

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 11 July 2002

The Council met at half-past Nine o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

THE HONOURABLE KENNETH TING WOO-SHOU, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, J.P.

THE HONOURABLE LEE CHEUK-YAN

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

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.S., J.P.

THE HONOURABLE FRED LI WAH-MING, J.P.

DR THE HONOURABLE LUI MING-WAH, J.P.

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, S.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH

THE HONOURABLE LAU WONG-FAT, G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, J.P.

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE SZETO WAH

THE HONOURABLE TIMOTHY FOK TSUN-TING, S.B.S., J.P.

THE HONOURABLE LAW CHI-KWONG, J.P.

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, J.P.

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, J.P.

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE MA FUNG-KWOK, J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION,
SECRETARY FOR HOUSING, PLANNING AND LANDS, AND
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE ANTONY LEUNG KAM-CHUNG, G.B.S., J.P.
THE FINANCIAL SECRETARY

THE HONOURABLE ELSIE LEUNG OI-SIE, G.B.M., J.P.
THE SECRETARY FOR JUSTICE

THE HONOURABLE JOSEPH WONG WING-PING, G.B.S., J.P.
SECRETARY FOR THE CIVIL SERVICE AND
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE MRS REGINA IP LAU SUK-YEE, G.B.S., J.P.
SECRETARY FOR SECURITY

CLERKS IN ATTENDANCE:

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

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

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

BILLS

Second Reading of Bill

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): Council will now continue with the debate on the Second Reading of the Public Officers Pay Adjustment Bill.

PUBLIC OFFICERS PAY ADJUSTMENT BILL

MR CHAN KWOK-KEUNG (in Cantonese): Madam President, this is our last regular meeting of this Session and the Government presented us with a grand finale in the resumption of the Second Reading debate on the Public Officers Pay Adjustment Bill. This signifies a breakdown of labour relations and disrespect for consultation. I recalled that when it was first disclosed in the Budget that a pay reduction would be effected by way of legislation, I was the first person to stand forth to raise objections. Various civil service unions then joined hands to raise objections and took to the streets. I recalled everything with great feelings.

The psychological warfare of the Government has always been very brilliant. This time, it first talked about our serious deficit and then proposed a 4.75% reduction rate in the Budget as an overture to the civil service pay reduction. Finally, when the Pay Trend Survey concluded that only a minor reduction rate was necessary, public opinions echoed the views of the Government of the Hong Kong Special Administrative Region (SAR) that "civil servants should accept a pay reduction".

In fact, civil servants are not unwilling to accept a pay reduction. What they cannot accept is to effect the reduction by means of legislation which is not at all convincing! There are altogether four civil service staff consultative councils and these councils form the consultative mechanism for pay adjustment and they represented the wishes of various grades and ranks. However, the Government has not adopted the consultative approach but instead high-handedly sought to effect the pay reduction by way of legislation and forced civil servants to accept it. Civil service unions have not been given any opportunity to

resolve the pay reduction issue through negotiation and consultation for the Government has maintained a "couldn't care less" attitude.

This attitude aroused unanimous opposition from civil servants because the enactment of legislation would obliterate all room of negotiation and deprive them of their rights to redress. Once such a precedent is set, the Government can rationalize everything through legislation and pays no heed to whether civil servants object or otherwise.

The situation is like the introduction of today's Bill where pay reduction is a political decision. It is both planned and directed by the Financial Secretary, and it has now turned into a gamble. First of all, he put all his stakes on introducing a pay reduction and the result is very surprising, for no party emerges the winner. Civil servants have lost their morale, and the Government has lost its credibility.

When the Bill was submitted to this Council for scrutiny in June, I decided at once to vote against it because I virtually cannot accept this approach of effecting a pay reduction by way of legislation. However, I still joined the Bills Committee for I would like to see what justifications there are in the Bill.

The Bills Committee held six to seven meetings in total and at the last meeting, the Government cited the cases of the Public Sector Pay Reduction Act (1994), Prince Edward Island, Canada and The State Government Leaders' Salary Reduction Act (2002), Illinois, United States to show us that there had been such precedents. It wanted to show us that the measure was consistent with the international practice and there was nothing wrong with it.

However, I would like to tell the Government that the political environment of Canada is not entirely similar to that of Hong Kong and its experience could not be mechanically applied to the SAR. As pointed out by the Legal Adviser of this Council, in the case of Canada, the Provincial Government had reached an agreement with its civil servants before the agreement was endorsed by way of legislation. This is different from the current pay reduction Bill of the SAR.

The SAR Government likes to employ a dissimulation tactic in recent years to play one sector against another. This time it has employed the same tactic. This is a very dangerous tactic and if we think that this is good

administration, then I believe it will do great harm to Hong Kong in the future. We should draw on the spirit of South Korean nationals, where both government and people were of one heart and one mind to face the results of the World Cup Finals. We should refrain from turning public opinions and legislation into tools and replace things and objects that are not to our liking, for this will only mark the beginning of our nightmare.

With these remarks, Madam President, I oppose the resumption of the Second Reading of the Bill and its Third Reading.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR JASPER TSANG (in Cantonese): Madam President, do Hong Kong civil servants enjoy the right of no downwards adjustment in their pay? Have they actually been enjoying this right? Should they enjoy this right?

Miss Margaret NG pointed out in her speech that we should not equate the civil service pay system with that of the private sector, and I totally agree to this. In fact, I have also openly expressed this view before. Some people said it is not right for us to say that civil servants are duty-bound to be contented with their lot and that they should not make great fortunes or quick money in times of economic prosperity; and then said civil servants should not enjoy the protection under the pay system in times of economic adversity and poor social conditions. I absolutely agree to this. However, does the protection mentioned by Miss Margaret NG include the protection on no pay reductions? Yesterday, Miss NG said that she had expressed a lot of views in the newspapers and those who were receptive and willing to listen should have already understood her points. I have thoroughly read Miss NG's articles and also listened to her speech carefully yesterday but so far, I have not distinctly heard her say that civil servants should actually enjoy a right of no pay reductions.

When Ms Audrey EU delivered her speech, I also did not hear such a view. She said since upwards and downwards pay adjustments can be effected under the existing mechanism, there is no need to do so by means of legislation. However, the Government has admitted that if it were sued for effecting pay reductions, it will surely lose its case and this shows that the Government does not have the right to reduce the pay of civil servants. Well, let us put aside

what the Government told us for the moment, as a member of the legal profession, can she make a judgement on whether civil servants should enjoy such a right under the existing civil service conditions of service and the long-standing pay adjustment mechanism? Should they enjoy such a right? So far, I have not heard of any clear judgement.

I also noted that many other legal professionals have commented on this issue in the press and media, but my impression is that the views are varied and no consensus has yet been reached. Have civil servants been granted the immunity to pay reductions under the existing civil service system?

If we are now talking about the contract between the Government and civil servants, let us take a look at how both contractual parties look at this issue. Does the Government think that civil servants now enjoy immunity to pay reductions? Do civil servants themselves think that they have always enjoyed this right? Though the Government has said it will lose if it is engaged in a lawsuit in this connection, government officials and the Secretary for the Civil Service have all along said that the Government has never promised not to impose pay reductions. According to the Government's understanding, it is not true that civil servants may not be subject to pay cuts and it has even clearly said that civil service pay can be reduced under the original mechanism. So, according to the Government's understanding, it seems that such a right has never existed.

And, how do civil servants look at this? Some civil servants think that the Government should not impose pay reductions and some civil service unions have even indicated that they would take the Government to court if it should reduce one cent from their pay, because they think that they enjoy protection on no pay reductions. However, this is certainly not the view of all civil servants. As regards the discussion on whether civil servants should enjoy this right, it seems that at the latter stage of the dispute, the majority of civil service unions no longer insisted that civil service pay should not be reduced. That means they no longer insisted that civil servants should continue to enjoy immunity to pay reduction. They all indicated that the pay reduction was acceptable.

As regards whether civil servants actually enjoy this right under the terms of the original contractual relationship between civil servants and the Government, I have also heard varied views. Some people say yes and some other say no. I have contacted many civil service unions, and some of their

representatives even told me that government lawyers have misled the public by saying that the Government would most certainly lose its case, for this is not true. This was what some civil service unions told me. They did not think that it was a fact. The Government may not lose its case for pay reductions are allowed under the existing mechanism and there is no need to effect pay reductions by way of legislation. What I am saying is that at least some civil servants or some representatives of civil service unions do not believe that civil servants actually enjoy immunity to pay reductions.

Let us take a step backwards and assume that such a right does actually exist and this right has now been deprived by means of legislation. Yesterday, several Members said the legislation we are now enacting is a draconian law and it is definitely a draconian law because it will deprive civil servants of their existing right. However, what right will be taken away by this legislation? It is clearly provided that if this legislation is passed, it will come into effect on 1 October and civil service pay will be reduced by 1.58% to 4.46%. This is the right we are now talking about.

Is this a piece of draconian law? We must not forget that the reduction rates were said to have been accepted by everyone when several tens of thousands of civil servants took to the streets recently. Through this legislation, we are only implementing pay reduction rates that have been accepted by all civil service unions which oppose effecting the pay reduction by way of legislation. This is all there is to it. So, how draconian is this piece of legislation? Yesterday, Mr LAU Chin-shek said even if this law was passed, there would be no winners. However, we should also consider whether all parties concerned would suffer even greater losses if this Bill were not passed? The Government will certainly lose, but do members of the public wish to see the implementation of civil service pay reduction being thwarted? And, do civil servants believe they have won if the Government does not dare to reduce civil service pay because this Bill is not passed? Then, Hong Kong would be faced with a problem. Let us examine whether the passage of this Bill will make us losers, or the failure of its passage will make us even bigger losers.

Yesterday, Dr LO Wing-lok said that after listening to all the speeches, he found that those Members who supported the Government had taken a very circuitous position in arguing the case. While they criticized the Government, they also felt that they had to support the Bill; however, those who were opposed to the Bill put forward very righteous arguments. I am afraid I have to join the

ranks of those who criticized the Government on the one hand and supported the Bill on the other. Whether there is a need to effect a pay reduction by way of legislation and whether the Government had adopted the right approach before we reached the decision on pay reduction are two separate issues.

Mr Eric LI said yesterday that he should conduct a self-reflection to examine whether he has done the right thing in regard to this issue for he has expressed his opinions at various stages in the past. The Democratic Alliance for Betterment of Hong Kong (DAB) and I should also do some soul-searching to see how civil servants, civil service unions and the public look at us in the light of the message conveyed by us in the course of the whole incident? Having said that, I believe it is most imperative for the Government to conduct a self-reflection. The rates of pay reduction have the support of nearly all Hong Kong people and even certain civil servants and civil service unions who are opposed to the Bill have voiced their support. Therefore, though no one is happy about pay reductions, I still fail to understand why the pay reduction exercise has developed into such a huge political issue under such circumstances and with such public sentiments and opinions in the community.

In the course of the whole incident, as I had exchanged views with government officials on the one hand and contacted civil service unions on the other, I could watch the development of the whole incident as an observer. Many Members pointed out that the 4.75% pay reduction rate was first mooted by Mr Antony LEUNG, the Financial Secretary, in his Budget without going through the pay adjustment mechanism and it was also not supported by the findings of the Pay Trend Survey. Civil service unions were not consulted and the Government even disclosed that the pay reduction would be effected by way of legislation, so it is understandable that civil service unions will be on their guard. This is especially true when so many voices in the community called out at that time that the pay of civil servants is too high, or that the existing pay adjustment and review mechanism is unreasonable and not in line with that of the private sector, thus creating a kind of public opinion pressure and made our civil service unions all the more determined to defend their rights and interests. This is what the problem is all about. Coincidentally at that time, the Government came up with an unprecedented approach to effect pay reduction by way of legislation. What are the consequences and significance of this unprecedented approach? Naturally, civil servants and civil service unions, the target of this measure, become more adamant in their opposition. In the course of the whole

incident, I feel that the Government has failed to do something that should have been done, but this does not mean that the present legislation is a mistake.

As such, I can fully understand why Members like Mr CHAN Kwok-keung have directed emotional criticisms at the Government. The DAB does not say that the Government should not be held responsible for the conflicts that have been induced; the main responsibilities still lie with the Government because it took the initiative and civil service unions certainly had to make a response. But nevertheless, we should still support this Bill for this is consistent with the interests of Hong Kong.

Dr LO Wing-lok and I went to the same secondary school. I heard a story in secondary school and I think Dr LO had heard it too. There were two women in the story who went before King Solomon to fight for the custody of one baby. Each of them swore that she was the mother of the baby. King Solomon said there was no way he could not tell who was the real mother and who was an impostor, so he suggested cutting the baby into two halves and shared the baby between them. After the two women heard what he said, one of them "stood firm" and the other "made a volte-face". Like what Dr LO Wing-lok said in his speech, the one who "stood firm" adopted a very clear stance and said righteously that no matter what had to be done, she was the mother of the baby; whereas, like what Mr Eric LI said yesterday, the one who "made a volte-face" felt very sad and helpless. If King Solomon had adopted Dr LO Wing-lok's standard in making his judgement, then this would become an unredressed case of injustice in history.

MR LEE CHEUK-YAN (in Cantonese): Madam President, I rise to speak against the Bill and will vote against it, since I do not know how to put forth a lot of reasons to oppose it, then make an about-turn and switch to supporting the Bill when giving the last-minute explanations. I have not yet acquired such a technique and indeed have to learn more from the persons concerned. However, I believe the public, with their discerning eyes, do not want me to imitate such behaviour.

Mr Howard YOUNG asked yesterday what civil servants were arguing over. I think it is incumbent on me to tell the public what we are arguing over. The first point of contention, as pointed out by Mr LAU Chin-shek on behalf of the Hong Kong Confederation of Trade Unions (CTU) yesterday, is that the

Government has bypassed the negotiation and arbitration mechanism and imposed a pay reduction by way of legislation, displaying a high degree of disregard for the principle of negotiation. This is the crux of the whole problem. Just as Mr Jasper TSANG said just now, the crux of the present problem does not lie in whether the pay should be reduced, but rather in why the present dispute cannot be settled through negotiation or arbitration. Mr Jasper TSANG asked what deprivation there is. In fact, there would be deprivation of two things. The first is the principle of negotiation and arbitration, and this is unacceptable to any trade union. And what is the second thing that will be deprived? It is the original approach to resolving disputes over contracts by referring the matter to court rather than make the Legislative Council pass a piece of legislation so that the Government can go to court with the guarantee that it definitely would not lose in the proceedings. It is said that we should render unto Caesar the things which are Caesar's, so contractual disputes should be referred to the Court and the present approach has deprived civil servants of the right to take legal actions.

What is the second point contended by civil servants? I believe it is necessary to delve into some further generalizations. It is said that a tree falls not at the first stroke. Why is the morale of the entire Civil Service so low? How do they feel? They feel that, before the reunification, the Government of Hong Kong under British rule regarded them as partners and society as a whole was even more excessive in treating them like treasures. After the reunification, how does the SAR Government regard them? They feel that they have been resigned to a position worse than dirt. The SAR Government often discredits them in various ways, turning them from an asset into a liability. The description of having become a liability rather than an asset can typically be associated with the Financial Secretary, Mr Antony LEUNG, who created this sentiment. How did he create it? It is him who estimated in his Budget that the rate of pay reduction would be 4.75%. But then the outcome of the survey was wide of the mark, so what could be done? He immediately raised the prospect of a tax increase or a reduction in expenditure, so that the situation of this failed attempt to reduce civil service pay by the proposed rate is translated into a burden felt by society as a whole, creating the situation in which members of the public have to fall victim to the Government because civil servants are unwilling to cut their pay by that much.

On the other hand, the entire Civil Service has been smeared, changing from public servants to public enemies. Mr CHEUNG Man-kwong cited a lot

of examples yesterday, such as the high-profile criticism by Mr Joseph WONG after becoming the new accountable Secretary that a rally by civil servants was uncalled for because it would cause inconvenience to the public, and that civil servants are doomsayers. In view of this, how would it be possible to negotiate with the Government? Since civil servants are already painted in a bad light, how can both sides sit down together and negotiate? If the Government totally ignores the morale of civil servants — who also are its servants and employees — and is intent on tarnishing them, how can their morale be high? To tarnish civil servants in this way and to treat them in such a manner will of course make them take to the streets in protest. In fact, the deeper reason does not lie in the pay reduction on this occasion, but in the perception of civil servants that the Government has all along been trying to disrupt their stable lot since the reunification. This is the true reason.

Furthermore, I would like to respond to what I feel sorry to describe as a fallacy in the "Letter to Hong Kong" read out by Mr James TIEN yesterday. Firstly, he said that civil service pay poses the greatest obstacle to resolving the deficit problem. Should the deficit be borne solely by civil servants? This is what I would like to ask. If there is a deficit, this is a problem for the entire society. Why do we not increase profits tax? If there is a problem of deficit, then why do we not make the entire society shoulder it? A lot of people outside the Civil Service are also highly paid, so let us increase the tax. More tax should be levied on prime employees. In this way, everyone will bear the burden fairly. If we think that the pay of senior officials is too high, or even that the pay of civil servants is too high, the problem of deficit can also be solved by levying higher salaries tax. Let everyone deal with the deficit together. Why just single out civil servants and victimize them, and regard them as the obstacle to resolving the deficit problem? Do they not work? In fact they do. Do they get paid for nothing? The more some people say so, the more indignant civil servants feel.

Secondly, Mr James TIEN criticized the Government for being too generous to civil servants and that their pay far outstrips the market rate. This is really a chorus sung by officials and businessmen, because the Financial Secretary, Mr Antony LEUNG, when interviewed by the China Central Television, said that the rates of pay reduction which employees of the private sector were subjected to in the last five years were definitely higher than the rates of civil service pay reduction proposed by the Government. With the two of

them saying the same thing, it means that the rates of reduction proposed by the Government are already very mild and civil servants should consider themselves lucky since more should have been deducted. Mr James TIEN even said that it would do only if at least 10% is deducted.

However, let us examine this with a cool head and see what is actually happening in private enterprises. Of course it is unquestionable that instances of pay reduction have occurred. However, I would like to present some figures to Members. According to the survey conducted by the Census and Statistics Department on the total amount of salaries paid by private companies over the past few years, civil service pay in fact did not deviate widely from that in private companies. For example, in the first quarter of this year, the average wage index of employees in private companies has only dropped 0.6% compared to the same period last year, and is less than the civil service pay reduction proposed by the Administration. That is to say, the pay in private companies has on average dropped 0.6% only. You may ask why this is so. There is apparently a substantial decrease. Obviously the pay has decreased a lot and there were also layoffs and the remaining employees have to work much harder than before whereas their pay has been frozen. Furthermore, whenever a company closes down, the new employees recruited by new companies are also employed on drastically lower pay. However, compared to last year, the final average rate of decrease is only 0.6%. Therefore, I have to say that compared with 10 years ago, the rates of pay adjustment in private companies and civil service pay have been more or less the same, therefore the rate of pay reduction in private companies cannot be described as particularly drastic.

You will probably say that the decrease has obviously been drastic. However, as I have just said, employees who have survived layoffs may not be earning less. On the other hand, we have to realize that if society operates according to the market logic proposed by Mr James TIEN, what would this lead to? At present, there is still a group of people in society who have not been subjected to pay cuts, thus contributing to the average rate cited by me. According to Mr James TIEN's proposal, those who have not been subjected to pay cuts should also be. Is this a situation we would like to see in society? Does his logic mean that the market level is of paramount importance and the pay of those who have not been subjected to pay cuts should also be brought down to the market level? Is this his logic? Do we want to see things descend from bad to worse?

If we follow this logic, what would it eventually lead to? Is it our request that all employers in Hong Kong, including the Government, should follow the examples of the worst and most unscrupulous employers in trying to be fair? Are we going to be satisfied only when civil servants earn an hourly rate of \$7? Is this the way we seek to ride out the storms together? Does riding out the storm together mean that we have to make ourselves more miserable than others? I hope wage earners will identify their friends and foes clearly and see clearly that it is those who attempt to break the rice bowls of workers and to cut their wages further and further are really our common enemies.

In fact, Members all said during the debate yesterday that the Government often gives only one reason for this move, that is, apart from introducing legislation unilaterally, there is no other way to settle this dispute on pay adjustment. However, other approaches are actually available, only that the Government has been unwilling to adopt them. This approach is the agreement of 1968. Under this agreement, the Government and civil service unions undertook to negotiate whenever disagreement over the terms and conditions of employment arise. The matter will be referred to a third party for arbitration only when it is really impossible to settle the differences. However, up to the last moment, before the Government decided to reduce the pay unilaterally by legislative means, it still considered that the collective agreement reached with civil service unions or the outcome of arbitration will be binding on all civil servants. Although the Government considers the standards imposed by the Court on administrative law in recent years to be increasingly stringent, and that if the Government acts without explicit authority vested by legislation, its action will be considered *ultra vires* and is therefore invalid, so that any consensus or outcome of arbitration arrived at by the Government and civil service unions according to the agreement of 1968 may not be 100% safe.

In fact, there is a second feasible and proper approach, that is, to revise the agreement of 1968 to greater perfection and legislate in accordance with International Labour Convention 151 on settlement of disputes and the convention on the right of civil servants to collective bargaining. That is to say, it is possible to require the Government and civil servants to conduct negotiations and to seek arbitration should negotiations fail. This matter should be regulated by legislation and legislation should be introduced to specify that any agreement reached through collective bargaining is binding on all people, as suggested by us

before. The problem faced by the Government today can be completely solved if the results of negotiation with labour unions are binding on all people. Why has the Government not adopted this approach?

In fact, the Chief Executive, in order to appease civil servants — or rather, to appease Members who wanted to change their stance — guaranteed that no legislation would be introduced in the future to curtail the pension of civil servants. However, the guarantee is limited to pension only, while other pay or fringe benefits were not mentioned. So history may repeat itself again and again. On the one hand, the Government has to introduce legislation, and yet on the other, it has encountered resistance in the course. Moreover, it has to offer benefits to Members who have changed their stances. So why does it not solve the problem properly and thoroughly? Even though the Government has woken up to this situation only belatedly and does not have time to adopt the method proposed by me in introducing the legislation, it should still seek the consent of trade unions and both sides should make statements on how to solve problems, conduct negotiations and seek arbitration, in order to solve the problem of how to negotiate, reach an agreement and eventually make the agreement applicable to all civil servants. If the problem can be laid before all parties for negotiation, all sides may agree after negotiation that it is better to legislate once and for all and legislate on the right to collective bargaining as specified in the entire International Labour Convention in the future. Unfortunately, the Government did not seriously consider complying with the agreement of 1968 and was only intent on taking a shortcut, thus completely destroying the labour relationship established with civil servants in the course of 34 years.

In fact, the Chief Executive has undertaken not to adopt a legislative approach in dealing with the pensions of civil servants. This is very much like a husband saying to his wife, "I have taken a second wife, sorry, I will never do it again." However, we must bear in mind one thing: Will the wife believe him? One betrayal is too many. In this instance, the Government did not honour the agreement of 1968, in the future it may take the Government a hundred folds of time and effort to repair the basis of mutual trust between it and civil servants. In fact, the Government's action to reduce pay unilaterally by means of legislation is not only a breach of trust and justice, it has also destroyed the spirit of co-operation.

Yesterday, Mr James TIEN pointed out that some people support the pay reduction but not legislation. In fact, I remember that on the issue of the electricity charges of the two power companies, Mr James TIEN were also opposed to legislation. At that time, he also considered electricity charges to be expensive and supported a reduction in the charges. He was also opposed to undermining the agreement with the two power companies and the guaranteed return of 13.5% by adopting the legislative approach, since he said that the spirit of contract had to be respected. However, are not the present situation and the rationale the same? How can we disregard the spirit of contract this time? At that time, we also did not venture to propose introducing legislation to undermine the agreements reached with the two power companies.

Finally, I would like to comment on what steps should be taken at present to solve problems in the future. As I have said, International Labour Convention should be respected. Article 8 of the International Labour Convention stipulates that the Government should seek to settle disputes between the management and civil servants through negotiation, mediation, conciliation and arbitration. However, the Government obviously has not done so on this occasion. The CTU will consult civil service unions and will discuss in the executive committee meeting next Thursday whether we would lodge a complaint on this matter to the International Labour Organization. I am destined to run into Secretary Joseph WONG all the time. Last time, he had to repeal a piece of legislation and I lodged a complaint against the Education and Manpower Bureau. At that time, he was the Secretary of that Bureau and on this occasion, it is him again. I do not know why I am always destined to meet Mr WONG. This time, Mr WONG has become a Secretary committing the three violations because he has contravened articles 87, 98 and 151 of the International Labour Convention. Bravo, Mr WONG!

Thank you, Madam President.

MR KENNETH TING (in Cantonese): Madam President, the Federation of Hong Kong Industries conducted a questionnaire survey on the issue of reducing civil service pay by way of legislation. We received a total of 294 responses, of which 251 were in favour, 38 against and five had no particular views. In terms of percentage, 85% of the responses were in favour, 13% against and 2% had no views. Of the 38 responses that opposed the pay reduction, if we look at them

more carefully, we would find 16 members are opposed to it because they think the rates of reduction are too small. If we add these 16 responses to the other 251 responses, the percentage becomes 91%.

Why is the result like this? We can see that on the one hand, with the economy caught in recession, deflation and a fiscal deficit, I believe most factory owners and members of the public share the same views and I believe this is sufficient proof that everybody has arrived at a consensus on this issue. On the other hand, I believe the majority of civil servants also agree to the rates of deduction. Therefore, given that Members have already reached a consensus, I hope Mr LAU Chin-shek and Mr LEE Cheuk-yan will strive together with us in like mind and in concerted efforts to enhance the efficiency and competitiveness of Hong Kong, improve the economy and eliminate the deficit. In this event, there will never be any need for Hong Kong to reduce the pay again. Thank you, Madam President.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

MR MARTIN LEE (in Cantonese): Madam President, we can all remember that before 1997, our Civil Service was considered the finest, cleanest and the most efficient civil service in the world. Although leaders of the Central Government were aware that civil service pay was rather high, they worried that civil servants might leave and hoped that all of them would remain. I still remember Mr LU Ping also agreed that civil service unions should establish a pension fund to safeguard their pension, and he said that the more the funds, the better. In fact, it may never have occurred to Mr LU that there is no need to safeguard the pension since the Government would allocate funds for this purpose every year and it would be necessary to establish a pension fund only if there is a lack of confidence in the SAR Government. Nevertheless, this shows that at that time, all of us attached great importance to the Civil Service. In 1997, how could anyone imagine that in recent days, over 30 000 civil servants would take to the streets to protest against their own employer — the Government? Even in a place as chaotic as Argentina, nothing of this sort has happened. What on earth has happened here?

Yesterday, Mr Michael MAK observed one minute of silence and some Members derided him. In fact, should our Mr TUNG and respectable principal

officials also observe silence for a while and reflect on what has happened exactly. It may not be a big deal, for I remember the Secretary for the Civil Service said that only 30 000 had taken to the streets in protest and there were still hundreds of thousands of people who had not done so. I remember that when the Government requested the National People's Congress to re-interpret the Basic Law, over 600 lawyers took part in a half-hour rally in June that year, all clad in black robes. At that time, I was sweating all over but obstinately refused to remove the black robe. Finally, after observing two minutes of silence before the Court of Final Appeal, we left peacefully. When I mentioned this to the Chief Executive, he said that lawyers certainly had different views, and he said that on that occasion only some 600 lawyers had taken to the streets and there were several thousands who had not. I replied that if you were able to find 300 lawyers who would take to the streets in support of the re-interpretation of the Basic Law, I would admit that I was overwhelmed. Similarly, Secretary Joseph WONG were able to find 5 000 civil servants to take to the streets in support of the legislation, I would kneel down here and give him nine resounding kowtows. I hope we will not make things go from bad to worse.

In fact, why is it so difficult to cut civil service pay? This is because, as we all know, a job in the Civil Service is an unbreakable iron rice bowl. When I started my practice, my elder sister also suggested to me that, instead of being too adventurous and choosing to become a barrister, I had better become a prosecutor. Eventually, I decided not to become one. However, I have some friends who are prosecutors. Although they find that their life is rather simple, their nine-to-five work pattern does not pose a lot of pressure. Many people are prepared to lead this kind of life and the civil service system is simply like this. We do not expect civil servants to strive as hard as other people. They can work according to the nine-to-five work hours because this is what is prescribed in their contract.

Have Members thought about why the Chief Executive has to go to such lengths to establish the accountability system for principal officials, so as to let senior civil servants retire and receive a sum of money first, then give them higher salaries and appoint them as accountable officials? This is because the Government wanted to take back their iron rice bowls and give them what can be described as more expensive but breakable clay rice bowls. In the next five years, accountable officials may lose their job at any time. Therefore, why did the Government treat civil servants of the middle and lower ranks differently? Since the Government wants to take back their iron rice bowls (because their rice bowls would no longer be iron after the pay reduction), this would certainly be a

difficult thing to do because even its legal experts have advised it that if the Court has to deal with legal proceedings on this issue, the Government will lose. Why? The reason is very simple. If the Government will not lose, then why did it add one more term in the contract used in recruiting civil servants after June 2000, stating that it has the power to reduce the pay? That means the Government knows it cannot reduce the pay if there is no such term in the contract and that the contract is sacred.

Madam President, with your indulgence, I shall read out a case of 1875: *Printing and Numerical Registering Co. vs Sampson* (1875) LR 19 Eq. 462, at p.465:

".....if there is one thing which more than another public policy requires it is that all men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice".

Another case is *English Hop Growers Limited vs Dering* [1928] 2 KB 174 at pp.186, in which the Judge expressed the following views:

".....where the parties enter into an agreement with their eyes open, the Court should not, in my view, be astute to assist those who endeavour to break it, as Jessel M.R. said in *Printing and Numerical Registering Co. vs Sampson* [that] "you have this paramount public policy to consider - that you are not lightly to interfere with this freedom of contract". There is still something to be said for the sanctity of contracts, and for the man who keeps his agreement....."

Madam President, what is "the rule of law" and "the rule by law"? As far as the rule by law is concerned, it will not do for a country to have no laws, so it will put in place very clear laws to govern the country and its people. However, these laws can be evil ones, or good ones. If a country is governed by evil laws, then it has not lived up to the rule of law. Countries abiding by the rule of law have to be governed by a code of good laws accepted by the people and formulated by a popularly elected legislature before the rule of law can be brought into full play. In fact, the Secretary for Justice has also said something to this effect.

Before HITLER came to power, the laws of the Weimar Republic were on the whole good laws and the Judges of the Republic were able to protect the freedoms of its people through these good laws. However, after HITLER ascended to power, the parliament controlled by him passed many evil laws.

Some Judges enforce these evil laws, so not only did they fail to protect the freedoms of the people, they even deprived the people of their freedoms. However, some Judges refused to enforce these evil laws and were executed as a result.

What is a good law and what is an evil one? Laws that are first deliberated and accepted by all, with a mechanism established for it before its promulgation can be considered good laws. For example, the present forced legislation, which is the outcome of the Government's deliberate avoidance of conducting negotiations with representatives of civil servants and which is being pushed through by treating Members of the Legislative Council as rubber-stamps, is an evil law. I hope our leaders and the leadership will understand the basic differences between the rule of law and the rule by law.

Mr TUNG said that he was obligated to do so, but only for once. However, have we ever thought of what will happen if the economy is still in recession and there is still a need to reduce the pay a year or two later? Will not another piece of legislation be introduced? I believe not many people other than the Chief Executive himself will believe in his words. There is a cartoon in a newspaper showing a boy pleading with a girl, "Darling, please believe me for once, I won't get you to do this again." However, sometimes such things will be done again because the girl loves him. Civil servants did not have any chance to negotiate because the Government was unwilling to do so and did not really show any sincerity in doing so before it introduced this piece of legislation into the Legislative Council. How can civil servants believe that this will never happen again? Moreover, one is never incapable of bringing oneself to do something for a second time: doing it for the first time will be difficult, as is true of anything, but it will be much easier for the second time, and the third time will become a matter of course, and for the fourth time, not doing it will be odd. In fact, I do not believe Mr TUNG's remarks were intended for civil servants. As a matter of fact, what he said was only intended to make it easier for some Members to get away with their actions.

Madam President, when I was prepared to speak yesterday, I told my brothers and sisters in the Democratic Party that I wanted to speak because I could not stand some Members making a volte-face. The secretariat of the Democratic Party immediately provided some information to me on how some Members had changed their positions. I have the information with me now, but I do not wish to use them. In his last Question and Answer Session, the Chief

Executive cited the lyrics of a song sung by Paula TSUI, "Showing True Hearts in Weathering the Storms Together". He said that now is the time we face the greatest difficulties and it is imperative we ride out the storm together with concerted efforts. It is only by doing so that we can get out of our predicament.

Now, what course of action should we take? Obviously, everyone is at loggerheads with one another and the camps are clearly defined. Those in favour of the Bill are in the majority and the Bill will definitely be passed. I have never seen so many so-called "paparazzi" outside the Chamber. They are all rather senior civil servants. Why are they spending so much time here? If the Government has dealt with this matter appropriately, why is it necessary to make so many people watch over so many Members closely? These Members should support the Government wholeheartedly, but we could hear how a number of Members had painstakingly struggled to find a reason to explain their actions in support of the Government. Members of the Democratic Party have described Dr David LI's action of delivering a speech and then suddenly voting for the Bill as a forward who, after getting around all the defenders, kicks the ball out of the pitch. However, I think the situation is not like this. I think his behaviour is like Ronaldo who, after shaking off all defenders single-handedly and even evading the goal-keeper, stops the ball outside the goal area and then walks away, so as to let the Government get the score. What Dr David LI has said is all correct; and all of us have heard the closing remarks of Mr Jasper TSANG, the speech by Mr Eric LI and the views expressed by Mr CHAN Kwok-keung. So please do not say that only the Democratic Party has something to say. All these remarks reflect the truth.

In fact, what should be done now? The knot has to be untied by the one who tied it. There is now only one person with the power to stop this matter from dragging on. The Legislative Council is divided, but I am not going to do what I originally intended to. It is pointless to divide it any further. The Breakfast Group is divided, and so is the DAB. Some say that the Civil Service is also divided and so is society, thus it is pointless to continue to conduct opinion polls. We may as well conduct an opinion poll to ask the public whether the annual dividend of directors of large companies should be reduced, and the outcome would certainly be in the affirmative. If an opinion poll is conducted asking the public if the pay of senior officials should be reduced, the outcome will also definitely be in the affirmative. If yet another poll is conducted on whether the pay of the Chief Executive should be reduced by 10%, 20%, 30% or

90%, perhaps most of the people will opt for a 90% reduction of his pay. Is there any point in doing this?

Is there really no option which will allow all three parties to come out as winners, as Mr Eric LI has suggested? In fact there is. This Bill will certainly pass through its Second Reading, but is it really necessary for us to vote in favour of it at the Third Reading? Members have stated their positions and the Chief Executive has lobbied them successfully, but is it necessary to drive home the victory? In fact, is it possible only for a wise and confident leader to possess absolute power but not to use it, to possess absolute advantage but not to take it? No one can accord oneself esteem, it has to be accorded by someone else. I hope our Chief Executive will think twice, and our accountable officials will bring to his attention this situation. What is more, I hope the eight parties can sit down and have a discussion again on whether it is possible to defer the Third Reading of the Bill so that everybody can discuss it further and introduce legislation only when nothing can really be worked out. King Solomon in fact did not really want to divide anything. However, many of us have now become divided. It now takes a wise King Solomon, that is, our Chief Executive, to decide whether we will be further divided. Only he can decide to defer the Third Reading of the Bill after the Second Reading, so that everyone can sit down for further discussions.

MISS CHAN YUEN-HAN (in Cantonese): Madam President, any issue may give rise to disputes and people may have different views on any issue, however, concerning the dispute on this occasion, is it appropriate to resolve it by legislation? I believe that it is not, in particular because this dispute to be settled is, strictly speaking, a labour dispute and it is even more inappropriate to settle a labour dispute by legislation.

The Employment Ordinance in Hong Kong does not clearly specify that a reduction in pay and fringe benefits must have the consent of employer and employee. However, this principle pervades the Employment Ordinance. References to consent by both parties are enshrined in various provisions of the Ordinance and this is the same as the spirit of contract mentioned by Mr Martin LEE just now. It also shows that we attach great importance to the law and this is an important spirit.

Even though it is not clearly specified in the Employment Ordinance that a reduction in pay and fringe benefits violates the very important spirit of contract, if the matter is referred to the Court for a decision, whoever breaks the law will lose the case. However, with the dismal economic situation in recent years, when employers want to reduce the pay and fringe benefits or even slash jobs, many people have no choice but to put up with it quietly and accept a cut in pay and then a cut in fringe benefits and even eventually dismissal. Although countless cases like this have occurred, we can only tell the Government that it is impossible to implement the spirit of the Employment Ordinance. Although the Ordinance states that the consent of employer and employee is required, this cannot be implemented. In 1998, when companies reduced their pay one after another, we informed the Government of each of the cases, asking it what could be done if the provisions of the Employment Ordinance could not be implemented?

The Commissioner for Labour at that time was Miss Jacqueline Ann WILLIS, to whom the labour sector repeatedly requested that legislation be introduced. However, the Government said that there was difficulty in doing so and a set of guidelines would do. Therefore, in October 1998, the Government issued a set of guidelines on reduction of pay and fringe benefits. The contents of this set of guidelines are very clear, with instructions to employers and employees on what they should do.

I can provide a set of the guidelines to the Government should the Government need it. In fact, this set of guidelines was issued because it is not specified explicitly in the Employment Ordinance what employers should do when they encounter difficulties in reducing pay and fringe benefits. Therefore, the Government took the action to issue this set of guidelines on reduction of pay and fringe benefits in October 1998. These guidelines were drawn up by the Government for compliance by employers and employees in dealing with this kind of problems.

We have said that we do not agree to the way in which the Government reduces civil service pay on this occasion. The Government, on the other hand, said that it is difficult to ensure that not even one civil servant would sue the Government. If any civil servant succeeds in suing the Government, the impact on Hong Kong will be tremendous. If the Government can look at this matter objectively, in fact the Government's action will be damaging to both sides.

When the Government finds that the good relationship it has been promoting in requiring employers and employees to carry out negotiations when reducing pay and fringe benefits is destroyed by us with this legislation, it will also suffer from this.

I have discussed my views with many Directors of Bureaux and Secretaries of Departments, and for a very long time for that matter. Let me give an example here. When a large group in the catering industry recruited its employees, the employees were told at the beginning, "Let's sort it out ourselves. We will pay wages in lieu of leave. There will be only two rest days each month. The other two days of leave will be accounted for in the wages." After a year, two years or even 20 years of operation, some employees are not aware that such an agreement was ever reached, nor is it specified in the employment contract. However, objectively speaking, the catering group has adopted a means to compel its employees to sign and acknowledge certain conditions. This is my point of view.

Some employees considered that the group had contravened the requirement that entitles workers in Hong Kong to one day of rest for every seven days of work, so they went to the Labour Tribunal to report on the group. The Labour Tribunal ruled that since it was not specified in the contract that wages were paid in lieu of leave, therefore it ruled that the group had lost the case. The group disagreed with the decision and took the case to the High Court, where it was also ruled that although the group could pay wages in lieu of leave, it was not specified in the employment contract, so the group was also ruled to have lost the case. The group has now taken the case to the Court of Final Appeal. However, I think it is very likely that the group will also lose the case. Why? This is because the arrangement was not specified in the contract, even though the group maintained that it had verbally stated this or this is the trade practice. Therefore, it can be said that this kind of cases are generally dealt with through arbitration by referring them to the Court.

In the present case, the Government found that some loopholes existed in the terms of employment of pensionable civil servants before June 2000, so the Government had to remedy the situation. I believe such a move is desirable as long as both sides conduct negotiations in remedying the loopholes. This is similar to the negotiations that I conduct with large, medium or even small companies if their employees are given unfair treatment. The employees are on

high ground at the negotiation table and the employer must offer proposals. This is how negotiations are conducted. When one side is on high ground, the other side should offer proposals in exchange or to remedy existing deficiencies.

However, the Government did not take such a step in dealing with civil servants. A senior government official told me that he had had discussions with civil servants on a number of occasions, but the civil service unions did not make any undertaking. Therefore, if the Government did not introduce legislation, even if one civil servant decided to sue the Government, it would be in trouble. So, what should be done? I agree that such a situation may arise and the difficulties mentioned by the Government do exist. However, it is precisely because difficulties do exist that negotiations are necessary. I cannot see why civil service unions or the parties concerned cannot conduct negotiations on this issue. Of course, if you ask me what the outcome will be, I will say that everything should be settled at the negotiation table. In fact, there is no such thing as which party will come out as the winner from negotiations. It will be fine as long as both parties can reach an agreement by meeting each other half-way.

Furthermore, some officials have asked me how the diverse views among civil servants should be handled. I agree that this is the case, but I explained to him that very often, when I dealt with major cases, I would also encounter different views at different levels of the company concerned. This is normal. How can we make them compromise? This must be done through negotiation. By mutual accommodation, all parties can find a solution. The process of negotiation is painstaking and time consuming and it is also necessary to make mutual concessions. Everything depends on the attitudes of both sides and the mediator cannot make decisions for them.

Someone asked me whether I could always make both sides come to an agreement in the numerous cases that I have dealt with. Did you provide a lot of options to employees? I said that I did not, and I was only the mediator, however, I would give them professional advice. They should know how to conduct negotiations. In the final analysis, it is up to all of the people, who may comprise different groups with different interests, to work out a solution and face the problem to be solved altogether.

I believe negotiation is a kind of civilized behaviour. I do not believe that it will always be futile, but it takes time. Some people will then ask who should

take the time to do so in this instance? I believe it should not be the civil servants but the Government, since it is the contract drawn up by the Government that is problematic. The Government must therefore take the time to negotiate with civil servants. This is the viewpoint that we have always insisted on and also the view that the FTU stressed to the Government.

We did not wish to see the present situation emerging. It is not conducive to the interest of Hong Kong as a whole. The aim of the Government in implementing the accountability system for principal officials is to unite all walks of life to deal with the unemployment problem and economic difficulties in a concerted effort. However, the Government is reluctant to engage in too intensive an exercise in this instance or to go back to the negotiation table to bargain with unions and employees. The damage done is irreparable. I have taken part in labour movements for over 30 years and know that it takes a rather long period of time to remake the *status quo*, so things are not really as simple as it seems.

However, it is most unfortunate that the Government has been very obstinate on this issue, and has only looked at it from its own point of view, believing that it is dealing with the problem with the interest of Hong Kong in mind. Of course, we all think that the Government should deal with the problem with our overall interest in mind, but it should not think that it has a lot of backing. If it thinks so, then it is sorely mistaken.

The FTU held a regular executive committee meeting in the evening a few days ago, but a couple of days prior to this, someone said to me that concerning the stance of the FTU when voting on this issue, some residents at the district level held certain views. That evening, I did not attend the executive committee meeting of the FTU but went instead for a discussion with over a hundred residents in a small place about why the FTU would cast its vote in this way. Originally, some people supported our stance while others opposed it, but after I had enumerated the problems, everybody felt that they had a better understanding. This group of people is committed to Hong Kong and loves Hong Kong and the country ardently. Naturally they very much hope that the three sides will not all come out losers in this dispute. When we talk about matters of principle, I hope they can also understand them. I understand that they also want Hong Kong to continue to fare well.

However, we definitely cannot accept the approach adopted by the Government on this occasion to solving the problem. If the Government does such a thing, it may put Hong Kong in an even worse position. Hong Kong possesses advantages in development. It has attained its present position because it has kept up its development in various aspects. Many people say that in competing with cities on the Mainland, we can still maintain our superiority precisely because Hong Kong attaches great importance to the concept of law and to solving problems by taking matters to the Court, rather than dealing with them with the approach adopted by the Government today.

However, no matter what, I still very much hope that the Government will learn a lesson from the outcome today. If the Government wins, then I hope Mr TUNG will honour his words. In fact, not only must the Government honour Mr TUNG's words, it also has to make concessions in other aspects and hold discussions with civil servants again to solve the existing problems. It cannot repeat what it is doing in this instance, that is, to settle disputes through the legislative approach because an administrative problem has occurred. In fact, such tactics will not work, and we find them totally unacceptable. Therefore, Madam President, the FTU opposes the Second and Third Readings of the Bill today.

DR LUI MING-WAH (in Cantonese): Madam President, I support the Public Officers Pay Adjustment Bill introduced by the Government because this is what the Government needs and also the wish of a great majority of members of the Chinese Manufacturers' Association of Hong Kong.

Like other bills discussed in the Legislative Council, the two sides in a debate can hold forth eloquently on their arguments, and accuse and deride Members not in support of one's stance. However, history has shown that the results of voting is never dependant on the rhetoric of the parties concerned in this Council or how loquacious the speakers are.

Personally, with a view to solving the problem and resolving conflicts, six other Members of the Breakfast Group and I, after discussions, wrote to Secretary Joseph WONG to express our views for the Government's consideration. At that time, we all hoped that the Government could take on board our views because they could solve the problem better. However, we did

not have any established position at that time, nor did we make our stance known or change our position. We only fulfilled our responsibilities as legislators. The outcome is now very clear, the Government has already made a decision and will not be swayed. At such a stage, as a Member representing a functional constituency, I can only support the Government on behalf of my sector, bearing in mind the overall long-term interest of Hong Kong.

Concerning the other issues, let us leave it to the employer and the employees, that is, the Government and civil servants to solve them. Thank you.

MR SZETO WAH (in Cantonese): Madam President, I did not attend St Paul's College, nor was I a schoolmate of Mr Jasper TSANG and Dr LO Wing-lok, but I have also heard the story of King Solomon many times before. Today, I have heard this story once again.

There were four characters in this story: King Solomon, the baby, the blood mother and the impostor. Which of these characters was Mr Jasper TSANG? He implied that he was the not very righteous but blood mother; and Members who righteously opposed to effecting the pay cut by way of legislation were the impostor who pretended to be the mother while civil servants were the baby. I would like to ask civil servants who are likened to the baby whether they recognize Mr Jasper TSANG as their blood mother? Do they think that he is the one who truly loves them?

THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair.

In fact, Mr Jasper TSANG is none of those characters. He is only a close official of King Solomon for he is a Member of the Executive Council who was involved in the decision on the pay reduction. Even if he did not have a chance to get involved, he is now involved in promoting the pay reduction by way of legislation. He mentioned in his speech that the Government had not done a good job in some areas, but not much has been said on this. It is all right if he does not talk about this today. I hope he will be more outspoken in the

Executive Council to point out the inadequacies of the Government and tell the Government not to repeat those mistakes again.

In fact, the real mother is the general public. They were so scared of the fake King Solomon that they did not dare not to support effecting the pay reduction by way of legislation. This King Solomon is a fake for the real King Solomon who is truly wise will not resort to threats, nor will he play one sector of the people against another. Who was the expert in applying the tactics of playing the people against the people? Anyone who knows a bit of modern Chinese history will be able to guess who he is. Today, the persons who are ruling Hong Kong are the disciples and grand disciples of this person. They have inherited this tactic from him.

THE PRESIDENT resumed the Chair.

During the 2000 Budget debate, I pointed out that the Government had often adopted the tactic of playing the people against the people in its reforms. This tactic may be successful for the time being. However, though it has won the battle, it will lose the war. Over the past five years, it seems that the Government has won battles after battles, but there are already signs that it will lose the war. I hope Mr Jasper TSANG can put forward more suggestions in the Executive Council in respect of this in the future.

I so submit.

MR ABRAHAM SHEK: Madam President, I confess that I was not going to speak. But having heard all the speeches during the last two days on the issue of legislation on public officers pay adjustment, I decided to speak for the sake of the record and for what I shall vote. I shall vote in favour of the Bill. The debate has been of scholarly standard and, at times, emotionally charged. And here, I would like to give some of my humble comments on the speeches which could be categorized as follows:

The first group of speeches which are of scholarly standard are contributed by the Honourable Margaret NG, the likeable legal angel — the Honourable

Audrey EU, and the gladiator of democracy — the Honourable Albert HO. They spoke with high sounding legal arguments. They talked of principles of justice, fairness, elements of contract, and the effect and impact on the rule of law and good governance in Hong Kong if the Bill were to be passed. Their arguments were truly persuasive and logical. Had I been weaker, I would have been swayed. But then I asked myself, have these principles been molested? Have these principles been raped? Even if the Bill is passed, what effect would that have on Hong Kong? I cannot give an answer. I cannot give an answer for something that I do not know. Then, I heard the speech delivered by the Honourable Jasper TSANG, who has addressed some of these arguments.

The second group is the emotionally charged speeches delivered by some of the colleagues who have vested interests, because they represent certain functional groups or some of their voters. These Members are to be respected for their arguments, for they serve their voters well. And may they be elected again, for they are good servants to their masters.

The third group of speeches are from those who spoke for the Bill, believing that their votes for the Government would bring about a good and effective governance of Hong Kong. They believed that they were the custodians of public good. Blessed are they who are fighters for the Government, and may they enter the Kingdom of Heaven.

The fourth group of speeches are from the pragmatic practitioners, who believed that their "yes" votes would be an effective solution to a simple problem of employer/employee relations. This group is represented by sound arguments put forward by the Honourable James TIEN. I bow to their courage in their conviction and belief. Pragmatism sometimes is a hard dosage to swallow, especially for the Honourable LEE Cheuk-yan.

The fifth group of speeches are from the rational and independent Members who will vote either "yes" or "no". They are represented by the speeches given by the so-called Breakfast Group, including the Honourable Eric LI, Ir Dr the Honourable Raymond HO, the Honourable Bernard CHAN, the Honourable NG Leung-sing, Dr the Honourable LO Wing-lok and myself. Members of this particular group have their beliefs and convictions. They are prepared to give up their beliefs for the sake of public good, in order to seek a compromise so that we can achieve harmony in society, to seek a solution that

could lead to a win-win situation. This group listens, deliberates, objectively analyses and prepares a workable solution to address the issue of legislation.

Madam President, unfortunately, life is never ideal and it is particularly true in this case. What is left for Members of this group who have forsaken their beliefs in the hope of a compromise, but failing which would have no alternative but to stick to their convictions? Some would vote "yes" and some would vote "no". I am proud to be a member of this group.

Today's debate is Hong Kong's gains, as it bears testament to the world that Hong Kong is still a place where the institution of freedom of speeches, beliefs and convictions is still alive and kicking. Like many of my colleagues who have quoted from the *Bible* on the wisdom of Solomon and from famous legal cases, I follow their wisdom and quote from Winston CHURCHILL: Never had so few sacrificed for the sake of so many during the Second World War.

May I ask the 180 000 civil servants to forget yesterday, forget today, but follow the great tradition of the Civil Service of being obedient servants to the Administration, accept the reality and continue to serve Hong Kong well as they and their predecessors have done.

Madam President, legislation may not be the ideal solution. Taking into consideration the present adverse economic environment that we are facing and for the sake of harmony and goodwill, legislation may not be the best supplement but the best at hand. Thank you.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member responded)

PRESIDENT (in Cantonese): Secretary for the Civil Service, you may now reply.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, first, I must say I am very grateful to Members for their comments. Whether or not they support the Bill, they have all put forward many valuable opinions.

Although I do not agree to some of their views, I will still respond to them one by one later on. Some Members have criticized the Government and me for the approach adopted to handling this issue. In response to their criticisms, I would say I would certainly make improvements if I have really made the mistakes described, and I would note those things that I have done correctly as reminders.

I must first express my gratitude to Mrs Selina CHOW, Chairman of the Bills Committee on Public Officers Pay Adjustment Bill (the Bills Committee), and also members of the Bills Committee, for completing the scrutiny of the Bill within such a short time, thus making it possible to resume its Second Reading today. The Bills Committee convened a total of seven meetings, during which it examined the contents of the Bill in great detail and made many valuable suggestions. We will, in response to these views, move a number of amendments at the Committee stage later on.

I must, on behalf of my colleague, Mrs Jessie TING, thank Ms Audrey EU for the praises sung on her. I think I must learn from Mrs TING, who has been so calm and patient, so that people will not think that I am always so firm, trying to make life difficult for my colleagues in the Civil Service. Actually, as Secretary for the Civil Service, I will never, and I cannot possibly, say anything that may injure the interests of the Civil Service as a whole. I will never, and I cannot possibly, do anything to induce any antagonism between civil servants and the wider society.

I would first of all like to discuss whether the pay cut decision and rates this time around are reasonable — a question raised by Mr LEUNG Yiu-chung. To begin with, we have acted in full accordance with the mechanism agreed between the Government and civil servants, which has operated for 20 years. We had considered all the factors under the mechanism, including the net pay trend indicators of private sector and public sector organizations, the economic conditions of Hong Kong, the financial shape of the Government, changes to living conditions, the pay adjustment request of the staff side and the morale of civil servants, before we decided to reduce civil service pay this year. The factors pertinent to the mechanism that Members have heard may produce both positive and negative effects on civil service pay. The pay adjustments under this mechanism may well be upward or downward, and no civil service unions have ever questioned this point openly. And, in fact, this is the spirit behind the agreement between us and civil servants. This year, the Government has decided to reduce civil service pay in accordance with the net pay trend

indicators. The rate of reduction ranges from 1.58% to 4.4%, scheduled to take effect as from 1 October 2002.

There is already an answer to the question of whether the rates of reduction are reasonable. Countless opinion polls have indicated that most of the people find the rates both fair and reasonable. Members' remarks I heard yesterday and have heard today show that many of them, whether they support the pay cut decision, actually think that everything else aside, the rates of reduction are fair and reasonable. Mr LEUNG Yiu-chung of course has his own opinions, and I must thank him for his remarks yesterday, for it appears that he has read very carefully my letter to Members. This letter is only one of the ways in which I communicate with Members. I have written many letters to civil servants too, and I would love very much to give Mr LEUNG Yiu-chung copies of my letters to civil servants for his perusal, so that he can get to understand many of the policies related to civil servants. Actually, very detailed explanations can be found in these letters.

Besides, I also wish to say a few words on our decision this time around. Is it really true, as claimed by some, that there has been no communication, no consultation, but just a "high-handed, top-down" approach? This is absolutely not true. I have explained that before, but let me explain it once again here. Before we made our decision this time around, we had acted in accordance with all established procedures and consulted the several central consultative councils of civil servants. These councils gave their views on the pay adjustments this year, and their views were forwarded to the Executive Council for discussion and advice. The advice of the Executive Council was later on conveyed to these councils for their scrutiny, examination and reference. The views of the councils following this were once again submitted to the Executive Council for yet more discussions before reaching a final decision. In other words, the decision this time around has in fact been made in full accordance with all our established practices. Of course, we will also say more on the various issues connected with consultation, communication, and so on, a moment later.

What I wish to talk about now is the reason why we have to legislate on pay reduction. Rightly just as Mr LAU Chin-shek said, we absolutely do not agree to legislation if at all possible. The question is: We have considered many alternatives, but our conclusion is still that the only safest way to implement pay reduction should be enacting a piece of legislation on that. Currently, the agreements signed between the Government and most existing

civil servants do not contain explicit provisions on permitting the Government to introduce pay reduction. Although the Memorandum on Conditions of Service provide that the Government reserves the right to alter any terms and conditions of service of civil servants as it deems fit. But legal counsel to the Government pointed out that, according to past precedents, the Court will not accept the application of this general power of altering agreement terms to such a basic term like salaries. Therefore, if the Government relies solely on this provision and reduces the pay of civil servants without enacting any legislation, individual civil servants can still sue the Government even though the rates of reduction are determined under the established mechanism and accepted by the majority of civil servants. In that case, if the Court rules that the Government does not have sufficient legal basis to impose the pay cut, we will be unable to implement any pay reduction this year.

Some have asked why we do not negotiate with civil service unions, why we do not discuss with them. They may even ask, "Since everybody agrees that salaries may be raised or reduced, why is it impossible to revise every agreement?" If Members think about the matter in greater depths, they will see that there are 300 civil service unions and 180 000 civil servants altogether. Is it then possible in practice to draw up a new agreement with each and every civil servant? In case any of them refuses, what are we going to do?

Some also think that since the pay cut is an employment issue between the Government and civil servants, it should not be brought before the Legislative Council. But I wish to point out that the employment relationship between the Government and civil servants are different from that which exists between private sector employers and their staff. The reason is that the matter involves not only private contracts, but also public laws. The funds for paying civil servants' salaries are public money, and after all, the salary levels of civil servants will ultimately affect the appropriations from the General Revenue Account of the Government. Therefore, if we wish to raise the salaries of civil servants, we must seek the Legislative Council's approval. That is why we must apply to the Finance Committee of the Legislative Council for funding. So, when it comes to pay cuts, we would say that it is perfectly reasonable and proper of us to draw up a piece of legislation for the scrutiny of the Legislative Council.

There is also the view that any legislation on reducing civil service pay will deprive civil servants of their rights under their respective agreements. We

do not agree to this view. I used to work as Secretary for Education and Manpower, and I am able to tell that the Government will in fact amend the Employment Ordinance every now and then, and following each amendment, the employer-employee relationship under employment contracts which existed previously will be affected in some measure. Amendments to the Employment Ordinance will of course affect employers' rights and interests in the main. The Government may sometimes amend other laws to require mandatory registration for people engaged in various trades and occupations, or to lay down the qualifications of people engaged in some specific occupations. All this will naturally affect people's contractual or legal rights and interests under the respective legislation before amendment. I am no barrister myself, of course, and I am just trying to say that if our purpose is reasonable, and if we can strike a balance between individual rights and the overall interests of society, it will be perfectly proper to enact legislation for the purpose. On the current exercise to make legislation for purposes of effecting the pay cut decision, we must first ask, "Is the decision reasonable and fair? Can it strike a balance between civil servants' rights and the overall interests of society?" If the answer is "yes", then what is wrong with submitting this Bill to the Legislative Council for scrutiny by Members, to let the Council decide whether it will endorse or negative it? Should the legislation made this way be described as draconian, as producing an adverse impact on the rule of law in Hong Kong?

I cannot agree to such views. Actually, in a way, what is most unfortunate about the issue of effecting the pay cut by way of legislation is that many people have far too many worries, far too many associations. I wish to point out that this Bill is intended to serve only a one-off purpose. This means that it is solely intended for the pay cut this year, without any other intentions, or any other purposes either. The Chief Executive has written an open letter to all civil servants, undertaking that the Government will not use this legislation as a pretext for any plan to curtail the pension of civil servants.

Some Members, while opposing our legislation as a one-off exercise to effect the pay out decision, wonder why the Government does not wait until a piece of legislation is enacted on the civil service pay adjustment mechanism. Their proposal can in fact co-exist with our one-off legislative approach to pay cut this time. I have once said openly that if there is a consensus amongst the Legislative Council, the community and the Civil Service, a consensus that it is worth enacting a piece of legislation on pay cuts in general, or to be precise, on a general mechanism allowing both upward and downward pay adjustments, we

will proceed to explore such a proposal as soon as we have finished with the civil service pay adjustments this year. We will also proceed to draft the relevant law and submit it to the Legislative Council for scrutiny. But I must remind myself and Members that we must conduct sufficient consultation, and we must include civil service unions in the consultation exercise. As for the content of the law, I believe that it will not be as simple as some Members have imagined. The pressing task now is to make a sensible and reasonable pay cut decision on the basis of the existing mechanism. If Members do think that the decision is sensible and reasonable and the rates are acceptable, we really fail to see why the implementation of the decision should be so lightly deferred. For the pay adjustments of each year, we need to make a decision of some kind, whether we want to increase salaries, freeze them, or reduce them, as in the case of this year. If we do not make a decision due to any legal problems, I do not think that we can satisfy ourselves, the public and even civil servants.

Many Members have advanced a different viewpoint, wondering why we do not seek to tackle the problem through arbitration. They question why we insist on the legislative approach, why we do not set up an independent committee of inquiry in accordance with the agreement signed in 1968. To begin with, I hope Members can understand that our insistence on the legislative approach is actually based largely on the rule of law. If ambiguities are detected in the provisions of any ordinance or agreement, we must seek to make them clear. When it comes to the establishment of an independent committee of inquiry, we must of course abide strictly by the agreement of 1968, meaning that we must ascertain the kinds of circumstances under which such a committee is to be set up.

The 1968 agreement is an agreement signed between the Government and a number of major civil service unions. It provides, among other things, that if the Government, the staff side and these major civil service unions hold divergent views on certain issues, the staff side representatives may request the Chief Executive to establish an independent committee of inquiry to determine whether a consensus can be reached.

We have examined the 1968 agreement very carefully and found that the Chief Executive is not supposed to set up any independent inquiry committee under. Three of these circumstances are as follows: first, when the issue concerned is of a trivial nature; second, when the issue may endanger Hong Kong's security; and, third, when the actions of the Government are in

compliance with established public policies. We have sought legal advice on this, and as I have just said, the pay cut decision this time around is in full compliance with the annual pay adjustment policy of the Government. Therefore, there is no justification for the establishment of an independent committee of inquiry.

What we now need to tackle is a legislative problem, a legal issue. An arbitration committee or a committee of inquiry may well offer some advice on the rates of pay cut, but they cannot solve the legal problems involved. The legal problems will still be there, and the relevant provisions will still be ambiguous. Some civil servants may still take legal actions, and the Government may lose. All these possibilities will still be there, and neither an arbitration committee nor a committee of inquiry can offer any solutions. Therefore, the legislative approach is in the final analysis the safest way to implement the decision on reducing civil servants' salaries.

Some question whether the proposed pay cut is in compliance with the Basic Law. I do not intend to dwell on this, because on many occasions, our legal adviser has explained very clearly that the decision is in full compliance with Articles 100, 103, 160, 6, 105 and 39 of the Basic Law.

Let me now turn to the question of enhancing communication with civil servants. Ever since I assumed office as Secretary for the Civil Service, I have in fact been examining how best we can enhance communication with civil servants. Besides holding formal and informal meetings with major civil service unions, I now also visit individual government departments every week, and I also write letters to civil servants very frequently.

Over the past two years, I have met with thousands of civil service union representatives. I am sure that the civil service union representatives and front-line civil servants I have met with will not be smaller in number than those whom any Members here or many civil service union representatives have themselves met with.

And, as soon as the disputes surrounding the legislative approach to effecting the pay cut started to emerge in March, I have been maintaining continuous communication and discussion with civil service unions. For example, since March, my meetings with civil service unions with records of meeting have totalled 19. I have also written nine letters to civil servants. I

must thank Members like Mr LAU Ping-cheung and Dr Raymond HO for pointing out yesterday and just now that I am willing to communicate with civil servants. Yes, as long as there is a right occasion, we will definitely try to explain the government position without any reservation.

I agree that we should do more, and I also intend to continue with our exploration on the drawing up of some concrete arrangements whereby we can enhance our discussions and communication with civil servants, and all civil servants can voice their views to the Government whenever they want to.

However, with respect to the present dispute, I hope Members can realize that there will always come a stage when neither communication nor consultation can resolve the issue. I agree entirely that pay cut is a controversial issue. Although my colleague has been so calm and patient, has exchanged views with Members so frequently, some Members still do not accept our position in the end. That I can understand, and I certainly respect their views. So, no matter how much more time we spend on communication — many more months and even many more years, I believe that in the end, there will still be no consensus on enacting a piece of legislation on pay cut.

I hope Members can understand that the SAR Government is a responsible government. Since we think that the pay cut decision this time is sensible and reasonable, we do consider it obligatory to implement it when circumstances reach a certain stage. Though the decision may arouse disputes, we will still do our utmost and explain our position to civil service unions and civil servants. We also very much hope that apart from the current pay cut issue, we can still conduct many more positive discussions with civil service unions on other complex issues such as the civil service reform, its expenditure, reorganization and even morale.

Many Members have referred to the tale of King Solomon. I think we really need the wisdom of King Solomon in our future handling of civil service matters, and I am sure that I am not wise enough in this respect. That is why I am going to issue a letter to all Members today, informing them that in the following two months, I will personally visit the various political parties and Members with the intention of listening to their views on civil service policies, management and ways of maintaining our Civil Service as an efficient and energetic team. Besides, I also wish to hear how they would like civil servants

to make some appropriate contribution and commitment at this very difficult time when the economy is declining, the unemployment rate is so high, and the people are earning less. This is a very complex issue. I do not only wish to communicate with civil servants on this, but also hope that the Members here can enlighten us, so that we do not have to face the same problem encountered by King Solomon.

Lastly, I wish to point out that the role of the Civil Service Bureau under the accountability system is to uphold the overall interests of civil servants and the civil service system. Members may still remember that last year, when many people demanded a 10% reduction of civil service salaries, we stood firm, saying that we must not deviate from the established mechanism, because that would not be fair to civil servants. I am sure that if an opinion poll had been conducted at that time, there would have been overwhelming public support for us.

Similarly, the Financial Secretary has made a budgetary assumption in the Budget this year. But in the end, we still decide to act in full accordance with the existing mechanism. I think the decision is sensible and reasonable, and our arguments now are all about this decision. Therefore, I can assure Members that we will definitely safeguard the overall interests of civil servants. But we must at the same time make judgements continuously, seek continuously to balance the overall interests of civil servants and those of the community at large. Difficulties and conflicts will certainly emerge in the process. I thus hope that the Government can have more discussions with Members in the future.

I understand that many civil servants do have many worries about enacting a piece of legislation on pay cut. But I will do my utmost and enhance my communication with civil service unions and civil servants in general. I hope that with such efforts, the disputes between the Government and civil servants can come to an end. In the process, since the Government has to seek Members' support for legislation and unions have to persuade Members not to support any legislation, the Legislative Council has thus become the focus of lobbying. To me, this is most unpleasant, something that may injure our cordial relationship. However, I am still convinced that the Government's decision is correct. And, I also hope that we can all join hands in the future to tackle many other civil service policy issues which will be even more complex and controversial.

I implore Members to support the passage of the Bill. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Public Officers Pay Adjustment Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

PRESIDENT (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

(All Members belonging to the Democratic Party, Mr Frederick FUNG and Mr Michael MAK left the Chamber at this juncture.)

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Mr Eric LI, Dr David LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr HUI Cheung-ching, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM

Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Miss LI Fung-ying, Mr Michael MAK, Mr Albert CHAN, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 59 Members present, 31 were in favour of the motion and 27 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Public Officers Pay Adjustment Bill.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

PUBLIC OFFICERS PAY ADJUSTMENT BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Public Officers Pay Adjustment Bill.

CLERK (in Cantonese): Clauses 1, 3 and 5 to 8.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 2, 4 and 9.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam Chairman, I move that clauses 2, 4 and 9 be amended as set out in the paper circularized to Members.

Clause 2 of the Bill defines terminology in the Bill, under which there was originally no definition of "civil servants". However, some Members suggested at meetings of the Bills Committee that for the sake of clarity, the definition of "civil servants" should be added to clause 2. We accepted this suggestion. Clause 4 was originally written to cover only officers of the Independent Commission Against Corruption (ICAC) remunerated on the ICAC Pay Scale. However, in order that all officers of the ICAC, including those on the civil service pay scale, are covered by the application of this Bill, it is now proposed that an amendment should be made to clause 4(3) to the Bill. The original clause 9 of the Bill provides that the contracts of employment of public officers are to be read as expressly authorizing the adjustments to pay and the amounts of the allowances made by this Ordinance. Members suggested at the meetings of the Bills Committee that in view of the policy intent of the Government, the wording of clause 9 should be drafted in a more direct manner.

We have accepted this view and proposed to amend clause 9 as follows: the contracts of employment of public officers are varied so as to expressly authorize the adjustments to pay and the amounts of the allowances made by this Ordinance.

With these remarks, I implore Members to pass the above amendments.

Proposed amendments

Clause 2 (see Annex VII)

Clause 4 (see Annex VII)

Clause 9 (see Annex VII)

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, if the amendment to clause 9 of the Bill is passed, the Government will be given the power to vary the contracts of civil servants. Is it legally correct?

In an article published by the *Ming Pao* on 27 May this year, Mr Eric CHEUNG, Assistant Professor of the Faculty of Law, University of Hong Kong, opined that the civil service terms of employment were regulated by private law, that is, contract law, and public law, such as primary legislation and subsidiary legislation. Now the Government is given or supplemented certain powers by means of drawing up legislation under the established mechanism, therefore it might not necessarily have violated the spirit of contract. However, Mr CHEUNG considered that it is only a general principle that does not apply to the Bill. Part of the terms of employment of civil servants, such as pension, is regulated by law; but there is always a contractual relationship on the part of basic remuneration. The pay adjustment mechanism is merely an administrative arrangement of the Government. Generally speaking, an administrative arrangement should not override the contract. In view of this, the remuneration of the Civil Service is essentially not regulated by any public law. As a result, today's Bill has not just given the Government an extra power,

it has also allowed the contract to be arbitrarily and fundamentally infringed by public law. If it is not a violation of the spirit of contract, then what is it? Mr Eric CHEUNG also cited the relationship between the Government and land owners as an example and pointed out that in addition to restrictions prescribed in the government lease, the Government might add other restrictions by way of legislation like the Town Planning Ordinance and the Buildings Ordinance. But so doing is not a violation of the spirit of contract. However, this example is not a convincing justification to support the enactment of legislation to effect a pay cut, because the major purpose of drawing up and amending the Town Planning Ordinance and the Buildings Ordinance is to implement a public policy, but the only purpose of this Bill is to intervene in the contract between civil servants and the Government. The only effect of the Bill is to vary a specified provision in the contract of civil servants. Just now the Secretary mentioned that amendments to the Employment Ordinance and similar labour legislation would also affect the contractual rights of employees and employers in the private sector. Nevertheless, in this case, it is obviously a slap in the Government's own face. It is because, according to the established practice of the Government, consensus of employers and employees should be obtained prior to drawing up and amending any labour legislation. Obviously, the Government has not obtained the consent of the staff side before proposing this Bill.

The abovementioned bills were proposed by the Government in the capacity of a public authority, but in clause 9 of the Bill, instead of a public authority, the capacity of the Government is either the employer of civil servants, or the two capacities have become one. Precisely because of this conflict of roles, whenever the Government proposes any bill on regulating the terms and conditions of employment of the Civil Service, it should obtain a consensus with the staff side, or it should refer the issue to a third party for arbitration, otherwise, the legislation will only be reduced to the domestic discipline of the household of Boss TUNG, and justice could not be seen to be done.

Just now the story of King Solomon was cited by several Members. In fact, now the Government is vested with more power to vary the terms of the contract through the amendment to clause 9, which is tantamount to a fight for one child between two persons, one of them is the Secretary for the Civil Service who fights for the child through this legislation and thwarts any attempt by the other person to fight for the child. This is the crux of the entire problem, and

this is also the reason why I consider that the issue should be handed over to King Solomon for arbitration. However, this time around, the Government has not handed it over to King Solomon for arbitration. Instead, with its prerogative and its capacity as the employer of civil servants, it is vested with the power to vary the contract through the amendment to clause 9. This is the biggest problem of all. Therefore, I think the issue should be handed over to a third party for arbitration, in order to allow King Solomon to seek justice for the Civil Service. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR JAMES TIEN (in Cantonese): Madam Chairman, concerning clause 9 of the Bill, since I have not read the article written by Prof Eric CHEUNG, so I can only believe in what Mr LEE Cheuk-yan has cited.

Regarding making variations to contracts, what we are discussing are issues relating to employer and employee as well as pay, not other types of contracts, such as those the Government entered into with power companies or the Walt Disney Company. As far as I can remember, employment contracts change all the time. Madam Chairman, maybe I am a little older than Mr LEE Cheuk-yan. I came back to work in Hong Kong in 1971. At that time, my factories already employed a lot of people. I remember that at that time, the contracts entered into with employees would change all the time. For example, there was no paid maternity leave in the past but this requirement was added later. For this, a legislative procedure was required. Why is it that at that time, when we supported amending the legislation, nobody said that legislation was uncalled for or that the terms of contract were changed in the course of legislation? Was it the case that after the bill providing for paid maternity leave had been passed, all employees employed before 1971 or the passage of the bill were not entitled to such benefit? The answer is of course in the negative. All of them were entitled to this additional benefit and there are many other similar examples, such as long service payment, severance pay and the increase in paid holidays.

I believe that on many labour issues, the final decision should rest with the Government so that the relevant requirement can be implemented. If everything has to be agreed on by employer and employee, as has been suggested by Mr LEE Cheuk-yan, things would be rather difficult. The Labour Advisory

Board (LAB) has six representatives of employers and employees respectively. In fact, a lot of things were decided by the Government for implementation without the agreement of employers. Some examples are the maternity leave mentioned just now and the requirement that the rate of compensation should be 80% or 60% of the salary. If provisions are to be implemented only after employer and employee have reached a consensus, this will be very unfavourable to employees because any such discussions would involve employees seeking more benefits from employers. It is very difficult for representatives of employers and employees to both agree to a certain measure. Therefore, the Government sometimes will implement certain measures without regard to employers' opposition and make variations to contracts if it considers that there is such a need in society, even though employers may experience difficulties in operation.

Therefore, I cannot concur with the argument of Prof Eric CHEUNG, as cited by Mr LEE Cheuk-yan in support of his opposition to the amendment to clause 9 of the Bill.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Mr LEE Cheuk-yan, for the second time.

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, Mr James TIEN mentioned just now that issues relating to labour legislation are matters of public policy, but what I said was that it is very inappropriate of the Government, as an employer, to vary its contract with its employees by means of legislation. This is related not only to public policy, but also to a conflict of roles in being an employer and the Government at the same time. This is where the crux of the problem lies. Thank you, Madam Chairman.

MRS SELINA CHOW (in Cantonese): Madam Chairman, it really beats me why the pay or terms of employment of civil servants do not belong to the realm of public policy, whereas labour issues of private organizations do. There can be no denying that what we are doing this time is definitely implementing a public policy which has won approval not only in society but also among civil servants. Therefore, I totally agree with what Mr Jasper TSANG has said

earlier, that is, we are giving a legal base to a power by way of legislation and clause 9 is certainly one of the crucial links. This is an approach approved of by a majority of people. If this is not a public policy and should not be dealt with by the Legislative Council, then who should deal with it?

CHAIRMAN (in Cantonese): Does any other Member wish to speak ?

(No Member responded)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary for the Civil Service to speak again.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam Chairman, I would just like to make a brief reply. When I spoke earlier, I made it clear that the relationship between the Government and civil servants is different from that between private sector organizations and their staff. The salaries of civil servants are paid by public money. I also explained that it was due to this reason that we may make legislation to clarify the contract between the Government and civil servants so that variations could be made from the legal point of view. As to whether this is reasonable and consistent with the pay adjustment as the Government and the civil servants understand it, the answer is in the affirmative. The amendment *per se* only serves to state the intention of the clause more clearly, and in my opinion that is perfectly proper. So I would like to urge Members once again to pass this amendment.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for the Civil Service be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raise their hands)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 2, 4 and 9 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hand.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Heading before clause 10, clauses 10 and 11.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) and 58(7) be suspended in order that this Committee of the whole Council may consider new clause 2A and Schedule 3 together with heading before clause 10, clauses 10 and 11.

CHAIRMAN (in Cantonese): As only the President may give consent to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for the Civil Service, you have my consent.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, I move that Rule 58(5) and 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 2A and Schedule 3 together with heading before clause 10, clauses 10 and 11.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) and 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider new clause 2A and Schedule 3 together with heading before clause 10, clauses 10 and 11.

PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Council is now in Committee.

CLERK (in Cantonese): New clause 2A Application.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam Chairman, I move that new clause 2A as set out in the paper circularized to Members be read the Second time.

It is the policy intent of the Government that this Bill shall not apply to judges, judicial officers and civil servants whose salaries are not linked to the annual civil service pay adjustment. I have explained this when I moved the Second Reading of the Bill.

In addition, as from 1 April 2000, entry salaries are delinked from the annual civil service pay adjustment. Officers appointed on entry salaries will not have their salaries varied as a result of the annual civil service pay adjustment until they are eligible to be remunerated an annual increment. Thereafter, they will be remunerated on their respective pay scales and the revised pay scales after the annual adjustment.

Some Members suggested that the policy intent of the Government should be set out in the primary legislation. We have accepted the suggestion and proposed to add a clause on the application of the Bill after clause 2, listing out the categories of public officers to whom the Bill does not apply.

The present clause 10 and Schedule 3 of the Bill provide that the Bill upon enactment will not apply to the pay and allowances of judges and judicial officers, nor to the pay of officers remunerated on new entry salaries. Clause 11 empowers the Chief Executive in Council to amend Schedule 3. As the application of the Bill is reflected in the new clause 2A and we do not envisage any amendment to the application of the Bill after passage, we propose to delete the heading before clause 10, clauses 10 and 11, and Schedule 3.

With these remarks, I implore Members to pass the above amendments.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 2A be read the Second time.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR LEE CHEUK-YAN (in Cantonese): Madam Chairman, of course we do not oppose granting exemption to some people. This policy is aimed at exempting civil servants whose pay is not linked to the annual civil service pay adjustment. However, I wish to remind the Secretary that the problem I am going to mention may not fall into his ambit, but the pay adjustment proposed by him has affected all subvented organizations in Hong Kong. In subvented organizations, there are one category of employees whose pay is linked to civil service pay, and another whose pay is not. The Bill tabled by the Secretary clearly specifies that the Bill is not applicable to civil servants whose pay is not linked to civil service pay, but what about employees of subvented organizations? Will the Government provide guidelines to employees of subvented organizations so that employees can act according to clause 2A and say to the employers of subvented organizations that they have to put into practice government policy and ensure that employees whose pay is not linked to civil service pay will not be affected, as provided for under clause 2A. Will the Secretary do so?

Employees of these subvented organizations also worry that apart from a reduction in the pay of employees whose pay is not linked to civil service pay, all employees will be subjected to further reductions in pay and benefits, that is, apart from the pay adjustment on this occasion, other variations to the contract will be introduced. I hope that the Secretary can also do something by exercising the Government's influence, so that no one will suffer damage more than is inflicted by this Bill. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam Chairman, the speech made by Mr LEE Cheuk-yan earlier is not directly related to this amendment, he has only raised a question on whether subvented organizations may invoke this clause to affect their employees. I would like to explain this point briefly. It remains of course, that in many subvented organizations the remuneration of their employees does have some connection with that of civil servants. After the passage of the Bill today, we will reduce our subvention to their organizations in line with the pay reduction agreed. As to what specific

measures will be adopted by these organizations and whether any changes will be made to the pay of their staff, these will depend on the actual terms and conditions of subvention that we have entered into with these organizations and also the contracts which these organizations have executed with their employees. We will put Mr LEE's view on record and inform the Treasury later and see what the Treasury will think on this.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clause 2A.

CLERK (in Cantonese): Schedule 3.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam Chairman, I move to add clause 2A and to delete the heading before clause 10, clauses 10 and 11, and Schedule 3 from the Bill. The amendments are set out in the paper circularized to Members.

Earlier on when I moved the Second Reading of new clause 2A, I had explained the consequential amendments proposed to the heading before clause 10, clauses 10 and 11, and Schedule 3.

I implore Members to pass the above amendments.

Proposed amendments and addition

New clause 2A (see Annex VII)

Heading before clause 10 (see Annex VII)

Clause 10 (see Annex VII)

Clause 11 (see Annex VII)

Schedule 3 (see Annex VII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendments moved by the Secretary for the Civil Service be passed.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion carried.

CHAIRMAN (in Cantonese): As the amendments to heading before clause 10, clauses 10 and 11 and Schedule 3, which deal with deletion, have been passed,

heading before clause 10, clauses 10 and 11 and Schedule 3 are deleted from the Bill.

CLERK (in Cantonese): Schedules 1 and 2.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion carried.

CLERK (in Cantonese): Long title.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam Chairman, I move that the long title be amended, as set out in the paper circularized to Members.

As clause 2A on application has been added to the Bill, we propose that in the interest of clarity, a consequential amendment be made to the long title by adding "certain" after "adjust the pay of" and adding "certain" after "payable to".

I implore Members to pass the above amendment.

Proposed amendment

Long title (see Annex VII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for the Civil Service be passed.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): Council now resumes.

(All the Members of the Democratic Party, Mr Frederick FUNG and Mr Michael MAK returned to the Chamber.)

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

PUBLIC OFFICERS PAY ADJUSTMENT BILL

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Madam President, the

Public Officers Pay Adjustment Bill

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Public Officers Pay Adjustment Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr LAU Chin-shek rose to claim a division.

PRESIDENT (in Cantonese): Mr LAU Chin-shek has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Mr Eric LI, Dr David LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr HUI Cheung-

ching, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kuok voted for the motion.

Miss Cyd HO, Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kuong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kuong, Miss LI Fung-ying, Mr Michael MAK, Mr Albert CHAN, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

THE PRESIDENT announced that there were 59 Members present, 32 were in favour of the motion and 26 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Public Officers Pay Adjustment Bill.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Drug Trafficking and Organized Crimes (Amendment) Bill 2000.

**DRUG TRAFFICKING AND ORGANIZED CRIMES (AMENDMENT)
BILL 2000****Resumption of debate on Second Reading which was moved on 1 November
2000**

PRESIDENT (in Cantonese): Mr James TO, Chairman of the Bills Committee to study the above Bill, will now address the Council on the Committee's Report.

MR JAMES TO (in Cantonese): Madam President, in my capacity as the Chairman of the Bills Committee on Drug Trafficking and Organized Crimes (Amendment) Bill 2000 (the Bills Committee), I would like to report on the major deliberations made by the Bills Committee.

The Drug Trafficking and Organized Crimes (Amendment) Bill 2000 (the Bill) makes a number of proposals to increase the effectiveness of Hong Kong's anti-money laundering legislation. The most controversial issue is the creation of a new offence. Under the proposed provision, it will be an offence for a person to deal with property if he has "reasonable grounds to suspect" that the property represents a person's proceeds from drug trafficking or an indictable offence. Moreover, according to section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance, the test for requiring disclosure from "knows or suspects" is changed to "knows or has reasonable grounds to suspect".

Members have expressed great reservations about applying the mental element of "having reasonable grounds to suspect" to the new money-laundering offence and offences related to undisclosed suspicious transactions. They have concerns about persons who would not have committed any offence under the current law may be convicted if the mental element of "having reasonable grounds to suspect" is adopted, since the application of the provisions has been extended enormously.

Members are concerned that professionals, such as accountants and lawyers, will be sued by their clients for breaching the rule of confidentiality if they disclose the suspicious transactions to the police. They consider that the disclosure proposal would impose an unreasonable burden on financial institutions, especially their front-line staff who have to handle numerous transactions in their everyday work.

Members note that clause 11 of the United Nations (Anti-Terrorism Measures) Bill requires a person to make a report if he knows or has reasonable grounds to suspect any property to be terrorist property. To address members' concern, the Administration agrees that clause 11 should be amended to require a person to make a report if he knows or suspects that property is terrorist property.

In the light of the new development and the grave concerns expressed by members, the Administration has agreed to withdraw its proposals of creating a new offence under sections 25 and 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance and applying the mental element of "having reasonable grounds to suspect" to offences related to undisclosed suspicious transactions under section 25A.

Notwithstanding that the Administration has agreed to withdraw its proposals, some members are still concerned that under section 25A, a legal representative is required to disclose privileged communication, under which the legal professional privilege of the legal profession would not be adequately protected.

Considering the decision of the Bills Committee on United Nations (Anti-Terrorism Measures) Bill on the same subject, the Bills Committee agrees that the Administration will move a Committee stage amendment to add a general provision to section 2 of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance to the effect that nothing in the two Ordinances should require the disclosure of any item subject to legal privilege unless otherwise specified. Consequential amendments to the Mutual Legal Assistance in Criminal Matters Ordinance will also include this general provision.

Madam President, under existing legislation, a restraint or charging order cannot be issued in respect of a person who has been arrested and released on bail. In order to prevent a person who has been released on bail from transferring or concealing his property, the Bill proposes to amend section 9 of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 14 of the Organized and Serious Crimes Ordinance to allow for the making of restraint or charging orders in relation to the property of a person who has been arrested for a drug trafficking offence or a specified offence, and released on bail. To check this power, the Court will be required to be satisfied before making such a restraint or charging order that, in the circumstances of the case, there is

reasonable cause to believe that the defendant may be charged with the offence after further investigation.

To protect the property right of a person who should be presumed innocent before conviction, members consider it necessary to strike a right balance by raising the threshold for invoking the power to restrain the property of a person who has been arrested and released on bail. As the person arrested may refuse bail in order to avoid his property being restrained or charged, some members opine that the proposed amended provision should cover the scenario where a person has been arrested but refuses bail.

In the light of members' views, the Administration agrees to move Committee stage amendments to the effect that the Court will be given discretion to issue a restraint order or charging order with an expiration date not exceeding six months against a person who has been arrested and released on bail or refuses bail, having regard to the circumstances of the case, if the Court is satisfied that there is reasonable cause to believe that the defendant may be charged with the offence after further investigation is carried out. Moreover, the Court may also order an extension of the restraint order or charging order if it is satisfied that there is reasonable cause to believe that the defendant will be charged with the offence after further investigation is carried out, but the expiration date should not exceed six months.

The Bill proposes to amend section 3 of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 8 of the Organized and Serious Crimes Ordinance to revise the requirement of notifying an absconded defendant to the effect that "reasonable steps should be taken to ascertain that person's whereabouts".

At members' suggestion, the Administration has agreed to move a Committee stage amendment to add a deemed service provision of publishing the notice of the confiscation proceedings in a Chinese language newspaper and an English language newspaper of wide circulation. The Administration has also agreed to move a Committee stage amendment to give the Court discretion to specify the additional step to be taken in relation to giving notice of a confiscation order proceeding to a person who has absconded.

Madam President, the Bills Committee supports the resumption of the Second Reading debate of the Bill and the Committee stage amendments to be moved by the Secretary for Security later on.

MR ERIC LI (in Cantonese): Madam President, today, I speak in support of the Second Reading debate of the Bill. In fact, the deliberation on the Bill has been going on for almost two years and I really appreciate the exceptional patience of Honourable Members in this Council, especially the Chairman of the Bills Committee. Furthermore, Members and officials have both dealt with the legislation in a serious and objective manner.

I believe that these two years have not been wasted, as the Bill tabled for scrutiny and passage today is more mature, and manages to address the concerns of all parties. As far as the Bill is concerned, I made the remark, during the scrutiny on the anti-terrorism legislation, that if we were going to propose an immature legislation, the anti-terrorism legislation would become a terrible piece of legislation. Nevertheless, I know that we are not discussing the anti-terrorism legislation.

If professionals should run the risk of committing a criminal offence many a time unawares and without any criminal motive, nobody would feel secure in carrying out their duties. In fact, this is also a violation of an essential right. In a stable society, I believe everybody hopes that he can do his own job, carry out his duty, make money and look for a job with a feeling of security. Talking about terrorism or criminal offences, it would be an entirely different world to professionals, and they will not feel the existence of this world. However, if the legislation is there, then they will have a strong feeling about the menace of the legislation.

I became aware of the fact that co-operative efforts were inadequate in the course of scrutinizing the Bill, especially the efforts exerted by law enforcement professionals. I hope the Government will understand that, usually, professionals such as accountants are victims, not the conspirators. Most of the time, when somebody cheats the Government intentionally, accountants will also be cheated. Sometimes it is not at all strange that accountants are not aware of it. If we adopt the original amendment to section 25A to deal with such cases, accountants would easily be used by law enforcement officers with malicious motives to distract public attention. For example, it is relatively more difficult to crack down on some major criminals and it is particularly hard to find evidence to prove that crimes are committed by some drug traffickers. However, it would be easier to prove the accountant concerned has not reported on suspicious transactions. Whenever there are some major or striking cases,

the immediate victims would be professionals who have failed to report, because it would be easier to prosecute and arrest them. We think it is unfair to them. However, as a statutory organization, the Hong Kong Society of Accountants (HKSA) is a group of responsible professionals. We have repeatedly expressed that we are very willing to co-operate with the Government in combating corruption and drug trafficking activities. Although we have no power, we have the professional know-how.

In fact, the Government can work well with the professionals. In last couple of years, we have come across many bills concerning finance and economic issues. In the course of scrutinizing these bills (perhaps Mr SIN Chung-kai is more familiar with these bills), we are aware that professionals, such as legal professionals (Miss Margaret NG is a law expert in the legal profession), would first bring up all the technical problems, in order to identify whether the responsibilities the relevant bills required us to achieve are practicable at the technical level, and whether professionals are well-informed of the procedures they should follow and the objective they should achieve, so that the Government would be convinced that we have tried our best not to break the law. Solving these problems first would not only make professionals feel relieved, and with my many years of experience in the Legislative Council, I believe this will also help the relevant decision-making officials understand more about the front-line work outside the Government. It is because many officials often think up things in their offices and take them for granted. However, the technical problems encountered by front-line workers are far more complicated than that. I believe these experiences will benefit both parties. In this aspect, we have been co-operating constantly with officials in charge of finance and economic affairs. Although some Bills might have been introduced belatedly, I have to say the least even there were issues of enormous significance to the accountancy sector, many a time I needed not say much, Mr Henry WU knows this very well. In the case of deliberations on bills concerning securities, for example, very often he had voiced most of the opinions and I did not have to say anything more, as we had been discussing the issue two or three years before that. Therefore, no one should say that we have not exerted any effort, in fact, we have exerted tremendous efforts. A high degree of consensus would have been reached when the Bill was tabled.

On behalf of the accountancy sector, I welcome the co-operation with the Government once again. We have noted that in terms of co-operation, the

Government thinks that we could have done better, and we are willing to do better. We have already begun work in relation to the enhancement of the code of practice and practical guidelines, but we do not know whether we can achieve the desired effects. Although the Government has expressed that there is still much room for amending this Bill and amendments may still be proposed, I do not believe that will happen in the near future on the one hand, and I believe the lead work can be done better when such a Bill is tabled on the other. Besides, I believe this Council will not again spend two years to scrutinize such a Bill. Perhaps Honourable Members have made some preparatory efforts outside this Council within these two years' time. Anyway, it would be a win-win situation with this Bill, unlike the previous one, in which everybody has become a loser. In this respect, I thank the Government for its patience and eventual acceptance of our suggestions in an objective manner.

MR IP KWOK-HIM (in Cantonese): Madam President, faraway in the Caribbean, besides islands with fine sandy beaches, clear waters and cold shade of coconut palm trees, there are also Internet gambling websites and off-shore banks which overtly take advantage of loopholes in law. It has been reported that there are 550 banks on a Caribbean island with a population of 33 000 people, many of them being involved in money laundering activities. Some off-shore banks even advertise on the Internet that they will provide hidden assets management services. These financial institutions take advantage of these circumstances to get rid of the financial and legal controls imposed by various nations, and the amount of money laundered each year is as high as US\$85 billion. The severity of money laundering activities is so great and its network so complicated that it is beyond the imagination of a layman.

As one of the most important financial centres in the world, Hong Kong handles transactions valued at hundreds of millions of dollars daily. In order to uphold the order of the financial centre and to increase the effectiveness of the anti-money laundering legislation, the Government introduced the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 (the Bill).

The amendments proposed to sections 25 and 25A will combat money laundering activities in the most direct way, but they are also most controversial. Under existing legislation, a person who knows or suspects that any property are used in connection with drug trafficking or an indictable offence will commit an

offence if he fails to report on the same. Targets of sections 25 and 25A are intermediaries participating in money laundering activities, including people who get paid to carry out structural remittance and bookmakers. From the perspective of a layman, in the cases cited by the Government, it is impossible that the participants involved do not know or suspect the property they handled was suspicious. However, it is technically difficult to prove that these people already knew the proceeds were illegal when they handled the transactions, as it is difficult to prove the subjective judgement made by a specific person at a specific time. For this reason, there has been only one successful prosecution in the past 11 years, and the defendant was successfully indicted as he had pleaded guilty.

Therefore, the Government proposed to amend the wording in the Bill from "knows or suspects" to "knows or has reasonable grounds to suspect" and to add objective elements such as the process of the crime and office, in order to strengthen the prosecution of informed intermediaries who fail to report, and to enhance the effectiveness of combating syndicated money laundering activities. The fact that the Bill has adopted a mental element of reduced standard for prosecution may facilitate the initiation of prosecution, but it has also induced strong feedback from the banking, financial and securities industries. The term "knows or has reasonable grounds to suspect" involves everyday financial and stock transactions, but since front-line staff need to handle numerous transactions every day in their work, it would be impossible for them to have full knowledge of the capital source of every transaction. If one transaction out of hundreds of transactions handled every day turns out to be problematic, they would be caught by the net of justice. It therefore constitutes a great concern to them. Furthermore, even a person is protected by a defence provision, if he has to find a defence for "knows or has reasonable grounds to suspect", the onus of proof will be shifted from the prosecution to the defendant, in violation of the common law practice. In order to prevent the Bill from abortion, the Government finally decided to withdraw this controversial provision.

The Democratic Alliance for Betterment of Hong Kong (DAB) agrees with the original intent of the amendments to sections 25 and 25A proposed by the Government, that is, to prevent the failure of prosecuting some intermediaries who engage in money laundering activities due to technical reasons. Eventually, the Government has given up the original intent of enhancing the initiation of prosecution, the DAB finds it most unfortunate. We hope the Security Bureau

will study the matter with the Department of Justice and consult the legal sector and financial industry as soon as possible, in order to draw on their opinions and amend the wordings and prosecution standard of sections 25 and 25A, with a view to striking the right balance and plugging the existing loophole of difficulty in adducing evidence.

Another amendment direction of the Bill is to enhance efficiency and freeze the proceeds from drug trafficking and organized crimes. At present, the Drug Trafficking (Recovery of Proceeds) Ordinance empowers the Court to assume the property which has passed through the defendant's hands in the last six years to be proceeds from drug trafficking and to freeze the same. According to the relevant precedent, it will also apply to the Organized and Serious Crimes Ordinance in future. In respect of the procedure of freezing assets, the giving of notice of proceedings to a person who has absconded or whose whereabouts are unknown shall no longer be required for the issue of confiscation order under section 3 of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 8 of the Organized and Serious Crimes Ordinance. Now the Bill proposes to amend the wordings to "reasonable steps should be taken to ascertain that person's whereabouts", as long as it is dealt with according to the deemed service requirement of the Rules of the High Court, and a notice of the confiscation proceedings is published in a Chinese language newspaper and an English language newspaper of wide circulation.

Under existing legislation, a restraint or charging order cannot be issued in respect of a person who has been arrested and released on bail. The suspect will have a chance to transfer his property in order to avoid investigation. The amendments to section 9 of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 14 of the Organized and Serious Crimes Ordinance will plug this loophole. The Court may make restraint or charging orders to freeze the relevant property as long as it lays a holding charge and considers "there is reasonable cause to believe that the defendant may be charged with the offence after further investigation". In order to strike a balance between protecting private property rights and the needs of prosecution, Members eventually reached a consensus with the Government that the Court would be given discretion to set an expiration date of not more than six months for a restraint order or charging order, and it may extend the order upon expiry, but the expiration date of the extension should not exceed six months.

The amendments to sections 10 and 11 of the Drug Trafficking (Recovery of Proceeds) Ordinance and sections 15 and 16 of the Organized and Serious Crimes Ordinance require the holder of any property which is subject to a restraint or charging order to provide a statement in writing as to the value of the property. However, the provision of a statement in writing requires certain professional services such as valuation and identification. It would cause difficulties to people whose assets are frozen. Members and the Government reached a consensus on this ultimately, which only requires the provision of documents or copies of documents which may help the assessment of the value of the property. In order to ensure compliant professionals will stay away from claims or liabilities arising from a breach of contract or professional conduct, an immunity provision is added for non-disclosure. Moreover, another issue arising from the freezing of assets is that whether the defendant can pay the legal expenses. Under the Rules of the High Court, legal expenses would be dealt with just like expenses on necessities of life, so the receipt of such payment by a legal representative will not amount to money laundering. Therefore, the issue of the legal expenses of the suspect is resolved.

As to the amendments concerning confiscation, restraint or charging orders, the DAB considers them consistent with the need for freezing of assets and also capable of striking a balance between the authorities' prosecution need and the rights of the suspect. Therefore, the DAB supports the aforesaid amendments.

Being one of the most important global financial centres, Hong Kong enjoys a high reputation for its legal system and supervision. We would not tolerate Hong Kong transforming into one of the Caribbean islands which lives on money laundering and bookmaking activities. The Bill is just a precautionary measure to prevent some unimaginable, and yet everyday crimes in Hong Kong.

With these remarks, Madam President, I support the Bill on behalf of the DAB.

MR NG LEUNG-SING: Madam President, the First Reading of this Bill dated back to 1 November 2000. The prolonged process of scrutiny by the Bills Committee highlights, to some extent, the controversial nature of the Bill, which aimed at making the combating regime against drug trafficking and organized

crimes more effective. In presenting the report to this Council, the Chairman of the Bills Committee has elaborated on many issues involved in the Bill and I will not repeat all of them here. As a Member working in the banking industry, I have been gravely concerned by two new measures that the Bill in its original form sought to introduce. One of them intended to create a new offence of dealing with property if the person dealing with it has reasonable grounds to suspect that the property in whole or in part represents another person's proceeds from drug trafficking or an indictable offence. The other measure sought to raise the threshold for disclosing information relating to such properties or transactions, making it criminal for one to have reasonable grounds of suspicion but fail to report to the authority.

The addition of the phrase "having reasonable grounds to believe" means, we were told, that an innocent person could well be caught if he happens to deal with the tainted property or fail to report to the authorities even though he genuinely harbours no suspicion whatsoever, so long as it can be proved that a reasonable man in the same situation would suspect. In other words, objective standards step in and replace the subjective mental state, which becomes less relevant or even irrelevant in determining a man's guilt. It is understandable that organizations across different financial industries and professional services raised strong objections, since the operations of many legitimate businesses which handle numerous transactions daily would be put under great burdens and threats by these aggressive amendments.

The Administration tried to appease members of the Bills Committee by proposing a new defence for those charged with the offence of dealing with tainted properties. But in substance, it makes little difference because an innocent man may still be caught if he cannot prove that a reasonable man in exactly the same situation may also do the same as he did. The question remained unanswered for the Administration that whether a man without the criminal state of mind should be penalized.

Thanks to the efforts jointly by the Administration and my colleagues in the Bills Committee on United Nations (Anti-Terrorism Measures) Bill, now the question becomes a non-issue as the Administration agreed to withdraw the proposals in both Bills relating to criminal sanctions based upon "reasonable suspicion". However, I hope that this is not merely a tactical retreat by the Administration in order to get the United Nations (Anti-Terrorism Measures) Bill passed before this Council recesses, but rather a due recognition of some

basic principles for the administration of criminal justice, and that it will not come up later with similar proposals when it thinks opportune to do so, without all those concerns as already raised being properly addressed.

With these remarks, Madam President, I support the Bill.

PRESIDENT (in Cantonese): Just now Mr James TO has not yet expressed his personal views when he addressed this Council on the Committee's Report. Therefore, he may speak again on his own views.

MR JAMES TO (in Cantonese): Madam President, the Democratic Party supports the resumption of the Second Reading debate of the Bill. Earlier, I have given an account of the arguments of the Bills Committee. The Democratic Party has discussed them in detail and the Bills Committee has considered them carefully. In order to facilitate the keeping of a relatively complete record and to do justice in so far as history is concerned, I wish to point out that some Members seldom attended the meetings of the Bills Committee after joining the Bills Committee. But they have put forward their views in the resumption of the Second Reading. It is fine for them to do so, but I feel that the record must be set straight. In fact, the Democratic Party, including other colleagues and me, in my capacity as Chairman of the Bills Committee, have taken great pains in scrutinizing this Bill. However, I feel that if certain colleagues have not attended the meetings of the Bills Committee as often as they should but said that they have painstakingly studied and kept a close interest in the legislation (of course they have the right to do so), I ought to clarify this for the record purpose and set it straight.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam President, the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 seeks to improve and enhance the anti-money laundering system in Hong Kong so that it can better meet the current needs and give full play to the deterrent effect on drug

trafficking and other serious crimes. Under the chairmanship of Mr James TO, the Bills Committee held 15 meetings over the past 20 months, scrutinized the Bill with great care and thoroughness, and made a number of valuable suggestions. I would like to express my heartfelt gratitude to the Bills Committee here.

I would also like to make use of this opportunity to thank the relevant professional bodies, trade organizations, chambers of commerce and the academia for their views on the Bill. During the deliberations on the Bill, we considered the views of the Bills Committee and proposed a number of amendments which were agreed by the Bills Committee subsequently.

Madam President, I hope Honourable Members will lend their support to the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 and the amendments which I will propose at the Committee stage. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Drug Trafficking and Organized Crimes (Amendment) Bill 2000.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

**DRUG TRAFFICKING AND ORGANIZED CRIMES (AMENDMENT)
BILL 2000**

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Drug Trafficking and Organized Crimes (Amendment) Bill 2000.

CLERK (in Cantonese): Clauses 1 to 4.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) and 58(7) of the Rules of Procedure be suspended in order that this Committee may consider the Schedules ahead of new clause and new Schedule together with a new clause.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Secretary for Security, you have my consent.

SECRETARY FOR SECURITY (in Cantonese): Madam President, I move that Rule 58(5) and 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider the Schedules ahead of new clause and new Schedule together with a new clause.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) and 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedules ahead of new clause and new Schedule together with a new clause.

PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Council is now in Committee.

CLERK (in Cantonese): Schedules 1, 2 and 3.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that Schedules 1, 2 and 3 be amended as set out in the paper circularized to Members.

I move that section 2 of Schedules 1 and 2 be amended to add new interpretation provisions to the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance, specifying that these two Ordinances do not require the disclosure of items subject to legal privilege. This amendment has been proposed in response to the request of the Bills Committee, and it is drafted with reference to the relevant proposed amendment to the United Nations (Anti-Terrorism Measures) Bill. The aim is to ensure that legal privilege will not be affected by the relevant provisions. I also propose to introduce a consequential amendment to the interpretation provisions of the Mutual Legal Assistance in Criminal Matters Ordinance.

With the respect to the requirement to notify an absconded defendant before the making of a confiscation order by the Court as set out in the two Ordinances, the Bill proposes to amend the relevant provisions to read "reasonable steps have been taken to ascertain the person's whereabouts". The aim is to provide clearer guidance to the prosecution on the steps to be taken in cases where the defendants have absconded. The Bills Committee has in principle accepted this proposal, but it also considers that the new steps to be taken should be incorporated into the provisions for the sake of clarity and better protection for the rights of absconded defendants. In response to the suggestion of the Bills Committee, I now propose to amend the two provisions concerned, specifying that the prosecution must take reasonable steps to ascertain the whereabouts of defendants and also publish a notice in an English newspaper and a Chinese newspaper of wide circulation in Hong Kong. Besides, after the prosecution has taken reasonable steps to notify the defendant, if the Court deems that it is in the interest of justice to do so, it may further instruct the prosecution to take the additional step of serving a notice of proceedings on the defendant.

These two provisions, that is, section 7 of Schedule 1 and section 6 of Schedule 2, serve to amend section 9 of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 14 of the Organized and Serious Crimes Ordinance respectively, enabling the authorities to issue restraint orders and

charging orders against the property of persons who have been arrested but released on bail. To check this power, the Court is required to satisfy itself, before making a restraint or charging order, that on the basis of the merits of the case, there are reasonable grounds to believe that the person concerned will be charged with the offence after further investigation. The Bills Committee agrees to this proposal, but it also expresses the concern that a restraint or charging order made under such circumstances should not be too long in validity, lest the property rights of the defendant may be affected. To address members' concern, I propose to amend the relevant provision, empowering the Court to exercise discretion and fix the validity of an order having regard to the time required for investigation, up to a maximum of six months. If the Court is satisfied that after further investigation, the defendant will be charged, it may extend the relevant order for a further period of six months at the maximum. To plug possible loopholes, this provision will also apply to the property of arrested persons who refuse to be released on bail. Besides, I also propose to delete section 7B of Schedule 1 and section 6B of Schedule 2. Under these two existing provisions, if the prosecution fails to press a charge within a reasonable period of time after the issue of a restraint or charging order, the Court must rescind the order. Following the amendments, since there will be clear guidance on the relevant procedures, these two provisions can be repealed.

As for sections 8 and 9 of Schedule 1, sections 7 and 8 of Schedule 2 and section 3 of Schedule 3, the Bill originally proposes to require that under a restraint or charging order, a person holding any realizable property must deliver to the authorized officer a statement in writing as to the value of the property, so that the authorities can process an application for confiscation order. The Bills Committee agrees to the principle of requiring the production of such information, but it also deems that the person or organization concerned should not be made to expend extra resources for compliance with this requirement. After listening to the views of the Bills Committee, I propose to delete the requirement on a statement in writing, and amend the provision to read: "documents (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property."

With respect to members' concern that disclosure may lead to problems of legal liabilities, the proposed amendments also provide the required protection in the relevant provisions. The protection concerned is similar to that currently offered under section 25A(3) of the Drug trafficking (Recovery of Proceeds) Ordinance. Under section 25A(3), any disclosure of property suspected to be

proceeds of drug trafficking will not be treated as a breach of any contract or statute law, rule of conduct or other provisions. And, the restrictions on the disclosure of information will not render the person concerned liable to damages.

As for sections 10, 11 and 13B of Schedule 1 and sections 2, 9 and 10 of Schedule 2, the original intent of section 10 of Schedule 1 and section 9 of Schedule 2 is to provide for a new offence for any person who, despite having reasonable grounds to suspect that any property may be the proceeds of drug trafficking or any indictable offence, continues to handle the property concerned. And, it is also the intent of these provisions to increase the maximum penalty for money laundering under section 25(1) of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance, from imprisonment of 14 years to 20 years.

Section 11 of Schedule 1 and section 10 of Schedule 2 of the Bill seek to amend the mental element under sections 10 and 25A(1) of the two Ordinances, replacing "knows or suspects" by "knows or has reasonable grounds to suspect". The prison term under section 25A(1) is also increased from three months to 12 months. At the beginning, the Administration put forward the same mental element of having reasonable grounds to suspect in clause 11 of the United Nations (Anti-Terrorism Measures) Bill, with a view to implementing the Special Recommendation on the disclosure of suspected terrorist property made by the Financial Action Task Force on Money Laundering (FATF). Since the mental element under clause 11 of the United Nations (Anti-Terrorism Measures) Bill has been amended to "suspect", and since there is a need for consistency regarding the provisions of the Drug Trafficking (Recovery of Proceeds) Ordinance, the Organized and Serious Crimes Ordinance and the United Nations (Anti-Terrorism Measures) Bill, we have decided to withdraw the proposals relating to sections 25 and 25A after discussions with the Bills Committee. Therefore, I now propose to delete sections 10, 11, and 13B of Schedule 1 and sections 9 and 10 of Schedule 2. In other words, the relevant provisions of the two Ordinances will remain unchanged.

However, I still wish to take this opportunity to reiterate that for the purpose of effectively combating money laundering, it has become an international trend to amend the mental element connected with the handling of drug-trafficking proceeds and other serious crimes, replacing "knows and suspects" by "knows or has reasonable grounds to suspect". The FATF is now reviewing all its 40 recommendations on combating money laundering. It may in the end recommend its members, including Hong Kong, to adopt the mental

element of "has reasonable grounds to suspect". In fact, many members of the FATF have already applied this mental element to the combat of money laundering. In order to ensure the effectiveness of Hong Kong's anti-money laundering regime, the Government does not rule out the possibility of submitting a relevant proposal to the Legislative Council in the near future, after consulting the industries concerned and listening to their views.

The amendments to sections 5, 8 and 9 of Schedule 1, sections 4, 7, 8 and 11 of Schedule 2 and also the amendments to the rest of Schedules 2 and 3 are technical in nature. Section 5 of Schedule 1 and section 4 of Schedule 2 originally seeks to amend the relevant provisions of the two Ordinances, so that in case the defendant has absconded, the Court can satisfy itself that the statement in writing submitted by the prosecution has been accepted by the defendant. The amendment seeks to extend the application to a diseased defendant.

The amendments also propose to amend paragraph (b) of section 11, Schedule 2. The objective is to amend the descriptions in sections 15 and 16 of Schedule 1 of the Organized and Serious Crimes Ordinance, so as to rectify an oversight when section 25 of the Drug Trafficking (Recovery of Proceeds) Ordinance and section 25 of the Organized and Serious Crimes Ordinance were introduced in 1995.

The rest of the amendments are either technical or consequential in nature, the objective of which is to increase the clarity of the provisions and achieve consistency between the English and Chinese texts. Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex VIII)

Schedule 2 (see Annex VIII)

Schedule 3 (see Annex VIII)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Schedules 1, 2 and 3 as amended.

CHAIRMAN (in Cantonese): Will those in favour raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clause 5

Consequential amendments to Mutual Legal Assistance in Criminal Matters Ordinance - (Schedule 4)

New Schedule 4

Consequential amendments to Mutual Legal Assistance in Criminal Matters Ordinance.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that new clause 5 and new Schedule 4, as set out in the paper circularized to Members, be read the Second time.

As a result of the Bill's proposals, there is a need to introduce consequential amendments to the Mutual Legal Assistance in Criminal Matters Ordinance, because the Ordinance also contains provisions on confiscation orders, restraint orders and charging orders, which are similar to those found in the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance. Following discussions with members of the Bills Committee, the Government has agreed to introduce clause 5 and Schedule 4 to the Bill, so as to reflect the consequential amendments to Cap. 525. I hope that members can support the addition of new clause 5 and new Schedule 4.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 5 and new Schedule 4 be read the Second time.

CHAIRMAN(in Cantonese): Does any Member wish to speak?

MR JAMES TO (in Cantonese): Madam Chairman, I speak for myself. I agree that the contents of this amendment are similar to the amendments we have just passed, that is, the amendments to the Mutual Legal Assistance in Criminal Matters Ordinance under Schedules 1, 2 and 3 regarding restraint orders and charging orders. In principle, and as far as the contents are concerned, I agree to the amendment. However, I would like to make one point, that is, I do not agree that it is a consequential amendment. Why? It is because the original intent of the Bill was to amend two Ordinances. When the Government drafted the Bill, it had also intended to amend the two Ordinances. However, in the course of scrutiny, another Ordinance was found to be involved, the authorities therefore considered it would be better to propose the amendment incidentally. We would be able to see this point in the amendment to the long title that the Secretary for Security would move later.

I think we should not encourage this kind of approach. If there is any oversight in drafting, a short piece of legislation should be drawn up to amend

the Mutual Legal Assistance in Criminal Matters Ordinance. Furthermore, since there are repeated discussions beforehand, Honourable Members will not propose any amendment at all, or even the bill concerned would be passed without the need of setting up a Bills Committee to scrutinize it. I consider the current approach very inappropriate.

I hope the Government will remember this in future, and we will not support such an amendment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary for Security to speak again.

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): New clause 5 and new Schedule 4.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that new clause 5 and new Schedule 4 be added to the Bill.

Proposed additions

New clause 5 (see Annex VIII)

New Schedule 4 (see Annex VIII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 5 and new Schedule 4 be added to the Bill.

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Long title.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendment to the long title. The amendment seeks to reflect the consequential

amendments made by the Bill to the Mutual Legal Assistance in Criminal Matters Ordinance as set out in the paper circularized to Members.

Proposed amendment

Long title (see Annex VIII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Security be passed.

MR JAMES TO (in Cantonese): For the same reason, we consider it not a consequential amendment, therefore we will not support the amendment to the long title.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

SECRETARY FOR SECURITY (in Cantonese): Madam President, the

Drug Trafficking and Organized Crimes (Amendment) Bill 2000

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 be read the Third time and do pass.

PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Drug Trafficking and Organized Crimes (Amendment) Bill 2000.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the United Nations (Anti-Terrorism Measures) Bill.

UNITED NATIONS (ANTI-TERRORISM MEASURES) BILL**Resumption of debate on Second Reading which was moved on 17 April 2002**

PRESIDENT (in Cantonese): Mr LAU Kong-wah, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MR LAU KONG-WAH (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on United Nations (Anti-terrorism Measures) Bill (the Bills Committee), I would like to report on the deliberations of the Bills Committee.

The United Nations (Anti-terrorism Measures) Bill (the Bill), introduced to the Legislative Council on 17 April 2002, seeks to implement certain mandatory elements of Resolution 1373 passed by the United Nations Security Council (UNSCR), and three recommendations of the Financial Action Task Force on Money Laundering (FATF).

The Bills Committee has held 15 meetings with the Administration. Moreover, it has met with 10 organizations/individuals and received eight written submissions from other organizations.

Members are concerned that apart from briefing the relevant panels of the Legislative Council on the scope of the Bill and the issues to be covered by the legislation, the Administration has not conducted any public consultations. In view of the fact that the Bill has serious implications on human rights and property rights, members consider it important to study the provisions carefully and necessary to invite relevant bodies to give their views.

As for provisions in the Bill, the following major provisions have attracted the attention of members in particular.

First, members have expressed concern that the definition of "terrorist act" under clause 2 of the Bill is too wide, and would undermine an individual's civil and political rights.

After considering the views of members, the Administration has agreed to amend clause 2 by extending the exclusion provided in paragraph (b) of the definition to cover paragraph (a)(i)(D), (E) and (F). In addition, the Administration has accepted the recommendations made by members on the wording of the definition.

Miss Margaret NG and Ms Audrey EU still hold different views and they have proposed amendments respectively.

Another clause which attracted the attention of members is clause 4.

Clause 4 empowers the Chief Executive to specify, by notice published in the Gazette, persons and property that the Chief Executive has reasonable grounds to believe are terrorist, terrorist associates or terrorist property. Such notice is not subsidiary legislation. It would be presumed, in the absence of evidence to the contrary, that the persons and property specified in such notice are terrorists, terrorist associates or terrorist property. Such notice would, unless revoked, expire on the third anniversary of the date of its publication in the Gazette.

Whilst appreciating the need for an expeditious means of achieving the objectives of the UNSCR, members are deeply concerned that the power given to the Chief Executive is too wide, and there are insufficient safeguards to prevent undue injury of rights. The proposed system does not require any prior judicial authorization, and it is left to an affected individual to bring an application before a judge to have the specification by the Chief Executive reviewed in the Court of First Instance (CFI). Members have pointed out that the person concerned could be totally unaware that he is involved in any terrorist activities or financing. Under the proposed system, the unwary person would have no knowledge of the grounds for the specification by the Chief Executive, and it would be difficult for him to refute the specification or provide relevant information to support his application to have the notice revoked under clause 16.

Members have suggested that the Chief Executive should first obtain a court order before publishing by notice in the Gazette that a certain person or a property is a terrorist, terrorist associate or terrorist property. The application for a court order should contain the reasons for the specification so that the

person being specified knows the reasons for the specification when making the objection.

To allay members' worry, the Administration has proposed to replace clause 4 by new clauses 4 and 4A.

New clause 4 will enable the Chief Executive to publish a notice in the Gazette specifying the name of a person or property if such person or property is designated by a United Nations Security Council Committee as a terrorist, terrorist associate or terrorist property. Clause 4(6) of the Bill provides that, where a specified person or property ceases to be designated by the United Nations Security Council Committee as a terrorist, terrorist associate or terrorist property, the notice is deemed to be revoked to the extent that it relates to the person or property immediately upon the cessation of the designation.

The proposed clause 4A to be added provides that the Chief Executive may make an application to the CFI for an order to specify a person or a property is terrorist, terrorist associate or terrorist property. The CFI shall only make the order if it is satisfied, on the balance of probabilities, that the person or property is a terrorist, terrorist associate or terrorist property, as the case may be. If the Chief Executive receives information which causes him to have reasonable grounds to believe that the person or property is not, or is no longer, a terrorist, terrorist associate or terrorist property, then the Chief Executive may make an application to the CFI for the order to be revoked.

Members consider that the three-year validity period for the specification by the Chief Executive originally proposed under new clause 4A too long and have asked the Administration to shorten it. Clause 4A(8) now provides that such specification, if not otherwise revoked, will expire after two years.

Clause 5 empowers the Secretary for Security to serve a notice to direct the holders of funds not to make those funds available to any person when she has reasonable grounds to suspect that the funds are terrorist property.

A member has asked the Administration whether any provision will be made for releasing funds for legitimate uses, such as paying staff wages. The Administration has pointed out that under clause 5(1), the Secretary for Security can grant a licence for such purpose. Members are concerned that it is unclear

as to the types of expenses which will be covered by such a licence, and have asked the Administration to set out clearly the circumstances to be covered by the licence.

To allay members' worry, the Administration has proposed adding new clause 14A to set out supplementary provisions applicable to licences mentioned in clauses 5(1) and 7. Clause 14A provides that the Secretary for Security can grant a licence for the affected person to use part of the funds for such purposes as reasonable living expenses and reasonable legal expenses.

Mr Albert HO considers that the two circumstances quoted may not be exhaustive enough to guide those who have to implement the relevant provision. He is particularly concerned that staff wages and funds held on behalf of third parties are not mentioned. Mr Albert HO has proposed an amendment to this effect.

As members consider that a three-year validity period too long, the Administration will amend clause 5(3) to provide that the notices issued by the Secretary for Security will expire after two years. Miss Margaret NG has proposed an amendment to reduce the validity period of the freezing notice to one year.

Another provision in the Bill which has caused enormous concern among members is clause 10. Members note that the prohibition against making false threats of terrorist acts in clause 10 is outside the scope of UNSCR 1373 and FATF. Since the Administration has emphasized that a minimalist approach is adopted to implement the relevant requirements, some members have questioned the need to include such a provision. Two journalist associations have expressed concern about the clause, and in the view of JUSTICE and the Law Society of Hong Kong, clause 10 should be deleted in the absence of any demonstrated need for such legislation.

The Administration has stressed that the provision is not directed against inaccurate reporting by journalists and will not suppress freedom of the press. The Administration considers that clause 10 is necessary to prevent and deter hoaxes which are intended to cause panic and confusion.

Mrs Selina CHOW, Mr Albert HO and Miss Margaret NG have proposed different Committee stage amendments to improve or delete this clause.

Clause 11 requires a person to make a report if he knows or has reasonable grounds to suspect that property is terrorist property.

Members have expressed concern that the adoption of the mental element of "having reasonable grounds to suspect" may cast the net too wide and innocent people may be caught. In addition, the requirement for disclosure of suspicious transactions will impose an extremely onerous burden on accountants, solicitors and financial institutions.

To allay members' worry, the Administration has proposed to move an amendment to clause 11 to change the mental element for the reporting requirement to "knows or suspects".

Miss Margaret NG has proposed an amendment to clause 11 by deleting "has reasonable grounds to suspect" and substituting by "suspecting on reasonable grounds".

Apart from the above provisions, members are also concerned about the issue of compensation.

As specifying someone as a "terrorist" or "terrorist associate" and property as "terrorist property" has serious implications, members consider that there should be a provision for compensation if it turns out that the specification is unjustified. Similarly, it should be specified that a person, whose application to the Court to revoke a notice made by the Secretary for Security is successful, would have the right to claim damages from the Government.

The Administration has agreed to add new clause 16A to provide where a person or property has ceased to be specified under clause 4A(2) or clause 5(1), the Court can order the Government to make compensations in certain circumstances. However, members share the view that the requirement of "serious default" in the clause on the part of any person concerned in the course of investigation or prosecution as a prerequisite to obtaining compensation is unreasonable and would make the compensation provision meaningless. They have asked the Administration to exclude such a requirement.

The Administration considers that the requirement of "serious default" is a reasonable standard necessary to protect the interest of the Government and public revenue. In regard to wrong decisions that do not stem from negligence

or bad faith, *ex gratia* payments are available, at the discretion of the executive authorities, after consideration of the overall circumstances.

Members have asked the Administration to seriously review the issue. In view of the concerns expressed by members, the Secretary for Security will conduct a review of the issue of compensation with the Secretary for the Treasury and the Department of Justice and report to the Legislative Council after the passage of the Bill.

On the issue of enforcement powers, in response to the concern raised by members about the wide powers in Schedules 2 and 3, the Administration has proposed to delete Schedules 2 and 3 to the Bill, and rely on powers of investigation, seizure and detention as are available under existing laws. Clause 12 which describes the purpose and scope of Schedules 2 and 3, and clause 15(1) which empowers the Secretary for Security to authorize persons as "authorized officers" will also be deleted.

In addition, clauses 17, 18 and 19 relating to procedures to be provided by rules of court, amendment of Schedules 1, 2 and 3 and power to make regulations for freezing of property (other than funds) respectively will be deleted. A new clause 17 will be added to empower the Secretary for Security to make regulations to deal with the freezing of property (other than funds), and to provide for other matters such as any necessary powers of investigation, seizure and detention that may be required in the future. The Administration has proposed that all of the regulations made by virtue of clause 17 will be subject to the approval of the Legislative Council.

Members have pointed out that it is most unsatisfactory that the freezing of property (other than funds) and the provision of the necessary powers of investigation, seizure and detention should be dealt with by way of subsidiary legislation instead of amendment to the principal ordinance. They understand that the relevant provisions are taken out for the time being because more time is required to work out the details and urge the Administration to introduce an amendment bill as soon as possible for consideration by the Legislative Council.

The Administration has agreed to give priority consideration to introducing the relevant provisions by way of an amendment bill. The Administration will work on the details during the summer recess with a view to submitting the proposals, if any, to the Legislative Council in the last quarter of 2002.

On the commencement date of the Bill, members note the Administration's intent that clauses 4A, 5, 7, 14A, 16 and 16A of the Bill would not come into operation after the passage of the Bill until the relevant rules of the Court have been made by virtue of new clause 18.

The Administration has agreed to give the following undertakings during the resumption of the Second Reading debate or Committee stage:

- (i) The Security Bureau will give priority consideration to introducing an amendment bill in the last quarter of 2002 to deal with the outstanding issues;
- (ii) The Security Bureau will conduct a review regarding the Bills Committee's view that the requirement for "serious default" should be removed from the compensation provision in the new clause 16A of the Bill and to include improvements, if any, in the amendment bill mentioned in paragraph (i) above;
- (iii) In exercising the delegation of power under clause 15(3), the Secretary for Security will only delegate such power to senior officers of the Security Bureau; and
- (iv) As there may be a trend to relax anti-terrorism measures in the international community, the Administration will review the anti-terrorism measures set out in the Bill periodically to ensure that they are in line with the international trend.

The Administration has agreed to work on the outstanding provisions during the summer with a view to consulting the Legislative Council Panel on Security as early as possible in the new Legislative Council Session.

Thank you, Madam President.

MR ALBERT HO (in Cantonese): Madam President, to start with, the Democratic Party would like to express its view on the legislative procedures. We definitely know the purpose of making and passing the United Nations (Anti-terrorism Measures) Bill (the Bill) is to enable Hong Kong to honour its

international obligation of joining forces to combat terrorism. The approach adopted in the Bill is to target mainly at the funds held by terrorists. However, the Bill was not submitted to this Council until April this year. The schedule very tight if we are to pass this Bill before the Council rises this year. During the meetings, the Government repeatedly stressed that many countries had already completed the first stage, or even headed towards the second stage of legislation, and that it did not want to see Hong Kong lagging behind and being criticized as a result. This we understand. Yet we cannot help asking this question: Why could the Bill not be submitted earlier? In any case, Members have exerted their utmost to discuss and co-operate with the Government, and made every effort to scrutinize the Bill properly and enable it to be read the Second time during this Session.

In view of the complexity of the Bill, the extensive scope involved, and the profound implications on numerous human rights issues, we must listen to the views of deputations in the course of scrutiny. The written submissions made by the Hong Kong Bar Association and the Law Society of Hong Kong have to be taken into account too. I would like to take this opportunity to thank the Department of Justice, representatives from the Hong Kong Human Rights Monitor, and Prof YOUNG of the University of Hong Kong, who even made a personal attendance before the Bills Committee to give us his valuable views. I have to emphasize that, given the severe time constraints, I have no further opportunities to benefit from their advice or discuss with them. The Bills Committee has held a total of 14 formal meetings with the Government, and exchanged views or even held discussions with individual government officials. I must stress that we have exerted our utmost. We also understand that the Government has made all efforts to respond to some of our questions and queries. The Secretary for Security, Mrs Regina IP, and the incumbent Permanent Secretary for Security, Mr Timothy TONG, have obviously spent a lot of time on this matter. Mr FOX, the lawyer responsible for drafting the Bill, has worked very hard too.

I note that substantial amendments have been made by the Government in response to our suggestions. Certainly, many of the proposals it made still fall short of meeting our requirements. I will come to this in detail later. Though the Government fundamentally responded at the last meeting to the key suggestions made by the Democratic Party, some of its replies were not satisfactory or acceptable to us. Despite the fact that we cannot totally share the

Government's views, we do not feel the Government has failed to respond to our request. For this reason, we were originally not opposed to the idea of resuming the Second Reading of the Bill. I understand that other Honourable colleagues feel that they have not been given ample time and opportunities of thorough consideration, and are thus required to rush through the scrutiny, so in the procedural context, I consider this inappropriate. From the angle of the Democratic Party, however, I will not oppose the resumption of Second Reading merely because the procedure has not taken its full course. Later, I will explain in detail that it is based on another principle that we find it impossible to support the Second Reading of the Bill.

We are also aware that the Government has, in order to save time, agreed to delete Schedules 2 and 3. These two Schedules seek mainly to confer on the police or law enforcement agencies the search and evidence-taking powers. Now the Government will have to rely on the power conferred under common law or other legislation to enforce the Bill after enactment. We also note that the Bill has actually dealt with funds only. Nothing has been done to address non-monetary property. The Government has in its response attributed this to insufficient time. We hope this legislative exercise is only the first stage so that Hong Kong can at least give a preliminary response to the international community in September, when the first anniversary of the September 11 incident is going to take place. I have also learned that the Secretary will endeavour to submit the second part of this piece of legislation within this year. I have requested the Secretary to allow Honourable colleagues the chance to go through the first part again. Perhaps more suggestions can be made if we have more time to go through it. I hope she can respond to my request later. If the Government considers our proposal reasonable, I hope it can reconsider the matter and agree to making amendments, instead of merely confining its attention to the second-part legislation.

Madam President, in addition to the procedure, the Democratic party also attaches very great importance to this Bill, because it will give the Government extensive powers and have far-reaching implications. We have spent three months scrutinizing this Bill. Though it is not a very lengthy Bill, numerous amendments have been proposed by both government officials and Honourable Members. As the Chairman of the Bills Committee has given us a brief account just now, I will not go repeat the details.

I would only like to say a few words on an issue of the gravest concern to Members and deputations. We are of the view that the definition of "terrorist act" in the original text is too broad, while the scope of some exclusion clauses are too narrow. In this respect, the Government has agreed to amend the exclusion clauses, and not to define such acts as disseminating dissenting views, staging protests, and so on, as terrorists acts, which will otherwise result in widening the definition of "terrorist act". The Government has also agreed to introduce amendments to make it clear that terrorist acts must be referring to those acts that will result in destruction or casualties. In an amendment to be proposed later, Ms Audrey EU will propose that if an act merely serves as a threat and will not lead to terrorist consequences, it should not be included in the definition of "terrorist act". This is very important indeed. We will therefore support Ms EU's amendment.

The most important part of the entire Bill concerns how best checks and balances can be exercised on such important powers held by the Government. We certainly understand very well that, owing to the nature of terrorist activities, swift action must be taken to target terrorist funds. Therefore, it is very difficult to insist that a certain criminal standard of proof must be met, such as specifying certain persons to be terrorists for the purpose of freezing their funds, at an initial stage. It is very difficult for us to require compliance with this standard because so doing will enormously restrict the application of this law. Yet I feel gravely concerned that the Government will be subject to enormous pressure when applying this piece of legislation. This is because many high-risk countries (for instance, the Mainland is under enormous pressure at the moment) have resorted to numerous over-sensitive or overreacted measures because of their extreme sense of crisis. Members can read from the newspapers yesterday that a lady was ordered to leave a plane after asking a flight attendant whether the latter was sober, on the ground that she had threaten flight safety. In other words, she had influenced the mental state of the flight attendant. A friend of mine also told me lately that the relevant authorities in New York had refused to issue driving licences to students who were not resident locally for pure security reasons. Examples like this abound. In particular, ethnic minority groups are subject to greater pressure.

It is anticipated that the Government will come under great pressure when this piece of legislation is applied in future. It is precisely for this reason that we feel the checks and balances exercisable by the Court are very important. Even though applications may be made to the Court in future to revoke the Government's initial specification that a certain person is a terrorist, it is

meaningless because the damage has been done. It is impossible or extremely difficult for us to make up for the damage. In this connection, we strongly urge that checks and balances must be put in place so that a preliminary examination must be conducted by the Court before a certain person is specified a terrorist. The Government has finally agreed to amend clause 4 and split it into clauses 4 and 4A. Under clause 4, only persons classified by the United Nations Security Council as terrorists will be gazetted immediately. We do not disagree to this for we do trust the Security Council. The amended clause 4A(1) makes it clear that an application must be made to the Court if the person in question is not on the list released by the Security Council. This is very important because it can prevent the Government from taking actions in haste under pressure, thereby hurting innocent individuals.

The most controversial point of the Bill is related to compensation. Actually, all Members have almost unanimously raised this important point at the very beginning. As far as we understand it, the Government will rely heavily on intelligence provided by foreign countries, particularly the Central Intelligence Agency, the Federal Bureau of Investigation, and Military Intelligence 6, when applying this piece of legislation in future. Yet it is very difficult for the Government to verify the accuracy of the intelligence furnished. We can hardly say it is wrong for the Government to rely on the intelligence.

Although the Government has agreed to add clause 16A to affirm its principle of making compensation, one of the criteria it has laid down is that — Miss Margaret NG will raise her objection later — one has to prove he is no longer a terrorist. In our opinion, it is not necessary for him to prove this since he should no longer be considered a terrorist as long as his name is no longer on the terrorist list. It is even more difficult to prove there has been serious default on the part of the Government. As Dr YEUNG Sum has remarked, this provision exists in name only. What is the point of adding it for compensation is merely an illusion? For this reason, we consider it unacceptable to the "serious default" requirement. Based on consideration of international obligations and the needs of the actual situation, we are willing to confer such enormous power on the Government. We demand that checks and balances be put in place. Should this mechanism fail to achieve its desired purpose, compensation must be made. We do not wish to see innocent people to shoulder completely the tragic consequences. Such consequences should be borne by the entire community instead. For safety sake, we are willing to pay the price for taking out insurance. However, the premium should not be borne by individuals. For this reason, we proposed to delete the provision concerning

"serious default". However, our amendment was rejected by the President, who ruled that the amendment had a charging effect. Should the Bill be passed, the compensation offer will exist in name only. Therefore, we cannot accept the passage of the Bill. Although consideration will be made by the Secretary in future, we will not support the Bill, unless reasonable principles or provisions are added. We will hold further discussion on other amendments later.

I so submit.

MR HOWARD YOUNG (in Cantonese): Madam President, a lot of people, or at least some people, think that the United Nations (Anti-Terrorism Measures) Bill before this Council today is a piece of draconian legislation. The Liberal Party cannot share their views. Following the September 11 incident in the United States, international terrorism has brought profound impact on global stability and economic development. There have been consistent voices all over the world calling for timely measures to combat and sanction terrorism. Therefore, it is the common obligation of the international community to think of ways to combat and curb terrorism. Hong Kong is no exception.

Against such a backdrop, it is only natural for China, being one of the Member States of the United Nations Security Council, to give instructions to the Government of Hong Kong, which is a special administrative region of China, to implement the United Nations Resolution. As the legislature of Hong Kong, the Legislative Council should make an effort to match this initiative.

There has been the view that since Hong Kong has never been a direct or prime target of terrorism, nor a safe haven for terrorists, there is no urgency for the enactment of anti-terrorist legislation. The Liberal Party cannot subscribe to this view. As Hong Kong is an international economic and financial centre, precautions against terrorism should be put in place. Moreover, we cannot dismiss the possibility that terrorists might make use of our financial and economic freedom to engage in or support terrorist activities. Therefore, the Hong Kong Government should take resolute action to forestall such activities promptly. If the relevant legislation cannot be passed, terrorists would be given a window of opportunity, apart from affecting the confidence of overseas investors in the financial system of Hong Kong.

The scrutiny of this anti-terrorism Bill has engendered divergent views. However, the Government deserves commendation in handling this matter.

This is because the Government did listen to the views of every sector and the Legislative Council and make a number of amendments to the Bill, for instance, narrowing the definition of "terrorist act"; stipulating that the specification of a person as a terrorist by the Chief Executive should be subject to court permission, if such person is not designated by the United Nations as a terrorist; taking out the procedure of specifying a person, who is not designated by the United Nations as a terrorist, as well as introducing a compensation provision in clause 16A. These show that the Government is willing to listen to views of Members and various sectors. The Liberal Party appreciates and supports the Government for this. However, as regards compensation, the Liberal Party has its own views. For instance, if the property of a person is frozen as a result of his being specified as a terrorist, he will suffer direct losses. Later, if it is found to be a mistake, then according to the current amended provision, this person can obtain compensation only when serious default has been proved on the part of the Government. We think this is a very high threshold. How can a serious default be proved? In this connection, I did attempt to introduce an amendment to clause 16A. However, I have not gone as far as Mr Albert HO. I have not sought to remove the word "default" but just the word "serious", for I believe it is easier to judge whether a person is in default. But whether the default is "serious" or not is really a matter of opinion.

Both the President and the Administration thought that this amendment might have a charging effect, and it could not be introduced without the prior consent of the Chief Executive. I accepted their decision and I did not attempt to seek the consent of the Chief Executive. My failure to introduce an amendment to the Bill will not constitute a reason for me to withhold my support for the Bill's Second Reading. I note that in the report of the Bills Committee, the Government has made an undertaking to conduct a review on the compensation issue. We will wait and see how the Government will address this matter in future.

As some of the wordings in the Bill are too ambivalent, Mrs Selina CHOW of the Liberal Party has proposed some amendments and she will explain them later.

Madam President, we have learnt from recent news reports that the Al Qaeda is still active and gaining strength. There is the possibility that a new round of terrorist attacks will be launched. Under the circumstances, it is all the more obvious that there is an urgency to enact anti-terrorism legislation to

fulfil our international obligations. Otherwise, Hong Kong is open to criticism from the international community.

Madam President, with these remarks, on behalf of the Liberal Party, I support the resumed Second Reading of the Bill.

MISS MARGARET NG: Madam President, terrorism is a new threat to the open society and civilization as we know it. It is Hong Kong's obligation, as directed by the Central People's Government under the Basic Law, to implement the United Nations Security Council Resolution (UNSCR) 1373 without delay. This I accept and appreciate. The Government has advised us that legislation is appropriate. This, too, I am prepared to accept.

But none of these considerations give us the right to enact a law in haste, with little regard to its real effects or consequences. Just because terrorism is bad, does not automatically make a law aimed at fighting terrorism good and deserving of support. The fact that some governments in the world, hit hard by terrorist attacks, have gone overboard with anti-terrorist measures which threaten rights and freedoms, natural justice and due process in their countries, does not mean that we in Hong Kong should slavishly copy these measures. More power for the state does not automatically mean that terrorism will be dealt a harder blow. The extra power can be used just as readily against the innocent. At the end of the day, ironically for a place like Hong Kong, the open society is not undermined by terrorist attacks, but by anti-terrorism laws which have been made without sober and careful thinking, compounded by haste and impatience.

Such is the case with the United Nations (Anti-Terrorism Measures) Bill now before this Council. As the report of the Bills Committee has chronicled, the Bill was gazetted in April. The Bills Committee held its first meeting on 17 May. There was no doubt that the Bill was complex and would have serious consequences on liberty and property. Yet half way through the scrutiny of the Bill, the Government made it clear that it was determined to push it through by giving notice on 24 June. During the short period of five weeks, a total of nine meetings were held. Six more meetings were held even after the notice was given. I was unable to attend the last two because I had to leave Hong Kong on a long-standing commitment. Numerous amendments were proposed. Some seven drafts were put in succession before members. Committee stage

amendments, which members found it necessary to introduce, had little time to be discussed.

Many of the amendments were made by cut-and-paste from other legislation or other jurisdictions. In some cases, the Law Draftsman confessed that he was not entirely sure of the legal effects, but felt bound to include it all because he was afraid to leave out things from the original legislation from which the provisions were taken. Yet, in other cases, he had excluded preconditions, safeguards and restraints, because they were considered somehow inappropriate. Members were not allowed the luxury of time for an overall view of the final product to ensure that the right balance was struck and the necessary safeguards were provided.

Madam President, there are so many serious problems with this Bill that I hardly know where to begin. Taken as a whole, the balance is wrong. The Bill provides for wide definitions of "terrorists", "terrorist acts", "terrorist associates" and "terrorist property". The Chief Executive can specify by notice in the Gazette persons, organizations and property as terrorists, terrorist associates and terrorist property. All that is required is that he has reasonable grounds to believe that they are so — hardly a high threshold. Once so specified, a presumption arises that these are terrorists, terrorist associates and terrorist property as the case may be, and it becomes a criminal offence for anyone to have anything to do with these persons or organizations, or deal with such property. Separately, if the Secretary for Security has reasonable grounds to suspect — merely suspect — that any funds held by any person are terrorist property, he or she can immediately freeze the funds for two years simply by written notice. In such a situation, it can be expected that mistakes will be made from time to time. As a result, innocent people wrongly suspected of being terrorists or terrorist associates or of holding terrorist funds will suffer. So will innocent third parties. For example, when the funds of a company suspected of being a "terrorist associate" is frozen, its employees will not get paid their wages. Their families will suffer. Yet, when it has been shown to be a mistake later, the Bill does not provide for people who have suffered to be compensated.

This is very unfair, and very wrong. If the law has to enable the Government to act swiftly and take drastic action, with the possibility of making mistakes which cause innocent people to suffer, then the law must make provisions for these people to be compensated for their loss once the mistake is proven.

A number of suggestions were made, for example, that the definition of "terrorist act" be made narrower; that specification by the Chief Executive be subjected to the Court's judgement; that the Secretary for Security should apply to the Court for an injunction to freeze funds; that proper compensation should be made.

The Government has accepted part of the comments and agreed to introduce some amendments. But the end product, even with the amendments, are far from satisfactory. The definitions remain far too broad for the consequences which they give rise to under the Bill. The Secretary for Security's power to freeze funds on suspicion remains not subject to any court permission. The freezing order, unless successfully challenged by the person or persons concerned by court proceedings, will last for two years. At the end of the two years, the Secretary for Justice can apply for the property to be forfeited. Most importantly, the compensation provision to be introduced, clause 16A, is nothing short of outrageous. A person applying for compensation has to prove his innocence — that he was at no time a terrorist or terrorist associate, or that the property was at no time terrorist property. Even that is not enough. He has to prove that there has been some "serious default" on the part of the Government. It is difficult to imagine how an ordinary citizen is going to prove that any government official was seriously in default. It is not clear why he is required to prove serious default; why the compensation should not be borne by public funds as the cost of fighting terrorism; and why the price has to be paid by the innocent individual.

The compensation clause that the Government proposes may be worse than no compensation clause at all, because it imposes stricter conditions than are required by the common law for damages. In construing this Bill, if it passes into law, the Court may well take the view that the new clause 16A replaces the common law.

Yet the Government refuses to be persuaded to remove these inequitable requirements, on the basis that they are exactly the same under the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance. As I shall argue, this is a fallacy. But there was no time to argue with the Government, and so we are in danger of being stuck with an extremely unfair law which raises the question of whether this is in breach of the Basic Law protection against the lawful deprivation of property without compensation in Article 105.

Madam President, in February, the Secretary for Security had made a statement to the Panel on Security that a "minimalist approach" would be adopted, because Hong Kong is not subject to threats of terrorism. Legislation will contain only what is necessary to implement the UNSCR 1373, and the Financial Action Task Force on Money Laundering (FATF). The Secretary has not kept her word. Clause 10 of the Bill which makes communicating a false belief that a terrorist act has been or will be carried out a crime, is admitted by the Government to be exceeding the UNSCR or the FATF. I see no necessity in including such a provision and every need to hold the Secretary to her promise.

But the Bill exceeds the UNSCR and the FATF in other ways. I will come to it when proposing amendments to clauses 6, 7, 8 and 9 if we go that far. What I want to point out now, because of its wide implication, is that clause 11 of the Bill imposes on everyone in Hong Kong, and every Hong Kong resident outside the jurisdiction, the duty to report to the authorities if he or she has reasonable grounds to suspect that any property is terrorist property. This is an objective test. Provided there are objective reasons to suspect, even if one did not in fact suspect that some property is terrorist property and therefore did not report it, one may be guilty of a crime. The Government, having admitted that there is just cause for concern, will introduce an amendment to change "has reasonable grounds to suspect" to just "suspects". In other words, from the purely objective, one goes to the purely subjective. It does not matter if one suspects simply because one is by nature suspicious; it will still be a crime if one fails to report his suspicion. Why the Government refuses to require both the subjective and objective elements by using the words "suspects on reasonable grounds"? I cannot understand.

Neither the UNSCR nor the FATF requires Hong Kong to make a potential criminal of every ordinary citizen. The FATF imposes the obligation only on "financial institutions, or other business or entities subject to anti-money laundering obligations". When this was pointed out to the Government, the reply given was that clause 11 is just lifted from the Organized and Serious Crimes Ordinance, which imposes the obligation on "any person".

Madam President, this is where no conscientious Member can take up the responsibility of introducing or even framing a proper amendment to remedy the

wrong in the Bill. For it is not possible, especially under such severe pressure of time, to specify or appropriately describe institutes and entities on whom a duty of disclosure on suspicion should be imposed.

Thus, although I shall be forced to introduce a great many amendments in the not unlikely event of the Second Reading of the Bill being passed, and to bore Members very much, all the amendments put together will not make this Bill sound, only a little less diabolical.

I do not ignore the many amendments that the Government has agreed to introduce which are good and in the right direction, for example, in clarifying legal professional privilege. This so-called "privilege" is not a privilege of the lawyer but his client, and not in the lawyer's interests, but necessary in the public interest of the administration of justice. A person, particularly a person accused of a crime, must be able to feel utterly confident that communication between him and his lawyer is kept in confidence. Article 35 of the Basic Law thus enshrines a fundamental principle of the common law.

I also welcome the amendment to remove Schedules 2 and 3 which allow persons authorized by the Secretary for Security to go on fishing expeditions under the name of investigation or gathering evidence for the wide purposes of the Bill. These powers of requiring people to give information, to search and seize and break in without a warrant, make huge inroads into the right of silence and personal liberty. However, it is to be deplored that a new clause will be introduced for those powers to return through a backdoor, by allowing the Secretary to make rules to the same effect.

Madam President, as I have indicated at the beginning of my speech, there are just too many problems and potential threats to fundamental rights in this Bill. I cannot accept for a minute that any international obligation requires us to pass such a law, or that any international sanction can lie against our refraining from doing so because haste is more valuable than justice. No nation can be required to legislate against the interests of its citizens. This Bill is against the public interests of the Hong Kong Special Administrative Region of the People's Republic of China. I have no hesitation in opposing it and urge Honourable Members to do the same.

MS AUDREY EU (in Cantonese): I rise to speak against the resumed Second Reading of the United Nations (Anti-Terrorism Measures) Bill (the Bill).

Madam President, the September 11 incident has given swell to a global wave of anti-terrorism. I totally agree that the Special Administrative Region Government (SAR Government), as a member of the international community, is obligated to join the fight against terrorist activities, and that the Legislative Council should render its support. However, Members being legislators must still seriously scrutinize each and every bill submitted by the Government, so as to ensure that all the relevant provisions are fair and reasonable, that a proper balance is struck between the maintenance of law and order and the protection of people's rights. This principle must allow no compromise.

The Administration has pointed out that if the Bill cannot not be passed in good time, Hong Kong may face sanction and reproach from the international community. In the words of the emotive Secretary for Security, Mrs Regina IP, if the legislation cannot be enacted in good time, she will let down the Motherland, the United States and the United Nations. My response to this remark is that while we should ensure that our anti-terrorism legislation can effectively combat terrorists, we should at the same time safeguard such internationally recognized values as human rights and freedom.

Unfortunately, as in the case of the accountability system for principal officials, the Government has once again sought to handle the issue of anti-terrorism legislation with its characteristic haste, doing away with any public consultation and giving Members insufficient time for scrutiny. Even more unfortunately, in a bid to push through the Bill before the end of the current Session, the Government has even broken the convention and, before obtaining the consent of the Bills Committee, given notice of resumption, thus requiring the Legislative Council to pass the Bill today, in total disregard for the Council's principle and need of serious scrutiny. For this reason, the Bills Committee has passed a resolution, expressing extreme regret at the Government's action.

Actually, over the past one and a half months, Members have worked non-stop to scrutinize the Bill, convening 15 meetings in total. If my reckoning is correct, the Administration has submitted more than 10 revised drafts. Last Wednesday, when the last meeting of the Bills Committee was held, the Government could not submit a printed version of the finalized draft in time, and

so, the draft had to be dictated to Members at the meeting, and Members were required to submit their amendments to the Government's finalized draft before midnight that day. This shows that the Bills Committee has never had any opportunity to discuss the Bill and submit appropriate amendments. It is extremely irresponsible, Madam President, to handle a bill like the anti-terrorism Bill, which is so very complicated in nature and extensive in implications.

As rightly emphasized by government officials, Hong Kong, being one of the safest cities in the world, is under no threat of terrorism. When people in general hear of the enactment of anti-terrorism legislation, they will think that the law is just meant to deal with international terrorists like Usama bin LADEN, so the community is generally uninterested in anti-terrorism legislation. But the anti-terrorism Bill submitted by the Government is targeted not only at the kind of terrorists mentioned, but also terrorist associates, people providing services to terrorists and those who do not make a report despite their suspicion. An ordinary man in the street may well be incriminated without realizing it. What is even more important is that once a person is specified as a "terrorist" or "terrorist associate", the consequences can be very serious, as his property will be frozen or even forfeited.

In addition to the United Nations' specification of terrorists, the Chief Executive may also, under clause 4A of the Bill, apply to the Court of First Instance for an order specifying a person as a "terrorist" or "terrorist associate", or his property as "terrorist property". Once a person is so specified, he will be cut off from all kinds of connections, because under clauses 6 to 9 of the Bill, no other persons or organizations are permitted to provide him with any funds or related services, or to establish any connections with him.

Clause 5 of the Bill empowers the Secretary for Security to serve a written notice to freeze any property suspected to be — merely suspected to be — terrorist property, for as long as two years and without having to make an application to the Court. The affected person may file an application with the Court of First Instance, but the requirements of the Court in respect of proof from the Government are very low. As I said a moment ago, the Secretary for Security needs only to prove that there are reasonable grounds to suspect that any funds are the property of "terrorists" or "terrorist associates", and the definition of property is extremely wide.

The freezing of funds will not only affect the person so specified and his dependants. If he is the proprietor of a company, the salary payment of his employees may well be stopped and they may even be plunged into unemployment. Madam President, I have received some complaints from people who say that because the companies they work for are suspected of assisting in money laundering, the enforcement agencies have taken over the companies by virtue of the relevant legislation; as a result, while the employees have to work as usual to help the officers in charge, they are not paid any salaries in the meantime. From this, we can see that the freezing of property can lead to very serious consequences. So, the Government should be subject to stringent restrictions in invoking the relevant legislation.

I have also said that the freezing period of two years is too long. Miss Margaret NG's amendment seeks to narrow down the definition of "terrorist property" to "any property intended to be used to finance the commission of a terrorist act", and its proposal on shortening the freezing period to one year is also more reasonable.

Madam President, a yet bigger problem as pointed out by some Members earlier on is that "even a saint may err", not to mention the Government. Those who have been wrongly accused and mistaken for terrorists or terrorist associates, or those whose funds are frozen, will see the ruining of their career and the loss of their property overnight, and their families will also be plunged into financial hardship; not only this, even if they are subsequently proved innocent, it will be very difficult for them to claim any compensation from the Government, because under clause 16A of the Bill, the Court can order the payment of compensation to people mistaken for terrorists only when it is satisfied that there is a "serious default" on the part of the Government. But we must note that in these cases of injustice, the crucial information is usually in the hands of the Government, so it will be extremely difficult to prove that there is a serious default on part of the Government and use that as a ground for claiming compensation, especially when the onus of proof on the Government is just limited to "having reasonable grounds to suspect". The existence of clause 16A is at best nominal.

Miss Margaret NG and Mr Albert HO once wanted to move amendments in respect this, but Madam President, since you ruled that their amendments would have public expenditure implications, they could not do so. Madam President, I think this is against the spirit of protecting private property behind

Articles 6 and 105 of the Basic Law. Clause 11 of the Bill is targeted at those who have suspicion but do not thus make a report. Under this clause, a person who "knows" or suspects" that some property is terrorist property but do not make a report commits an offence.

The Government explains that clause 11 is targeted at professionals who frequently have to handle others' property in their work, such as bank staff, accountants, lawyers, and so on. But, Madam President, these people are no detectives, nor have them received suitable training. Since they may not necessarily be able to judge whether the property of their clients is connected with terrorists, to require them to make a report may result in wrong accusations or injure their mutual trust with clients. I suggest that the Government should adopt the approach of drawing up a code of professional practice or a set of guidelines. Specifically, it should conduct discussions with the relevant professional bodies or organizations on a code of practice for report on terrorist property. It should also provide appropriate guidelines and training for professionals instead of pushing all liability — criminal liability — onto people.

THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair.

The amendment of Miss Margaret NG seeks to replace "suspects" with "suspects on reasonable grounds". This means that the prosecution has to prove that there have been "reasonable grounds" to make the accused suspicious. In that sense, I think the amendment will at least require a more objective standard of proof, and will therefore give people an additional safeguard.

Besides the above questions, many other inadequacies are found in the Bill. One example is that the definition of "terrorist act" is much too wide. I have in fact submitted an amendment on this, and if necessary, I will give a further explanation at the Committee stage. In addition, because the Government has not had sufficient time to draft provisions on freezing property (other than funds) and other criminal offences provisions, it has, after deleting Schedules 1, 2 and 3, sought to leave a backdoor in clause 17 of the Bill for the Secretary for Security to make subsidiary legislation on the handling of terrorist property, collection of evidence and other relevant crimes in the future.

This approach will confuse the respective roles of primary legislation and subsidiary legislation. There is simply no reason for separating the provision on such an important issue like the freezing of property (other than funds) from those on the freezing of funds, and for adopting different approaches. This is certainly not appropriate. The Government should seek to implement this by way of primary legislation. Subsidiary legislation is different from primary legislation in terms of the time for scrutiny, that is, in terms of the overall legislative institution. But now, the Government has even sought to ruin the existing legislative institution and principle due to the lack of time. Madam Deputy, this is a disrespect for the rule of law. I agree that the Government has made many concessions and introduced many amendments. Madam Deputy, I appreciate all this, and I will support some of these amendments later. But I think the biggest problem with this Bill has been the lack of time. May and June are the peak periods of the Legislative Council businesses, so even the most diligent Members cannot possibly split themselves up and show up at three different meetings held in three different venues. This is simply impossible. A couple of years ago, Madam Deputy, just a couple of years, I mean not too long ago, the Copyright Ordinance was passed under similar circumstances. The Government has year after year forced Members to work in such great haste in May, June and even July, but still Members have year after year condoned and connived at this practice. Madam Deputy, I really cannot say anything about this.

With these remarks, I oppose the resumed Second Reading of the Bill at this juncture.

MISS CYD HO (in Cantonese): Madam Deputy, I speak against the resumption of Second Reading debate as well as the Third Reading of the United Nations (Anti-Terrorism Measures) Bill. However, I will actively participate in the voting on various amendments. Although the Bill may still be passed despite our opposition today, I still hope that many of the amendments can be endorsed so that the numerous deficiencies of the Bill can be addressed temporarily.

After the September 11 terrorist attack, members of the United Nations reached an agreement and signed the United Nations Security Council Resolution (UNSCR) 1373 for an allied crackdown on terrorist activities, especially in intercepting the deployment of funds by terrorists in conducting activities.

China has signed the UNSCR. And according to the Basic Law, Hong Kong should handle matters relating to national defence and foreign relations according to state policies. Therefore, Hong Kong is perfectly obligated to participate in initiatives against terrorists, and to make local legislation on this.

In February this year, the Security Bureau briefed the Legislative Council on its intention to make legislation on anti-terrorism. Members were aware that such legislation might have far-reaching effects, and therefore, during the meeting, proposed to the Government that public consultation be conducted first. However, this was rejected by the Administration. It was not until April this year that the Government formally submit the Bill to the Legislative Council for scrutiny. As we all know, there are presently a lot of scheduled bills awaiting scrutiny. We agreed that the Bill should be accorded top priority instead of being placed at the end of the programme, and that we should start the scrutiny work once we had time. On 17 May, we held the first meeting. Everything had been done in such a hurry simply because we hoped that the Bill could be passed as soon as possible. The Administration even wanted us to enact the law on anti-terrorism at the last meeting of the Legislative Council on 10 July, that is, before the first anniversary of the September 11 incident, so as to be accountable to the international community. However, time really did not allow us to do so. Since the provisions are so complicated while there are so many issues yet to be discussed, if the Bill is thus passed immediately simply because we have to be accountable without completing the necessary work, such kind of legislative procedure will be too imprudent and careless. If, in the future, any member of the public is harmed innocently by these carelessly drafted provisions, we have to be held responsible.

During our deliberations on the Bill, we understood that we had to take up the responsibility and participate in combating terrorist activities, as terrorist activities are detrimental to the general public. Nevertheless, we were, at the same time, highly concerned about how best the Government's powers could be regulated in order to prevent ordinary citizens, before really being threatened by terrorist activities, from being implicated or suffering just because the Government had been given unreasonable powers. During the course of scrutiny, the Secretary said that if the Bill could not be passed in time, we should feel sorry to our Motherland, the United States and the United Nations. However, I also hope that Members can bear in mind that, first of all, we should not let Hong Kong people down, and that the interests of Hong Kong people and

those of the Motherland, the United States and the United Nations are not conflicting.

In the course of deliberations, we totally agreed that we had the international obligation to make legislation on this. But we requested an opportunity of detailed deliberation so that the public would understand the impact of the Bill on society before the law on anti-terrorism is enacted. As far as time is concerned, it is inevitable that there might be a time gap so that the Bill could not be passed on 10 July. Nevertheless, as the Secretary knew and reckoned that timing was so important, and considered international obligation so significant, why had she not started the preparatory work sooner, but leaving such a short period of time instead for us to pass those controversial provisions, insisting on not to give a reasonable period of time to scrutinize the Bill and to let the procedure take its full course?

The Bureau also pointed out that if the Bill could not be passed, Hong Kong might be subject to international sanction. As a matter of fact, during the course of scrutiny, foreign consuls demonstrated that they were very concerned about the progress of the deliberation work and appreciated the worries of Members. We understand that the scope of regulation of the provisions concerned is actually wider than that of the international agreement. In addition, there is a lack of proper checks and balances on the power of enforcement against terrorism. We, therefore, reckon that the international community will understand why we are unable to pass the Bill on 10 July. The Permanent Secretary for Security said, when being interviewed by the media, that if the Bill could not be passed before the first anniversary of the September 11 incident, the officials in Beijing might feel embarrassed — I absolutely agree that they would definitely feel embarrassed, especially the officials resident in the United Nations, who will be the first to suffer from the pressure. However, I hope that the Secretary for Security can explain our considerations to the Beijing officials. I believe that under "one country, two systems", communication between two sides is allowed and encouraged, instead of one side imposing the will while the other side cannot even raise any queries or ask for discussion.

The first draft of the Bill introduced by the Administration has indeed given the Chief Executive supreme powers. Clause 4 of the Bill states that if the Chief Executive has reasonable grounds to believe that a person or an organization is a terrorist or a terrorist organization, he may specify by notice in the Gazette the name or names of the person or the organization. The Chief

Executive is not required to state immediately the reasons or grounds for his reasonable belief that the person or the organization is a terrorist or a terrorist organization. Although the person or the organization specified as a terrorist or a terrorist organization will not be criminalized just because the name or names concerned have been gazetted, some members of the public who actually are ignorant of what is going on may be implicated just because they are somehow related to the specified terrorist or the terrorist organization, as there are many implicating clauses in the Bill such as clauses 6, 7, 8, 9, 10, 11 and 13. Even though the specification is correct and the identity of the terrorist is confirmed, the clauses of the Bill are so widely implicating — we would describe those as implicating the nine generations of a family — that a lot of innocent people may be involved. Stepping back, if the specification in the Gazette is wrong, it can really kill without intending to do so.

In the course of deliberations, the Government has accepted many of the views from Members, including moving an amendment to this clause. We welcome that move of the Government, as it helps to reduce quite a lot of the excessive powers of the Government. The purpose of my allusion to the original proposal under the first draft of the Bill is not to claim credit for members responsible for the deliberation, but to point out that the original draft of the Bill has provided for a power to control the life and death of people. And when the implicating clauses were drafted, no proper consideration has been given to how many people would be plunged into dire straits as a result of the implication. If the Bill is passed in its original form, there may arise a situation where I have not intended to harm anybody, somebody would be hurt because of me. Thus, how can we agree to passing this Bill in haste today?

Regardless of the amended clauses in the Bill or those that yet have to be amended, there are still quite a number of clauses in the Bill which can implicate the property of the general public and a large number of people. The Government has not amended clauses 6 and 7, and while clause 11 requires disclosure from everyone, clause 13 requires everybody to keep secret. We would like very much to discuss clearly how these clauses can be complied with at the same time, and whether they are contradictory to each other. However, the Bills Committee has not discussed all these clauses in detail.

Clause 5 of the Bill empowers the Secretary for Security to freeze immediately funds suspected to be of a terrorist. After amendment, the validity period has been shortened from three years to two years. Besides, after two

years, the funds can be forfeited if the standard of proof in civil proceedings is met. Thanks to the efforts of members, part of the frozen property can be excluded to pay for basic living expenditure and legal expenses. However, the wages or debts owed to the employees or commercial partners of a specified terrorist can only be defrosted or released upon the approval of the Secretary for Security. Another example is that if the terrorist is engaged in financial business or securities transactions, the assets of individual investors deposited with the company concerned will also be frozen. As a result, the capital flow of many people will be affected. While many people may go bankrupt, the living of many families may also be placed immediately in dire straits.

There are still, in fact, a lot of shortcomings among the clauses of the Bill. For instance, clause 10 will seriously affect press freedom. Clause 16A is related to compensation, but the President disallowed an amendment to the clause due to charging effect. There are still controversies about many other aspects. However, it is most unfortunate that the Administration is not willing to consult the public. As a consequence, most members of the public have no way of knowing the contents of these clauses, neither do they know the impact on them if these clauses are passed. Hence, they have not aired their views. Even for those bodies or individuals who have provided a lot of precious views, they did not have the opportunity to read the various revised drafts. It is indeed a pity that they could only air their first-round opinions but could not participate in the legislative work at the later stage.

Madam Deputy, we have exerted our utmost in scrutinizing the Bill. We know that the scrutinizing period had been short and there was no opportunity to examine the clauses in detail. But we are afraid that there are still a lot of shortcomings in this final version of the Bill. If it is hastily passed today, there will be adverse effects on society. I remember that the President, Mrs Rita FAN, has once said that we should not repeat what we have said during the discussion in the Bills Committee, and that we could simply mention our stance once. However, I am afraid what should not happen will happen today, as the Bills Committee has not given us enough time to state clearly our views.

The scrutiny of a bill means more than simply holding enough meetings. The last five or six meetings were held every day in a row, even after the 8.30 am meeting was finished, we started another meeting at 2.30 pm again. However, members simply did not have any opportunity to take their time to

prepare properly before the meetings, nor could they study the issues in detail after the meetings. Hence, some examples could simply not be raised during the meetings. The example just mentioned by Ms Audrey EU is exactly one of them. In fact, this is by no means a good thing to us, because we did have some questions, but they could not be answered by the Secretary on a proper occasion. If the Secretary can, through mutual persuasion, let us know that we are only over-worried, then we do not have to raise our questions. Conversely, if our questions were sensible and reasonable, then the Government could consider amending the clauses concerned, and this did happen. Nevertheless, we indeed do not have time to complete the entire procedure. Even though at the Committee stage later, we can lobby among ourselves and try to reach a consensus, there is already no time for us to move any amendments, as the deadline will be passed by then.

At the last stage, the Secretary deleted, in a bold and resolute manner, clause 12 and Schedules 2 and 3, thus narrowing the scope of discussion. We welcomed this, as a narrowed scope could bring convenience to us when time was so limited. However, through amending clause 17, the Secretary hopes to bring the powers back in the form of subsidiary legislation for future discussion. I have to point out that I hope at the second stage of legislation, the Secretary can adopt the approach according to the substance of the policies concerned. The procedure of primary legislation should be used if this is the appropriate venue, while the procedure of subsidiary legislation can be adopted if only this is feasible. I also hope that the Secretary can undertake that at the second stage, we can be given an opportunity to review the legislation which is going to be passed today, and to discuss thoroughly those issues which have not been discussed thoroughly to date. What is more important is to let the public and the community know to what implications they would be subjected when these provisions are enacted, so that they will have a chance to express their views.

Madam Deputy, anti-terrorism is supported by all, but the measures and means must be subject to detailed discussion. If the means adopted by us can similarly widely infringe upon private property and are similarly off the balance, then we would have driven away the tiger at the front door while letting in the wolf at the back door. Members, therefore, are very concerned about how the compensation clauses are drafted. However, the President has already refused to let Members move the relevant amendments today. We hope that when we come to the second stage of legislation in October, we can continue the second-

round discussion on these clauses. Today, I will oppose the Second and Third Readings of the Bill.

MR ERIC LI (in Cantonese): Madam Deputy, similar to many laws which safeguard the security of the respective territories, the United Nations (Anti-Terrorism Measures) Bill (the Bill) is about striking the right balance between the power of law enforcement officers and human rights. It is believed that the right balance is difficult to master. From time to time, the relevant legislation has to be reviewed and revised in keeping with the changes in time and circumstances. To a certain extent, the balance also involves subjective judgement, which includes confidence in the Government and law enforcement agencies, and other objective circumstances. It is understandable that views in this Council should be divergent, which is not at all unusual.

I have voiced my opposition when I participated in the scrutiny of the Bill as I was concerned about an anti-money laundering provision. When we discussed the anti-money laundering legislation, I already expressed similar views. Since it has been a lengthy debate in the meetings of yesterday and today, therefore I will not repeat them. I just wish to have my views put down on the record.

I welcome the eventual amendment proposed by the Government, and it has made it easier for me to accept the Bill. Notwithstanding I have accepted the Bill as it is written now, the relevant provisions on disclosure of terrorist property also empower the Secretary for Security to make subsidiary legislation. I agree with the views of other Members, especially the views of Ms Audrey EU and Miss Cyd HO, that these provisions are an important part of the Bill, and I hope provisions of such great impact and magnitude could be written in the form of primary legislation as long as it is technically viable (and I believe it is technically viable). I understand that it may perhaps be somewhat strange, because as soon as we have completed the discussion on the amendments today, further amendments may have to be proposed again, which is not a common practice to the Government. However, considering the specific reasons, and in view of the fact that we have to make quick and proactive response to the anti-terrorism endeavour initiated by the United Nations, so that we will not lag behind other countries, I believe Honourable Members will understand that it is an exception, but for once only.

I also agree with the view of some other colleagues, that is, given the current circumstances, we should do something as soon as possible, even if the authority is vested with excessive powers in some areas, it should exercise restraint and assume the responsibility in enforcement, or it should order law enforcement officers to exercise restraint when they invoke the legislation. Otherwise, I believe public opinions or even legislators may ask for a review of this balance in future and see whether it fits Hong Kong, if it is evidently seen to be in violation of human rights. I hope my brief discourse will let the Security Bureau see our stance in future, and it may provide a basis for future amendment to the new legislation. Thank you, Madam Deputy.

MISS EMILY LAU (in Cantonese): Madam Deputy, I rise to speak against the resumed Second Reading of the United Nations (Anti-Terrorism Measures) Bill.

Madam Deputy, the September 11 incident shocked the whole world and many people were greatly shaken while they watched the scene on television. I believe terrorism can hardly get any support, especially when terrorist activities also harm so many innocent people as well. After that incident, I asked the United States Government and American people via many channels the following question: "Have you ever considered why so many people display such animosity towards the United States?" Of course, everyone wants to combat international terrorist activities, especially when the innocent is hurt, so it must be done, but how could a certain type of terrorism be eliminated once and for all?

I believe that everyone, be they Americans or people of other nationalities, must consider this: If they have used radical measures to suppress certain nations or even gone to the extreme to do so by exterminating the entire nation, those who were suppressed would certainly fight back fiercely. I do not think many people will support or agree to such counter actions, but they will understand. Therefore, when we talk about anti-terrorism, I hope everyone should bear this in mind. As I mentioned at the Bills Committee meetings, terrorists in the eyes of some people are democratic and human rights fighters in the eyes of others. The situations of these people may not apply to the current situation in Hong Kong. However, as you may be aware, Madam Deputy, in some countries, the people are in great plights and some of them may not even have a country. Under such circumstances, with their fellow countrymen being massacred every day, which of us can be in a position to judge them, if they launched counter-attacks activities that we may consider as barbarous? I hope that the United

States, as the richest and most powerful country in the world, can really reflect on its actions. We condemn terrorist activities like the September 11 attacks, but I told the United States Government that it must also reflect on its actions.

Many Members said earlier that the scrutinization process of this Bill had made them feel most regrettable. I contacted the government officials of two countries. They did not want to put pressure on us but only wanted to enquire about the progress of our scrutiny. They were certainly very concerned and had already done what they said they would do. They only wanted to enquire of our progress. At that time, I could only explain to them that we did not have sufficient time. Some Members also said earlier that the Secretary had submitted the Bill to this Council in mid-April and we did not start the scrutiny until mid-May. By 3 July, 15 meetings were held. A Consul-General told me that in their parliamentary assembly (of course, it was fully elected by the people), if some members had really expressed such strong views on a piece of legislation, he would think that the legislation could not be passed. But the situation in Hong Kong might be rather peculiar for the majority of seats in the Legislative Council were not returned by the people. So, when I explained to him that there was nothing we could do, but I would not support the Second and Third Readings of the Bill, the Consul-General could understand my position perfectly. I believe that this Consul-General would also earnestly hope that one day the formation of our Council would be similar to that of his country.

Madam Deputy, in fact, the Secretary could have helped expedite our work. The United Nations Security Council passed the Resolution on 28 September last year but the Secretary did not submit the Bill to this Council until this April. Certainly, even if the Secretary had promptly submitted the Bill to this Council at the end of last September, there is no guarantee that the scrutiny could be completed in time. The Secretary is also aware that the scrutiny of some less controversial and less complicated bills may take a year or two, then how could we expect that such a complicated Bill could come back for Second Reading only after it has been scrutinized for several weeks.

However, in fact, we also have to bear part of the responsibility. The Chairman of the Bills Committee, Mr LAU Kong-wah, may recall what happened on a particular day when the Secretary for Security came for a meeting with us. After the meeting, Mr LAU Kong-wah and I discussed whether we should allow the Bill to be passed for the Bills Committee had already held several meetings? Could the Second Reading of the Bill be resumed? Both of

us thought that it was not possible for the Bill was too complicated. That day, the Secretary had personally led a whole team of officials to attend our meeting and said a lot of things. They also said they were willing to make a number of amendments; so everyone were satisfied. Then, the meeting ended. At that time, the Chairman, Mr LAU Kong-wah, and I shared the view that it was impossible to resume the Second Reading of the Bill. Madam Deputy, please bear in mind that the Bills Committee meeting was already adjourned at that time. A Member who sat next to me at the meeting came over and joined in our conversation. I could not recall who it was. It could be Miss Cyd HO or some other Member. Anyway, that Member felt that the resumption of the Second Reading of the Bill should be allowed and said we should make an extra effort in scrutiny. I felt very surprised, so I immediately confirmed it with Mr LAU Kong-wah. He said he shared my view that the Second Reading of the Bill should not be resumed. At that time, the government officials had not yet left and some of them might have overheard our conversation. The Secretary then said to Mr LAU Kong-wah: "Why could the Second Reading not be resumed? We have given you so much information and made so many compromises, why could it not be resumed?"

I must also be fair to Mr LAU Kong-wah. At that time, when he heard the Secretary's remarks, he took out his diary, and glanced through it. Then he said, "Given that, let us hold some more meetings." What we did wrong was to take the step we took at that time. The problem was the meeting was already adjourned at that time, but Mr LAU Kong-wah said, "Since the Secretary said that, let us hold some more meetings". Then several meetings were scheduled. Madam Deputy, if you were still in the conference room at that time, you might also recall this scene. No one raised any objections at that time and that was the turning point. Once the dates for the meetings were set, everyone worked like mad to hasten through the scrutiny process so that the Bill could resume its Second Reading.

Afterwards, I realized what had gone wrong, and, I told Mr LAU Kong-wah at one of our meetings that the resumption of the Second Reading of the Bill or otherwise was actually within our grasp. This was absolutely correct. Had we been more decisive on that day and told the Secretary that we thanked her for her willingness to make so many amendments and also for her readiness to accept our suggestions, had we expressed the view that the Bill still had some inadequacies, then the matter would have ended there and then. Therefore, we also have to make some self-reflections regarding the question of whether the

Second Reading of the Bill should be resumed. Many Members also said earlier that they should reflect on their own actions. In fact, if we know in advance that the condition for some matters is not yet ripe or that it could not be done, then we should not go ahead with it. To say that it was not possible to resume the Second Reading of the Bill and then immediately scheduled five more meetings was to send a wrong message to the Secretary and the Hong Kong community for they might think that it would be possible if we exerted our utmost. Madam Deputy, I believe that some Members, including your good self, did want to make every effort to make it possible. However, many Members were of the opinion that even if we spared no efforts, it was still impossible to complete this task. But, at that time, it seemed that the Bills Committee was charged with unlimited energy and Members attended every meeting they were asked to, so new impetus was generated to push this scrutiny onto a road of no return. Therefore, I think that we should learn from this lesson.

I am not going to repeat what many Members have said earlier, but there is one point I must emphasize, and that is, I think that even if the Bill cannot be passed today, we will not be subject to international reproach. In fact, I have already asked many times which countries had speeded up their legislative processes in such a manner to enforce the United Nations Resolution? China, Singapore, the United Kingdom and most certainly, the United States, Canada, Australia, New Zealand did, but has any other country done so? There are many countries in the world and I must have omitted some. I hope the Secretary can help us out by naming 20, 30, 40 and 50 more countries later on. However, even if we are not on the list, must we be subject to reproach? Or is it true that after repeated countings, we can only find 10-odd countries that have adopted measures to enforce the Resolution?

Furthermore, I must mention another issue. I agree to the points made by many Members in their speeches, in particular those of Miss Cyd HO, Ms Audrey EU and Miss Margaret NG. But I will not repeat them here. Moreover, I must admit that I am neither an expert nor a member of the legal profession. I am only a Member of the Legislative Council who would try my best to scrutinize the Bill. Therefore, in the course of the scrutiny, I had to rely very much on the help of other people, in particular those who have knowledge on this subject or are interested in helping us. In the course of our scrutiny, some people came to this Council to give us suggestions, but when we proceeded

to the fifth, sixth, seventh and eighth amended draft, those people had all disappeared and some of them said they did not know how to comment.

Furthermore, Madam Deputy, there is one organization that I have great respect and that is the Hong Kong Bar Association (the Bar Association). In fact, it is very strange that they had never given us any advice in the course of this exercise while we had repeatedly consulted their views. Madam Deputy, I believe you may also recall this incident. When did we receive the views of the Bar Association? It was on Tuesday, 9 July. I do not know whether other Members have received it or not. Last Saturday, the Chairman of the Bar Association spoke on the radio and said that he opposed the Bill. I immediately gave him a call, but by Saturday, I still did not receive any document from him. He only faxed the document to me on Tuesday. The document was not very long and I believed it was completed in haste. I did not know whether the Secretary has got a copy. Anyway, the problem is, the document was sent to us on Tuesday, 9 July and the Second Reading of the Bill was to be resumed on 10 July, then how much assistance could this document be of to us? Should we take the views of the Bar Association seriously? We may not necessarily take on board the views of the Bar Association in their entirety.

Over the past years (I have been a Member of the Legislative Council for many years), I have much respect for the views of the Bar Association, but what kind of views have they submitted this time? It is laughable that even the Bar Association itself is aware that it may not be possible for it to follow our schedule for its submission cannot cover the sixth, seventh, eighth and 10th draft of this Bill. Therefore, their views are based on the amendment proposed on 26 June and the Secretary's speech of 28 June. Everyone knows that some amendments were dictated to us on 3 July, but the Bar Association certainly did not have a chance to look at them.

Which clauses did the Bar Association discuss? It mentioned clause 5, which everyone has talked about earlier. Clause 5 of the Bill empowers the Secretary for Security to serve notices to freeze certain funds when she has reasonable grounds to suspect that the funds are terrorist property. The Bar Association thought that this was not appropriate. How could the Secretary for Security be vested with such great powers? This must be subject to the decision of the Court. Furthermore, they also proposed to delete the definition of terrorist property in clause 13(1)(a) and (b), but these are two very short clauses and it did not discuss them in detail. The Bar Association also proposed to

delete clause 8, that is, the provision on the prohibition on supply of weapons to terrorists and terrorist associates. Why did they make such a proposal? This is because the Bar Association was of the opinion that governing clauses are already found in Chapters 271, 491 and 245 of the Laws of Hong Kong, so it is not necessary to make any additions. The Bar Association also proposed to amend clause 9 in relation to prohibition on recruitment, and so on, to persons specified in notices because it was of the view that some people might not be able to tell which organizations are terrorist and innocent people should not be incriminated. Of course, the Bar Association also proposed to delete clause 10 and this point has been mentioned many times because this provision is not a requirement of the United Nations. The Secretary has also admitted that this is not a United Nations requirement. However, she said though the authorities had stressed that a minimalist approach would be adopted, she still believed that prohibition against the dissemination of false news was a good legal provision. Why should it be deleted from the Bill? I told the Secretary at that time that if all good legal provisions were included in the Bill, then it would become a Christmas tree. We need to have principles and should not say at one time that a minimalist approach will be adopted and that the best provisions will be adopted at another. If all the best provisions were to be included in the Bill, we may have to spend five years on discussions.

The Bar Association also made proposals on compensation. The Bar Association commended the Government on this clause (in fact, many Members have commended the Government) but it still thought that there were some inadequacies in the Bill. It, therefore, proposed that clause 16A(2)(a) and (c) be deleted because it thought that it was excessive to require the applicant to prove in court that there has been a "serious default" on the part of the Government. The Bar Association also asked the Government to delete clause 17 for it thought that the Secretary should not be given such an enormous power.

Some Members said earlier that there had not been enough time to discuss a number of issues and amendments in the Bills Committee meetings. And, a Member also said earlier that his proposed amendments were the results of his efforts. I support these efforts in spirit but in practice, I do not think that any amendments should be proposed if there were no time for discussions. The Bills Committee is now dissolved and the amendments were proposed only a few days ago. In the past, I asked the Bills Committee to refrain from doing so because it would be reproached for such actions. However, now I believe that the Government is the one to be reproached for it has driven Members to act in

this manner. The Bar Association has now made a number of suggestions and some Members may wish to follow up certain of these suggestions but some of them have not been discussed in detail. I have not had a chance to ask Mr Alan LEONG, the Chairman of the Bar Association, why he has made certain suggestions but not others, and I could see that the proposals of the Bar Association were made in haste.

Furthermore, I support the views of Mr Albert HO and Miss Cyd HO that in the future, the powers granted under Schedules 2 and 3 should be enacted by way of primary legislation. I also support their request on reopening discussions on the whole Bill and this will certainly be endorsed. Miss Cyd HO has also repeatedly said that after measures on enforcing the Resolution were passed, many countries have continued with their discussions on this issue for the human rights fighters in those countries are also very concerned about such matters. I hope that the Secretary can promise us later that discussions on this Bill could be reopened. We have already missed a good opportunity and embarked on a path of no return. I feel very sorry about this.

MR LAU KONG-WAH (in Cantonese): Madam Deputy, on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB), I rise to speak in support of the Second Reading of the Bill.

The position of the Government in the scrutiny of this Bill has been the progress in the maximum speed, but Members have required that a minimalist approach be adopted for this legislative exercise. It is very difficult for these two standpoints to co-exist, which was why sparks were often seen flying during the scrutiny process. The voting outcome in the end, six votes for and three votes against the Bill's resumption of Second Reading, can aptly prove this.

The DAB agrees that Hong Kong must discharge its international obligation, and it also hopes that Hong Kong can remain stable. Without stability, how can there be prosperity? What we are facing now is neither ordinary sabotage, nor a common crime, nor a protest action like the display of a coffin and the burning of a vehicle tyre. What we are talking about are acts of mass destruction which may upset the stability of our society or even the whole world. Therefore, I think that we must combat terrorism with the strongest force and act with the highest speed in enforcement. This should be our basis of discussions.

Terrorist acts may not necessarily take the form of the September 11 incident, nor must they be related to the stories behind the September 11 incident. The Sarin poisoning on the Tokyo subway is still fresh in our memory, and bomb attacks at foreign consulates abound. The targets of terrorist attacks can be commercial buildings, subways, buses and even restaurants. The means adopted can be an airplane, can be poisonous gas and even anthrax.

Madam Deputy, if we share common memories of our childhood days, we would recall a certain television series about a women's volley team, entitled "The Sparkle of Youth". This series told of a particularly way of serving, nicknamed the "Ghostly Serve". I can remember clearly that as a particular way of serving, the "Ghostly Serve" was kind of invincible. If one does not study how to tackle the "Ghostly Serve", one will be destined to defeat, to a most passive situation in the game. Can we not see that terrorists are just equally ghostly? They leave no traces of their whereabouts and are ever-changing in the tactics they employ. If we do not enact legislation as quickly as possible, who can guarantee that there will be no terrorist acts tomorrow? Who can guarantee that there will be no terrorist acts in Hong Kong?

Some Members oppose the Second Reading of the Bill, arguing that it is not yet perfect. I also agree that the Bill is not yet perfect, and that we must launch the second stage scrutiny. And, even if the Bill is passed, the implementation of some of its provisions should still be withheld. We support some of the amendments put forward by Members. Even if we now all think that the Bill is perfect and render our unanimous support, we must still note that we are actually dealing with acts which transcend all national boundaries, which come in no fixed forms and which take on no fixed patterns. In the words of some Members, what is considered perfect today may thus become inadequate tomorrow. Therefore, when tackling this problem, we must conduct continuous reviews in the light of the prevalent situation.

Some Members are of the view that since the legislation is just meant as a precautionary measure, we need not be overly concerned, especially because Hong Kong is not a terrorist target. Madam Deputy, before September 11, the Americans all thought that the continental United States would not be the target of terrorists. But what happened in the end? Hong Kong may not be a target, nor are the people of Hong Kong, perhaps. But the foreigners here may be high-risk targets, and we simply must not ignore them. Sunzi said: "And as

water has no constant form, there are in war no constant conditions."¹ Terrorist acts are not confined to any particular time or place. They may be committed in Japan, Northern Ireland, the Philippines, Xinjiang and even Singapore, where several terrorists have recently been arrested. Before the September 11 incident, who could have imagined that a terrorist attack would be launched in New York? This tells us that terrorists and other kinds of criminals do share one thing in common: they will go for the easy instead of the difficult. A place generally considered to be the safest may well become their prey. This is one of the reasons why the foreign consuls in Hong Kong are so anxious to see the passage of the Bill.

And, there is another reason. What does Hong Kong depend on for its living now? Tourism and the financial and logistic industries. These industries cannot bear the consequences of even one attack. Even a hoax may cause very serious impact. For this reason, we will support the Government's proposal related to clause 10. It needs only one accident to kill. If we ignore the gravity of the problem, we will be plunged into the dark abyss of destruction.

Madam Deputy, during the whole scrutiny process, we discussed how to crack down on villains, how to protect decent people, and how not to victimize the innocent. How are we going to safeguard the rights of villains? This is of course the duty of lawyers, and this is also something legislators must take into account in the legislative process. However, legislators must also not ignore one point in the legislative process — the authority to crack down on villains. And, the effectiveness or otherwise of such authority is crucial. Clause 6, for example, is about the prohibition on supply of funds to terrorists. Miss Margaret NG's amendment seeks to restrict the application of this clause to funds directly related to terrorists. We cannot accept such an amendment. Does she mean that we still have to allow some people or organizations to obtain funds, while knowing all too well that they are terrorists or terrorist organizations? This does not only run counter to the spirit of the United Nations Resolution, but will also undermine our power to combat terrorists. To be kind to terrorists is to be cruel to the masses. We must also protect the human rights of the masses.

If we play a game of association, when we mention New York, some may associate it with the September 11 incident. If we mention Tokyo subway, some may associate it with Sarin gas. If we mention Israel, some may associate

¹ The Art of War, GRIFFITH, Samuel B., Oxford University Press

it with suicide bomb attacks. Do we want Hong Kong to be included in the list of such associations? Hong Kong is noted in the whole world, in Asia, as a place of stability, and we must therefore treasure our stability. A person who has never suffered from any disease usually will not realize the importance of good health. We must not miss any opportunity to protect good people, however minor it is. Similarly, we must do the same when fighting against villains.

We understand that the second stage in the scrutiny of the Bill is about to commence, and the Government will come back to this Council in the coming six months. I agree entirely with Members that the Bill has been put before this Council in very great haste, and that the schedule for scrutiny is much too tight. This is the first time I serve as the Chairman of a Bills Committee since I joined the Legislative Council. In such a capacity, I have felt like riding on a super-racer. The experience is very exciting to me, who is just like a newly-licensed driver driving a new car. And, I also see many boulders blocking our way. On board, many people are yelling "Slow down", "Pull over" and "Let me get off". But whenever someone yells "Pull over", the Government will remove one boulder standing in our way; whenever someone yells "Let me get off", the Government will remove yet another boulder blocking our way. So, the scrutiny goes on and on, with people yelling all the way. I notice that those who yelled most frequently were Members with the highest attendance record in the Bills Committee, and they were the most punctual ones too. I may not necessarily agree to the viewpoints of those Members who oppose the Second Reading of the Bill, but I hope and I do feel, that the Government has responded to them very seriously. Miss Emily LAU recounted some of the episodes just now. She is in fact one of those people who saved this scrutiny agenda. I of course do not agree with Miss Margaret NG, who said a couple of days ago that she and a number of other lady Members were all difficult women. No matter what, they are no match for those vicious terrorists, who should be the focus of our combatant efforts.

Thank you, Madam Deputy.

DR YEUNG SUM (in Cantonese): Madam Deputy, in the aftermath of the September 11 incident, the United Nations passed a resolution on combating terrorism. The Government has repeatedly stressed that Hong Kong must discharge its international obligation. I agree that this is indeed an international

obligation. But it is equally important to safeguard people's rights and freedom. If the Government is given excessive powers, which are subject to insufficient checks and balances, people's freedom and rights will be dealt a severe blow. I do not think that the Bill has done enough in striking a proper balance between anti-terrorism and the protection of people's rights and freedom. Let me cite two examples, which Mr Albert HO has already explained clearly for the Democratic Party. The first one is about compensation. If the Government mistakes a person or an organization for a terrorist or a terrorist organization and even forfeits the property involved, it commits an error. But if the relevant provision requires a person to provide proof of a "serious default" on the part of the Government before he can be paid any compensation, I would say that the provision is utterly unacceptable. For example, clause 4 of the Bill gives the Chief Executive a very enormous power, so that as long as the Chief Executive has reasonable grounds to believe a person or an organization is a terrorist or a terrorist organization, he may make such a specification by notice in the Gazette. Similarly, if the Secretary for Security has reasonable grounds to suspect any property is terrorist property, he or she may freeze such property. We can thus see that the relevant provisions will give the Government very great powers.

THE PRESIDENT resumed the Chair.

However, if the Government makes a mistake and victimizes an innocent person, it will be very difficult for that person to get any compensation. We can easily imagine how difficult it will be for an ordinary member of the public to prove that there has been a serious default on the part of the Government. How can he prove that? As far as compensation is concerned, the Government claims that while provisions on compensation are not found in other places, it has sought to include such provisions, so it is in fact very benevolent, sensitive to public sentiments. But as I have pointed out just now, since it will be very difficult for an ordinary man in the street to prove that there has been a serious default on the part of the Government, we can rightly say that these provisions are nothing but an "optical illusion", something that serves no practical function, that exists in name only. For this reason, the Democratic Party cannot accept the Bill.

Second, we think that the provisions of clause 10 on the dissemination of false information are much too harsh, with the result that journalists may run the

risk of being caught by the law whenever they publish news reports on terrorist acts. Clause 10 will deal a blow to press freedom in Hong Kong.

Madam President, the Government has to discharge its international obligation of combating terrorism because terrorism knows no national boundaries at all. But while doing so, it must never ignore the Hong Kong people's rights and freedom.

In addition, I wish to raise two points here, the first of which has already been mentioned by many Members — the Bill has been tabled before this Council in a great hurry. Given such a short time to scrutinize a bill which is so complex and so far-reaching in implications, we can do nothing but just exert our utmost. Basically, we have to rush along in great haste. That being the case, we worry that the enactment of the Bill may well lead to unforeseen crises.

I also wish to put the following viewpoint on record. We oppose the Government's move to issue a notice on the resumption of Second Reading debate before the completion of our scrutiny. I hope that the Secretary for Security and other accountable officials will not make the same mistake again. The executive must respect the legislative procedure of this Council.

The Secretary for Security has responded to many of the requests made by Members during the scrutiny process, promising to introduce the relevant amendments in the next Legislative Session. We welcome this.

To sum up, since the Bill is really unable to sufficiently protect the people's rights and freedom, the Democratic Party will oppose it.

Thank you, Madam President.

MR AMBROSE LAU (in Cantonese): Madam President, I rise to speak for the Hong Kong Progressive Alliance (HKPA).

The United Nations (Anti-Terrorism Measures) Bill seeks to implement the mandatory provisions of the UNSCR 1373 and some specific recommendations made by the Financial Action Task Force on Money Laundering. The Central People's Government has, under Article 13 para 1 and Article 48(8) of the Basic Law, directed the Special Administrative Region

Government to implement the resolution. Therefore, although Hong Kong is not a hotbed of terrorist activities, the Special Administrative Region Government must still implement the resolution as directed by the Central Authorities. In addition, all major common law jurisdictions in the world have already drawn up relevant measures to implement the resolution, which is why the Special Administrative Region must also demonstrate to the international community its clear commitment to the fight against terrorism. That is why the Government needs to enact the Bill.

Madam President, the HKPA supports the Second Reading of the Bill.

MRS SELINA CHOW (in Cantonese): Madam President, I have just heard several Members discuss the scrutiny process of the Bill. It is a pity that Mr LAU Kong-wah is not in the Chamber now because I wish to say a few words to comfort him. But I do not know that it is the first time he chaired a Bills Committee. Members who have chaired Bills Committees must have faced similar situations. Bills Committees will invariably be working at high speed almost every May, June and July, especially between late June and July. Thus, it was not the first time that a Bills Committee had to work at such speed. Different Secretaries, bills and reasons would require us to speed. Should we work at high speed without speeding or violating the law? As Miss Emily LAU has said, all Members are duty-bound to consider the matter and strike a balance. I very much agree with Mr Eric LI that whenever we discuss granting the Government law enforcement power in respect of security, especially when we discuss bills conferring on certain people more power, Members will obviously have divergent views in regard to balancing human rights, security needs and law enforcement power.

On this occasion, our target is not as simple as a criminal act in Hong Kong, but a problem that has to be faced by the world, a problem that will have serious damages and consequences. We know very clearly that the power is not ordinary and we have to be very careful when considering the Bill, we must carefully avoid overkill. In striking a balance, we should never apply the security criteria of Hong Kong to the extent and criteria of world terrorist activities because a comparison can definitely not be drawn between the two. Let us take a look at the activities of Usama bin LADEN and his Al-Qaeda organization, which were inconceivable to a peaceful place like Hong Kong. Regardless of whether we understand their background or the historical factors

behind these activities, we can absolutely not pardon, allow or sympathize with their acts. Therefore, we can feel at ease and justified in targeting at these terrorists and we clearly know that it is right for us to do so. In the course of doing so, we certainly have to be very careful and we cannot do harm to innocent civilians. Yet, I believe we would always bear this in mind and Members of this Council constantly have to strike such a balance.

Time was pressing when we considered the Bill and Members might not be very pleased with the notice given by the Secretary.

However, we could not say that we did not know or expect that things would happen that way because we already knew that it would be the case. When we started scrutinizing the Bill, the Government already told us that the Bill was a matter of urgency and hoped that the legislative procedure would be completed by 10 July. Therefore, what happened subsequently was anticipated. From the perspective of the Secretary, if she did not give a notice, the Bill would not be presented to the Legislative Council. In the light of procedures, we should understand that. It is not the only time that the Government gave us so little time to consider a bill. I believe the Government could give an explanation and offer a reason for such on each occasion. We cannot make an absolute judgement because each of us makes our own judgement and each of us would consider on our own whether the reasons given by the Secretary are acceptable.

However, we have to be clear about one point. Have we performed our responsibilities for Hong Kong in passing the Bill? From the legal standpoint, I understand that some colleagues thought that they did not have sufficient time to consider the Bill and they were not sure if they could make a judgement for consideration had not been thorough. On deeper thoughts, we should realize that bills are alive and not dead, and we can still discuss them after passage. In fact, though we have continuously discussed a lot of bills during the scrutiny stage, we still have a chance to continue discussing and amending them after passage because the circumstances will change and the community would not act according to our schedule. For instance, Miss Emily LAU has earlier mentioned that the Hong Kong Bar Association (the Bar Association) has made a submission. After we have held so many meetings, why has the Bar Association chosen to make a submission on 9 July? Perhaps the Bar Association has its own schedule and they would not always think of tying in with the work of the Bills Committee. Does it mean that we may no longer be

able to make reference to the views of the Bar Association from now on? It is certainly not the case because we would continue to discuss the relevant matters even after the Bill has been passed. The practice is not unique to Hong Kong and many other places work similarly.

Honourable colleagues or the public may ask why we have to pass the Bill now. Can the motion to pass the Bill not be negated? I am not just referring to this Bill for that was also the case with many bills in the past. When considering a bill, we may not find all of its contents satisfactory but we pass the bill for we basically agree with and support it. Why would subsidiary legislation be made? Why would there be room for deliberations in future? It is because we have to make a decision at a particular juncture in time, and this decision is time sensitive. What are the views of the international community on Hong Kong? What message do we wish to give the international community and the local community? We passed a lot of bills in the past on the basis of these principles. For example, a primary legislation passed by us may still have a lot of holes. We pass the bill because we wish to give the community a clear message that we have to follow certain procedures and we would not go beyond the framework. We are going to fill these holes within the established framework and we will conduct adequate discussions and consultations before filling these holes. I believe it is a very important point. I am sure the Government would allow further discussion this time. Since colleagues have also discussed this point, I am not going to repeat their remarks.

Lastly, I wish to say that, when we considered giving the Government the power, many colleagues expressed worries from the angle of human rights protection. Should we not consider whether the Government had a very poor record in the implementation of human rights? Has the Government frequently abused the law? The law is certainly important, but the Government determines the enforcement and interpretation of the law. From the past conduct of the Government, can we thus say that it would casually trample on human rights by virtue of the law? I do not think there is such a convention, and I do not think that we should judge our law enforcement agencies that way. We can definitely not say that the Government will do everything perfectly right and it may make mistakes in enforcement every now and then. Yet, we have a mechanism for criticizing the Government. On the whole, I personally think that the Government's track record is not poor at all, and it has managed to foster such a liberal community in which people can enjoy civil rights. Therefore, we should look at the issue from an impartial angle.

Having said all this, I only hope that the Government, including the Secretaries present, would get the message that Members will be awfully busy working their souls out every year when the recess is approaching, as we have stated time and again. The Bill may really contain a lot of objective factors for consideration and it is a matter of urgency, but the problem is, different bills have different factors for consideration and Members are working under pressure. Thus, Members should not be blamed for reacting so strongly. I call upon the Government to address squarely such feelings of Members.

MR LEE CHEUK-YAN (in Cantonese): Madam President, talking about anti-terrorism, what first comes to my mind is the celebrated dictum of the United States President, George BUSH, when he declared war after the September 11 incident, "You are either for us or against us in the war against terrorism." This is a logic of dichotomy that "either be my ally or be my enemy". This time around, the legislation made by the Government of the Special Administrative Region (SAR) so hurriedly in the name of anti-terrorism is, in fact, a reflection of such logic of hegemony. It is very often that the SAR Government applies the above-mentioned dichotomy to Members of this Council. Instead of learning something good, it is learning something bad indeed.

The Hong Kong Confederation of Trade Unions (CTU) and many other local organizations have earlier on expressed our stance clearly to the Bills Committee. We oppose the United Nations (Anti-Terrorism Measures) Bill (the Bill) and request the Government to postpone the passage of the Bill. We suggest that extensive consultation should be conducted first and that effective and balanced measures should be adopted in combating terrorism and protecting human rights.

Generally speaking, I consider the Bill now tabled before us has committed three offences. First, the Government requested this Council to hastily legislate without extensive consultation beforehand. Second, the application of the Bill proposed by the Government is so wide that innocent people can easily be caught. And third, the scope of the Bill introduced by the Government on the pretext of the United Nations resolution goes beyond the contents of the resolution, contrary to the principle of legislation only when it is absolutely necessary.

It is not until mid-April this year that the Government gazetted the Bill. In less than three months, the Government forcibly submitted the Bill to this

Council for resumption of Second Reading debate and Third Reading. The whole process has demonstrated once again how domineering and overbearing the Government is. A Member has just used another term — "speed driving". Speed driving can easily turn into dangerous driving, while the consequence of dangerous driving may be a collision that will eventually kill innocent people.

The issue of anti-terrorism is not only new to a majority of countries internationally, but terrorism has also never appeared in Hong Kong where the Government always claims to be a safe city. Hong Kong is not a place for the so-called active terrorists. Therefore, we should not decide so rashly as to whether we should legislate on anti-terrorism or what should be covered by the legislation concerned.

Nevertheless, Mr LAU Kong-wah has earlier refuted these arguments. He said that terrorist activities were just like a "Ghostly Serve" that knows no boundaries or regularity. However, he suddenly asked what would be associated with New York, and he said it was the September 11 incident. He asked what would be associated with Israel, and the answer was the clash between Israel and Palestine. Then what would be associated with Hong Kong? Does he want Hong Kong to be associated with a place attacked by terrorists whenever it is mentioned? Therefore, we have to be very careful, but do we have to be over sensitive? If terrorism is really everywhere, should we suggest that pistols be worn by all the pilots in Hong Kong? Now that people in the United States are discussing whether the American pilots should be armed, then should Hong Kong follow suit? Or should Hong Kong introduce more departments like MI6, CIA or the State Security Bureau to do the monitoring work for us or to regulate the entire society? Does the Hong Kong society need to be like that in order to be considered as a safe place?

In the United States now, there is a large-scale introspection going on about why the United States would become the target of terrorist attack. The immense percussion recently comes from a book by CHOMSKY. We should read that book, too, as it has induced a nation-wide discussion about what role the United States is playing globally. I think that this is a more positive approach instead. The United States should positively think about what role it is playing, and this is far better than putting up defences against this or against that. Putting up defences everywhere will only render oneself paranoid. I do not want Hong Kong to be associated with a place of active terrorists.

It is exactly because we do not have any experience relating to legislation on anti-terrorism or enforcement of such legislation, legislation in an imprudent manner can only result in slavish plagiarism, copying those provisions which are controversial enough overseas and have been criticized as detrimental to human rights by not a few community groups. During discussions on the Bill, the Government would often point out that certain provisions had been enforced in certain countries, for example, Canada and New Zealand. As a matter of fact, some community groups and human rights organizations in democratic countries like Canada and New Zealand have been criticizing their own governments for doing so. We can thus see that what the governments of these countries have done are not necessarily good examples for us to follow. Let us take the definition of "terrorist act" as an example. Although the Government will move an amendment to the effect that a stricter definition will be adopted, the coverage is still too extensive. Besides, Ms Audrey EU also mentioned earlier that when deliberating the Bill, we had considered dealing with organizations similar to Al Qaeda. The purpose of this is that terrorist act will finally be adapted to our laws. Any act will be confirmed as terrorist act only if three conditions are met, first, when action is carried out or a threat is caused; second, when it is for the purpose of advancing a political, religious or ideological cause; and third, when a person's life and property are seriously affected. To a certain degree, an act which originally is criminal intimidation in nature will become a terrorist act. But is this our intention? Therefore, I reckon that we should hold more discussions on such kind of definitions. What worries me most, of course, is that "terrorism" itself is a very unclear concept. If the definition is too wide, it will be easily made use of by the Government as a weapon against its opponents. I do not wish to query whether the Government will do so. But in deliberating the Bill, we should be very cautious.

Apart from the possibility of overkill by an excessively wide definition of "terrorism", there are some provisions in the Bill which will also have this effect, a situation similar to the bombing of Afghan civilians done mistakenly by the United States. Clause 6 of the Bill provides that a person commits a crime if he provides funds to another person who is believed to be a terrorist on reasonable grounds. What is meant by "has reasonable grounds to believe"? Will that be too loosely defined? Will somebody provide funds to a so-called terrorist without knowing that the latter is a terrorist and eventually be convicted of a

criminal offence? The maximum penalty for this offence is 14 years' imprisonment. Another provision states that anyone should report to the authorities concerned if he knows or suspects that the property is terrorist property. It is also a criminal offence if he does not do so. It is also stated in yet another provision that the Secretary for Security is empowered to freeze any property suspected to be terrorist property. We all know that if the amount is used on legal expenses and living expenses, an application for a certificate of exemption can be made. However, not a word is mentioned about the employed staff, and that is why Mr Albert HO will move an amendment to this effect. We do not want the innocent employees to be victimized by the overkill. Ms Audrey EU has mentioned a case about some property being frozen by the police when they were investigating a case of money laundering. As a result, the staff concerned could not receive any wages from mid-October till February next year. For months, the staff could not receive any wages, but still they had to go to work every day. We do not want to see such a situation arising. I believe that the Government does not want to see this too. If that is the case, to minimize the impact of the legislation on the general public is thus a very important principle in my view.

I have just said that the Bill has violated the principle of legislation only when it is absolutely necessary. Miss Emily LAU also pointed out that clause 10 of the Bill, concerning the offence of making false reports of terrorist attack, has clearly gone beyond the scope of the UNSCR 1373. This is a classic violation of the principle of legislation only when it is absolutely necessary.

Four infatuated but ferocious women have already spoken. I hope that these four female colleagues will not be too infatuated, as men cannot be trusted, and the Government cannot be trusted either. If a lady is too infatuated, she will be easily driven crazy by the ungrateful guy or Government, and it is simply not worth it. Finally, I hope that Members will not take this issue too seriously. Although we are very much concerned and hope that the Government can do better, it is not worthwhile if we become crazy simply because of the Government.

With these remarks, Madam President, the CTU opposes the Second and Third Readings of the Bill.

MR CHAN KAM-LAM (in Cantonese): Madam President, the Federal Bureau of Investigation of the United States issued another warning last month, claiming that terrorists might attack the bridges and public places in the country. A few days earlier, it also made a national announcement that there might be terrorist attacks on 4 July, the Independence Day of the United States of America; hence, everyone in the country was panic-stricken. Even though 4 July went by peacefully, it remains an undeniable fact that the United States has entered an era in which it has to maintain high vigilance against the threatening terrorist attacks. The United States President has even professed that he would never come to terms with terrorists, and he has also vowed to proactively launch pre-emptive strikes to destroy the terrorists before they could make any move.

There are indeed worrying crises hidden in the international community today: colonialism has left plenty of political crises to the vulnerable countries and places that had been subject to colonial rule, including religious clashes, racial disputes and incessant warfare. Economic exploitation and political manipulation by powerful countries have also given rise to long-term political instability and racial hatred in certain countries. Knowing that they cannot see justice done by political means, some weak countries have resorted to terrorist attacks to retaliate. That way, only more international disputes will be created while power politics will become prevalent, thereby giving those super powers another pretext for intruding violently into other countries' territory to interfere in their internal affairs. As the saying goes, "Let the doer undo what he has done". The colonialists and super powers should review their international relations policy, implement reconciliation policies, help the weaker countries to develop their infrastructural facilities, respect such countries' independent sovereignty and national dignity, and uphold the interests of such countries in the international community. It is only in this way that a peaceful and just international community can emerge.

Following the end of the Cold War, super powers' long-term exploitation and political manipulation of the weaker countries sowed seeds of threats of "answering violence with violence" to the present age when the world economy is heading in the direction of globalization development. We certainly should not adopt an on-looker's attitude, thinking that terrorist activities would be confined only to certain countries. In fact, terrorist activities will do immensely grave damages to human civilization, and that is why all of us have a responsibility and obligation to guard against terrorist activities.

Hong Kong is an open society and a small member of the international economy. We oppose answer violence with violence and the use of Hong Kong as a bridgehead for terrorist activities. On 28 September last year, the United Nations Security Council (UNSC) passed the Resolution 1373 to require all member states to adopt measures to prevent and combat terrorist activities. In accordance with the Basic Law, the Central People's Government has given instructions to the Hong Kong Special Administrative Region (SAR) to implement the UNSC Resolution. Hence, it is necessary that we formulate anti-terrorism legislation to prevent terrorist activities from taking place in Hong Kong or the use of Hong Kong as a place for carrying out terrorist activities targeting at other countries.

During the deliberations on the United Nations (Anti-Terrorism Measures) Bill, the Bills Committee had listened to the views from members of society and noted the concerns of opponents of the Bill were mainly focused on whether or not the Government would make use of the anti-terrorism legislation to suppress dissidents, infringe upon human rights, restrict freedoms of speech and assembly, and so on. What is more, they were even concerned that the Government might use anti-terrorism as a pretext for suppressing religious freedom and human rights. I consider such concerns not called for, bearing in mind that the religious freedom and basic human rights enjoyed by the people of Hong Kong are all protected by the Basic Law. Actually, no dissidents or human rights groups should consider themselves to be the SAR Government's suppression target and regard the anti-terrorism legislation as a tool against them, for the SAR Government has never suppressed any dissidents. After the reunification, the people of Hong Kong can still "participate in horse racing and dancing" as they did in the past while demonstrations and processions are also held almost every day. Besides, the criticism and ridicule made against the Government and government officials are even more severe than those before the reunification. But then, not one single organization, not even those established solely to act counter to the Central Government and the SAR Government, has ever been treated unfairly. On the contrary, many members of society have always criticized the Government for being too lenient and tolerant when handling some over-radical activities. Perhaps it is all because they have deliberately offended the existing legislation frequently that the dissidents believe the SAR Government will always suppress them. In Hong Kong, every person is subject to the law and must abide by it. Dissidents are no exception. Moreover, it is specified clearly in the Bill that any protest against government

policies or dissenting views from dissidents shall not be considered as an offence against the anti-terrorism legislation.

Hong Kong is a highly transparent society upholding the rule of law, and our Government, which is subject to extensive monitoring, has an inherited responsibility to uphold the basic human rights and freedom of the people. Since the reunification, the performance of the SAR Government in this respect has been recognized by the international community. The purpose of the anti-terrorism legislation is to ensure that the most basic civil rights of the public will not be affected by terrorist activities.

Certainly, actions to combat terrorist activities should not involve indiscriminately the innocent members of society; otherwise, the legislation would be regarded as an instrument employed by the ones in power to suppress dissidents. Having listened to the many different views, the Government has made an appropriate amendment during the deliberations on the Bill to require the Chief Executive to obtain the prior approval of the Court before specifying persons as terrorists, so as to subject the Government to appropriate checks and balances in exercising its power. We consider this amendment commendable. As regards the many amendments proposed by certain Members, however, they will in fact cause the Bill to lose its power. In seeking to safeguard human rights, the relevant proposed amendments will over-protect the terrorists and offering terrorists some legal protection at the same time. The Democratic Alliance for Betterment of Hong Kong (DAB) really cannot support such unsatisfactory measures. Indeed, even if we pass the Bill today, the Government still has to perfect the relevant legislation by further submitting its subsidiary legislation to this Council for scrutiny. The DAB just hopes that the Government can expeditiously submit the relevant legislative proposals to the Legislative Council for deliberation.

Hong Kong has never been a target of international terrorist activities. Nevertheless, since we are a member of the international community, we should fulfil our obligation. In exactly two months' time will come the first anniversary of the unforgettable September 11 incident. If the anti-terrorism legislation we formulate today is unable to effectively prevent terrorist activities, we cannot join hands with the international community to combat terrorist activities. How then can we face the peace-loving innocent souls lost in the incident?

With these remarks, Madam President, I support the Second Reading of the Bill.

MR JAMES TO (in Cantonese): Madam President, I have been a member of the Fight Crime Committee for more than a dozen years and I have also been the Chairman or Deputy Chairman of the Panel on Security for many years. During the scrutiny of the United Nations (Anti-Terrorism Measures) Bill (the Bill), I had originally intended to identify a position which all parties could agree upon, so that I could support the Second Reading of the Bill.

First of all, I agree with Mrs CHOW's view in that it is rather important to send out the message. Regrettably, however, when we eventually came to the issue of compensation, I believe the Government had to make very complicated consideration. If this point could be settled smoothly, we might perhaps give support to the Second Reading of the Bill. I believe Members do understand that the divergence of views on this point is exactly where the practical problem lies, as the Government estimates that the amount involved would be unimaginably huge if it should be required to make compensation.

The brewing of the Bill was first commenced upon the passage of Resolution 1373 by the United Nations. I have been thinking the matter over and keeping a close watch on it since then; besides, I have also been observing very carefully the relevant deliberation work of other countries at the same time. Actually, I have been very much concerned — I should say cautious rather than concerned — from the very beginning because I was wondering whether the Government would make use of the Bill to disguise the advanced enactment of legislation on Article 23 of the Basic Law to suppress organizations of certain ideologies. Now that the Government has introduced substantial amendments to the Bill, I must admit that my concern has in fact been allayed significantly.

In this connection, what is the most important issue facing Hong Kong now? If there were really terrorists in Hong Kong other than those on the list made by the United Nations, the Security Bureau would have a very difficult task to perform. This is because Hong Kong would be gravely affected if there should be such terrorists. If we should say that the terrorists found in Hong Kong are not those on the United Nations list and that they are in large numbers, I believe Financial Secretary Antony LEUNG would say this to the Secretary for

Security, Mrs Regina IP: "You really have to look into that very carefully to ascertain whether there is really any problem. Otherwise, the efforts we have been making to develop the economy and the tourism industry will all be affected."

Let me cite some rather extreme examples. For those so-called dissidents in Hong Kong, if they should be specified as terrorists, the Government would have difficulty applying the original provisions of the Bill to handle them, not to say taking them to court. To put it more rudely, if the Government should try to "play" with the Bill, it would have to pay a huge price. Hence, I have all along considered that there should be no problem so long as the provisions are clearly written. Even though I think there is still room for improvement insofar as the relevant definitions are concerned, it is still very difficult for the Government to suppress the so-called local dissidents, and it may even cost the Government a huge political price. In my view, the price is so huge that the Government just may not be willing to take the risk casually. Another example is Falun Gong. With regard to the original definition of "terrorist act" specified under clause 2(a)(i)(D), the Government has already made some exclusion to address my major concern, which is about "serious risk to the health or safety of the public". I have also cited some examples to explain certain exclusions that should be provided for.

On the other hand, perhaps it was because of the limitation of their scope of vision, some Honourable colleagues could not support the Bill and thus regarded it as an extremist measure. As pointed out by Mr LEE Cheuk-yan earlier, some would consider as allies those people who are not their enemies. As such, some have opined that the Bill might even provide some sort of protection for terrorists. This is indeed over-exaggeration. Frankly speaking, even if the Bill is passed, it is still doubtful whether the legislation can be applied right away. Will it be very effective? I really hope that Members can read each of the clauses very carefully. For my part, I do agree with Mrs CHOW in that the purpose of the Bill is to send out a message, perhaps in a less sophisticated manner, that our efforts to combat terrorist activities have made some progress before the first anniversary of the September 11 incident.

In the case of Hong Kong, many of the items specified under the Bill will not be applicable without the "second wave", the subsidiary legislation. In this connection, the major pressure on the Government remains what kinds of issues

would require the Central Authorities to give an explanation for us. As Hong Kong is a special administrative region, if a certain Bureau Secretary or even the Chief Executive should always require the Central Authorities to give explanations on some trivial matters, he or she would cause much trouble to the Central Authorities and thereby invite criticism from the international community. In that case, the pressure will certainly be immensely great. Actually, some countries are very "smart". The efforts made by the United States and some other Members States of the United Nations, for example, are not really so effective; but still, these countries could muddle through by submitting some reports showing that they have made some progress. Thus, we hold that if there should be a "second wave", which is the subsidiary legislation, we should examine the relevant subsidiary legislation in great detail and with extra care, as this is where the thrust of the matter lies.

However, some Honourable colleagues are of the view that there would be great trouble if the Bill could not be passed, and that protection would be provided for the bad guys or even lead to an extreme result in which either the Bill is passed or we are dead. Such kind of view has indeed politicized the matter. I hold that this is by no means the real situation. In my view, the situation of Hong Kong can only be regarded as "wandering about midstream". It should be fine as long as the Government could present a report showing that some progress has been made in this respect.

Mr LAU Kong-wah said it was the first time he chaired a Bills Committee. He also said that the Bills Committee had speeded. Let me put it more frankly, Mr LAU knew it very well that the Bills Committee must speed up the deliberation process. Actually, Mr LAU Kong-wah knew it upon assuming the chairmanship that the deliberation work could not be completed if the process was not speeded up. It was exactly because Mr LAU knew that the deliberation process had to be speeded up that he would assume chairmanship of the Bills Committee, for he knew that the scrutiny must be completed. Well, in any case, as I said before, while we would try our best to scrutinize the Bill, the time available was indeed far from enough. Nevertheless, even though the results were obtained through a hastened process of deliberation, we still will not give people the impression that the human rights situation in Hong Kong is very poor after the passage of the Government's Bill. In my view, the problem remains only that there are some untouched areas and that certain directions are not clear enough.

Some Members said that there were past records of the Government infringing upon human rights. My view is that the Government does not have a good record of striving to safeguard human rights and some of its efforts in this respect do call for criticism. Nevertheless, throughout the deliberation process, I have never harboured the feeling that the Government would try every means to infringe upon human rights. As I said just now, the Government would have to pay a huge price if it should really do so.

Then again, a new political situation has merged after the reunification and many government officials have now become Bureau Secretaries playing a more important role under the accountability system for principal officials. Certainly, some may say that such government officials will become even more careful after assuming office as Bureau Secretaries, as they have to pay regard to public opinion. Actually, a coin has two sides. Similarly, I have also been keeping a close watch on many fronts; as, for example, a new situation may emerge among the disciplined forces which largely abide by the law and uphold the rule of law. That having been said, I still need to observe quite sometime to see whether that is really the case.

Another rather interesting point is that the speeches made by Mr CHAN Kam-lam and Miss Emily LAU are quite similar to each other in some way, as they both criticized the United States for its improper policies. Actually, we should also look at our own country when talking about such mega countries or super powers. We just cannot focus on criticizing only other countries when there are similar situations in Tibet, Xinjiang, and so on. On the contrary, the United States does have a good reason for not joining the International Criminal Court, as it does not want its soldiers to be described as terrorists committing humanity crimes and thereby giving it trouble. Hence, I believe we should adopt a temporary stance on this issue. As regards the September 11 incident, even though the terrorist acts as seen on the television were tantamount to warfare to a certain extent, we still may not necessarily regard the incident from a territorial point of view. Besides, I do not find Hong Kong's present legislation on this matter too stringent. I believe it should be enough for the Government to just show that it has made some efforts in this regard. I believe this is the situation in Hong Kong and I hope that the various parties concerned will not go to such extremes, as there is really no need for us to do so.

As regards the particulars and details, I think they should be looked into when formulating the "second wave" subsidiary legislation, though I am not sure

whether there will really be the so-called "second wave" subsidiary legislation. In reality, we will rarely need to invoke the legislation, and that is why I believe the Government should examine if it is enough for it to just furnish a report on the progress made. As regards the best efforts we have made to perfect the legislation over these few months, they will not be in vain because we would have no choice if the Government should decide to further pursue the matter.

The Democratic Party only thinks that if our requirements regarding the compensation issue were not fulfilled, individuals would have to suffer the losses arising from the Government's "default", but one just could not take out any insurance policy for such situation. Mr Bernard CHAN can tell us that we cannot take out any insurance policy for risks. In other words, no insurance policy could cover the loss of life and properties as a result of mistakes made by government officials. We have suggested that it should be better to empower the Government to provide a kind of collective insurance for the public as a means to protect the people from such risks and let the premium be shared by all people. But the Government turned down our suggestion. For this reason, we are really caught on the horns of a dilemma, as we will have considerable reservations about giving support to the Bill just to send out the message.

PRESIDENT (in Cantonese): Does any other Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam President, first of all, I would like to thank Mr LAU Kong-wah, Chairman of the Bills Committee on United Nations (Anti-Terrorism Measures) Bill (the Bills Committee), and other members for holding a series of 15 meetings within a short duration of one-odd month. They scrutinized the United Nations (Anti-Terrorism Measures) Bill (the Bill) in detail and made a number of constructive suggestions to perfect it. I also have to thank Members who supported the resumption of the Second Reading debate on the Bill so that it can have a chance to be scrutinized at today's meeting.

I gave notice on the resumption of the Second Reading of the Bill to the Legislative Council on 24 June. I understand some Members were not happy about this and thought the fact that the executive authorities had given notice on

the resumption of the Second Reading of the Bill before the scrutiny of the Bill was completed was a hasty act and a show of disrespect for the Legislative Council. Some Members even questioned the validity of the notice. In this connection, I would like to make another explanation.

As there is a pressing need for Hong Kong to pass the Bill, I have only given notice simply in accordance with the Rules of Procedure. I also wanted to strive for the opportunity for the Bill to be read the Second time today at the last meeting of the whole Council, so that if the Bill were passed, it could formally become law in this Legislative Session.

I am also very grateful to the President for her affirmation on the validity of the notice. I certainly do not intend to overlook the power and significance of the Legislative Council in scrutinizing bills. I respect that the Legislative Council has the final say on whether a piece of legislation should be passed. But, I also trust that Members do appreciate the pressing need of the legislation. In fact, deep down in their hearts, most Members are sympathetic to the Government in making this arrangement.

Some Members made some criticisms earlier. They are quite unhappy about the fact that they would always be caught in a heavy workload in the summer months of June and July every year for all the bills are very pressing. This Bill travelled with the speed of an express vehicle or even that of a roller coaster. Members have to take up additional work and held extra meetings in continuum. A Member said earlier that the Government had appeared to have acted in a domineering, overbearing manner. Truly, I admit that the Government has really put in a lot of efforts to push this Bill, but does it mean that this approach should not merit the support of Members? I believe that is not the case. As some Members said earlier, they were scolding the Government while working all along. In fact, every time when we held a meeting, this Bills Committee gave me a very deep impression. Every meeting was well attended and every Member was very conscientious and did a lot of work.

Last year, after the September 11 incident, we started early preparations for this Bill and submitted papers to the Legislative Council. We explained at that time that once the Bill was ready, it would be passed the sooner the better. Therefore, I believe the majority of Members were actually deeply conscious of the righteousness of the cause and had the good of the whole Hong Kong at heart,

though they all knew that their workload would increase and the work would be very tiring. For example, we are all sitting here today and going without lunches, though to me, skipping lunch is part of my sliming exercise. *(Laughter)* I know that even if Members blamed us, deep down in their hearts, they realized that the work should be done, otherwise, we would not have reached this stage. Mr LAU Kong-wah said that when he was the Chairman of the Bills Committee, he felt that the scrutiny was very much a process of touch and go. Some clauses were feasible, some were not and sometimes no headway could be made at all. However, on the whole, we have already reached the consensus that terrorism is an international hazard. Though a small number of Members have some doubts about this consensus, we should, nevertheless, respond to the call of the international community and complete this fundamental task as soon as possible.

A Member asked me whether there was really a pressing need in Hong Kong to make anti-terrorism legislation? I noted that the Law Society of Hong Kong and the Hong Kong Bar Association have also questioned the urgency of the legislation, especially when they quoted what I said. They pointed out that I often said Hong Kong is the safest city and there has never been any terrorist attack in Hong Kong. In that case, was there really a need to legislate to combat terrorist activities? As Mr LAU Kong-wah said earlier, if something did not happen in the past, it does not mean that it will never happen. As the official responsible for security, I believe I could not be so careless as to say that Hong Kong was the safest city in the past, so nothing will ever happen in the future. Nobody can say that.

Another point I would like to explain is that I think Members who questioned whether there was a pressing need to legislate might have misunderstood one point. In fact, the purpose of the Bill under discussion today is to implement certain mandatory elements in the United Nations Security Council (UNSC) Resolution 1373 and the special recommendations of the Financial Action Task Force on Money Laundering (FATF). These recommendations seek to combat terrorist financing and prohibit the supply of weapons to terrorists or assisting them in recruiting members. Typical terrorist activities such as hijacking airplanes and ships, holding hostages and using human bombs in bombing activities are not the target of our combat for such actions have already been covered under other legislation. We would, however, look into certain terrorist activities again, in the second phase of the legislative

exercise, subsequent to the signing of certain international conventions by our Motherland.

This legislative proposal actually seeks to curb the supply of funds to terrorists and prohibit terrorists from using Hong Kong as a base to raise funds or to channel their funds via Hong Kong to terrorist networks in other places. Since Hong Kong enjoys the status of an international financial centre, we cannot rule out the possibility that terrorist funds would flow into Hong Kong. I feel gratified to say that so far, we have not identified any of those activities. We have continued to work together with overseas correctional institutions in analysing the information we have got. Fortunately, so far, we have not identified any terrorist activities, but this does not mean that such activities will not occur in the future. In fact, if Hong Kong lags too far behind other international financial centres in this respect and does not have any legislation to block terrorist funds, Hong Kong will become the weakest link in the international community and we will provide an opening for such activities. Terrorists may also be led to think that since Hong Kong does not have any legislation to deal with such activities, they might as well let their funds flow into Hong Kong for it can serve as their shelter.

Since the UNSC passed Resolution 1373 on 28 September, the Central People's Government immediately instructed Hong Kong in October last year, to implement the Resolution under Articles 13(1) and 48(8) of the Basic Law. Whereas the FATF made special recommendations on 31 October to request all member states to implement its recommendations before mid-2002, we have already missed the mid-year deadline. In order to honour our international obligation, we carefully reviewed our existing legislation and came to the conclusion that new legislation must be enacted to fully cover the UNSC Resolution 1373 and all recommendations of the FATF on combating terrorist financing.

Some Members asked why we had to wait until April before we submitted the Bill to the Legislative Council. I hope Member will bear in mind that once we received such instructions, we must go through the process of making internal considerations like which legislative tools would be the most appropriate. We had to consider whether we could adopt the practice for implementing other United Nations resolutions, that is, to have the Government make a regulation and then passed it on to the Legislative Council for endorsement since we do have such a mechanism. At our first meeting with the Panel on Security, we

explained that this approach could be adopted in implementing certain recommendations of the United Nations. But since we respected the views of the Legislative Council and we knew that Members must be very anxious to have an opportunity to study our Bill in detail, we abandoned that channel. I also knew that Members did not like this simple and expedient channel, so we did not adopt the approach used by us in dealing with the sanctions on Afghanistan, that is, to have the Government and the Chief Executive make a regulation for the endorsement of the Legislative Council and passed it by means of a rubber-stamp approach. We have abandoned such a channel this time.

Furthermore, at the joint meeting of the Panel on Security and the Panel on Administration of Justice and Legal Services on 30 November last year and the special meeting of the Panel on Security on 5 February this year, the Government explained the pressing need for legislation and the application of the Bill before submitting it to the Legislative Council on 17 April. I certainly understood that the time given to Members for the scrutiny was somewhat too short and I was also aware that Members had worked tirelessly. However, I believe that all Members as legislators would not shirk their responsibility and were willing to share this responsibility together with the executive authorities. I would like to stress that if the Bill were not passed, it would be impossible for Hong Kong to fully implement the mandatory elements of Resolution 1373 and the recommendations of the FATF. Apart from failing to honour our international obligation, it is also possible that we may face international criticisms and sanctions by the FATF. From this, we can see the urgency of this enactment is beyond doubt.

Members asked earlier why public consultations were not conducted? We have made reference to the experience of overseas countries. After the September 11 incident, many countries, including the United States, the United Kingdom, Canada, Australia, Germany, New Zealand and our Motherland, have all passed legislation as a matter of emergency. I am not aware that any country has ever conducted public consultation on the major premise, principle of combating terrorists alone. I think that this issue, like other issues, may be described by an English phrase "The devil is in the details". If we ask the public whether terrorists should be combated, I believe the answer must be unanimous, or at least, the majority of the people will think that this must be done. However, as regards whether this Bill would adversely affect human rights and freedom, we have to look at the details, that is, "The devil is in the details". Therefore, the most opportune time to conduct public consultations

was after the publication of the Bill. So, we think that after the Bill was read the First time on 17 April and published in the Gazette, interested persons, human rights organizations, judicial organizations, the Law Society of Hong Kong, the Hong Kong Bar Association, and so on, should have sufficient time to make submissions on the Bill. As such, like Miss Emily LAU, I am very surprised that since the Hong Kong Bar Association had raised such a hue and cry and pointed out that the Bill might impact on the rule of law and human rights, why did it wait until so late to issue a press release? In fact, they have never made any direct submissions to the Security Bureau and only made some very general comments on television on the eve before the Bill may be passed. I am really very puzzled by their approach.

Miss Emily LAU also asked me whether I had kept count on the number of countries that had endorsed such measures. I think that this is both meaningless and senseless. The most important point is that we should strive to exert our utmost in following the examples of some good countries. Or do we actually wish to be ranked among the "bottom five percentile" of 200 countries? There is no reason for us to do so. And, how many countries have not made legislation actually has nothing to do with us for we should learn from the best members of the international community. In fact, countries like the United Kingdom, the United States, Canada, Australia, Singapore, India, Germany, our Motherland, the European Union, France, New Zealand and Japan have all passed legislation on this. Furthermore, some countries like the United States, Germany and the United Kingdom have not only passed legislation on Resolution 1373, but also enhanced the powers of their law enforcement agencies and greatly increased their powers in combating terrorists.

Like I told Mr Albert HO a few days ago, I have learned from Australian officials that they have almost completed the second phase of their anti-terrorism legislative exercise. They have a piece of legislation that could increase the power of their correctional organizations and one of its provisions also empowered them to detain suspects for 48 hours and forbid them to see their lawyers. Have they injured human rights by doing so? Anyway, this legislation has already been endorsed by their House of Representatives and will soon be submitted to their Senate.

Miss Margaret NG also accused me earlier of not keeping my words because I had said a minimalist approach would be adopted. She questioned why there is an additional clause on punishing people who spread news of false

terrorist attacks in the existing Bill. First of all, I have to clarify that I have never said that any provision is indispensable. I did talk about a "minimalist approach", but what I meant by a "minimalist approach" is relative. In comparison to countries like the United States, Germany, Australia and the United Kingdom, the measures we have adopted are already minimalist. Is that not true? In fact, this Bill will not give any additional powers to our law enforcement agencies and it will only provide the most basic legal framework for us to continue to make legislation and improve our work. Therefore, I do not agree that I have gone back on my words. At the same time, after the September 11 incident, we had received at least 75 false reports on terrorist attacks in Hong Kong and some of these reports were obviously practical jokes. Miss Emily LAU also received an anthrax letter. Members may also recall the news on "Hong Kong Usama bin Laden". It could be seen that some people were obviously playing practical jokes by spreading false news on terrorist attacks or they might even try to fish in troubled waters. So why should those people not be punished? Miss Emily LAU asked, if we were to include all the good things in the Bill, then why the Government had not added 50 more clauses to the Bill in the manner of hanging 50 more ornaments on the Christmas tree. In fact, this is not the case and Members must be fair for I have only requested to add one clause. If we are to say that it is like having redundant tiles in a mahjong game (*laughter*), then I have only got one redundant tile, is that not true? It is really unfair to exaggerate in such a manner.

I would also like to make further explanations. I understand that the greatest concern of Members and the public is that the definition of "terrorist act" is too broad and the executive authorities are given powers so great that human rights and freedom of speech and religion may be stifled. Such worries are really unnecessary. I noted that Mr James TO has also said earlier that some worries are unnecessary. We do not intend to combat certain organizations by means of this Bill. The definition made by the Government on "terrorist act" was made with reference to the relevant anti-terrorism provisions of other countries, and such countries include the United States, the United Kingdom, Canada, Singapore, Australia and New Zealand. The standards adopted in the Bill on "terrorist act" are consistent with those in the international definition on terrorist acts. In making other provisions, we have even adopted a minimalist approach in drawing up the relevant offences and essential powers needed by law enforcement agencies. We have definitely not followed the examples of other countries in greatly increasing the powers of law enforcement agencies in interception of communications, detentions and searches. We think that this

legislation could certainly strike a balance between the protection of individual freedom and rights and the protection of public safety.

I also noted from the earlier speeches of many Members that they acknowledged that while we have worked tirelessly with Members in the past two months, the Government has made many concessions and proposed many amendments. I remember that for one or two weeks, we would propose a draft almost every day. The proposed amendments of the Government could be summarized into four directions. Firstly, it includes amendments to wordings, such as to make the definition of "terrorist act" more prudent; and to draw up clearer provisions on the offence of recruiting members for terrorist organizations.

Secondly, there are amendments to principles such as extending the coverage of exclusions to prescribe that normal demonstrations and industrial actions do not constitute acts of terrorism, even if those actions endanger public health or safety or cause serious interference of electronic systems and essential service facilities; reducing the validity period of the order on the specification of persons and property and notice on freezing terrorist funds from three years to two years; and amending the standards of reporting to delete the objectivity element, so that the property holders must make reports only if he subjectively suspects that certain property is terrorist property. As Mr Eric LI pointed out in his speech, such standards of reporting is a major concession on the part of the Government. We had arguments on this issue for a year or two and the Government finally sympathized with the difficulties of the sector and heeded their good advice.

Thirdly, there are procedural amendments such as making additions to the effect that specification of terrorists and terrorist property not designated by the United Nations should be subject to the approval of the Court of First Instance instead of according to administrative measures; the prescription that the executive authorities can only make applications *ex parte* on the specification of terrorists and terrorist property under circumstances where it is allowed under the rules made by the Court of First Instance; the provision that the Secretary for Security cannot freeze the same funds for a second time unless there is new evidence; and the establishment of a compensation appeal mechanism.

Fourthly, there are legal amendments such as adding provisions to explicitly protect legal professional privilege and the right against self-

incrimination as well as freedom of the press; prescription of compliance-friendly reporting requirements modelled on existing legislation after accepting the recommendations of the banking and financial sectors; and deletion of clauses on powers of enforcement agencies.

The above amendments are only some of the Government's proposed amendments and I would explain the content of each and every one of them in detail when I move Committee stage amendments later. I understand that one of the major problems is the compensation standard proposed by the Government. The Democratic Party also said that this standard is a major obstacle in their decision on giving us their support. They think that it is unreasonable that compensations could be given only if the Government has committed serious faults. However, if amendments are made in accordance with the suggestions of Members, it will not be consistent with the existing compensation standard under common law. According to the existing compensation standard, compensations will be made only if the Government has really been negligent or purposely acted in bad faith, and it will also have far-reaching implications on the existing compensation policy as well as the standards for compensations in civil litigation. Therefore, at the present stage, I cannot accept proposals on altering the compensation mechanism. However, as I pointed out during the course of our scrutiny, we shall conduct another review in six months after the Bill is implemented because we have to spend more time to hold discussions with the experts of the Treasury and the Judiciary to see how we can address the problems raised by Members.

I understand that some Members will move amendments in relation to the provisions in clause 16A on the compensation mechanism. I also noted that the President of the Legislative Council was of the opinion that the proposal of the relevant Members was different from the general compensation measures that may be adopted under common law. From the analysis made by the Legal Adviser of the Legislative Council on the three different versions of the amendment proposals to clause 16A, we could see what different impact they would have if the amendment were passed and compare the compensation level with those offered under common law. Subsequently, the President agreed to the analysis of the Legal Adviser. She was of the opinion that if any of the three proposed amendments is implemented, compensations to be made by the Government under common law would be increased and there would be a charging effect on government revenue. The President then ruled that the

proposed amendments of the relevant Member have a charging effect as provided under Rule 57(6) of the Rules of Procedure, and thus, could not be proposed at the meeting today. Nevertheless, as I have just said, we shall continue to work with the relevant departments to look into this issue and report to the Legislative Council in six months after the implementation of the Bill.

Finally, I would like to respond to one point. Some Members has pointed out, and they also understood or appreciated, that the existing Bill is only the first phase of our legislative exercise and we still need to carry out a second phase because certain detailed provisions such as those relating to collection of evidence, investigation and enforcement still need to be enacted. Moreover, after Schedules 2 and 3 are deleted, regulations will have to be made under the Ordinance. Some Members have proposed that the second phase of our work should be conducted in form of amendment to the principal ordinance resubmitted to the Legislative Council for scrutiny. Another Member urged us to consider whether we could adopt the approach of making regulations; some other Members even said that the first phase of our work has been too hasty and asked whether a review should be conducted in this respect? On the issue of review, I can say that the Government has actually been constantly reviewing all Ordinances, especially after they are implemented. The Government will review the legislation in the light of its actual implementation. I believe that this legislation will be handled in the same manner and after it is implemented, the Chief Executive can soon specify terrorists designated by the United Nations. As for other provisions, I do not think they will be invoked soon. We shall naturally review the legislation after we have gained some practical experience.

As regards some provisions that require enabling legislation, I would respond to Members' call by considering what is the most appropriate approach to submit the same for Members' scrutiny. That means, I shall consider whether it should be tabled in form of a regulation or in form of amendment to the principal ordinance. I shall discuss this with our legal experts in the hope that we can implement more international conventions that have been signed by our Motherland on combating terrorist activities in the second phase of our work. We must also legislate in this relation. I can also undertake to give Members as much time as possible to examine the Bill in this second phase.

With these remarks, Madam President, I implore Members to support this Bill and the amendments I shall move later on. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the United Nations (Anti-Terrorism Measures) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Miss Emily LAU has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG LEUNG-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN

Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr WONG Sing-chi and Ms Audrey EU voted against the motion.

THE PRESIDENT, Mrs Rita FAN, did not cast any vote.

The PRESIDENT announced that there were 50 Members present, 31 were in favour of the motion and 18 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): United Nations (Anti-Terrorism Measures) Bill.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Committee stage. Council is now in Committee.

UNITED NATIONS (ANTI-TERRORISM MEASURES) BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the United Nations (Anti-Terrorism Measures) Bill.

CLERK (in Cantonese): Clauses 1 and 3.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 2.

CHAIRMAN (in Cantonese): The Secretary for Security, Ms Audrey EU and Miss Margaret NG have separately given notice to move amendments to the Bill.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I will first call upon the Secretary for Security to move her amendment, as she is the public officer in charge of the Bill.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that the definition of "terrorist act" in clause 2 be amended, as set out in the paper circularized to Members.

As I mentioned earlier on, the definition of "terrorist act" in clause 2 is consistent with the international trend and modelled on the definition of "terrorism" under the United Kingdom Terrorism (United Nations Measures) Order 2001.

During the scrutiny of the Bill, some Members and organizations expressed the view that the definition of "terrorist act" was too broad, with the result that normal political activism, such as the peaceful protests of human rights activists and environmentalists, might be taken wrongly for terrorist acts. They pointed out that this would not only cause immense nuisance to the ordinary public, but would also undermine freedom of speech and of civil rights actions. I must say that such a worry is largely unnecessary, because under the definition of "terrorist act" in clause 2, a "terrorist act" must satisfy three criteria:

First, it must involve the use of action or threat of action to influence a government or intimidate the public;

Second, the use or threat of action is for the purpose of advancing a political, religious or ideological cause; and

Third, the action or threat must involve serious violence, serious damage to property or serious risk to public health and safety.

Peaceful demonstrations and industrial actions will not therefore constitute terrorist acts.

However, in order to address the concern of the Bills Committee and other organizations, we have still proposed to make the expressions used in paragraph (a)(i) under the definition of "terrorist act" more precise. We propose to replace the word "involves" with "causes" in the references to serious violence against a person and serious damage to property. We also propose to replace the word "designed" with "intended" in "is designed seriously to interfere with or seriously to disrupt an electronic system" and "is designed seriously to interfere with or seriously to disrupt an essential service, facility or system". And, for paragraph (a)(ii)(A) under the definition, we also propose to replace the words "designed" and "influence" respectively with "intended" and "compel" in "designed to influence the Government or to intimidate the public or a section of the public". We further propose to expand the scope of exclusion under the definition, specifying in paragraph (b) that the use or threat of action in the course of any advocacy, protest, dissent or industrial action which causes serious risks to public health and safety and serious interference and disruption to an electronic system and an essential service, facility or system will not constitute a terrorist act.

The objective of our proposed amendments is to let the public know that the Bill is directed at terrorists who commit genuine acts of terrorism, and that it is certainly not the Bill's intention to impose any restrictions on people's rights and normal civil rights activities by way of legislation.

I note that in the amendments of both Ms Audrey EU and Miss Margaret NG, the very important element of "threat of action" is deleted from the definition of "terrorist act". In this connection, I must first point out that in the anti-terrorism legislation of other common law jurisdictions, such as the United

Kingdom, Australia and Singapore, "threat of terrorist acts" is invariably stipulated as constituting a terrorist act. So, in that sense, Hong Kong is no different from all these countries. Besides, "threat of terrorist acts" will definitely cause public panic, whether or not a terrorist act is really committed. A terrorist may, for example, threaten that he will fly an airplane and ran it into a certain famous building in Hong Kong if the Government does not release a certain prisoner. Eventually, however, he does not do this. He does not even attempt to do this, and he is just making a threat. But will his mere threat affect public interest? Will his threat cause a great panic in Hong Kong? In cases like this, where someone makes such a threat, should we not punish him? If the definition of "terrorist act" in the Bill does not include the element of "threat of terrorist acts", the act of the terrorist mentioned just now will not constitute a terrorist act, and all those who have financed the acts of this terrorist will all be able to get away with it. In that case, the effectiveness of the Bill in combating terrorism will be significantly reduced.

I implore Members to exercise their sensible judgement and support the Government's amendment to the definition of "terrorist act".

Proposed amendment

Clause 2 (see Annex IX)

CHAIRMAN (in Cantonese): I will call upon Ms Audrey EU and Miss Margaret NG to speak on the amendment moved by the Secretary for Security as well as their own amendments. However, they may not move their respective amendments at this stage. Whether they may later move their respective amendments will depend on the Committee's decision on the Secretary for Security's amendment.

MS AUDREY EU (in Cantonese): Madam Chairman, first of all, I welcome the Secretary's proposal to amend the definition of "terrorist act". The Bills Committee has made some suggestions on this definition and the Secretary has accepted some of them so as to improve the definition.

Madam Chairman, I wish to explain the reason why I have sought to further amend the definition of "terrorist act" in clause 2. In fact, my

amendment only seeks to delete all parts concerning "threat" in the definition. Otherwise, the rest of my amendment is identical to the amendment proposed by the Government. Madam Chairman, I have proposed this amendment because I think two of the definitions in this Bill should be read together, namely, the definition of "terrorist" and the definition of "terrorist act". This is because the definition of "terrorist" covers the definition of "terrorist act".

"Terrorist" means a person who commits, or attempts to commit, a terrorist act or who participates in or facilitates the commission of a terrorist act. That means a person who commits, or attempts to commit, a terrorist act is regarded as a terrorist. In the definition, two elements constitute a terrorist act, which are the use or threat of action. If we look at the two definitions together, it means a person who "attempts", "to use", "threat". It is not necessary for such persons to commit, or attempt to commit, any action before they are regarded as terrorists. They do not necessarily have any intention to actually commit any action. If they intend to commit any action, they fall in the category mentioned earlier, that is, those commit, or attempt to commit, an action. Therefore, we are talking about persons who only threaten to take action but have no attempt to take action.

Madam Chairman, I think the scope of this definition in the legislation is too wide. The definition of "terrorist" has already covered persons who commit, or attempt to commit, a terrorist act or who facilitate or participate in the commission of a terrorist act. I think this is adequate to cover those targets of this legislation, that is, the terrorists. The definition has already covered any person who only attempts to commit a terrorist act.

Madam Chairman, the Secretary asked earlier should not a person who only verbally threatened the Government to crash a plane into a building in order to have a certain prisoner released be punished. Madam Chairman, I have not said that such persons should not be punished. I do not condone or connive such persons. I only think that the definition is too wide. Such persons can be prosecuted and punished by a number of existing provisions in other legislation. For instance, they can be charged with criminal intimidation. If these people are specified as terrorists, they will be treated like terrorists and their assets will be frozen. In consequence, their connection with other people will be severed. I think this is totally out of proportion. Those who only make threats should not be punished this way. I am not saying that they should not be punished, only

that they just should not be treated in the same manner as those who attempt to commit, or actually commit, a terrorist act.

Madam Chairman, the Secretary explained that the relevant provision was lifted from the legislation of other common law jurisdictions. Madam Chairman, I wish to emphasize that the actual situation differs in different places. In the Second Reading debate earlier, Members mentioned problems of the other countries which are not found in Hong Kong. When we make reference to the legislation of other countries, we have to consider the Hong Kong context, and I think the punishment prescribed in the legislation should be in proportion.

This is the only amendment I propose to the Bill and it is just a minor amendment. After the clause is amended, the original intent of the Bill will not be jeopardized and the same purpose will be achieved.

Thank you, Madam Chairman.

MISS MARGARET NG (in Cantonese): Madam Chairman, I do not agree that legislation is a message. Legislation is law. This is not a progress report. Law is solemn and effective. Therefore, I do not agree with Mrs Selina CHOW and Mr James TO. Instead, I agree with the Secretary that "the devil is in the details". At the Committee stage of the whole Council, we are now discussing these details which are very important.

Madam Chairman, I am afraid I have to apologize to Members from the outset. This is because I am going to move a lot of amendments. As a result, Members' dinner time might be disrupted and they might feel tired. And unfortunately, I think this Bill is very important, so I am going to claim a division after every amendment is put to the vote and this will further stretch the meeting. For this reason, Madam Chairman, I would like to apologize to Members now once and for all. I will try my best to be concise and straightforward when moving my amendments. And as I have already explained matters of principle in the resumed Second Reading debate, I will not go into the details again unless it is absolutely necessary to do so.

Madam Chairman, first of all, I would like to explain the reason why I have to move an amendment to the definition of "terrorist act". Mrs Selina CHOW mentioned earlier that we had to be firm in combating terrorists. Of

course, everyone will agree with her. That is why who should be regarded as a terrorist is very important, and this depends on the definition of "terrorist act". I think this is the most fundamental point.

In the amendment proposed by the Government, threat of action is regarded as a terrorist act. No matter whether a person intends to, or attempts to commit an act, threat of action is regarded as a terrorist act. At the Bills Committee meeting, Mr Howard YOUNG said that if the aviation industry, in which he was a member, was being threatened, it would deal a great blow to the industry. Madam Chairman, I do not mean that we should connive at such behaviour. As Ms Audrey EU mentioned earlier, I think even persons making such threats with a mischievous intent should be punished. However, we must clearly delineate what constitutes a terrorist act. If it is an act of mischievous intent, it is not a terrorist act. We should not regulate such act with a full set of anti-terrorist legislation. Since an offence under this Bill will lead to a series of grave consequences, the definitions in the Bill must therefore be very precise. We will see later that the handling of terrorist property is also based on the definition of "terrorist act".

My main point is that the act concerned should not be just a threat. It must be an act which is intended to cause death or serious bodily injury by serious violence against a person. If a person only threatens to commit such an act, should such an act be committed before it is regarded as a terrorist act? The answer is in the negative. This is because such an act is not necessarily committed but only threatened to be committed — if it is not a serious threat, it is, of course, only an act with mischievous intent. If a person intends to, but not yet commits such an act, he only makes his intent to commit such an act known to the public, then he has indeed a serious intent to commit such an act and that fits the definition. Therefore, this will not impose improper restriction on actions to combat terrorists. I think this is appropriate. Madam Chairman, the Law Society of Hong Kong has also pointed out that problems would arise if the scope of the definition is too wide because many innocent people will be caught.

Madam Chairman, the difference between my amendment and the amendments of Ms Audrey EU and the Government is that I propose an additional provision to the definition of "terrorist act" in clause 2, and that is, "in the case of paragraphs (a)(i)(D),(E) and (F), does not include the act in the course of any advocacy, protest, dissent or industrial action". This has incorporated the views expressed to the Bills Committee by some deputations.

They were afraid that an anti-terrorist legislation would indirectly undermine, suppress or stifle the freedom of speech. If consequences of this nature inadvertently arose from their action, they would be innocently caught by the definition of terrorism and this would affect their views on freedom. Therefore, they felt that positive safeguards should be put in place to protect the freedom of speech and freedom of peaceful assembly. Under such circumstances, I think this provision should be added to illustrate this point. This will provide a more positive safeguard to make the Bill better balanced.

Moreover, I will propose to amend the definition of "terrorist property" to define the scope clearer, meaning "any property including funds that is intended to be used to finance or otherwise assist the commission of a terrorist act". The Government's definition of "terrorist property" is too wide. In the Blue Bill, the definition is divided into two parts. Part (a) means the property of a terrorist or terrorist associate; and part (b) means any other property consisting of funds that is intended to be used to finance or otherwise assist the commission of a terrorist act — this is the same as my proposed definition; but the Government has added another criterion and that is, "was used to finance or otherwise assist the commission of a terrorist act". Madam Chairman, the United Nations Security Council Resolution 1373 has not made such a requirement under the minimalist definition. In fact, a lot of clauses to be discussed later, including the freezing of terrorist property in clause 5, are related to this definition. It is possible for a terrorist to have a lot of associates and he is merely in control or in possession of them. The property of a terrorist is not necessarily crime-associated. Even the property of a triad member is not necessarily crime-associated. For instance, a triad member may own a legitimate factory which provides him with funds. Should such property be forfeited? Should all the people be affected? In this connection, I think the definition in clause 13, which is on the forfeiture of property, should be narrowed so that the scope will be clearly delineated.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by the Secretary for Security, and the amendments of Ms Audrey EU and Miss Margaret NG.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR ALBERT HO (in Cantonese): Madam Chairman, the amendment proposed by the Secretary has already been included in the amendments proposed by the two Members. The proposed amendment mainly intends to narrow the definitions and extend the scope of application of the exemption clause and I support it.

The Secretary does not accept deleting the word "threat" from the definitions. The two Members have given very clear reasons in refutation, and I fully agree with them. I wish to say that, when we create an offence in legislation, we will define it by the criminal intent and act and we seldom define a threat to commit an offence as an offence. For example, we would not regard the threatened murder of another person as murder or a kind of homicide. Since there are other criminal laws against criminal intimidation, I think it is absolutely unnecessary to broaden the definition or even upgrade criminal intimidation to a terrorist act.

Miss Margaret NG has also said that we should narrow down the definition of "terrorist property" as far as possible. We agree with her because we should try our best to observe the principle of legislation.

Due to the order of voting, we would first vote against the Secretary's amendment so as to enable the amendments proposed by the two colleagues to be put to the vote.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MISS CYD HO (in Cantonese): Madam Chairman, I must say "sorry" to Members for having to bring the work of the Bills Committee to the full Council here. Frankly speaking, although I have all along been communicating with Miss Margaret NG and Ms Audrey EU, this is still the first time I ever hear them give such a formal, complete and systematic explanation on the rationale behind their amendments. I hope that Members can grasp this opportunity, seek as much as possible to understand their reasons and make a decision within the very short time available.

Madam Chairman, strictly speaking, the Bill does not set down any criminal liabilities for terrorists. Even the publication of one's name in the Gazette does not mean that one is guilty. Why then are we still so concerned

about the definition of a terrorist? That is because of the "ripple effect", the possible incrimination of many people. Many Members have mentioned this issue, and I only wish to add one point now. The definition of "terrorist associates" will cover all those entities directly or indirectly controlled or owned by terrorists. What are these entities? There is no clear provision which stipulates that they must be specifically devoted to the pursuit of terrorist objectives. Any ordinary entities engaged in trading or normal activities may be covered. The fact is that everyone in society, including a terrorist, may wear many different hats all at the same time. One may well wear 10 hats concurrently, and one or two of these may be connected with terrorist activities. But because of the "ripple effect", many other people may be incriminated, may have their property and funds frozen. In view of the widespread criminal liabilities that may result, we are very concerned about the definition of a "terrorist".

I hope that Members can make the best use of the little time available and complete the unfinished work left by the Bills Committee.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): Ms Audrey EU, do you wish to speak again?

(Ms Audrey EU indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): Miss Margaret NG, do you wish to speak again?

(Miss Margaret NG indicated that she did not wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I shall say a few more words very quickly.

Having listened to the remarks of Ms Audrey EU and Miss Margaret NG, I am all the more convinced that their amendments are illogical. Since Ms Audrey EU also admitted that "attempt to" is wrong, is unlawful, then why

should "threat" not be included in the definition of "terrorist act"? As for the reason why "criminal intimidation" under ordinary criminal law cannot serve the purpose, my answer is: Since criminal intimidation is a crime under ordinary criminal law, why is it impossible to include threat in the definition of "terrorist act"? Threat is of course an act, certainly not something intangible. As rightly pointed out by Mr Howard YOUNG, threats directed at Cathay Pacific will surely lead to very serious consequences. I fail all the more to understand their logic after listening to their remarks.

Why do we consider Miss Margaret NG's amendment to the definition of terrorist property unacceptable? The reason is that having studied paragraph (1)(c) of UNSCR 1373 and FATF Recommendation III, we understand that member states are required to freeze, detain or even confiscate the property owned by terrorists and terrorist associates as well as property once used for terrorist acts. If Miss Margaret NG's amendment is passed, we will be unable to fully implement the requirements of the United Nations Security Council and the FATF on the freezing, detention and confiscation of terrorist property.

Miss Cyd HO thinks that the definition of "terrorist associates" is much too broad. I think this is perhaps due to the fact that her daily work is somewhat different from ours in nature. I am not saying that because we frequently receive information from overseas, we are better informed about the ways in which terrorists act. Actually, we need only to look at the September 11 terrorist attack. The whole plot spanned at least two years, using US\$250,000 to US\$2 million and involving a huge network. The people who were connected with the terrorists might not necessarily be "professional" terrorists; they might be charitable organizations; others might be businessmen who simply masterminded this terrible plot through the companies under their control. Precisely because of this, expressions like "property owned or controlled directly or indirectly by terrorist associates" are found in the United Nations resolution. We have no alternative but to implement the letter and spirit of UNSCR 1373.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Security's amendment, the Committee will please note again that if the Secretary for Security's amendment is passed, Ms Audrey EU and Miss Margaret NG may not move their respective amendments to the definition of "terrorist act" in clause 2.

MR ALBERT HO (in Cantonese): It appears that the Secretary has some misunderstandings.

CHAIRMAN (in Cantonese): Mr Albert HO, do you wish to elucidate the part of your speech that has been misunderstood?

MR ALBERT HO (in Cantonese): The Secretary has misunderstandings about the remarks made by the three of us related to threat.

CHAIRMAN (in Cantonese): Mr Albert HO, you may speak again.

MR ALBERT HO (in Cantonese): I shall be very brief. The Secretary appears to have misunderstood why Ms Audrey EU has proposed an amendment. We are not saying that a person who make threats should not be convicted, but the nature of the offence is different. I would like to give the example of "Hong Kong Usama bin Laden" who did not have the ability or intent at all. I do not wish to specifically refer to any person, but I only wish to point out that a certain person may not have the ability or intent to commit a terrorist act and he may only be talking nonsense or wish to propose certain changes to the Government. He may fully fit the definition but he is actually only talking nonsense. Should we then regard him as a terrorist? I believe we should bring him to justice by invoking another law. From a realistic angle, it is impossible for a certain person such as an unemployed person or mentally disturbed person to do so, and he has only done a mischief. Should the law pinpoint at him if he has done so maliciously? Nevertheless, I am not saying that it is not necessary to legislate. Since Ms Audrey EU has put it very clearly that there are other laws to deal with such cases, we should tackle such cases according to other laws. Would it be meaningful to apply a set of anti-terrorist laws to deal with such persons?

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, there is no misunderstanding; I can fully understand the points made by the Honourable Members.

MR JAMES TO (in Cantonese): Madam Chairman, I would not talk about misunderstandings any more. I just wish to tender a piece of advice.

Concerning the definition, conception and enforcement of this part, as Mr Albert HO has said, if a person threatens to destroy certain facilities because of unemployment or a failed love affair, he is not related to the terrorists or terrorist groups under discussion and he has only acted rashly. Since the Bill has specified some powers and consequences, even if the Bill is passed, I urge the Government to clearly distinguish in enforcement between high-level international terrorists and those cases that can be dealt with under criminal law. I hope the Government would exercise its power prudently.

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

(The Secretary for Security indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr Bernard CHAN, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN and Ms Audrey EU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 49 Members present, 31 were in favour of the motion and 17 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

MRS SELINA CHOW (in Cantonese): Madam Chairman, in accordance with Rule 49(4) of the Rules of Procedure, I move that in the event of divisions being claimed in respect of the remaining clauses or amendments to the United Nations (Anti-Terrorism Measures) Bill, this Council shall immediately proceed to such divisions after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Selina CHOW be passed.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

I order that in the event of divisions being claimed in respect of the remaining clauses or amendments to the United Nations (Anti-Terrorism Measures) Bill, this Council shall immediately proceed to such divisions after the division bell has been rung for one minute.

MISS MARGARET NG (in Cantonese): Madam Chairman, I have earlier discussed the definition of "terrorist property" quite quickly. Madam Chairman, I wish to briefly discuss the matter again.

The Secretary for Security has earlier remarked that if we limit the definition of "terrorist property" as proposed by me, we would not be able to

enforce the UNSCR 1373. But the actual problem is the UNSCR 1373 has not defined "terrorist" or "terrorist act". That would be the case if we make such a broad definition. In fact, according to the definition in the UNSCR 1373, if a person commits or has the intention to commit a "terrorist act", his property and the property under his control would be put under surveillance. However, if the authorities make such a broad definition of "terrorist act" such that even terrorist associates are covered, the definition of "terrorist property" would go far beyond this scope. As a result — Madam Chairman, now that my amendment has been negated and the Government's amendment has been passed — a person who has the intention to threaten is the one who threatens, in other words, he and all his property or the property under his control, may be frozen or confiscated. It is absolutely inappropriate and excessive regardless of how we wish to punish those who made pointless threats. Therefore, even though Members have just turned down my proposal to narrow down the definition of "terrorist act", I think we should narrow down the definition of "terrorist property".

I restate that I define "terrorist property" as any property including funds that is intended to be used to finance or otherwise assist the commission of a terrorist act. The definition covers all such property and Members should bear in mind that a "terrorist act" includes such acts as threats. In other words, only property (including funds of terrorists related to a terrorist act) directly related to such acts should be frozen, withheld from circulation or confiscated in the future. Hence, it is very reasonable of me to propose an amendment to narrow down the relevant definition. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Miss Margaret NG, please move the relevant amendment.

MISS MARGARET NG (in Cantonese): Excuse me, Madam Chairman. I move the amendment to clause 2 related to the definition of "terrorist property", as set out in the paper circularized to Members.

Proposed amendment

Clause 2 (see Annex IX)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, when I was talking about the same topic discussed by Miss Margaret NG, that is, "terrorist act", I sort of very quickly mentioned the point on property. When Miss Margaret NG explained her standpoint again, she suggested that the definition of terrorist property should be restricted to the property intended to be used for the commission or facilitation of terrorist acts.

I have carefully read the relevant provisions, that is, paragraph 1(c) of UNSCR 1373 and Recommendation III of the FATF. Following careful studies, I notice that these requirements under the United Nations resolution are very demanding and meticulously worded. Paragraph 1(c), for example, states the need to "freeze without delay (Let me add here that the essence of 'freeze without delay' should be speed) funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;" Miss Cyd HO has described this provision as being too extensive in implication, similar to the "summary execution of one entire clan". Yes, there is such a need, because we are required by the United Nations resolution to do so. We have examined the motion of Miss Margaret NG but have come to the conclusion that the reduced scope recommended by her will render us unable to implement the resolution. Thank you, Madam Chairman.

MISS MARGARET NG (in Cantonese): Madam Chairman, please excuse me for expressing disagreement here.

During the scrutiny of the Bill, we examined the United Nations resolution in detail. Besides, the personnel involved in all the United Nations anti-terrorism conventions also told us that the resolution must be read together with

all the United Nations anti-terrorism conventions. According to them, it is not the intention of the conventions to cover all people, that is, to bring in extensive incrimination. In other words, it is not the intention of the conventions that even if a person is very remotely connected with a terrorist, his property should still be frozen. That is why I think that when the whole picture is taken into account, the coverage of paragraph 1(c) of the resolution should not be construed in a way as extensive as described by the Secretary. To begin with, when a person (or an organization, of course) commits, or attempts to commit, terrorist acts or participates in or assists in the commission of terrorist acts with his funds, his funds must be frozen. Paragraph 1(c) of the resolution makes reference to "funds derived or generated from property owned". Therefore, the scope is certainly not as wide as that prescribed in clause 4 of the Bill. What is especially worth noting is that given the broad definition of terrorist property and terrorist associate property, the property involved, irrespective of its purposes, may be frozen.

We must note that the relevant provision is divided into two parts: (a) property connected with terrorists and (b) property used for financing terrorist acts. This means that irrespective of whether the purpose of the property concerned is proper, whether it is directly or indirectly owned, it will be sanctioned under the Bill, that is, it can be confiscated or frozen. This is shown in the ensuing clauses, from which it can be inferred that the special approval of the Secretary is required even for expenses on food and legal representation. I am sorry. I do not intend to stir up any hostility here. The exact wording should be "under the authority of a licence granted by the Secretary". This is referred to as "special authorization". Special authorization is required.

Madam Chairman, if we do attach any importance to our own property and the property derived from lawful businesses, we must narrow the definition of terrorist property. My current proposal on narrowing the definition is very appropriate. I hope Members can consider supporting it. Thank you.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN and Ms Audrey EU voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Andrew WONG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, five were in favour of the motion and 20 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 22 were present, 12 were in favour of the motion and nine against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move deletion of the definitions of "authorized officer" and "property" from; addition of the definitions of "Committee", "items subject to legal privilege" and "prescribed interest" and subclauses (4) and (5) to; and amendments to the definitions of "funds", "terrorist associate" and "weapons" in clause 2, as set out in the paper circularized to Members.

The Bills Committee was of the view that the coverage of "financial assets" and "economic resources" in the existing definition of "property" in clause 2 was too extensive, making it difficult for the real substance of "property" to be ascertained. We agree with the Bills Committee and in order to avoid unnecessary confusions, propose to delete the definition of "property" and rely instead on the definition under the Interpretation and General Clauses Ordinance as the criteria for interpretation of "property".

In response to the Bills Committee's opinion that law enforcement agencies were granted excessive powers under Schedules 2 and 3, I am going to move the deletion of Schedules 2 and 3. The deletion of the definition of "authorized officer" and the amendment to the definition of "funds" in clause 2 are consequential amendments to the deletion of the two Schedules.

As regards the mechanism on the specification of terrorists, terrorist associates or terrorist property, I am going to move amendments to clause 4 to

propose that United Nations specified and non-United Nations specified terrorists, terrorist associates and terrorist property be dealt with under different mechanisms. The addition of the definition of "Committee" and the amendment to the definition of "terrorist associate" are technical amendments made in relation to the establishment of the relevant mechanisms, to allow the executive authorities to specify terrorists and terrorist property through administrative measures.

Furthermore, the Bills Committee and the legal profession were of the opinion that the Bill should clearly protect legal professional privilege, so as to safeguard the relationship of mutual trust between professional lawyers and their clients and to clearly prescribe the privilege against self-incrimination. This is to prevent the Government from forcing the relevant profession and persons under investigation to provide information against its professional code or provide self-incriminating information under the pretext of investigating terrorist activities.

In fact, even if there is no specific provision in the Bill, the above privileges are still protected under common law principles. However, in order to allay the worries of the Bills Committee members and professionals concerned, we are very happy to add the relevant provisions:

- (a) Addition of the definition of "items subject to legal privilege", the meaning of which is the same as that under the definition in the Organized and Serious Crimes Ordinance, and that is, communications between a professional lawyer and his client in connection with the giving of legal advice or for the purposes of legal proceedings, and addition of subclause (5) specifying that the Bill does not require a lawyer to disclose any "items subject to legal privilege" and authorize the search or seizure of any "items subject to legal privilege";
- (b) New subclause (5) also specifies that the Bill does not restrict the privilege against self-incrimination.

The addition of the definition of "prescribed interest" and the addition of subclause (4) seek to empower the Court, in making regulations on appeals concerning the relevant property, may prescribe that a person who has a "prescribed interest" may include the affected persons who do not directly hold

or own the relevant property and that they have the right to make appeals with regard to the relevant property.

The Bills Committee also mentions that part (d) in the existing definition of "weapons" includes any components and goods used in the manufacture or maintenance of any arms or related material. As such components and goods could be used for both military and civilian purposes, members of the Bills Committee were concerned that this clause may affect the normal trading and purchase and sale of certain commodities. We share the Members' concern and have thus proposed to amend the definition of "weapons" by deleting paragraph (d) and amending the provision on chemical, biological, radiological or nuclear weapons in paragraph (a) to add "the precursors (先質)" of those weapons, so as to state more clearly that only significant materials used in the manufacture of those weapons fall within the definition of "weapons". Companies engaging in the trading of commodities that can be used for both military and civilian purposes could, therefore, feel free to continue with their normal commercial activities and do not have to worry that they would be unjustifiably accused of providing "weapons" to terrorists.

The above amendments have been discussed by the Bills Committee and endorsed by the majority of its members. I implore Members to support and pass the amendments.

Proposed amendment

Clause 2 (see Annex IX)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MS AUDREY EU (in Cantonese): Madam Chairman, in respect of certain parts of the Bill, I owe the Secretary and the relevant officials some thanks. For instance, the definition of "property" has been deleted in response to suggestions by the Bills Committee because the definition of "property" includes "economic resources". It is a very good example because the term is found in the UNSCR 1373. As the Secretary has said, the term should be included if we indiscriminately copy the UNSCR 1373 but the Bills Committee has discussed how the term should be interpreted and what the term should cover. Finally,

the Secretary accepted the view of the Bills Committee that the term was too broad and general and we were not sure of its coverage, so it should be deleted. It is a very good example proving that indiscriminately copying a term may not necessarily work and it depends on how the resolution can be substantively realized in Hong Kong. It is good to do so and I am very grateful to the Secretary for making the relevant improvement and deleting part of the definition of "property".

The term "Committee" is newly added because according to the original clause 4 of the Blue Bill, where the Chief Executive has reasonable grounds to believe that a person is a terrorist, the Chief Executive may publish a notice in the Gazette specifying the name or names of the person. When the Bills Committee first discussed this, we said that a person might suddenly find his name published in the Gazette and that he had become a terrorist without going through any procedures; he was a terrorist as long as the Chief Executive had reasonable grounds to believe so. Later, the Secretary accepted the suggestion of the Bills Committee; so, clause 4 was rewritten as it is today. This part is applicable to a person specified as a world-class terrorist after the Committee has studied his case and his case can be handled according to clause 4. It is also an improvement that his property will be handled in a manner that is different from that for terrorist property under clause 5. Frankly speaking, Madam Chairman, I think the Bills Committee has not adequately discussed other additions and deletions such as the "prescribed interest" under discussion now. Although the topic was raised and I had asked some questions, there were too many issues for discussion and we did not have time to discuss what was "prescribed interest", how to exercise the relevant power or co-ordinate it with other laws. We did not have time to discuss these matters at that time.

Madam Chairman, we can only say that the Bills Committee has exerted its utmost and some of our 15 meetings lasted more than two hours. Therefore, we have discussed whatever we could discuss and the amendments proposed by us and the Secretary indicated some of the improvements made. Yet, we cannot say that the Bill has been thoroughly and suitably discussed. Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): Madam Chairman, the amendment to clause 2(5) is very important indeed. It is related to the preservation of legal professional privilege and the constitutional right for enjoying safeguards against self-incrimination. As Members are all aware, the purpose of adding this

provision is to safeguard the operation of the entire legal system and our tradition of the rule of law. I hope the Secretary can pay attention to only one point, and this is, some similar provisions might lack the express safeguards as provided for under clause 2(5). I hope the Secretary and her colleagues can re-examine this matter. As far as I can remember, a couple of laws, apparently related to money laundering, passed several years ago contain similar provisions, involving, for instance, the requirement to report, power of search, and so on. However, they lack the safeguards as provided for in this provision. I hope the Secretary can examine this matter and introduce appropriate amendments. Thank you, Madam Chairman.

MISS MARGARET NG (in Cantonese): Madam Chairman, unfortunately, I am not as generous as Ms Audrey EU, although some amendments have improved the previous provisions, I feel quite uneasy about certain points such as legal professional privilege. Throughout the entire process, our understanding is that legal professional privilege is a very basic common law privilege that is essential to the impartial administration of justice. Conventionally, the privilege would not be affected unless there is express provision on it being restricted or reduced. Therefore, if it is specified in certain wordings at the outset, the list cannot be exhaustive. In particular, since we have been in such a hurry, the concept of privilege might be different from references under other ordinances to "items subject to legal privilege". The expression is copied from other ordinances but I can really not tolerate having some express provisions and certain provisions presented in a different way. It is really bad, but we have no alternative but to accept them, which is very unsatisfactory indeed.

As we would be able to see later, clause 11 of the Bill is not satisfactory. It has imposed new requirements and responsibilities on everybody, including those in the legal profession. How could the legal professional privilege tie in with the new responsibilities? We did not have time to elaborate this point. Lastly, I would like to discuss "the right against self-incrimination" that actually gives inadequate and inexplicit protection. Therefore, I am very pleased that the Secretary has just said very clearly that the specified would be protected and the unspecified would not be protected for the avoidance of doubts in future. At least, the Secretary has explained that the provision is intended to avoid doubts rather than restricting or replacing the common law principles. It is beneficial to the parties concerned but "the right against self-incrimination" has still not given adequate protection for we have failed to consider the new responsibilities under the Bill.

Madam Chairman, I can only say that we have no alternative but to accept these amendments in order to pre-empt the emergence of even worse scenarios. Making amendments are after all better than not making any. But if I am asked if I am grateful to the Secretary, I am afraid I cannot express my gratitude to her this time. Perhaps I would be able to express my gratitude to the Secretary next time around. Thank you.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary for Security to speak again.

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 4.

CHAIRMAN (in Cantonese): Both the Secretary for Security and Miss Margaret NG have separately given notice to move amendments to clause 4 of the Bill.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I will first call upon the Secretary for Security to move her amendment, as she is the public officer in charge of the Bill.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 4 be amended, as set out in the paper circularized to Members.

According to clause 4 as it stands, the Chief Executive has the power to specify, where he has reasonable grounds to believe, that certain persons and property are terrorists, terrorist associates or terrorist property. Precedents for such administrative specification can be found in other countries such as the United States and New Zealand where similar administrative arrangements can be found. The Bills Committee was of the view that the executive was given excessive powers under this mechanism without suitable checks, so a judicial procedure should be introduced to protect the interests of the affected persons. We have carefully considered the views of the Bills Committee and share members' views. Therefore, clause 4 is amended in accordance with the direction proposed by the Bills Committee and two separate mechanisms are established in relation to specification by the Chief Executive of persons and property as terrorists, terrorist associates or terrorist property. The first mechanism is provided in the amended clause 4. Where any persons and property are designated by the United Nations as terrorists, terrorist associates or terrorist property, the Chief Executive may publish a notice in the Gazette specifying the names of those persons and property.

If the persons and property cease to be designated by the United Nations, then the notice published by the Chief Executive will lapse, and the Chief Executive should also publish a notice in the Gazette as soon as is practicable to revoke the relevant specification notice.

The second mechanism is provided for under new clause 4A. If a certain person or property is not designated by the United Nations as terrorist, terrorist associate or terrorist property and the Chief Executive wishes to specify that person or property, then he has to make an application to the Court of First Instance which shall grant the Chief Executive's application and make the order sought by the application only if it is satisfied that the person or property is a terrorist, terrorist associate or terrorist property. And, the Chief Executive shall publish the order in the Gazette and the validity period of the said order will also be reduced from the original period of three years to two years. Where the Chief Executive receives information which causes him to have reasonable grounds to believe that the person or property is not, or is no longer, a terrorist, terrorist associate or terrorist property, the Chief Executive shall, as soon as is practicable, make an application to the Court of First Instance for the order to be revoked and the Court of First Instance shall grant the Chief Executive's application. It is also clearly provided that unless the application of the Chief Executive falls within the exception circumstances specified in rules of court, an application shall be made *inter partes*, to ensure that the affected persons may make a defence.

The above amendments have been discussed by the Bills Committee and endorsed by the majority of its members. I implore Members to support and pass the amendments.

Proposed amendment

Clause 4 (see Annex IX)

CHAIRMAN (in Cantonese): I now call upon Miss Margaret NG to speak on the amendment moved by the Secretary for Security as well as her own amendment.

MISS MARGARET NG (in Cantonese): Madam Chairman, my amendment divides the original clause 4 into clauses 4 and 4A, which is similar to that proposed by the Government, and clause 4 after the division is identical to clause 4 as amended by the Government. Under clause 4A, the Chief Executive may specify in the Gazette the name of a person not designated by the Committee as a terrorist. On this point, my amendment differs from the amendment of the Government in a few aspects: firstly, we can see from the Blue

Bill that the specification will have a validity of three years, which is quite excessive, and the Government has also decided to change the validity period to two years. However, the Hong Kong Bar Association and I have stated in the submission that we do not think it is necessary to change the period to two years. It is mainly because the United Nations has stated that the issue should be handled expeditiously, if so, the validity period of specification may last less than two years. In particular, the Government may specify a person as a terrorist again when there is stronger justification. Therefore, the validity period is only one year in my amendment, as stated under clause 4A(8).

Secondly, I have added subclause (10) to clause 4A, specifying that we cannot assume that everybody could read the Gazette. The Chief Executive may make an application to the Court and when the Court grants the application, he shall cause a notice on the order to be published in the Gazette to specify a person or property as a terrorist, terrorist associate or terrorist property. Upon specification by the Chief Executive by notice in the Gazette, it is presumed that a person specified in the notice as a terrorist is a terrorist, a person specified in the notice as a terrorist associate is a terrorist associate, and property specified in the notice as terrorist property is terrorist property. It shall be presumed so in the absence of evidence to the contrary. I wish to clarify how effective the presumption is. Can we presume that other people have read the Gazette after a notice has been published in the Gazette, and that they already know that the person or his property has been presumed as a terrorist or terrorist property? Therefore, I propose adding subclause (10) to illustrate that, even if it is specified so, the criminal offences specified under clauses 6, 7, 8 and 9 to be read the Second time later cannot presume that any person has already noted any order published in the Gazette or its contents. Let us take a look at clause 6, 7, 8 or 9, specifying that no person shall provide or collect funds to be supplied to terrorists or make funds or financial services available to terrorists. After the Chief Executive has made a specification by notice in the Gazette, has he presumed that people know that they are terrorists or have read the Gazette? If so, the criminal offences would become very strict criminal offences and even if a person does not have any knowledge of the specification, he may have committed many criminal offences. I have proposed the amendment because it completely fails to meet the requirements of criminal offences.

Madam Chairman, I would like to spend some time on the point that the International Commission of Jurists and the Hong Kong Bar Association do not fully agree to requesting the Court, through court procedures, to allow the Chief

Executive to specify by notice in the Gazette certain people as terrorists, terrorist associates or their property as terrorist property for the Court should not be involved in such political incidents. But as Ms Audrey EU has mentioned earlier, during consideration of the Bill by the Bills Committee, the original draft of the Government specified that the Chief Executive shall cause a notice to be published in the Gazette if he has reasonable grounds to believe so. We think that the practice is not monitored at all and an unbiased Court not involving any interests must approve the application through judicial procedures. It would be more objective and reliable and provide the public or affected persons with better protection. The proposal made by the Government is not satisfactory but we have no alternative but to accept it. Anyway, it would be better than no monitoring at all. Hence, we have not proposed any amendment for we have no alternative.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by the Secretary for Security and Miss Margaret NG's amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MISS CYD HO (in Cantonese): Madam Chairman, the amendment by the Administration is certainly much better than the original provision. According to the original provision, so long as the Chief Executive has reasonable grounds to believe so, he shall cause a notice to be published in the Gazette to specify a person as a terrorist and there is no checking on this power. We often say that we have to make reference to the examples in foreign countries, but in these countries it would actually involve the parliament. The executive authorities have to seek the consent of the parliament before declaring a person or an organization as a terrorist or a terrorist organization. However, I understand very well why we cannot consider the possibility in Hong Kong and we have no alternative, as Miss Margaret NG has said, but to leave such cases to the Court. I believe the principal reason is that this is not a fully elected Council after all. We actually have worries about whether this Council is going to pass whatever legislation, motion or notice proposed by the Government at that time. When we considered the Bill, though we knew that there were examples in foreign

countries in which the consent of the parliament was required before the executive authorities could declare a person or an organization as a terrorist or a terrorist organization, this Council in Hong Kong has not taken this alternative into account.

As specified in the amendment of Miss Margaret NG, we cannot presume that anybody knows the notice of the relevant order or revocation of notice and its contents. It is a realistic approach. Does any one of us, legislators, go through the entire Gazette every Friday? Therefore, I fully support the amendment but, in actual operation, I hope the Government would also notify various sectors by putting out press releases besides publishing notices in the Gazette in future (the way in which the executive authorities will handle the matter now is already sounder). Although the public would have knowledge of such matters through the media, we cannot specify this in the law. We also cannot formulate a provision to specify that the executive authorities must put out press releases. Besides publishing a notice in the Gazette, how else can we let more people know that it has been declared that certain persons, organizations or companies are related to terrorist activities and that they should make a clear break with them lest they would be implicated and be held criminally liable? In future, when the executive authorities invoke section 4 or 4A or publish the United Nations list in the Gazette or publish with power conferred by the Court a notice in the Gazette specifying a person as a terrorist, I hope they would make efforts to let people know that there is such a law that they must abide by whether they like it or not. Thank you, Madam Chairman.

MR ALBERT HO (in Cantonese): Madam Chairman, the Democratic Party supports amending the existing clause 4 to clauses 4 and 4A and we think that they are very important amendments. After all, I think the Government has the responsibility to examine and determine whether certain persons or organizations are terrorists or terrorist organizations and it is far more appropriate for the Court than other bodies to check and balance this power of the Government. I do not understand why it would be better for such cases to be considered by this Council. This Council makes laws and monitors public finance, and we may have to hold a lot of hearings and hear a lot of evidence if we also consider individual cases. Given its existing structure and mode of operation, I think it is inappropriate for this Council to engage in such work but it is most suitable for the Court to act as a mechanism for checks and balances. In any case, I believe Members would agree that it is more suitable for the Court to act as the

mechanism for checks and balances although they have different views on or doubts about the principles of clauses 4 and 4A.

The Democratic Party also agrees with the addition proposed by Miss Margaret NG. As I have just explained the reasons very clearly, I am not going to repeat them. Given the order of voting, we would vote against the amendment of the Secretary first, hoping that we would have a chance later to vote for the amendment of Miss Margaret NG.

MR JAMES TO (in Cantonese): Madam Chairman, I just wish to make two points. First, we already discussed the concept of separate handling at the first meeting of the Panel on Security of this Council, that is, the Court should adjudicate or judge the specification of names not designated by the United Nations. The Blue Bill introduced by the Administration did not adopt the view and amendments were subsequently made. Had the Government formulated the provision earlier, it would have saved plenty of time for we had used several sessions discussing clauses 4 and 4A.

If possible, I wish the Government would respond to the second point that I am going to make. Under the existing clauses 4 and 4A proposed by the Government, once a notice has been published in the Gazette, it would be presumed that a person is a terrorist. The amendments of Miss Margaret NG are mainly related to the offences under clauses 6, 7, 8 and 9, such as the collection of funds and provision of assistance. Although a certain person is a terrorist, would the Government carefully investigate if the persons who commit the said offences knows that particular person is a terrorist? How much do they know? Have they read the Gazette? When the police makes an investigation, would they ask the persons who have committed the offences if they have read the Gazette? We hope that the provisions of clauses 6, 7, 8 and 9 would be enforced in a sounder manner. On the basis of my preliminary observation, in regard to legal concepts, even if a notice has been published in the Gazette, when the Government prosecutes a person by virtue of clauses 6, 7, 8 and 9, it may not necessarily presume that he knows that a certain person is a terrorist. If it presumes that he knows that a certain person is a terrorist, he would be in a fairly disadvantageous position as far as evidence is concerned. I wish the Secretary would tell us how to adopt a sounder enforcement method, which is a very important point. We think that the amendment of Miss Margaret NG specifies the point more explicitly. I am not sure if we are only being wise after the event

but I believe that if we had ample time, perhaps the Secretary might have also added that, that is, it may not be presumed that a person must have read the Gazette and known its contents after a notice has been published in the Gazette. When clauses 6, 7, 8 and 9 are invoked to prosecute a suspect, it may be disadvantageous to the suspect in terms of evidence. It is a pity that we did not have time to discuss the matter in detail.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, in fact, there are two major points in Miss Margaret NG's proposed amendment.

The first point was to shorten the validity period of the order of the Court of First Instance from two years to one year. In this regard, clause 16 has already provided an appeal mechanism for specified persons or other affected persons to apply to the Court for revocation of the relevant order. Moreover, the validity period of two years is also not too long and it is certainly not too excessive as opined by Miss Margaret NG. Therefore, I do not think that there is a need to shorten the validity period.

The second point is to make additional provisions to prescribe that the provisions in clauses 6, 7, 8, 9 and 11, relating to the supply of funds and weapons, recruitment of members for terrorists and disclosure of terrorist property should not presume that any person knows that the Court of First Instance has granted approval for the Chief Executive to publish an order in the Gazette. I would like to explain that the presumption referred to in clauses 4(5) and 4A(4) does not seek to presume that the public knows the content of the Gazette. This is not the case. I hope I have already answered Mr James TO's question. The main purpose of this presumption is to presume that the person specified is a terrorist. The purpose of the presumption in clauses 4(5) and 4A(4) is to ensure that there is no need to prove that persons and property specified in a gazetted notice and order are terrorists, terrorist associates or terrorist property when the Government makes prosecutions under clauses 6, 7, 8, 9 and 11. This presumption is made on the assumption that there is no local terrorist in Hong Kong and that all terrorists come from overseas, while the

information we got is also from overseas. Therefore, we must specify terrorist organizations like Al Qaeda who is active in overseas countries because it is virtually impossible for Hong Kong to get hold of much evidence to prove that these persons are terrorists, thus such a presumption must be made.

However, under the principle of criminal prosecution, even if there is such a presumption, the Government still has to prove beyond reasonable doubt (that is, 毫無合理疑點地) that the accused, that is, the person who is accused of breaching clauses 6, 7, 8, 9 and 11, has supplied funds, financial services, weapons and recruited members for terrorists when he actually knows or has reasonable grounds to believe that a certain person is a terrorist or terrorist associate, or that the accused actually knows or suspects certain property is terrorist property but fails to make a report, before charges made under clauses 6, 7, 8, 9 and 11 could be substantiated. Therefore, certain elements such as psychological factors like "has reasonable grounds to believe" and "actually knows" must first be proved beyond reasonable doubt, before any charges could be substantiated. The simple fact that a notice or an order has been published in the Gazette certainly cannot be regarded as substantial evidence on the charge. Therefore, we believe Miss Margaret NG's proposal on making additional provisions is unnecessary.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Are Members sure about the question already put?

Mr Andrew WONG, since you are present, please press the "present" button to indicate your presence. You are free not to cast any vote, but please press the "present" button. Thank you.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop, and the results will be displayed.

Mr Kenneth TING, Mr James TIEN, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG LEUNG-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr LEUNG Fu-wah, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN and Ms Audrey EU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

The CHAIRMAN announced that there were 47 Members present, 29 were in favour of the motion and 16 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Miss Margaret NG may not move her amendment to clause 4, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 4 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 5.

CHAIRMAN (in Cantonese): The Secretary for Security and Miss Margaret NG have separately given notice to move amendments to clause 5 of the Bill.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 5 be amended, as set out in the paper circularized to Members.

The validity of the freezing period for terrorist funds specified by a notice under the existing clause 5 is three years. Members on the Bills Committee are of the view that the freezing period is too long, and they also think that the provision which allows the Secretary to freeze the same funds upon expiry

without having to give any new justifications is unfair to the affected person. Having listened to the views of the Bills Committee, we now propose to shorten the freezing period from three years to two years. Besides, since under clause 13 of the Bill, the Government may, during the validity of the freezing period, apply to the Court of First Instance for the forfeiture of the funds concerned, we now propose to perfect this clause by introducing a new clause 13(3A), specifying that the freezing period will end only if the funds concerned still remain not forfeited when the relevant proceedings are completed.

In addition, in response to the concerns expressed by some law academics during the discussions of the Bills Committee, we now also propose to introduce a new clause 5(3B), specifying that unless there has been any new evidence or any material change in the evidence, the Secretary for Security shall not freeze the same funds again. This new provision can give added protection, thereby ensuring that the authority of freezing funds will not be abused.

As for the amendment to clause 5(1), the objective is to make the provision clearer and more concise. The amendment has incorporated the recommendations of the Bills Committee. I implore Members to support and endorse it.

Miss Margaret NG has put forward an amendment to clause 5, proposing to shorten the validity period of a notice on freezing terrorist funds to one year. I think this amendment fails to take account of practical needs. We hope the Bills Committee can realize that after freezing some funds suspected to be terrorist property, the Government will not just wait for the expiry of the freezing period with folded arms. Instead, it will make every possible effort in the meantime to collect evidence and apply to the Court for the forfeiture of the funds, so that they will not be used for financing any terrorist activities.

Since we may have to request relevant information and evidence from other jurisdictions through mutual legal assistance arrangements, we think a two-year freezing period will be appropriate, as it can allow us the time for investigation, liaising with other jurisdictions and the legal proceedings required. Besides, since clause 16 already sets down a channel of appeal, whereby an affected person may apply to the Court of First Instance for the revocation of a notice, we do not see any need to shorten the freezing period.

Miss Margaret NG also proposes to introduce a new clause 5(7), specifying that the notice on funds freezing shall not affect the supply of funds to the specified person or his dependants for the purpose of meeting expenses on food, clothing, accommodation, medical treatment and legal services. I understand that Miss Margaret NG's amendment is based on the principle of safeguarding basic human rights. But in practice, her amendment will lead to loopholes in the legislation, making it possible for some unruly elements to supply funds to terrorists for terrorist activities under the guise of the humanitarian grounds mentioned above.

Actually, both clause 5 and clause 7 of the Bill already provide for the authority of the Secretary for Security to grant a licence for the supply of funds to the affected person to meet various types of expenses. And, later on, I will also move the addition of new clause 14A, specifying that the affected person may use the relevant funds to meet reasonable living and legal expenses.

In addition, if the Secretary for Security refuses to grant a licence, or if the affected person is not satisfied with the conditions set out in the licence, he may, under the amended clause 16, apply to the Court of First Instance for a licence, or for the alteration of the licence conditions.

All this shows that our proposals can already take account of Miss Margaret NG's concerns. Her amendment is therefore largely unnecessary.

Proposed amendment

Clause 5 (see Annex IX)

MISS MARGARET NG (in Cantonese): Madam Chairman, clause 5 is the most important part of the entire United Nations (Anti-Terrorism Measures) Bill (the Bill). As the Secretary has disclosed, the Chief Executive may not specify a person as a terrorist or property as terrorist property in a short while.

As specified in the clause, the Secretary may by notice in writing freeze the funds where the Secretary has reasonable grounds to suspect that any funds held by any person are terrorist property, and the Secretary may by notice in writing freeze the funds at once. It is originally specified that the funds shall be frozen for three years, but it is now proposed that the period should be two years. The Secretary can more or less say that she has reasonable grounds to suspect so

at any time and the requirement can easily be met. The definition of terrorist property is very broad and we feel concerned because the Secretary may do so by giving a notice in writing, without going through any court procedure.

The Drug Trafficking and Organized Crimes Ordinance that Mr James TO is very familiar with has also specified that an application for a restraint order has to be made before freezing the property of a person, and it must be demonstrated that the person is going to be prosecuted for specific criminal offences. After seeking the advice of the relevant Bills Committee, I know that the Government must not only do so but also promise to make compensation if the application for a restraint order has been wrongfully made. Thus there are very stringent procedures. While court procedures are required for an obvious criminal offence case, can the property of a person be frozen without a court procedure so long as it is suspected that it is terrorist property even though it may not necessarily be his property? I feel very uncomfortable about this part of the clause.

Madam Chairman, as time was limited, we did not have time to work out an alternative or create an additional court procedure, therefore, we had no alternative. We understand very well that we must take some measures under Resolution 1373 and take expeditious actions to freeze the funds. Hence, we have considered two points. First, should the property be frozen for as long as two years? Second, can the period be shortened to one year at least? We have also discussed compensation and expressed views that are actually consistent with those of the Hong Kong Bar Association. Firstly, at least, we wanted to limit the period of freezing. Therefore, we have to take actions very quickly and we cannot take too long. As the Secretary has said, the Government would not seek to freeze the property indefinitely and it would make efforts to confiscate the property. As the Government would have sufficient time to take factors into consideration before confiscating the property, would it consider taking other actions? How can it freeze the property for a long time, such as two years, because it fails to confiscate it? It takes the Government two years. When we passed the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 earlier today, some Members remarked that, without special request, the Government would generally be allowed to freeze the property for six months only and, if it wished to extend the period, it had to file another application with the Court and furnish justifications for doing so. Under the present circumstances, it would be very convenient for the Government to freeze the property for one year. This Council is very understanding towards the Government and we understand that it has to fulfil the requirements of the United

Nations. Therefore, we have gone out of the way to bargain with the Government before allowing a freeze period of one year.

Why do I wish to make the addition of subclause (7)? I wish to illustrate that expenses on feeding, clothing, housing and legal proceedings should not be made under the authority of a licence. The Bill specifies that property once frozen cannot be used but I wish to make an amendment to it. I think property that cannot be used should not include expenses on feeding, clothing, housing and legal advice because all of us need food, clothing and housing, for these are basic rights. Why should the Secretary be given authority to grant a licence for the purpose? The Secretary may grant a licence when she has time and remembers to do so, but we have to note that the licence would be specially granted and we cannot take it for granted. If the Secretary is busy and does not have the time, an application should then be filed with the Court. The applicant can do nothing in the meantime and he has to wait for the Secretary to grant a licence before he can have food. If a person's property has been frozen without cause, he may have to immediately apply for the revocation of the written notice under clause 16 as the Secretary has just suggested. That means legal expenses. As a layman, the applicant would not know what to do and he would have to pay legal charges for the legal advice he needs. Thus, it is necessary to file applications with the Secretary for everything and, if the Secretary does not have the time, applications have to be filed with the Court.

Therefore, I propose slightly amending clause 5 for these basic rights. I wonder if we should at least shorten the period as proposed in my amendment and explicitly state that the expenses on feeding, clothing, housing and legal advice should not fall within the scope of freezing. Madam Chairman, I find it very reasonable to do so and I implore Members to support my amendment. Thank you.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by the Secretary for Security and Miss Margaret NG's amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR JAMES TO (in Cantonese): I am not going to repeat the points already made by Miss Margaret NG. The only thing I wish to say is that the Secretary

should note one point about the Government's amendment. The originally proposed validity period is rigidly set at three years, meaning that after three years, the validity period will come to an end no matter what, even though the application made by the Government is unsuccessful and the property concerned cannot be forfeited. But the Secretary now proposes to shorten the period to two years, with a proviso, set out in clause 5(3A), that if proceedings are still pending by that time, the validity period shall not expire. Do these two changes represent any improvement to the clause? I really wonder. Apparently, there is improvement, but then something new is added. Logically, if the Government has really made an application under the law, that is, if legal proceedings are in process, with the aim of forfeiting the funds concerned, then the *status quo* should be maintained. However, what is so bad is that we have not yet finalized all the technicalities and procedures of forfeiture applications. And, it is still unknown whether the Court will be given extensive authority in this respect. When the Secretary applies for the forfeiture of some funds, if, for example, the Court deems that there is not enough time to balance the interests of both sides, can it conduct a new hearing? And, I suppose the affected person should be granted licence to use part of funds for some necessary purposes in the interim. I am not talking about food, clothing or legal expenses, but about others, such as the expenses required to keep a business running, for example. The authority in this respect has not yet been firmly set down.

The amendment of Miss Margaret NG also touches on this point. It states that as long as proceedings have been started, as long as proceedings are still pending, the one-year validity period of the notice can be extended. In other words, it is fine as long as proceedings can be started within the one-year period. The whole world has now entered an emergency state of anti-terrorism. The terrorists referred to by the Secretary may mostly come from foreign organizations and countries, which is why the Government should be very anxious to get information from overseas relating to the affected person. Actually, since the funds and property concerned are in Hong Kong, they must logically be handled by the Hong Kong Government. Since the latter part of the amendment states that if legal proceedings are still pending, the notice shall not expire, I think one year will be enough to strike a proper balance. Actually, my experience of working with staff of the Department of Justice on the Organized and Serious Crimes Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance has made me realize that in many proceedings, as long as some substantial *prima facie* evidence can be given at the beginning, the Court will find it very difficult to refuse to hear the case right away. In some prosecutions,

there may even be the possibility of holding charges, meaning that it is very difficult or even impossible for the other side to prove some specific crimes or doubts. Given this balance, I think if proceedings have already started on *prima facie* evidence, a pending period of one year is enough and the validity period shall not expire. If the Government asks for two more years, the balance will not be a proper one.

MISS CYD HO (in Cantonese): Madam Chairman, as I have repeatedly remarked, under this Bill, a person declared as a terrorist is not guilty because he has not gone through court proceedings. However, it is stated in clause 5 that the person declared as a terrorist would be punished by freezing his property.

The power under clause 5 is actually greater than that under clauses 4 and 4A. Clause 4A specifies that the Chief Executive has to do so through the Court but clause 5 specifies that a notice in writing may do. Miss Margaret NG has just made this point. We understand that funds flow very fast nowadays, only by pressing the relevant key on a computer keyboard, unlike before when people transmitted money abroad by certain means of transport. It is not necessary to do so now for the instant transfer of funds can be made in a short while. Due to the lack of an opportunity to discuss a sounder mechanism, the Bills Committee has not proposed an amendment to take away this power of the Secretary, so the Secretary would still have the power to freeze property. As we all know, it is our international obligation to stop the transfer of funds by terrorists for terrorist activities. However, there is a dangling end to this clause. Is it necessary to set such a long freezing period?

Before the Secretary mentioned the exclusion under clause 13, we would be able to imagine the bad feeling of a person whose property has been frozen. If he is conversely put into prison, he may still live in a carefree manner and have shelter. Before the exclusion provision was proposed to us, the specified punishment was very serious indeed, and its implications were very extensive.

Madam Chairman, we all understand very well that the Secretary should be vested with the powers to deal with emergency so as to enable the Government to crack down on terrorists more effectively. However, should the validity period last as long as two to three years? In my opinion, one year is already too long. Anyway, we did not have too much time to consider the Bill. Should we put an end to the freezing if the executive authorities fail to collect

sufficient evidence to prove that the funds are related to terrorist activities within the two-year validity period of the freeze?

Madam Chairman, Miss Margaret NG has also referred to expressly specified exclusions on humanitarian grounds that do not require a licence to be granted by the Secretary. The bitter experience of the dependants has left a deep impression on me. Even a terrorist whose identity has been confirmed and who has not been done injustice has children and parents. Should such family members be implicated and be so seriously affected just because there is a terrorist in the family? Therefore, I wish Members would support Miss Margaret NG's amendment and that, if the amendment is not passed, we would continue to discuss the matter in the second-phase exercise to find out if there is a sounder mechanism for striking a balance between the power of enforcement and protection for the innocent.

MR LAU KONG-WAH (in Cantonese): Madam Chairman, this clause is extremely important because it empowers the enforcement agencies to freeze such funds with the highest possible speed. The flows of such funds are not measured in hours but just seconds, which is why they must be stopped at the highest possible speed. As I heard from Miss Margaret NG, she also agrees that such funds must be frozen with the highest possible speed. But the two amendments before us both seem unable to provide any viable alternative that can enable us to freeze such funds with the highest possible speed.

As far as I am aware, the major difference between the Government's amendment and Miss Margaret NG's is that while the rationale behind the former may be freezing before deduction (to be licensed later on by the Secretary to meet necessary expenses), that behind the latter is deduction before freezing. If Miss Margaret NG's amendment is carried, there will be very serious consequences indeed. The reason is that such funds do flow very quickly, so if lengthy negotiations are held with the affected person on how much he needs for clothing, food, accommodation and transport, on how many bowls of rice he needs, and on whether he needs brand name clothing, then even by the time the whole investigation is completed, we may still fail to freeze his funds, or the funds may have long since remitted elsewhere. As a result, if the intent of the law is really to freeze such funds with the highest possible speed, then I suppose there is no other alternative. Admittedly, even terrorists need money for food, clothing, and so on, but such needs are already catered for in the subsequent

clause 14A. This clause is able to make sure that the affected person can have the money to meet reasonable living and legal expenses. So, the basic protection is already there.

Madam Chairman, I think if we adopt the approach of deduction before freezing, we will run counter to the spirit of the Special Recommendations made by the FATF. Special Recommendation III states clearly that "each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts." The expression "without delay" is used, which means that we cannot possibly compute very slowly how much is to be deducted for expenses. As for UNSCR 1373, it also states that all the States should "freeze without delay funds..... of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts." The expression "without delay" is again used. The intent is absolutely clear.

I believe that Miss Margaret NG's amendment is certainly well-intentioned. She puts it very clearly in the amendment that the affected person must be allowed enough money to meet reasonable expenses on food, clothing, and so on. But I am afraid that such express provision may not be exhaustive, because it is often very difficult to list out certain types of expenses. For example, is transport a type of necessary expenses? And, children's education? And, the maintenance of dependent parents? There are lots of other examples. I on the other hand think that clause 14A can serve the general purpose of setting down reasonable living and legal expenses. Mr Albert HO may perhaps add another item of expenses on employees (that is, their wages). This is perhaps more in line with the needs of city people, for it can make sure that there will be money to meet a genuine need.

Due to the premise advanced by me before the resumption of Second Reading debate, that is, the premise that such funds must be frozen with the highest possible speed, I am unable to support Miss Margaret NG's amendment.

MISS MARGARET NG (in Cantonese): Madam Chairman, I wish to briefly respond to the remarks made by Mr LAU Kong-wah. In fact, the United Nations has not specified that the humanitarian stand must be upheld and it has not mentioned such issues as feeding. Therefore, my amendment has kept the

scope very narrow, that is, it only covers providing assistance for the purposes of clothing, feeding, housing and legal advice. If Members do not think that deduction should be made before freezing and if they think that the funds should be frozen without making any deduction, I would like to ask them to take a look at subclause (1) of the clause related to funds, that is, "the Secretary may, by notice in writing specifying the funds, direct that the funds not be made available, directly or indirectly, to any person except under the authority of a licence granted by the Secretary for the purposes of this section." In other words, an affected person would not have food and the question is not whether deduction has to be made. Certainly, those who have food may not violate the provision and we are not suggesting that deductions should be made from the funds. But it is certainly unacceptable for an affected person to raise the expenses to a certain level and indicate that \$100 million must be made available for the purpose of feeding for he is used to having expensive meals. Actually, huge amounts of funds are going to be frozen and the expenses I have mentioned account for a very limited part of the sum and it would not have any effect on the funds to be frozen.

Madam Chairman, concerning clause 14A, Mr LAU Kong-wah may have forgotten how clause 14A comes into being. When we considered the provision, we had asked some questions. What was clause 14A actually about? What was the authority of a licence? What did the licence cover? We asked if legal expenses would be included if the affected person sought legal advice, defended his case in the Court or challenged the notice in writing.

The Bureau subsequently promised to specify the reasonable expenses and the Secretary has proposed adding a new clause 14A to provide that "(1) Without prejudice to the generality of conditions and exceptions which may be specified in a licence mentioned in section 5(1) — (a) such conditions may relate to specifying the manner in which the funds to which the licence relates shall be held from time to time", I do not quite understand the above expression, and "(b) such exceptions may relate to the reasonable living expenses and reasonable legal expenses and the payments liable to be made of any person by, for or on behalf of whom the funds are held." It can thus be seen that the provision explains the items covered by a licence, so, Members do not have to argue over these items because they have been specifically covered by the scope of the licence.

Notwithstanding the provision in clause 14A, these expenses cannot be automatically deducted. The affected person has to apply for the approval of

Secretary Regina IP for the expenses on feeding, clothing and legal advice. Since there would be a problem in the time required for application, I think that the provision appears rather excessive and it is unnecessary.

Therefore, I urge Mr LAU Kong-wah to reconsider the matter and perhaps support my amendment. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Madam Chairman, Miss Margaret NG has covered 90% of the remarks I would like to make and I just wish to make one more point. Why do we grasp the opportunity to express our views now? It is because there is going to be a second wave of discussion about this legislation and a review is going to be conducted, I think it is important for me to express my views.

I only wish to say that, in respect of the one-year or two-year validity period under discussion, if proceedings or the legal procedures for confiscation are pending, the period would become invalid and the legal procedures can go on. It should be noted that consideration of the one-year or two-year period is the first level of fund freezing. In an extreme case, the Government may not necessarily freeze such funds immediately when it investigates or track down the funds of terrorists. It is because the Government wants to catch the big fish and find the mastermind behind the scene, thus, sometimes it may not freeze the funds but just follow closely the flow of the funds. In an extreme case, the Government would rather grasp information on the funds and the relevant accounts. If the persons concerned were an obvious target, all intelligence organizations in the world would have his information. Therefore, the one-year validity period of a notice is useless. Regardless of the whereabouts of the funds, they can be traced. Even if the funds have flown out of Hong Kong, they can be traced in another place (even if the place is unable to freeze the funds). It is very important that information tracing would be conducted in most operations. Thus, I think that a balance should be struck between the two. Even if the Bill is passed today and the funds have to be frozen, I believe the Government would still have to sum up experience and see whether improvements have to be made when it conducts a second-phase review on the legislation in the future.

MS AUDREY EU (in Cantonese): Madam Chairman, I wish to briefly respond to the remarks just made by Mr LAU Kong-wah. He said that the funds should be restrained at the highest speed, and all of us agree with him without objection. However, he has also said that the humanitarian stand mentioned by Miss Margaret NG involves the issue of freezing before making deduction or making deduction before freezing. Actually, I think Mr LAU Kong-wah has misunderstood the amendment proposed by Miss Margaret NG. The part of the amendment of Miss Margaret NG related to humanitarianism is pinpointed at clause 7, not the licence. Clause 7 of the Bill prohibits making funds available to a terrorist or terrorist associate. In other words, if a person has been specified as a terrorist or terrorist associate and another person provides him with money, that latter person has violated the law. Therefore, according to Miss Margaret NG, when a person has been specified as a terrorist and another person who knows that his money has been frozen gives him \$10 for a lunch box, that latter person has violated the law under clause 7. The amendment proposed by Miss Margaret NG intends to exempt certain matters from the prohibition under clause 7. In that case, if a person makes funds available to another person on humanitarian grounds for the purposes of feeding, clothing, housing and medical needs of that person, he has not violated the law. The amendment only seeks to make these changes and is not related to the question of freezing before making deduction or making deduction before freezing.

MR LAU KONG-WAH (in Cantonese): Madam Chairman, I believe I have not misunderstood the contents of the amendment, but I think I can consult the Member who proposed the amendment again. As Miss Margaret NG has explained, basically, the funds have been frozen and the affected person cannot automatically transfer certain amounts from the funds for living expenses. How is he going to meet his feeding or housing needs? He has to make an application for a licence to be granted by the Secretary. Should we consider the issue of dignity? As far as I understand it, Miss NG does not think that should be the case.

How would the provision be actually applied? In actual application, the Government will immediately restrain the funds if it suspects that a terrorist is going to use the funds for terrorist activities such as bombings. The Government will not bother about other things such as the living expenses of the affected person and it would immediately restrain the funds. It would not bother about what he will wear or eat.

I also wish to ask Miss Margaret NG about her views on the actual application. What procedures are involved and what formula would be adopted to calculate various expenses before deducting certain amounts of money? What will actually be done? The most important point is, after the repeated transfer of funds, we will hardly be able to tell who owns the funds. The funds may belong to a person outside Hong Kong or overseas, how can we calculate his expenses? Should we go overseas and interview him? In that case, the Government would not be able to freeze the funds at the highest speed, therefore, the proposal in the amendment will not work.

MISS MARGARET NG (in Cantonese): Madam Chairman, Ms Audrey EU is right in saying that my comments on that point are a bit confusing. In fact, Mr LAU Kong-wah only needs to read the original text of my amendment to find that the funds will be frozen by the Government as a lump sum. If the Government suspects that the funds of Ms Audrey EU are terrorist property and freezes the funds but I would like to offer her a lunch box without abalone, of course, out of good will. May I ask the Government if I can do so? I propose an addition to subclause (7) which reads: "if a notice (notice to freeze funds) under subsection (1) (on the freeze) has not been revoked under subsection (2), it shall not affect the provision of funds to the person specified in the notice (by another person) for the purpose only of feeding, clothing, housing, satisfying the medical needs of or any such person or dependant of such person or for the purposes of the obtaining of legal advice or representation." Therefore, even if I financially assist Ms Audrey EU, as I am not Ms EU and my sympathy for her is limited, people do not have to worry that I may spend too much money. Mr LAU Kong-wah is worried by the question of whether putting aside funds for reasonable living expenses would affect the speed of freezing the funds. Actually, it would not have any effect on the speed. Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Madam Chairman, I wish to convince Mr LAU Kong-wah. When Miss Margaret NG proposed the amendment, if she put the proposal under clause 5(7) under clause 7 instead of clause 5, it would have been easier to understand. But since she has put the proposal under clause 5(7), Members may thus think that the funds referred to are those restrained under clauses 5(1), (2) and (3). I think it would be clearer to put the proposal under clause 7, but it is fine to put the proposal under either clause so long as the funds referred to are different.

MISS CYD HO (in Cantonese): Madam Chairman, I am sorry to make you stay with us to hold this meeting of the Bills Committee. As a matter of fact, we have not been able to hold these discussions in the Bills Committee. I wish to make a certain point, but I am not sure if my memory would betray me.

This piece of legislation has a great number of subsidiary legislation. In the last meeting of the Bills Committee, the legal adviser from the Government told us that some provisions can come into force with immediate effect, while some others, be they subsidiary legislation or primary legislation, would have to wait until the "second wave" before they can come into force. If my memory has not betrayed me, clause 5 cannot come into operation immediately. Even if the Bill is passed, there are still many practical details in respect of clause 5, such as the granting of licence, the calculations, the procedures for application to the Court, and so on. All these will have to wait until the latter parts are complete before they can be put into force. In addition, issues like entry into premises to conduct searches, confiscation of property, and so on, which are found in Schedules 2 and 3, would have to be discussed in depth later.

Having said that, I still support Miss Margaret NG's proposal of giving some exclusions under certain provisions in the Bill and these should be incorporated into the Bill. Mr LAU Kong-wah's concern is how these should come into operation. Actually, when the "second wave" of the Bill comes, we will have a chance to consider the enactment of provisions in greater depths and discuss them thoroughly before a decision is made. If we can clearly provide for some exclusions in the primary legislation, we would have something to follow by in the second phase when we discuss the provisions.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, after listening to the remarks of Members, I tend to agree with Mr LAU Kong-wah's views because the amendment proposed by Miss Margaret NG is very much different from the original provision. What is involved is not just the speed with which freezing of property can be achieved; the amendment itself may generate a large loophole. Indeed, the current provisions make it possible that

where the living needs or humanitarian needs of a person affected require, the person may apply to the Secretary for a licence. Here, discretion is involved. Against this background, Miss NG asked: "Does one have to wait till the Secretary has time before approval can be given?" I do not think officials will act in this way! If anyone has a genuine living, medical or legal need, do we really believe the Secretary will act in such a slow manner? Naturally, the person affected will make an application immediately and certainly he will appoint a solicitor to make the application and any person in his capacity as Secretary will consider the application as soon as possible.

Nevertheless, if Members look at the wording by Miss NG, it makes the provision of living expenses an entitlement, a right, because she uses these words: "A notice under subsection (1) which has not been revoked under subsection (2) shall not affect (she uses the word 'shall') the making available of funds to a person specified in such notice," Thus, the person affected may argue that he is entitled to living expenses as of his right. If the terrorist happened to be Ms EU, a lunch box would suffice as assistance, as pointed out by Miss NG. But if the terrorist was a really "rotten guy", he would not be asking for just a lunch box. If the terrorist is a Muslim, firstly his legal fees may be very high. An ordinary lawsuit may cost several million dollars. Secondly, he may say he has four wives and 40 children. How much is needed for his living expenses? Or he may indicate he is sick. We can see that Usama bin LADEN looked rather pale on television. Would he demand that a hefty sum be paid as medical expenses? The words "shall not affect" mean that a list is made. If \$100 million belonging to a terrorist was frozen, he might demand that \$90 million be returned and the Government would have to pay as demanded. Would such an amendment create a large loophole? For this reason, we cannot support the amendment.

MISS MARGARET NG (in Cantonese): Madam Chairman, I would like to make one comment only.

First, despite the fact that Usama bin LADEN is a rotten guy, he has a right to life and we cannot deny him of this right because he is rotten.

Second, this provision does not have a very tall requirement. The provision can be invoked if the Secretary suspects a certain person, but actually the person may not be Usama bin LADEN, it could be Ms Audrey EU and she is

taken to be the rotten guy simply because she wears the wrong clothes.
(*Laughter*)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, my reply is simple. The Bill already empowers the Secretary to exercise discretion to grant a licence. Moreover, though the Secretary may act when she has reasonable grounds to suspect, the person affected may also apply to the Court of First Instance to revoke the notice. Therefore, I think the original clause has provided sufficient protection.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Abraham SHEK, Mr Henry WU, Mr LEUNG Fu-wah, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Miss LI Fung-ying, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi and Ms Audrey EU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 50 Members present, 29 were in favour of the motion and 20 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Miss Margaret NG may not move her amendment to clause 5, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 5 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 6.

MISS MARGARET NG (in Cantonese): Madam Chairman, I move that clause 6 be amended as set out in the paper circularized to Members. Madam Chairman, clauses 6, 7, 8 and 9 have one point in common and that is, they are provisions stating certain criminal offences on the supply or collecting of funds, or the supply of weapons to terrorists or terrorist associates. Madam Chairman, as these are criminal offences, at least they should have the prerequisite of a subjective *mens rea* which is composed of the following two elements: first, there must be an intention of assisting terrorists or terrorist associates; second, there must be knowledge that these persons are terrorists or terrorist associates. The absence of any one of the two will not do.

The common point about clauses 6, 7 and 8 is not only should there be an intention to assist terrorists or terrorist associates, but that there should also be knowledge that these persons are terrorists or terrorist associates. The wording of the amended clause is: "knowing and having reasonable grounds to believe". The words "having reasonable grounds to believe" are objective and maybe a person does not know or believe, but it would be an offence if objectively speaking, he has reasonable grounds to believe. I think that is unacceptable as it is against the principle of criminal offences. In this regard, I agree with the view expressed by the Hong Kong Bar Association, that is, in any criminal offence, there must be a clear subjective *mens rea*.

The Secretary says at least we should put into practice UNSCR 1373, but I think that will have to depend what its original requirement is. Paragraph 1(b) of the Resolution stipulates that the funds collection must be done in the

knowledge that they are used by terrorists and only such acts are to be criminalized. Madam Chairman, let me read out the original in English, "Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in the territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. " So that is the intention here.

Madam Chairman, clause 6 of the Bill is on the collection of funds and clause 7 is on the provision of funds, so the Administration should not confuse the two. Clause 6 is very complicated and it is not clear and there is also the problem of "having reasonable grounds to believe". Therefore, I have proposed a simple amendment to state that the purpose of clause 6 is to prohibit the provision of funds to terrorists or terrorist associates. The wording of the amendment to clause 6 proposed by me is "A person shall not provide or collect, by any means, directly or indirectly, funds with the intention that the funds should be used in whole or in part in order to carry out a terrorist act." The amendment would be clearer and consistent with UNSCR 1373. I implore members to support my amendment which is aimed at rectifying the ambiguities in clause 6 and the point on "having reasonable grounds to believe".

Proposed amendment

Clause 6 (see Annex IX)

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MS AUDREY EU (in Cantonese): Madam Chairman, I would like to make a brief comment on clauses 6, 7, 8 and 9. As a matter of fact, the Bills Committee did not have time to discuss these clauses. If we look at the wordings of the headings of clauses 6 and 7, we will find that the meaning of these two clauses is quite similar. Clause 6 is on "Prohibition on supply of funds to terrorists and terrorist associates" and clause 7 is on "Prohibition of making funds or financial services available to terrorists and terrorist associates". When I first read these two clauses, I felt as if there were some repetitions and the Bills Committee should have discussed that thoroughly. As for other details

and technical problems, apart from those brought up by Miss Margaret NG just now, they should also have been discussed by the Bills Committee. However, honestly, the Bills Committee has not discussed them. Even as the amendment proposed by Miss Margaret NG, it has not been discussed by the Bills Committee in detail. In circumstances as these, it would not be fair and proper if a voting is made.

MR JAMES TO (in Cantonese): Madam Chairman, the following comments I am going to make are meant for Mr Eric LI. When we were deliberating on the amendment bills of the Organized and Serious Crimes Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance, many Honourable colleagues mentioned clause 6 of this Bill on the part of having reasonable grounds to believe that someone is a terrorist. I recall an overwhelming majority of Honourable Members agreed that "having reasonable grounds to believe" that someone is a terrorist is an objective condition and that can be said to be an objective ground. If the objective condition makes people think that there is no ground which makes people think that someone is not a terrorist, then we would not be so foolish as not to believe it. That is why in the amendment bills of the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance the Government retracted and withdrew some of the amendments a few hours ago, and it gained the agreement of all the political parties. But in this rare case, that is, in the United Nations (Anti-terrorism Measures) Bill, it is almost impossible for the Government to get one vote of support. The words "having reasonable grounds to believe" come from the same formula and they are made a part of clause 6. I would think that apart from having reasonable grounds to believe, the person concerned should be "truly believed" to be a terrorist. Of course, there is some difference between to truly believe and to know, for the degree of belief in knowing may well be higher. "Knows" refers to some very certain matters. If someone just have reasonable grounds to believe, then will this mean that he really believes in it? Will there be people who are so foolish as not to believe it? If so, then that person may be penalized for this. The present Bill is related to the previous bills which I have mentioned. Therefore, I would like Members to know that with regard to this point, I would say that someone must really believe, that is, there must be an element of "do believe" or "did believe" before an act is said to have constituted the offence under clause 6. That would be a fair approach to tackle the issue.

MRS SELINA CHOW (in Cantonese): Madam Chairman, I believe what Mr James TO has said cannot be made a direct comparison. I recall when we talked about combating money laundering, we pointed out that those would be affected might be some professionals or financial institutions and often times this would have an effect on the public. However, these people we are talking now may be the lifeline of the terrorists and these terrorists depend on them for the provision of money so that the terrorists may do whatever they like. We should bear in mind that the terrorists are cunning and their network is huge and they are very pervasive. By the logic of Miss Margaret NG, it must be proved that there is an intention of providing money to terrorists to carry out terrorist activities before such act constitutes a criminal offence, then it will make the scope of application very narrow indeed. In other words, if the funds are not used in terrorist activities, the persons concerned are merely one of the sources of funds for the terrorists. Then it would not constitute any offence. Mr James TO mentioned earlier the difference between "knows" and "having reasonable grounds to believe", but it is different from the situation under discussion. What we are now discussing is the question of supply of funds and weapons which is directly related to the activities carried out by terrorists, so I believe we should make an extra effort to ensure that terrorists will not be supplied with funds.

MR LAU KONG-WAH (in Cantonese): Madam Chairman, I would just like to talk about the difference between "use" and "carry out". Before the resumption of the Second Reading debate, I said that if it was obvious that it was known that someone was a terrorist but despite this fact he was still supplied with funds, then it would be necessary to prove that he was carrying out terrorist activities before such supply of funds was to be prohibited, but if the funds were used in the ordinary manner, then no prohibition would be imposed. In such circumstances, the scope involved would be very wide indeed. I would imagine that there is no such ledger in the world, even if it is owned by terrorists, that would list out an item like "carrying out terrorist activities". Terrorists have all sorts of weird activities and so I think if funds are permitted to be supplied to terrorists, then it is just condoning their acts of terrorism. For the general public, that is a great threat. Therefore, I am afraid I cannot agree with such a narrow drafting of the provision.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MISS MARGARET NG (in Cantonese): Madam Chairman, if it is said that the scope is narrow and it is queried how we know whether there is an intention or not, then it must be remembered that the Bill in question also uses the word "intention". And if it is said that the "intention" in my amendment is too narrow, then the way in which it is written in the Bill is likewise narrow as well. The UNSCR 1373 is in itself narrow. Let me read out that sentence in English: "Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts." Madam Chairman, from this it can be seen that the way in which it is written is very narrow. The provision is about the collection of funds. If Members think that my amendment to clause 7 is too wide then we had better wait until the time when we discuss clause 7. But clause 6 is about the collection of funds and the way in which UNSCR 1373 is written is narrow. So Members can rest assured and I urge Members to support my amendment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LAU KONG-WAH (in Cantonese): Madam Chairman, I have read UNSCR 1373 very carefully and I agree with Miss Margaret NG 's point, that the essence is only on the carrying out of terrorist acts. However, Miss Margaret NG may like to take a look at Recommendation III made by the FATF, which states that countries should implement measures to detain and confiscate the proceeds from the financing activities carried out by terrorist organizations. Financing activities can be speculations in properties or stocks, and money derived from these activities may not necessarily be used in terrorist acts. All these proceeds are to be confiscated. It is not possible for us to distinguish in the accounts of the terrorists what are related to terrorist acts and what are related to other activities. So, I would think that it is not possible for us to separate them. The other thing is, should we use the greatest efforts in cracking down on these proven terrorists or should we use minimal efforts? That makes a difference. It would be bad if we fail to get this message.

MR JAMES TO (in Cantonese): Madam Chairman, that would be a more serious problem. I hope Members can take a look at the original clause 6 of the Government. The clause does not say anything about proven terrorists. It

only says "having reasonable grounds to believe" that a person is a terrorist. The words "having reasonable grounds to believe" refer to grounds which are objective and reasonable. Having said that, there may really be persons who are so foolish as not to believe, but still they have to be penalized. I am very surprised to hear Mrs Selina CHOW say that the context is different, but the point in law is completely the same. There are opinions that sterner measures than those used to combat organized crimes should be used against terrorists. Even if someone is more foolish than others and while other people who have reasonable grounds believe that a certain person is a terrorist, but that person does not, it would be better if the foolish are punished, rather than to let terrorists escape. It is because of this reason that the foolish should be punished. I would respect such an argument. For if not, the mental element would be the same as the argument we had during the debate on the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 earlier. However, the Government has withdrawn the relevant amendment because of this reason.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I agree with the views of Mr LAU Kong-wah and Mrs Selina CHOW. I wish to reiterate that in reading UNSCR 1373, we should not just read paragraph 1(b). We should read paragraph 1(d) as well. Though the word "wilful" is used in paragraph 1(b), the wording in paragraph 1(d) is strict: "Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;"

Let me now return to the point raised by Miss Cyd HO, who said our action would implicate a whole clan of people. Well, that is the wording of UNSCR 1373, which is very strict. Since terrorism is a public threat and is too great a threat to ignore internationally, people must be prohibited from giving assistance to terrorists, whether the assistance is given intentionally by way of

provision of funds to assist terrorist activities. If the Bill is not drafted in this way, we will not be able to fulfil our duties.

Ms Audrey EU said she did not understand what "economic resources" and "related services" meant. Well, such words appear in UNSCR 1373. Maybe other countries are cleverer and so they can do it but we cannot. But since they can do it quickly, why can we not?

Mr James TO asked why we must state the need to have "reasonable grounds to believe" rather than changing the wording to "prove" or "know". Let me reiterate a possible scenario. Hong Kong presumably has no terrorists within its boundaries. Most probably, people whom we have to penalize when we freeze funds for terrorist activities stay overseas. In other words, a certain government may inform us someone, probably terrorists from India or Pakistan, are transferring funds to Hong Kong or raising funds here and request that Hong Kong immediately stop or penalize them or criminalize the act. In this case, it is impossible for us to prove they are terrorists or extreme Muslims from Pakistan. I can only rely on the evidence provided by overseas governments to tell and believe with "reasonable grounds". I request that Members have faith in the Government and trust the good faith of not only the Special Administrative Region of Hong Kong but also other governments. That is, they have to trust that we are acting in good faith. Otherwise, we would be hindered from doing what we should do by some minor issues.

MR JAMES TO (in Cantonese): Madam Chairman, I am getting more and more confused. We have amended clause 5 to give the Secretary power of prohibition.

Miss Margaret NG has also said that very few provisions are written this way, but despite this we have passed it. However, from clause 6 onwards, these are provisions on offences. The meaning of these is: provided that the mental element is fulfilled, a person can be prosecuted, and that person may be liable to a prison sentence of more than 10 years. I am the Chairman of the Bills Committee on Drug Trafficking and Organized Crimes (Amendment) Bill 2000. I recall that every one of the members of the Bills Committee, including Mr Ambrose LAU, Mrs Selina CHOW, Mr Eric LI, and even Mr NG Leung-sing, opposed the idea that these foolish people should be punished. However, when it comes to clause 6, if it is so drafted, then these foolish people will have

to be punished. Would that be reasonable? There is nothing I can do about it. I hope, however, that when the Bill is passed, the Government can think, when a review is to be made, whether or not it is fair to punish these foolish people.

MISS CYD HO (in Cantonese): Madam Chairman, I would like to say the same thing again: it is unfortunate that we did not have time to deliberate on the Bill. The Secretary has admitted earlier that these provisions do have the effect of causing extensive and all-pervasive impact on many people. That is something which she did not mention in the meetings of the Bills Committee. She also says that these provisions which cause such extensive and all-pervasive impact are borrowed from the UNSCR 1373. Members have different interpretations of the UNSCR 1373. But unfortunately, we did not have a chance to discuss these provisions by citing exhaustive references in the Bills Committee and we can only discuss them now.

In addition, I would also like to point out that although many countries have enacted anti-terrorism laws, they are met with objections from human rights bodies. Some cases of wrong judgements have been exposed and the trend now is that the governments are beginning to relax these provisions. The Chairman of the Bills Committee, Mr LAU Kong-wah, said earlier that we hoped to renew our deliberations on the Bill when meetings are held in the second phase of the legislative exercise. Now in this Blue bill, there are very few mechanisms that restrain the powers of the Government. This is not enough. Since the Secretary has admitted that these provisions would have extensive and all-pervasive impact on many people, then why can we not improve on these checking mechanisms so that those innocent people will get some protection when they have contact with people whom they have no idea that they are terrorists and dealings that have nothing to do with terrorism?

Madam Chairman, I know that this Bill will certainly be passed today. But I would still like to make one point and that is, I hope that we can have more time to discuss the relevant provisions at the second phase so that a better system can be devised. That will also avoid making deliberations on the Bill in a Council meeting as we are doing now.

MR JAMES TO (in Cantonese): Madam Chairman, I am not going to repeat what I have said. I am sorry, I forgot to say one point earlier. As a matter of

fact, in the Bill on organized crimes and combatting money laundering, the drafting in clause 6 is adopted, that is, those people who are reasonably believed to be engaging in money laundering will be punished. So we pointed out that if the person who was punished was a foolish person, then things would become very bad indeed. The Government took a long time, that is, three or four months, to consider the question and then proposed adding a defence to the clause. It is proposed that if only the person concerned can prove that he is really a very foolish person, despite objectively speaking there is no ground not to believe, but the person is so foolish as really not to believe, then irrespective of whether the person is a teller or any other person, that can be regarded as a defence. But in this provision, the Government is unable to propose even a defence like that. In the Bills Committee, we opposed that the onus of proof be rested on the accused, but now the Government cannot even propose a defence that the accused raise the defence that he is a foolish person. Now such a person will be punished in any case.

MISS MARGARET NG (in Cantonese): Madam Chairman, I will be very brief. The Secretary said that she did not want to implicate too extensively, but it was only because the wording of UNSCR 1373 was like that. However, the wording of the resolution does not have words "having reasonable grounds to believe". The wording in UNSCR is "in the knowledge", that is, to know. Also, there is a clear distinction in the resolution, if it is "collection", that is collecting funds, then it has to be criminalized. But if that is supplying funds, as the scope will be very wide, so there is only a need to prohibit their nationals. That means prohibition would suffice. Prohibition can be made in a lot of ways and the freezing of funds in clause 5 is already one of the ways. Prohibition can also be effected by clause 7. As clause 6 is about criminalization, so we have to be very careful. There is no such wording in the UNSCR, so I urge Members to support my amendment.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Mr Eric LI abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG,

Mr SZETO Wah, Mr Albert CHAN and Mr WONG Sing-chi voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr MA Fung-kwok voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, five were in favour of the motion, 16 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 21 were present, 12 were in favour of the motion and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 6 stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 7.

CHAIRMAN (in Cantonese): Miss Margaret NG and the Secretary for Security have given notice respectively that they will move an amendment to clause 7.

CHAIRMAN (in Cantonese): Committee will now proceed to a joint debate. I will invite Miss Margaret NG to move her amendment first.

MISS MARGARET NG (in Cantonese): Madam Chairman, the criminal offence under clause 7 of the Bill is about the supply of funds. The scope with respect to the supply of funds is very broad and I have read out section 1(b) of the UNSCR 1373 earlier and its scope is also very broad, but that does not mean that the scope of clause 7 should be expanded to include criminal offences and to delete the wording "has reasonable grounds to believe". About the proposed clause 7(1), now I would like to read out the English version first. This is the amendment which I propose on criminal offences:

"No person shall knowingly make available, or cause to be made available, directly or indirectly, without lawful justification or reasonable excuse, any funds or financial services either to, or for the benefit of, a person, knowing that the person is for the time being specified in a notice under section 4(1) or (2) or specified in an order under section 4A(2) published in the Gazette as a terrorist or as a terrorist associate;"

Madam Chairman, I shall not read out the Chinese version. The scope which it embraces is very broad but even so, a person will be liable to criminal offence only if the person commits such an act knowing that the person to be assisted is a terrorist and that the person giving the assistance does not have any reasonable grounds to account for the act committed. So this is the mental element with respect to the offence.

Also, Madam Chairman, as I think that the scope concerning the supply of funds is also very broad, therefore, I have addressed the views proposed by the deputations to make the provision free from obstructing normal activities. With respect to the protection of human rights, the proposed clause 7(2) provides that prohibition will not be applied to the making of funds available to a movement or organization advocating normal or truly democratic activities or for the protection of human rights. Now I would like to read out the English version of the provision:

"Nothing in subsection (1) prohibits a person making funds available, or causing property or financial services to be made available, either to, or for the benefit of, a movement or organization advocating democratic government or the protection of human rights or promoting or providing humanitarian relief or assistance and that is not involved in any way in the carrying out of a terrorist act;"

Therefore, the public will not be subject to such a restriction if they are not actually making funds available to others to carry out terrorist activities. These provisions are specifically formulated for the protection of human rights.

As for the proposed clause 7(3), I think Honourable Members should be very familiar by now that if the funds supplied are only for the purpose of enabling people to have food, that is, related to the provision of clothing and accommodation, and so on, that it should not be considered a criminal offence. Madam Chairman, I have made myself very clear when I discussed clause 6 earlier and I would not repeat it here.

I hope Members can support this amendment. As for the amendment proposed by the Secretary, as far as I can remember, it is only a technical amendment which seeks to delete the restriction in "for the purpose of this section" under clause 7. The real and substantial amendment is my amendment. Therefore, I hope Members can oppose the amendment proposed by the Secretary and support my amendment. Thank you, Madam Chairman.

Proposed amendment

Clause 7 (see Annex IX)

CHAIRMAN (in Cantonese): Honourable Members, we have spent six hours on this Bill. I think the meeting can be adjourned for 10 minutes for a break. The meeting will resume after 10 minutes.

6.20 pm

Meeting suspended.

6.35 pm

Council then resumed.

CHAIRMAN (in Cantonese): I now invite the Secretary for Security to speak on the amendment moved by Miss Margaret NG and her amendment.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, we do not agree with the amendment moved by Miss Margaret NG for several reasons.

First, clause 7(1) proposed by Miss NG narrows the scope of the prohibition on the making available of funds or financial services to terrorists and terrorist associates. That means only the making available of funds or financial services to persons specified in a notice or in an order published in the Gazette as terrorists or terrorist associates is prohibited and the prohibition will not affect those people not specified in the Gazette, even if they are actually terrorists or terrorist associates. This way of dealing with the matter will actually create a great loophole.

Perhaps some Members may regard persons not specified in a notice or in an order published in the Gazette as terrorists or terrorist associates are in effect not so regarded by the Government and so no prohibition should be imposed on the making available of funds or financial services to them to avoid any mental burden being imposed on the industries dealing with the transaction of funds, in particular, the financial services sector. I wish to point out that this is a wrong thinking. Indeed, some people or organizations may be terrorists or terrorist associates before they are so specified in a notice or an order in the Gazette. A possible situation is that the Government is processing or confirming the source of the relevant information or is in the process of pursuing certain administrative and judicial procedures to arrange for specification in the Gazette of the persons or organizations as terrorists or terrorist associates or to specify that they are terrorists active only in individual regions but the relevant countries have not yet requested Hong Kong to so specify in the Gazette. If Miss NG's amendment is passed, law-breakers may use the loophole in the law to indiscriminately make available funds or financial services to terrorists or terrorist associates not yet so specified in the Gazette. This will encourage terrorists to use Hong Kong as a base for financing.

Secondly, UNSCR 1373 prohibits people from making any funds or financial services available to terrorists or terrorist organizations. The prohibition is not restricted to terrorists or terrorist organizations in a certain country or territory. The spirit is to combat financing activities by terrorists or terrorist organizations through joint efforts in the international community. Miss NG's amendment cannot fully reflect the requirements contained in UNSCR 1373.

Thirdly, clause 7(2) proposed by Miss NG states that no prohibition should be made in respect of a person making funds or financial services available to activities or groups not involved in terrorist acts to facilitate advocating democratic government or the protection of human rights or promoting or providing humanitarian relief or assistance. In this connection, I wish to reiterate that the aim of the Bill is to cut off funding sources of terrorists. The Government will never suppress activities organized by non-government organizations in the name of anti-terrorism. People or organizations that carry out lawful activities referred to by Miss NG will not be classified as terrorists and the relevant activities will not be regarded as terrorist acts. Thus, the Bill will not prohibit any person from providing funds to these people or organizations. Put simply, the Bill does not empower the Government to restrict or prohibit lawful civic activities. Therefore, Miss NG's amendment is not necessary.

Lastly, the amendment proposed by Miss NG allows the making available of funds to or for the benefit of any person specified in the notice or an order published in the Gazette as a terrorist or a terrorist associate for the purpose of feeding, clothing or housing, satisfying the medical needs of such person or for the purpose of obtaining legal advice, and so on. As I said in my earlier response to Miss NG's amendment to clause 5, Miss NG's amendment will create a great loophole in the law, making it possible for law-breakers to freely make available funds to terrorists to be used on terrorist activities in the name of expenses for humanitarian or legal purposes. For example, under Miss NG's amendment, law-breakers holding funds that can be made available to terrorists or for terrorist activities may claim that most or all of the funds are to be used to cover medical or legal expenses, which can be colossal. Then, the Secretary for Security cannot exercise the power to freeze the funds and the relevant provision becomes useless.

In fact, the present clause 7 specifies that the Secretary for Security has the authority to grant a licence to make funds available to affected persons. I will later on move a new clause 14A to state that funds may be used on reasonable living expenses and legal expenses. The amended clause 16 will specify the appeal mechanism for appeals made by dissatisfied affected persons to make applications to the Court of First Instance to vary the terms of the licence.

Thus, we have considered the situation mentioned by Miss NG. Other members of the Bills Committee also agree with the amendment proposed by the Government.

Madam Chairman, can I explain that proposed amendment now? Shall I explain it later, or shall I do it right now?

CHAIRMAN (in Cantonese): Secretary, under the Rules of Procedure, you may explain later in moving the motion formally. However, if you wish to continue speaking and for the sake of a more efficient meeting, I will allow you to explain now the amendment you are going to move.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, then I will explain it now in passing.

Madam Chairman, I will later on move an amendment to clause 7 later, as set out in the paper circularized to Members.

Clause 7 states that "for the purposes of this section" the Secretary for Security may grant a licence. During the process of the scrutiny of this Bill, legal experts pointed out that the meaning of "for the purposes of this section" is not clear enough and suggested that the phrase be deleted. We agree with the suggestion to make the provision more concise.

The amendment to delete that part was discussed and endorsed by the Bills Committee. I implore Members to support the amendment.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by Miss Margaret NG and the Secretary for Security's amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR LAU KONG-WAH (in Cantonese): Madam Chairman, I would like to focus on clause 7(2) in Miss Margaret NG's amendment. As a matter of fact, there is really no such need for it, because the amendment proposed by Miss Margaret NG has mentioned that there will be no prohibition if no terrorist act is involved.

In my opinion, words like "democracy", "human rights" and "organizations providing humanitarian relief", and so on, have become a protective umbrella. If these are written into the clause, then the public may have a wrong impression that these organizations are related to terrorists and that is not necessary.

In fact, terrorists are so named because of their acts, not because of the names of any organization to which they belong. Even if words like "democracy", "humanitarianism" or "human rights" appear in the names of these organizations, the organizations will be subject to legal sanction if their activities fall in any one of the three definitions of a terrorist act, no matter how attractive their names may sound. So the consequence is clear.

Even if the persons or organizations used to be involved in democratic or human rights activities — Usama bin LADEN is one example and he has made a lot of remarks on democracy and human rights — but if their acts fit in with the three definitions of terrorist act, that is, they have caused serious harm to other people, then they are terrorists regardless of the things they did in the past.

MR ALBERT HO (in Cantonese): Madam Chairman, this provision is originally intended to empower the Government to combat terrorists, including making use of the intelligence they have obtained and curbing their source of funds. These are the most important points about that provision.

However, it can be found that there is more to the provision when it is read carefully. The provision imposes many obligations on the public, requiring them to act on their own initiative to find out who are terrorists, take monitoring actions and suspect people whom they have reasonable grounds to do so. If members of the public are so foolish as not to harbour suspicions when they should and make funds available to these people, then they will commit an offence regardless of whatever grounds they may hold.

Please note the wordings of this provision. A person specified as a terrorist does not violate the law, but on the other hand, a member of the public who makes funds available to someone whom he has reasonable grounds to believe is a terrorist commits an offence. And this so-called terrorist has not been specified in the Gazette. Would we not be too harsh if we do not endorse the amendment proposed by Miss Margaret NG? Just imagine how harsh it is on the public when they are imposed so many criminal liabilities for no reason.

Please read carefully. If the public are so unwary as to have made available funds to people who have not been specified as terrorists, but if these people turn out to be really terrorists, then irrespective of how these people spend the money, the public will have committed an offence as a result of the unwary and foolish act of making funds available to these people.

Thus the whole community is left with the obligation of surveillance. Not just in this clause, but also in clause 11, where it can be found that the public have the responsibility of providing information to the Government. So I think Members will be able to see how this Bill has imposed so many criminal liabilities on the public. This especially applies to clause 11 which we will discuss later. The public have previously not been imposed any obligation to report, but this Bill is doing precisely that.

As for this clause, the meaning is if the public are so unwary as to have made available funds to someone, and even if this someone has not been specified as a terrorist at that time, but if he turns out to be one, then the public will unfortunately be held criminally liable. So this clause is very harsh. If we do not put any restraints on it, then the scope of the clause will go far beyond the original intention of the UNSCR of curbing the sources of funds for terrorists, for this clause will really make the public at large be held criminally liable.

Therefore, I strongly request Honourable Members to support the amendment. It is only when the terrorist in question is specified by the Government or when the public should really have reasonable grounds to suspect and really know that the person receiving assistance is a terrorist, then in such circumstances, the person who supplies funds should be held criminally liable. The amendments have all listed out this requirement. So it would not really matter if the Government has not made the specification, people will only be deemed to have committed an offence if what they do meet the two requirements of having reasonable grounds to suspect and act knowingly. For if not, many innocent people may have to be held criminally liable.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Security, before I invite Miss Margaret NG to speak again, would you like to speak?

(The Secretary for Security indicated that she did not wish to speak)

MISS MARGARET NG (in Cantonese): Madam Chairman, I am aware that many Honourable colleagues are not at all familiar with this provision, for the time spent by the Bills Committee in deliberating on the Bill was very short indeed. However, I can tell Members that this provision is not unfounded. Madam Chairman, when we were deliberating on the Bill, many professionals thought that while an anti-terrorist law was important, they would be dismayed to see human rights affected for no reason. They also understood that the Government was pressed with the need to pass the relevant legislation within a very short timeframe. Thus within this short span of time, apart from members of the Bills Committee, our counterparts in the Government also worked very hard to facilitate the early completion of scrutiny of the Bill. I also discussed with them on many occasions about the amendments and I appreciate the time they spent so readily and willingly on these discussions.

Therefore, Madam Chairman, my amendment is not proposed with the slightest political intention at all. It is not an amendment based on any empty slogan, either. The focus is on some point of law which I think is sound.

Madam Chairman, I would like to respond briefly to some comments made by the Secretary. First, the Secretary said that the scope of the amendment was too narrow, for it was confined to those persons specified in the Gazette. However, for terrorists whom even the Chief Executive does not have any knowledge of, then would it be too harsh, as Mr Albert HO has put it, if the people are required to know of the existence of these terrorists?

Besides, if these people are indeed terrorists, I do not think the Secretary would be short of means to deal with them. For if the Secretary only needs to be aware of item (b)(i) under clause 2(1) on the definition of "terrorist property" which I tried to amend but without success, that is, "any other property consisting of funds that (i) is intended to be used to finance or otherwise assist the

commission of a terrorist act". That is to say, if any person uses funds to finance or assist terrorists in the commission of a terrorist act, even if these terrorists are not specified in the Gazette, the funds are considered as "terrorist property". Then the Secretary can invoke clause 5(1) immediately to freeze such funds. Thus the Government is not entirely without any means to deal with the situation. The only difference is that the member of the public concerned will not commit a criminal offence for such act, that is, he will not be held criminally liable.

Madam Chairman, some Honourable colleagues are of the view that the scope of my amendment is too narrow and that of the Administration is too wide. As a matter of principle, the solution is quite simple. In choosing a provision on criminal liability, we should choose one which has a narrower scope, instead of one with a wider scope, for it can be expanded when there is a definite need and ground in future for doing so. That would be better than expanding the scope for no justifiable ground and to narrow it later. In such circumstances, if clause 7 really includes a provision on "having reasonable grounds to believe", that is, an objective standard, then the persons concerned would be held liable. Therefore, there must be a clear definition on criminal liability. So we must choose a narrow definition as much as we can.

Mr LAU Kong-wah expressed the concern that clause 7(2) of my amendment is not necessary. He is of the view that with regard to human rights, there are many activities done in the disguise of human rights. But in the provision proposed by me, it is stated that only when the activities carried out are not terrorist activities that they will be protected. So they cannot cry wine but sell vinegar. If it is known that they are carrying out terrorist activities, they are no longer protected by clause 7(2) of my amendment.

Is the amendment really necessary? At first, I was not sure if it would be necessary. However, after listening to the speech made by Mr LAU Kong-wah, I do think it is necessary. He said that people should not be allowed to do anything they like under a sweet pretext or in the name of a democratic or human rights movement. However, it is precisely due to the fear of many who advocate democracy and human rights that some countries will suppress democratic and human rights movements in the name of anti-terrorism that such a demand is put forward.

Mr LAU Kong-wah cited the example of Usama bin LADEN. Bin LADEN used to say a lot about democracy and the rule of law. Now people who talk about democracy and human rights are often asked whether they are in

fact people like bin LADEN when they talk about democracy and human rights. That is why after listening to the comments made by Mr LAU Kong-wah, I feel that he has actually reminded me that the amendment to clause 7(2) proposed by me is really necessary.

Madam Chairman, I implore Members to support my amendment. Thank you.

CHAIRMAN (in Cantonese): Before I put the question on Miss Margaret NG's amendment, the Committee will please note again that if Miss Margaret NG's amendment is passed, the Secretary for Security may not move her amendment to clause 7.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Miss LI Fung-ying, Mr Henry WU, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-chi and Mr Frederick FUNG voted for the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr MA Fung-kwok voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 23 were present, five were in favour of the motion and 18 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 22 were present, 14 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 7 be amended, as set out in the paper circulated to Members.

Proposed amendment

Clause 7 (see Annex IX)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 7 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 8.

MISS MARGARET NG (in Cantonese): Madam Chairman, I hope there will be no problem this time. It is because I propose the amendment simply because clause 8 mentions twice the expression "has reasonable grounds to believe". I think, coming now to this stage, Honourable Members should know why I object to such wording. I propose to amend this into "believe on reasonable grounds". Let me say it once more. "To believe" is a subjective element and "having reasonable grounds to believe" is objective. My amendment is to include these two elements, that is to say, there must be a subjective belief and reasonable grounds. When talking about criminal liability, such a subjective element must be taken into account. Thank you, Madam Chairman.

Proposed amendment

Clause 8 (see Annex IX)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Clause 8 as it stands specifies that a person commits an offence if he provides or collects weapons to be supplied to a person whom he knows or has reasonable grounds to believe is a terrorist or terrorist associate. "Has reasonable grounds to believe" is an objective standard of proof. If a normal person becomes aware of important evidence and information, by common sense he should believe that a person is a terrorist or terrorist associate. This is a well-tested element that has been applied to many laws related to criminal offences. The Government thinks that it is similarly applicable to clause 8 of the Bill.

Miss Margaret NG proposes deleting "has reasonable grounds to believe" and substituting "believes on reasonable grounds". It is a switch to a subjective standard of proof. In other words, a person should not provide or collect weapons to be supplied to another person if he believes on reasonable grounds that he is a terrorist or terrorist associate. We disagree with the amendment proposed by Miss Margaret NG because "has reasonable grounds to believe" is an effective and reasonable standard of proof applicable to criminal offences and it should be retained. If the amendment of Miss Margaret NG is passed, there will be a loophole and the unruly elements can provide or collect weapons to be supplied to a terrorist without violating the law if he subjectively does not believe

that he is a terrorist or terrorist associate. So long as he says that he subjectively does not believe so, he can supply the weapons. Switching from objectivity to subjectivity will create a very big loophole. Then, the effectiveness of clause 8 in combating the collection of weapons by terrorists will be largely weakened.

MISS MARGARET NG (in Cantonese): Madam Chairman, I have the experience of pleading for my clients in court. But when many objective factors exist, even if the defendant says that he does not believe, the Court will think that cannot be a defence. So if it is said that objective conditions alone will constitute a criminal offence, that is absolutely incorrect. Moreover, if objective conditions are fulfilled, but the defendant says that he has not believed, then unless there is some very convincing reasons that make the Judge really believe that at that time the defendant did not believe it, otherwise, the defendant cannot hope to clear himself of his charge. Therefore, the situation which the Secretary has mentioned will not happen. I find it absolutely unacceptable that there is not even one defence for this objective element of crime. This is the point about my amendment and it is as simple as that. There are no changes other parts in the original proposal made by the Government, so I urge Members to support my amendment.

CHAIRMAN (in Cantonese): Mrs Selina CHOW, do you request for permission to speak?

MRS SELINA CHOW (in Cantonese): Yes, Madam Chairman.

CHAIRMAN (in Cantonese): I would invite Miss Margaret NG to speak in reply after you have spoken.

MRS SELINA CHOW (in Cantonese): Madam Chairman, Miss Margaret NG said that her amendment is simple. She thinks that there should not be any objective considerations and so she suggests to amend the part on "has reasonable grounds to believe" and change it to an onus of proof. I would like to point out that what we are discussing is the supply of weapons. The Court cannot allow someone to use "not knowing" or "not believing" as a defence for supplying weapons to terrorists despite the possibility of the existence of some objective grounds. So I would still support the original clause.

CHAIRMAN (in Cantonese): Miss Margaret NG, would you like to speak again?

MISS MARGARET NG (in Cantonese): Madam Chairman, I feel sorry that the chances of Mrs Selina CHOW and I sharing similar views are becoming fewer and fewer. We have one such precious chance when deliberating a bill concerning the combat of money laundering. Even Mrs Selina CHOW agreed that if there was merely one objective standard, it would be improper if no defence was allowed. Based on the same principle, selling ice lollies will be the same as selling weapons. This is because selling weapons is in itself not unlawful. The crux of the question only lies in the fact that those weapons are supplied to terrorists. Therefore, there must be a subjective element. Without a subjective element, we should at least allow a defence. I think Mrs Selina CHOW has failed to follow our past practice of striving to reach a consensus, despite the very limited room. I hope she can change her mind.

MRS SELINA CHOW (in Cantonese): Madam Chairman, whenever onus of proof is involved, we must consider, as pointed out by Mr James TO earlier, in what context the relevant provision will apply. We were talking about employees in financial institutions when deliberating the bill related to combat of money laundering. Now we are talking about persons who supply weapons to terrorists. With different targets, the standard of proof will naturally differ. We are now trying to combat terrorist activities and terrorists; we should naturally do our utmost to ensure there is no weakness for exploitation. This is because terrorists are extremely dangerous. Not only are they pervasive, they have enormous power and extensive networks as well. Therefore, our standard can be set higher. In the event there are only reasonable grounds, should we exculpate a suspect merely because he insists he does not believe? What we were talking about was the sales of weapons under certain circumstances. Now we are talking about the supply of weapons to terrorists.

MISS MARGARET NG (in Cantonese): Madam Chairman, a terrorist will not identify himself as a terrorist on his forehead. We all agree that terrorists are extremely hideous, intelligent and pervasive. It is just normal for an ordinary weapon vendor to be unable to tell he is a terrorist. Madam Chairman, we have to be careful when convicting minor crimes. So why can we allow people to be easily "caught" when it comes to serious crimes? What we should actually do is just the other way round. For minor crimes, they can be dealt with speedily through summary procedures because the price paid will not be very high. But

we still need to handle the matter carefully, not to mention serious crimes punishable by years of imprisonment. Madam Chairman, I really find it impossible to carry on with my speech.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Miss LI Fung-ying, Mr Henry WU, Dr LO Wing-lok and Mr IP Kwok-him voted against the motion.

Mr Eric LI abstained.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-Chi and Mr Frederick FUNG voted for the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr MA Fung-kwok voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, five were in favour of the motion, 16 against it and one abstained; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 21 were present, 13 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 8 stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 9.

CHAIRMAN (in Cantonese): Both the Secretary for Security and Miss Margaret NG have separately given notice to move amendments to clause 9 of the Bill.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I will first call upon the Secretary for Security to move her amendment.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 9 be amended, as set out in the paper circularized to Members.

The purpose of clause 9 is very clear and simple. It prohibits a person from recruiting another person to become a member of a terrorist organization or from becoming a member thereof. During the scrutiny of the Bill, some Members and legal experts pointed out that the wording of clause 9 was not clear enough regarding the requirement "A person shall not recruit another person to become a member of a person specified in a notice" and that the public would find it difficult to tell under what circumstances a person would be recruited as a member of another person. Moreover, the clause states that a person shall not begin "to serve in any capacity with" a terrorist organization. This would cover a scope that is too wide and would unnecessarily involve many people who are completely unrelated to terrorist organizations. For instance, a cleaning company may carry out general cleaning work for a terrorist organization but is in fact not a member of it.

We think this is a reasonable comment and so propose an amendment to clause 9, stating clearly that a person shall not recruit another person to become a member of a body of persons who are terrorists, rather than recruiting another person to become members of another person. And a person shall not become a member of a terrorist organization, rather than of another person. In addition, we have deleted "to serve in any capacity with" to make the provision clearer.

As regards Miss NG's amendment, I believe Members would have noticed that our amendment proposes that when a person knows or has reasonable grounds to believe that the body of persons is specified in a notice or order in the Gazette, the person shall not recruit another person to become a member of or shall not become a member of the body of persons. Miss NG's amendment proposes deleting "has reasonable grounds to believe". As I said, this is not appropriate because the intention of stating the element of "has reasonable grounds" is to establish an objective standard of proof whereby an ordinary person will, with reasonable evidence and other information, have reasonable grounds to believe that a certain body of persons is an organization specified in a notice or order in the Gazette. If this objective element is deleted, unruly elements may readily and lawfully recruit members for terrorist organizations on the pretext that they do not know a certain terrorist organization belongs to the body of persons specified in a notice or order in the Gazette.

Some Members may ask whether retaining "has reasonable grounds to believe" will lead to the Government using some crude evidence as a ground to accuse some people of being a body of persons specified in a notice or order in the Gazette to be a terrorist organization. In this connection, I wish to explain that under principles of criminal prosecution, the Government as the prosecution must prove beyond reasonable doubt to the Court before a conviction can be achieved. Some scattered and weak evidence cannot support a prosecution. In fact, the objective standard of proof for having "reasonable grounds to believe" can be found in many Ordinances that have proven to be effective, such as the Organized and Serious Crimes Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance. The standard is not a new standard tailored for this Bill.

For the above reasons, we think the amendment to clause 9, as proposed by the Government is sufficient to effectively tackle recruitment of members by terrorists, without implicating the innocent.

Proposed amendment

Clause 9 (see Annex IX)

CHAIRMAN (in Cantonese): I will call upon Miss NG to speak on the amendment moved by the Secretary for Security as well as her own amendment.

MISS MARGARET NG (in Cantonese): Madam Chairman, my amendment differs from the amendment proposed by the Government in two areas. The Secretary has actually pointed it out already. First, I propose to delete "has reasonable grounds to believe". Madam Chairman, I have repeated this point a number of times before. There is no need for me to repeat it again. I guess those who have decided not to support my amendment will not change their mind. As for my supporters, it is unnecessary to explain to them once again.

However, I would like to say a few words on the second point. It is provided that not only do we need to know for sure the organization has been specified in the Gazette, we need to know it is actually the one we have joined. For instance, Al Qaeda is already specified in the Gazette, but I merely know I belong to a certain club. I know that Al Qaeda has been specified in the Gazette, but I am not aware that it is "the" Al Qaeda. Therefore, it must be provided for clearly. Actually, the English version of the provision is very clear. Let me read out clause 9(1), as amended by the Government:

"A person shall not -

- (a) recruit another person to become a member of; or
- (b) become a member of,

a body of persons (including individuals), whether corporate or unincorporate, who the first-mentioned person knows or has reasonable grounds to believe is specified

That is, he believes the organization is specified. I have proposed to amend it to "knows to be the body of persons specified". In other words, one must know it very clearly, not merely the fact that the organization is specified in the Gazette. This is because I might have seen it without noticing it. I have to know the organization I join is the one specified in the Gazette. As Members should all be aware, terrorists are insidiously clever and pervasive, and they have many ways of cover-up. Therefore, it must be stated very clearly here. I hope Honourable Members can support my amendment, rather than the one proposed by the Secretary, because I have only added some elaboration.

CHAIRMAN (in Cantonese): Members may now debate the amendment moved by the Secretary for Security and Miss Margaret NG's amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MISS CYD HO (in Cantonese): Madam Chairman, clauses 6, 7 and 8 will lead to the involvement of other people. After listening to our views, the Secretary agreed to add the principle that it does not constitute a criminal offence unless with knowledge that the groups involved are terrorist in nature.

We would actually like to add a similar principle to clauses 6, 7 and 8. Unfortunately, the Government has only agreed to add this principle to clause 9, but not to clauses 6, 7 and 8. This is most unfortunate. It is generally thought that only people armed with weapons and involved in massive killings of innocent people can be considered as terrorists. This is not true. As pointed out during the discussions on clause 8, the precursors of weapons may be manufactured, processed and caused into possession by commercial and industrial undertakings. It does not necessarily involve guns. For these reasons, I very much hope Honourable Members can support Miss Margaret NG's amendment. I guess Members will also support the Government's amendment. We will be very pleased to see the passage of this amendment too.

I would also like to point out that it will not be right if we fail to add the principle to these few provisions, even though we know very well the extensive implication of these provisions.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Mr LAU Chin-shek, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-Chi and Mr Frederick FUNG voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 40 Members present, 20 were in favour of the motion and 19 against it. Since the question was not agreed by a

majority of the Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): Miss Margaret NG, you may move your amendment.

MISS MARGARET NG (in Cantonese): Madam Chairman, I move that clause 9 be amended, as set out in the paper circularized to Members.

Proposed amendment

Clause 9 (see Annex IX)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-Chi and Mr Frederick FUNG voted for the motion.

Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr NG Leung-sing, Mr YEUNG Yiu-chung and Mr MA Fung-kwok voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, five were in favour of the motion and 17 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 21 were present, 13 were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

CHAIRMAN (in Cantonese): As both amendments have been negated, I now put the question to you and that is: That clause 9 stand part of the Bill.

MISS MARGARET NG (in Cantonese): Madam Chairman, the two amendments have been negated. However, the original clause 9 as contained in the Blue Bill will not serve any purposes because clauses 4(1) and (2) are mentioned therein. Subsequent to the passage of the amendment moved by the Secretary to clause 4 earlier, its meaning has been changed. In order to solve this problem, Honourable Members can only negative this clause. Should the Government find it necessary to prohibit persons specified in the notice from carrying out recruitment in future, an amendment should be made to add another provision to that effect.

CHAIRMAN (in Cantonese): Honourable Members, I now suspend the meeting for 15 minutes to allow Members and officials to consider the implications of the decision made earlier on the Bill. The meeting will be resumed in due course.

7.21 pm

Meeting suspended.

8.00 pm

Council then resumed.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, since the two amendments to clause 9 of the Bill were negated during the Committee stage a moment ago, which has caused the existing clause 9 of the Bill to be inconsistent with the provisions passed earlier in the Committee stage, therefore a technical amendment is necessary. Madam Chairman, I beg you to grant me leave to move an urgent technical amendment and dispense with the notice of amendment under Rule 57(2) of the Rules of Procedure, with a view to making the provisions under clause 9 to be consistent with the provisions passed earlier.

Madam Chairman, by the way, I would like to apologize for the prolonged suspension of the Council meeting since we had to deal with some technical problems. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Secretary for Security, you have my leave to move an amendment to clause 9 without notice. (*Pause*) Secretary for Security, would you please explain why the amendment about to be moved is purely technical?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, this is a purely technical amendment. Miss Margaret NG and I have similarly proposed an amendment to clause 9. The amendment proposed by me makes reference to clause 4A passed earlier. Now that the new clause has been added, clause 9 makes reference only to clauses 4(1) and 4(2), which is technically incorrect for it is necessary to mention the order specified under clause 4A(2).

A Member has just suggested that clause 9 would be unnecessary but I find it unacceptable. Clause 9 introduces a new criminal offence and is formulated to implement the United Nations resolution. It would be a great pity to leave out this clause after we have made such efforts to pass so many provisions today. We would fall short of success for lack of a final effort and be unable to implement the United Nations resolution. Therefore, I wish to promptly move the technical amendment to make the provision consistent.

CHAIRMAN (in Cantonese): Honourable Members, as the texts of the relevant amendment have just been distributed, I will now suspend the meeting for you to go through the texts of the amendment, and it may take you 15 minutes.

Honourable Members, the Secretary for Security cannot distribute the texts of the amendment to you before I have given her leave to move her amendment. The texts of the amendment are now being distributed, the English version would be distributed first, to be followed by the Chinese version.

I now suspend the meeting for you to consider the amendment.

8.03pm

Meeting suspended.

8.30pm

Council then resumed.

CHAIRMAN (in Cantonese): Honourable Members, I believe you have had sufficient time to go through the amendment and the Secretary for Security and several Members had discussed it while the meeting was suspended.

The Secretary for Security has decided to withdraw the amendment. Thus, we are going to consider the original clause 9 of the Bill.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That clause 9 stand part of the Bill. Does any Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I wish to make a brief explanation.

Just now I have held discussions with your good self and several Members, including Miss Margaret NG and a few representatives from different political parties. They were aware of the consequence of the withdrawal of the amendment which I consider purely technical, that is, it will cause discrepancy between some provisions under clause 9 and the provisions just passed in the Committee stage. Earlier, clause 4A was passed during Committee stage, but now clause 9 will make no reference to clause 4A.

Nevertheless, Miss Margaret NG also pointed out that if my amendment is passed, the discrepancy would be eliminated, but certain wordings that should not appear in clause 9, such as the term "in any capacity", would not be amended. This the Government agreed. For the sake of fairness, no amendment should be made by anyone. However, the result is that if clause 9 is passed, then there will be discrepancies between that clause and the previously passed provisions. Nevertheless, we all agree that the problem is not that serious, as there is adequate time for us to propose amendments in the next Legislative Session.

MISS MARGARET NG (in Cantonese): Madam Chairman, I would like to give a brief response only. I welcome the Secretary's withdrawal of her amendment. Now that the provision still reads all right to me, only that the wordings we previously agreed that should not be allowed to exist, that is, the holding of a post by a specified member in whatever capacity, are still there. Nevertheless, this is applicable to clauses 4(1) and (2) only, that is, terrorists specified by the relevant committee of the United Nations.

Madam Chairman, even if the Bill is passed today, it will only take effect on a date to be specified by the Secretary for Security. Since there are a lot of things, such as the enactment of subsidiary legislation, to be done before the Bill can take effect, the Secretary may perhaps consider proposing an amendment at that time to make the provision consistent with other provisions. I will definitely try my best to co-operate.

MS AUDREY EU (in Cantonese): Madam Chairman, I would like to point out that the problem with clause 9 of the Blue Bill is not merely confined to its inconsistency with the provisions already passed. There are some problems which are more serious than that. The amendment moved by the Secretary to clause 9 earlier has actually made some improvement. Examples are such wordings as "knows or has reasonable grounds to believe". Even the Secretary agreed that this should be preserved in her amendment to clause 9, though the clause was subsequently negated. Furthermore, the original clause 9 contains some strange wordings, such as the part concerning prohibition on a person from recruiting another person to become a certain member. It has been pointed out by the Bills Committee that this is not grammatically correct and a weird effect will be created too. It was based on this reason that the Secretary proposed changing "member" into an "entity" in her amendment. Now that we are called upon to vote on clause 9, but the awkward wordings still remain. I therefore hold that the problem is not merely confined to inconsistency of the provisions. Clause 9 is still flawed in many aspects.

MISS EMILY LAU (in Cantonese): Madam Chairman, may I ask the Secretary, now that the situation is so unsatisfactory, if the Secretary would let the Ordinance come into operation after making amendments when the Council resumes in October rather than letting it come into operation at once upon passage? Would the Secretary let the Ordinance come into operation at once upon passage despite the situation is unsatisfactory and there is something wrong with the Bill?

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR ALBERT HO (In Cantonese): Madam Chairman, clause 9 should not stand part of the Bill as both Miss Margaret NG and Ms Audrey EU pointed out earlier that there are a lot of problems with the original text of the provision. We must face the reality if it is not satisfactory. I hope the Government can, when submitting it to this Council in the next Session, fill this gap expeditiously. We should not force ourselves to pass a provision that is not only textually problematic, but also inconsistent with other parts of the Bill. We will therefore vote against it.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR LAU KONG-WAH (in Cantonese): Madam Chairman, although things are not so satisfactory now, clause 9 is basically part of the UNSCR 1373, so it would not be satisfactory if this part is taken out. As we will begin the second stage of our deliberations soon, we will vote in favour of clause 9.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MRS SELINA CHOW (in Cantonese): Madam Chairman, the Liberal Party thinks the same way too. Members should know what voting inclination would lead to what consequences in making their decision. If a provision is found to be problematic after voting is made, the Government will need to address it. It may probably need to make further amendments too. We will not allow the Government to introduce amendments today if discussion on the contents of the provision is warranted. In the opinion of the Liberal Party, it is better to keep this provision intact and improve it further at a later date. This is somehow better than having no provision concerning recruitment at all.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I agree with Mrs Selina CHOW and Mr LAU Kong-wah that though the fact that the two amendments have been negated will result in certain inadequacies in the provision, operationally, there will not be any great problem. Only terrorists or terrorist organizations specified by the United Nations will be quickly specified after the legislation comes into effect, the specification of other terrorists or terrorist organization that is subject to court order will not take place very soon for the Court also has to draft its own rules. Therefore, there will not be any operational problems in the short run. As such, we think we can deal with this matter in our next round of scrutiny and there is no need to delay the effective date of this Bill or the effective date of clause 9.

I agree with Mrs Selina CHOW and Mr LAU Kong-wah that since we have the responsibility to give full effect to the resolution of the United Nations Security Council, there is no reason why the clause on criminalizing the recruitment of terrorists should be left out after we have worked so hard tonight. Though the wordings of this clause are not perfect, operationally, there should not be any problems.

MS AUDREY EU (in Cantonese): Madam Chairman, I feel extremely sorry for what the Secretary said just now. She suggested us to pass the provision simply on the grounds that we had been working very hard. She further added that the provision, if passed, is not expected to cause problems in operation, except for some minor defects with wordings. Nevertheless, I would like to raise a significant point and that is, the Secretary has virtually accepted the way the provision is originally drafted. In other words, an innocent person can be convicted. This also explains why the Secretary proposed to add such wordings as "knows or has reasonable grounds to believe" in an amendment proposed by her earlier. The version laid before us for passage does not contain such wordings. How can the Secretary tell us that this is just a minor defect and that there will be no operational problem? Without such a basic criterion as *mens rea*, it is really surprising that the Secretary dared to tell us that she anticipated no operational problems except for some minor defects, and she even urged us to pass the amendment on the grounds that we had been working very hard. I really find it hard to accept.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR JAMES TO (in Cantonese): Madam Chairman, I hope I can convince the Secretary. I agree with Ms Audrey EU that this has nothing to do with whether or not the provision is satisfactory. The crux of the problem rather lies in the possibility of the provision becoming a stringent piece of law. I previously thought the lack of appeal channels has made it impossible for the Government to deal with the list specified by the United Nations and, as a result, things were put on hold. However, some innocent people may probably be convicted by virtue of clause 4 if they are found to be in such mental condition and with such elements of thinking in accordance with the law book. We are actually enacting a very stringent piece of law, not just an imperfect one. There is a great difference between the two, and this is very important. In other words, we are enacting a draconian law.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

(The Secretary for Security indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 9 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Martin LEE, Dr David LI, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

Mr MA Fung-kwok abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 55 Members present, 32 were in favour of the motion, 21 against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Clause 10.

CHAIRMAN (in Cantonese): Miss Margaret NG, Mr Albert HO and Mrs Selina CHOW have separately given notice to move amendments to clause 10 of the Bill.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I will first call upon Miss Margaret NG to move her amendment.

MISS MARGARET NG (in Cantonese): Madam Chairman, my amendment seeks to delete clause 10 from the Bill, which is not the same as the amendments proposed respectively by the Democratic Party and Mrs Selina CHOW.

The reasons for moving my amendment are as follows: First, I agree with the initial position stated by the Secretary. Actually, the relevant Bureau has conceded a long time ago that this is not necessary. The promise made by the Bureau is important. Therefore, clause 10 should no longer be retained. Second, there is a substantial reason for doing this. The media will be the most vulnerable, though the relevant provision is not written in a way to target at them only. In spite of the fact that it is not going to be easy to incriminate a person, this provision will still stifle the freedom of speech. I therefore hold that it should not be retained.

The Law Society of Hong Kong also raised objection to this provision in its advice to the Bills Committee. Both Mrs Selina CHOW and Mr Albert HO of the Democratic Party hold it necessary to retain clause 10(2), a provision that has nothing to do with the spirit of the entire Bill indeed. Section 29 of the Public Order Ordinance can handle most cases. In the event that toxic and chemical substances are involved, it will be more appropriate to amend section 29 of the Public Order Ordinance, instead of retaining clause 10(2) in the United Nations (Anti-Terrorism Measures) Bill.

For the abovementioned reasons, I implore Honourable Members to support the deletion of clause 10.

Proposed amendment

Clause 10 (see Annex IX)

CHAIRMAN (in Cantonese): I will call upon Mr Albert HO and then Mrs Selina CHOW to speak on the amendment moved by Miss Margaret NG as well as their own amendments.

MR ALBERT HO (in Cantonese): To start with, the Democratic Party supports in principle the amendment moved by Miss Margaret NG to delete clause 10. Miss NG has already explained the relevant reasons, which are actually very simple. Insofar as clause 10(1) is concerned, under the existing law, as confirmed by the Government during the meeting, it is against the law for someone to perform the relevant acts. At present, we have laws in Hong Kong to deal with such acts. A person attempted a terrorist act earlier and he would therefore be prosecuted. As regards clause 10(2), we agree that if it is deemed necessary to legislate on the relevant acts, the relevant ordinances should be amended. The acts should not be treated as if they were terrorist acts. The Government has conceded that clause 10 is not meant to be a vehicle to ensure compliance with the UNSCR 1373. Therefore, there is no question about deleting clause 10.

In view of the possibility that Miss Margaret NG's amendment might be negated, we came up with a solution at the meeting, though it is definitely not the most satisfactory. In the event that clause 10 is retained, we hope to move an amendment. The problem facing us is: Under what circumstances will a person trying to communicate false information to threaten another person be considered breaking the law? He must have the intent of causing public panic or inducing panic in a section of the public, rather than merely causing panic to the person receiving the information. Therefore, I decided to move an amendment to this effect. My amendment to clause 10 is actually similar to the one proposed by Mrs Selina CHOW, with both English versions being virtually the same. Nevertheless, insofar as clause 10(2) is concerned, my proposed amendment is not as comprehensive as the one proposed by Mrs Selina CHOW, though our intents are alike. For the reasons I explained earlier, that is, Mrs Selina CHOW's amendment to clause 10(2) being more comprehensive, I think it is better for me to withdraw my amendment. In the event that Miss Margaret NG's amendment is negated, I hope Members will support the amendment proposed by Mrs Selina CHOW. If necessary, I will formally propose to the President to withdraw my amendment.

Thank you, Madam Chairman.

MRS SELINA CHOW (in Cantonese): Madam Chairman, the position held by the Liberal Party with respect to clause 10 is that it is necessary to deter false terrorist acts which may pose as a threat or induce in another person a false belief that a terrorist act has been carried out and subsequently cause the public to panic. Miss Margaret NG argued that such acts should be taken out from the Bill. In our opinion, this is not a good solution since it will be tantamount to giving a "green light" to such acts.

As stated by the Government, the original provision was too broad. In principle, it is possible to incriminate almost anyone for telling another person that a terrorist act has been carried out in a certain place. Even if the media are excluded, the man in the street might be incriminated, possibly for joking or telling lies, even though he does not have any influential power to cause public panic. My amendment therefore seeks to provide that a person will be incriminated only if he communicates to another person false information, thereby inducing in the latter a false belief that a terrorist act has been carried out, eventually leading to a panic in the public. I hope Members can support my amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MISS EMILY LAU (in Cantonese): Madam Chairman, I speak to support Miss Margaret NG's amendment to delete clause 10. I had meant to move a similar amendment because the Secretary had said the provision was not required for the fulfillment of the requirements of the relevant resolution passed by the United Nations. We were shown a table during a Bills Committee meeting in which it was listed clearly which provisions were meant to comply with which requirements. The only exception was clause 10. It was not designed for the compliance of any requirements.

A Member stated earlier that the Law Society of Hong Kong, the Hong Kong Bar Association and international judicial organs have agreed it is not essential to retain clause 10 and suggested that the clause be deleted. The Secretary also quoted the incident in which I twice received a letter containing powder therein. Yet it had not posed any problems to me. The matter was manageable. No panic had been caused to any people. Even if a similar incident occur again, I am convinced the existing mechanism can handle it. However, Mr TONG, the then Deputy Secretary for Security, raised objection and insisted that it was necessary to prove that a certain person had knowingly published false information. In my opinion, we will be encouraging the media

or the public not to ascertain whether the published information is true or not if we do so. They can thus publish whatever information they have received. This is fine to me. Actually, there is no need for us to argue. I do not know the reasons why the media referred to Chapter 1 of the Laws of Hong Kong. That is not enough. I used to work in the media. In my opinion, the relevant provision is not merely aimed at regulating the media. It is aimed at every one of us.

We have spent weeks deliberating the Bill. It is simply unnecessary for us to continue with our argument since the provision is not essential. Moreover, it is not required for the purpose of compliance with the resolution passed by the United Nations. The Secretary remarked an hour or so ago that there is one "extra" provision. The crux of the problem does not lie with whether we should hang 50 ornaments on a Christmas tree. It rather lies with the fact that we has spotted a redundant one on the tree. Even the Secretary has personally admitted that clause 10 is not essential since it is not required for the purpose of complying with the requirement of the United Nations, so why should we continue with our argument? We do not see the need for Hong Kong to enact such a provision at the moment. Numerous groups have unanimously appealed to us not to legislate to this effect. Yet the Secretary insisted to do so. It seems to me she is trying to find an excuse to quarrel. I do not want to quarrel. Madam Chairman, it is getting late. I would only like to remind the Secretary that she should be responsible for what she said. There is no question about the Secretary's determination to comply with the requirements of the United Nations. But why should a redundant step be taken? We do not see the possibility of a dangerous problem or scenario. There are numerous ways to prevent such things from happening. If such acts are to added to the Bill, many others can follow.

For these reasons, I oppose clause 10. It is easy for me to support the amendments proposed by two Honourable colleagues to clause 10. However, I have decided not to support their amendments since clause 10 is not essential.

MISS CYD HO (in Cantonese): Madam Chairman, I very much agree to deleting the entire clause 10. We were told by the Bureau during our discussions that it could be difficult to adduce evidence under clause 10. The provision has certainly made it clear that a person can only be incriminated unless there is proof. However, arrests can be made after such a provision is put in place. This will produce a deterring effect on the media. Should the authorities resort to prosecution indiscriminately, the one being prosecuted will have to spend much money on litigation. This is indeed a severe punishment.

In the light of our discussion, the Government introduced some amendments to clause 2 with respect to the part concerning interpretation by way of amending Part XII of the Interpretation and General Clauses Ordinance, which is on the seizure of news materials and entry into the premises of media organizations to conduct searches, in a bid to set us at ease. Nevertheless, such amendments can only provide minimal and fundamental protection for the source of news. Nothing has been done to allay our worries about clause 10(1). What happened to our discussion when it was decided that the part concerning the Interpretation and General Clauses Ordinance was to be added to clause 2? Madam Chairman, during the last 30 minutes when the last meeting of the Bills Committee was held, legal advisers from both parties made a verbal exchange of ideas in a bid to perfect the relevant wordings as far as possible. Should ample time be available for discussion, I trust the Bills Committee can do a better job. Actually, both the Hong Kong Journalists Association and the Hong Kong News Executives' Association have submitted their views to us. It is extremely regrettable that we had failed to arrange their representatives to attend the meetings held by the Bills Committee to reflect their views since time was running out. We can thus see that our deliberation work has been conducted in great haste.

Madam Chairman, I support Miss Margaret NG's amendment. Insofar as clause 10(2) is concerned, if the Government considers it necessary to legislate on such matters as the use of biochemical weapons and toxic chemical substances, it should do so by way of other ordinances. It is inappropriate for such matters to be handled in conjunction with the Bill, which is enacted in response to our decision to introduce a minimalist approach to comply with the UNSCR 1373.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR LAU KONG-WAH (in Cantonese): Madam Chairman, clause 10 is absolutely essential to the community of Hong Kong. The caption of clause 10 reads "Prohibition against false threats of terrorist acts". During the Second Reading debate, I stated that Hong Kong economy is dependent upon tourism, finance and logistics. False threats can cause confusion and panic in society, not to mention real ones. Are we going to tolerate such acts? This is the most crucial point. If we do not want to see anyone conducting such acts, or if we want to see people conducting such acts to be sanctioned by law, it will be necessary to add this provision to the Bill.

Madam Chairman, a Member asserted that we have not seen such things happen for the time being. Following this logic, does it mean such things will definitely not happen in future? As the Chinese saying goes, "Growing up in happiness, one often fails to appreciate what happiness really means". Let us look at what happened in the United States. Reports of anthrax incidents, be they genuine or false, have invariably caused alarm among the public. American citizens now live in fear every day. Hong Kong people are "virtually having no knowledge of misery". Even if the news is not true, the community will still be thrown into confusion as a result. In my opinion, the provision is essential.

Though Miss Margaret NG suggested that the relevant problem be dealt with in the Public Order Ordinance, I am of the opinion that clause 10(2) is definitely relevant to terrorism. Why can it not be incorporated into the Bill to make the latter more comprehensive?

As regards the amendments proposed by the two Honourable Members, Mr Albert HO has indicated that he will withdraw his amendment. There is certainly some difference between his amendment and the one proposed by Mrs Selina CHOW. I also agree that Mrs CHOW's amendment is more comprehensive and consistent with the realistic circumstances. I will therefore support her amendment.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): Mr Albert HO, do you wish to speak again?

(Mr Albert HO indicated that he did not wish to speak)

CHAIRMAN (in Cantonese): Mrs Selina CHOW, do you wish to speak again?

(Mrs Selina CHOW indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, first of all, I would like to clarify that I have not said that clause 10 of the Bill is unnecessary. In fact, I have reiterated repeatedly in the meetings of the Bills Committee that this provision is absolutely necessary. It is because since the September 11 incident occurred in the United States last year, there were over 70 false anthrax reports in Hong Kong and there were false reports of terrorist attack. Miss Emily LAU says that she is not afraid, she is very bold and I admire her, but all the newspapers in Hong Kong were reporting these false reports of terrorist attack every day then, it could cause widespread panic and fear. Many people had made enquiries with the authorities about the reports, and even postmen were scared when they were distributing mails. These incidents will surely cause panic among the public. It will also damage the reputation of Hong Kong and make people feel that Hong Kong is an "anthrax port".

If we delete clause 10 today, what consequence will arise? We will pass onto the public a wrong message and make them feel that the Legislative Council has studied the issue and decided that it is unnecessary to punish the persons who deliberately distribute false news of terrorist attack. Is it not tantamount to giving them the green light? Bomb hoax is an offence, deliberate dissemination of false information about terrorist attack is more serious than a bomb hoax, however, it is not an offence, what exactly is the rationale behind it? It is totally absurd. In the meantime, what kind of a message will the unruly elements get? If terrorist attacks of larger scale or dirty bomb incidents take place in the United States or Europe, some people in Hong Kong will do the copy-cat stuff and disseminate false information. How will it affect the stability of Hong Kong?

Some Members are concerned that the authorities may suppress the media by virtue of this provision. Please give me some time to explain it. Provisions under clause 10(1) are modelled on the existing provisions of the Public Order Ordinance concerning bomb hoax: "Any person who communicates any information which he knows or believes to be false to another person with the intention of inducing him or any other person to believe that a bomb or other article, substance" The wordings of the two provisions are very similar. The bomb hoax provision has existed in the Public Order Ordinance for over several decades, have the authorities ever framed the media with the provision? Never, it is very difficult even if the authorities wish to prosecute an ordinary member of the public. Actually it is very difficult for the authorities to initiate prosecution against such acts, therefore Honourable Members should not worry at all. We have studied the relevant legislation in major common law

jurisdictions, such as the United Kingdom, Ireland and Australia. All of them have similar provisions in place, therefore I consider the provision a must. Although this provision is not intended to fulfil the requirement of UNSCR 1373, I have stated that I hope the requirements of the resolution could be met by adopting the minimalist approach, and the term "minimalist" does not equal to the exclusion of introducing a provision which targets a possible problem of Hong Kong.

I have also stated that during the initial stage of the implementation of the resolution, a lot of countries have virtually passed many provisions on top of the requirements of the resolution in order to expand the powers of their governments against the terrorist threat. This is the only provision we have sought to add, and I think it is a very reasonable request. As for the amendments proposed by Mr Albert HO and Mrs Selina CHOW, we think the amendment proposed by Mrs Selina CHOW will cause the least changes to the Bill, which is the most acceptable amendment to the Government. Therefore, I have no objection to the amendment of Mrs Selina CHOW. Thank you, Madam Chairman.

MISS MARGARET NG (in Cantonese): Madam Chairman, I would like to respond briefly. The Secretary indicated that if clause 10 is deleted today, a very bad message will be sent to the community, that it is not necessary to regulate the act of spreading false news, or people with such behaviour are given a "green light". If the provision is unnecessary, then it is unnecessary. The existing legislation should be able to handle the relevant situation. If someone tries to break the law, the authorities can arrest him immediately. The Secretary should be perfectly assured that she can resort to legislation already enacted. As regards the Secretary's remark that some people are scared, I think they are scared not because there is no law that can prohibit people from spreading false threats. Rather it is because they fear such things might happen.

Madam Chairman, it was indicated by the Secretary that the relevant provision was not meant to target at the media. Mr LAU Kong-wah has lent me a helping hand for he said, "growing up in happiness, one often fails to appreciate what happiness really means". Will the authorities possibly allow the media to disseminate false news? It is evident that Mr LAU had tried to look at the provision with an open mind, though he later became sceptical that the provision was meant to target at the media. Mr LAU is a young Member. I still remember many years ago — I dare not count the years — when a

discussion was held on the Public Order Ordinance in this Council, the argument held by the government officials when debating a provision related to the dissemination of false news at that time was exactly the same as the one held by the Government to substantiate its request to add this provision to the Bill. The argument was, given that Hong Kong is a densely populated commercial city, its interest will be jeopardized if this sort of false news is disseminated among members of the public. At the end, the relevant provision was forced through this Council by the Government. After the lapse of one year, nothing happened and the provision was repealed. This proves that it is unnecessary to have such a provision in place.

Madam Chairman, however the Secretary interprets her own words, she should keep her words. I will therefore propose to delete the entire clause 10. Thank you.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss Margaret NG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr David LI, Miss Margaret NG, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Mr LAW Chi-kwong and Mr Michael MAK voted for the motion.

Mr Kenneth TING, Mr James TIEN, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kwok-keung, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Timothy FOK, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him and Mr LAU Ping-cheung voted against the motion.

Geographical Constituencies and Election Committee:

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr Albert CHAN, Mr WONG Sing-Chi and Ms Audrey EU voted for the motion.

Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mr Andrew WONG, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Frederick FUNG, Dr David CHU, Mr NG Leung-sing, Mr YEUNG Yiu-chung, Mr Ambrose LAU and Mr MA Fung-kwok voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 27 were present, six were in favour of the motion and 21 against it; while among the Members returned by geographical constituencies through direct elections and by the Election Committee, 27 were present, 13 were in favour of the motion and 13 against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negated.

CHAIRMAN (in Cantonese): As the amendment moved by Miss Margaret NG has been negatived, Miss Margaret NG may not move her amendment to clause 14, which is inconsistent with the decision already taken.

MR ALBERT HO (in Cantonese): Madam Chairman, I would like to seek your permission to withdraw my amendment.

MRS SELINA CHOW (in Cantonese): Madam Chairman, I move that clause 10 be amended, as set out in the paper circularized to Members.

Proposed amendment

Clause 10 (see Annex IX)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mrs Selina CHOW be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee, who are present. I declare the motion passed.

CLERK (in Cantonese): Clause 10 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 14.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 14 be amended, as set out in the paper circularized to Members.

Clause 14(3) provides that a person who contravenes a requirement under section 5(5) commits an offence and is liable on conviction to a fine and imprisonment, that is, he has not given a copy of the notice to the owner of the funds concerned. The Bills Committee proposes that if the holder of the funds concerned has reasonable grounds to explain why he has been unable to comply with the requirements of clause 5(5), such as for reasons of contractual restrictions, then it will not be an offence. We agree with the views of the Bills Committee and therefore propose an amendment to clause 14(3). As to the deletion of clause 14(8) and (9) and the consequential amendments to Schedules 2 and 3, taking into consideration the views of the Bills Committee regarding the provision on bodies corporate in clause 14(10) that the provision is vague in part, the Administration has proposed to delete the subclause. After the deletion, the issue of criminality of bodies corporate will be dealt with in accordance with section 101E of the Criminal Procedure Ordinance (Cap. 221). These amendments have been endorsed by the Bills Committee, I implore Members to support and endorse them. Thank you, Madam Chairman.

Proposed amendment

Clause 14 (see Annex IX)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 14 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 11.

CHAIRMAN (in Cantonese): Both the Secretary for Security and Miss Margaret NG have separately given notice to move amendments to clause 11 of the Bill.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 11 be amended, as set out in the paper circularized to Members.

The existing clause 11(1) provides that "where a person knows or has reasonable grounds to suspect that any property is terrorist property, then the person shall disclose to an authorized officer the information" In this regard, professions which would often deal with property or financial transactions, such as the banking, finance and accounting professions, have all expressed that the objective mental element of "has reasonable grounds" would impose an onerous burden on them when they carry out these transactions. It is because, according to the principle which the element of "has reasonable grounds to suspect", when a person in normal circumstances encounters some crucial information and evidence, suspicion would be aroused. In this regard, according to members from these professions, they have to deal with a large amount of transaction information in their daily work and when this is added to the different personal styles in handling things, there may not be any suspicion about the property concerned. But if the objective element of "has reasonable grounds to suspect" is added, this would mean that from the perspective of a third party, those in the sectors should have suspicions about certain properties and thus pressure would be exerted on those working in the sectors.

After considering this view carefully, I accept the argument presented by the sectors and propose to change "has reasonable grounds to suspect" to "suspects". That is to say, the objective element is removed and the sectors would have to report only when they suspect that some properties are terrorist properties. The sectors welcome this amendment. Amendment is also made to subclause (4) to delete "has reasonable grounds to suspect" and substituting "suspects" to bring the wording in line with the previous amendment. That is to say, if any person suspects that other people have disclosed the information of some properties to the authorities, the person should not disclose to any other person that report has been made on such properties, for this will affect the investigation being carried out.

As to other amendments proposed, they are meant to safeguard the operation of the relevant sectors or amendments of a technical or consequential nature. The first amendment is new clause 11(3A) which provides that if procedure has been established by the employer for the making of reports, an employee would be deemed as having complied with the requirements of

clause 11(1) if the person has acted in accordance with such procedure and disclosed the information to persons specified by the employer. The amendment has the effect of offering protection to front-line and basic rank workers. The sectors have agreed to this amendment. The second amendment is the addition of clause 11(5) to state clearly that the reference to "authorized officer" under clause 11 means a public officer authorized by the Secretary for Security to receive such reports as specified in clause 11. In practice this would mean the Joint Financial Intelligence Unit formed by the Customs and Excise Department and the Hong Kong Police Force.

The amendment proposed by Miss Margaret NG seeks to substitute "has reasonable grounds to suspect" by "suspects on reasonable grounds". To put it simply, this means that the suspicion must be reasonable. As far as I am aware, the sectors should have a clear test for report and one which is easy to understand and comply with. If only the employees have any suspicions, then they should report the case. The two criteria of "knows and suspects" are well-established ones. They are well understood in the operation of the sectors. This mechanism has operated smoothly for a long time, and if employees are required to meet a new requirement, that is, they will report only when they suspect on reasonable grounds, that would only add new pressures on them. I think Miss NG's amendment would cause inconvenience to the sectors.

Having said that, however, I would like to make use of this opportunity to stress again that in order to combat money laundering activities more effectively, the international trend is to change the mental element with regard to the disposal of proceeds from drug trafficking and other serious crimes and their disclosure, from "knows or suspects" to "knows or has reasonable grounds to suspect". The Financial Action Task Force on Money Laundering (FATF) is presently making a review of the 40 recommendations it has made for combat on money laundering. At the end of the day, it is likely that a recommendation will be made to its members, including Hong Kong, to adopt the mental element of "has reasonable grounds to suspect". As a matter of fact, many member governments of the FATF have adopted this mental element in offences related to money laundering.

Proposed amendment

Clause 11 (see Annex IX)

CHAIRMAN (in Cantonese): I now invite Miss Margaret NG to speak on the amendment moved by the Secretary for Security and her own amendment.

MISS MARGARET NG (in Cantonese): Madam Chairman, the Secretary has analysed the differences between my amendment and the Government's amendment very clearly. It is true that I demand that the suspicion be based on reasonable grounds. In other words, both subjective and objective elements are required. Madam Chairman, apart from clause 5, clause 11 is the most important provision in the Bill. This is because the application of this provision can be very broad. All citizens will bear the responsibility to report their suspicion for they might be criminalized if failing to do so. This is because the relevant provision reads: "Where a person knows". "A person" is defined in a very broad manner. The Secretary stated earlier that my amendment would only add to the anxiety of the sectors. What she meant is the anxiety of the sectors will be aggravated if my proposed amendment is accepted, though mine is more reasonable and less broad, or stricter, so to speak. I feel sorry that the provision requires that all citizens, not just the sectors, to bear the responsibility. Why should all citizens bear the responsibility? According to the Secretary, there is a need to do so internationally. Actually, this is not the case.

I have repeatedly stated and recited the special recommendation made by the FATF. Let me read it out once again: "If financial institutions or businesses or other entities subject to anti-money laundering obligations suspect, or have reasonable grounds to suspect". It should be noted that reports should be made only if there is suspicion, or reasonable grounds for suspicion. The fact that the expression "any person" is not mentioned in the special recommendation means that not every person is involved. The onus of responsibility is thus entirely different. May I ask why there is such a great difference? Why can we not amend the Bill to reflect that only financial institutions will be made to bear the responsibility?

We were told by the Government at that time that it was impossible for the Bill to be amended because the existing laws do contain provisions governing every person. The Government even cited such examples as the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance where there are such wordings as "Where a person knows". Nevertheless, we should note that the scope of these two Ordinances is entirely

different from that of the United Nations (Anti-Terrorism Measures) Bill under discussion at the moment. The first example is related to proceeds derived from drug trafficking or crimes. First, its scope is relatively narrow. It cannot be put in different contexts. Second, the Bill needs to be enacted because there is a need to do so in Hong Kong. In some cases, proceeds derived from drug trafficking might go to an individual. Whether there is a need for a law to be enacted remains uncertain. As regards anti-terrorism measures, how can we expect every person, whether he suspects or suspects on reasonable grounds, to know what property should be considered terrorist property?

Today, Madam Chairman, I raised the point hours ago (I have forgotten when) that the scope of terrorist property can be very broad. Can someone tell me how broad such expressions as "a person", "terrorist property" can cover? Why should we require every citizen in Hong Kong to bear such an important responsibility? If it is intended that only certain industries, such as the one represented by Mr Eric LI, not every citizen in Hong Kong, should bear this responsibility, why do we not tell the citizens clearly that there is nothing to worry about?

This explains why I find this point problematic. However, Madam Chairman, there is nothing I can do. As time is running out, we cannot change "a person" into "an institution", because we have to specify the institutions if we really want to change the wordings. As I explained during the Second Reading debate, how can I say which institutions will be incriminated offhand? It is impossible for any changes to be made now. In spite of that, we must endeavour to distribute criminal liability in a more reasonable manner. At least, subjective and objective elements must be incorporated into the provision.

Madam Chairman, I would like to move an amendment to clause 11(4). I do not know whether it is now timely to move the amendment since Members are now focusing on commenting clause 11. Clause 11 is really fantastic in the sense that subclause (1) provides for the making of report to the relevant authorities (or an authorized officer). Under subclause (4), however, where a person suspects that a disclosure has been made, he must keep this confidential. In addition, he must not disclose it to another person. He might be criminalized if the relevant investigation is prejudiced as a result of the disclosure. So under what circumstances should he keep silent on what he knows? Subclause (4) makes it clear that confidentiality has to be maintained if one knows or has reasonable grounds to suspect that a disclosure has been made. May I ask how

we can ascertain one has reasonable grounds to suspect if a disclosure has been made? No one actually knows when one will be held liable. For these reasons, I propose that the expression "has reasonable grounds to suspect" be deleted entirely. In other words, it is not enough for holding someone who has reasonable grounds to suspect liable. He must "know" that a report has been made, and in that case, he should be prohibited from disclosing what he knows to another person to prevent the investigation from being prejudiced. The provision is barely acceptable subject to these requirements being met.

For the abovementioned reasons, Madam Chairman, I would move two amendments. I hope Members can support them. Thank you.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR ALBERT HO (in Cantonese): Madam Chairman, throughout the entire Bill, I find clause 11 the most disturbing. This is because the spirit of the provision has truly deviated from our general principles. Under common law, members of the public are not liable to report certain crimes or crimes suspected to have occurred. Clause 11 should be considered a rare exception in our laws. I find it extremely worrying. This is the first point.

The second point is, every citizen will be made to bear the responsibility proposed in clause 11, which seeks to hold all citizens duty-bound to monitor terrorists and terrorist activities. We can thus see that a person who is aware of certain situations or terrorist activities will be held criminally liable should he fail to report what he knows. May I ask if there is really a need to do so? Do we really need this provision to make every citizen a watchdog? I really have great doubts about it.

An amendment has once been proposed by an international judicial organ. It was mentioned that if one deems it necessary to make a report, the report must be related to suspected terrorists or terrorist activities. The wordings employed were "must be in possession of some property". The provision in question is not drafted like this, probably because of the time constraint. Neither have we examined in detail what possessed property really refers to. Must it be terrorist property? No matter how the provision is drafted, I am still worried by an undesirable exceptional scenario when the provision is put into implementation.

As a result, every citizen will be required to bear the responsibility to monitor terrorism, as I mentioned earlier. The amendment proposed by the Secretary has slightly improved the situation for at least it is stated clearly that an employee shall be deemed to have fulfilled his obligation as long he has disclosed what he knows to an overseer. Nevertheless, I still hold the view that the provision should be tightened. Actually, I can perceive that this provision is very likely to target mainly at some professionals since they might have the chance to come into dealing with terrorist property. Can the Government confine the provision to certain financial institutions or professionals by some other means?

Ms Audrey EU once suggested the Government to consider using codes of practice. It has indeed been the practice of the Hong Kong Monetary Authority, the Hong Kong Association of Banks, and individual professions to implement guidelines through their codes of practice. Can the desirable results be achieved in this way? I think we can consider this idea. The results might be even more effective.

Under such circumstances, I find it impossible to support clause 11. Even though the provision might really be discussed and implemented in future, any eventual amendments may still be far from adequate. I believe a lot of places need to be tightened if we really need to enact a provision similar to clause 11, in order to fulfil our obligations to the United Nations. I would like to raise the point in advance that we definitely need to revisit clause 11 when a bill is submitted in the second phase to see how it can be tightened. Of course, this is not confined to clause 11. However, as I mentioned before, clause 11 is one of the provisions with profound implications.

On the other hand, the professional privilege of the legal profession will also be affected. However, the problem has been resolved in clause 2, and the scope of implication is very small too. After the passage of the Bill, every citizen will bear huge responsibility. This is what we must address. Therefore, I hope Honourable colleagues can vote against clause 11 standing part of the Bill.

MISS CYD HO (in Cantonese): Madam Chairman, it is true that I feel something was beyond my reach while I took part in the debate on the Committee stage amendments. Miss Margaret NG was actually out of town when drafting her amendments. She had to rely on the diligent staff of her office who helped

send the latest amendments prepared by the Government to her and receive the amendments she sent back. We have all tried our very best to carry out the scrutiny work. I think this provision should be re-drafted if we can come up with other suggestions or found time to deliberate it carefully. What we can do now is to provide the groundwork and make sure the provision is not too bad.

As pointed out by Mr Albert HO just now, the provision actually seeks to ask every one of us to bear the reporting responsibility. To start with, I find its scope of implication most disturbing. Subsequent to clauses 6, 7, 8 and 9, as well as the possibility in which people can be implicated as provided for in other provisions, terrorists will be isolated and detached from the rest of society. Let me repeat, they will feel "even worse than dead". The addition of this provision will turn all people into informers on terrorists. I have the feeling that we are going back to the old days when certain movements were staged on the Mainland, in which implication, report, destruction of mutual trust between people caused the entire society to collapse. People could no longer build up mutual trust.

The application of the provision can almost be described as ridiculous. It is not stated clearly as to how people "know" as appeared in "where a person knows". What happens if the news is disseminated by the media? Let me tell a joke. Hundreds of thousands of people might "know". Should they report to the police? Will there be enough police manpower or authorized officers to handle the reports?

The Secretary will definitely tell us not to worry too much and not to let our imagination go too far. I think this can really happen. While clause 10 provides for the prohibition of the media to disseminate false news, this provision requires people to disclose what they know. There is also another provision demanding confidentiality. Madam Chairman, I really have no idea whether there are any conflicts between these provisions if they are read together, and whether concurrent compliance can be possible.

Madam Chairman, I support Miss Margaret NG's amendment with great reluctance. My reluctance stems from our agreement that her amendment has not gone far enough, not because she has not done a good job.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR ERIC LI (in Cantonese): To start with, Madam Chairman, on behalf of the accountancy sector, I would like to thank the Government for moving its amendments. As the legislation on combating money-laundering activities has already been discussed, I would not repeat our arguments here. The Government's amendments seek mainly to make the anti-terrorism legislation consistent with the anti-money laundering legislation. The former is certainly new to us; the latter has however existed for a considerable period of time. Various professions have actually formulated and implemented their own codes of practice for quite some time. This explains why the Secretary said earlier that we have grown relatively accustomed to them. Judging from that angle, we are supposed to be pleased to accept Miss Margaret NG's amendment. I can also see that she is doing it out of good intentions. To a certain extent, her proposal can help relieve our workload. It is indeed hard for us not to welcome her idea. Moreover, the onus of proof is an even harder issue. From this angle, we can see what is good to us. However, as pointed out by a number of Members, due to the shortage of time for scrutiny, we have been unable to give careful consideration to certain areas.

As regards Miss Margaret NG's amendment, I would like to say a few words on the areas I think we must consider carefully before we can indicate our support or disapproval. First, the Bills for combating terrorism and money-laundering activities are drafted in the same manner. From our experience, it is often hard to draw a line between money-laundering property and terrorist property. If the two Bills are drafted differently, whereas the property dealt with by us is found to fall in between the two, are we going to adopt two different sets of standard or guideline? Will it lead to confusion, misunderstanding or undue complication in the profession? We must therefore first look at the matter carefully.

The second point is concerned with the amendment. Some provisions in the anti-terrorism legislation are going to have particularly profound impact on professionals and employees in the profession for reporting under the provisions can immunize us against possible civil lawsuits by our clients. Should the provisions remain in its present form, we will easily be tempted to invoke the legislation for the purpose of protecting ourselves. This is because we are supposed to report what we believe or know. However, if the objective element of "reasonable grounds" is added, we will need to examine the matter very carefully. Yet we have not had the chance to examine what the so-called "reasonable grounds" really means. Will it be possible for our clients to sue us

on "reasonable grounds"? For instance, if we really report on one of our clients, he will ask: "Did you have reasonable grounds to report me? If not, I will sue you." Under such circumstances, the problem might become even more complicated. As a result, the protection we enjoy in law when making the report will diminish. To a certain extent, this is something good. However, we can also see that problems might arise. Given the lack of time for scrutiny, and coupled with the fact that we have not been able to examine the provisions in detail and seek legal advice, we find it very difficult to decide whether the result will turn out to be good or bad. As pointed out by Miss Cyd HO, it might not be possible for us to gain a full picture and have a thorough understanding if several provisions are read together. Judging from the two angles mentioned earlier, though I accept that Miss Margaret NG's amendment is well intentioned, and can even make life easier for us, I can hardly give her concrete support at this stage.

Miss Margaret NG, Mr Albert HO and Miss Cyd HO raised the same question concerning whether the ordinance should cover "every person". It is indeed very reasonable for them to do so. Just now, Miss Margaret NG raised another proposal of confining the provision to the accountancy sector. I was so shocked that I nearly fell from my chair. (*Laughter*) The introduction of the anti-terrorism bill instantly lifted the spirit of the sector. The Secretary should be aware of this since we were going to dispute her arguments. Of course, I was somewhat joking in making the remark. The sector is indeed prepared to bear a certain degree of social responsibility. In conclusion, we will be willing to consider if the amendment to the Bill can take into consideration all grounds or the due responsibilities of various professional sectors. The amendment must not give us the feeling that a certain profession is being targetted by a certain provision, and that something terrible will happen if members of the profession do not act accordingly. This is definitely not what we want. I believe it is worthy for us to consider such amendments or reviews if all professions, such as lawyers, chartered secretaries, boards of directors, and people related to corporate governance or those who may possibly come into dealing with such property, are covered.

Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Madam Chairman, I trust there will be a second wave to the Bill. I hope the Government can reconsider the matter so that there can be a direction to follow if a review is truly conducted in future.

First, the Bill and other laws have something in common. There is one scenario we might need to think over again. What will happen if the Organized and Serious Crimes Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance are applied to the media? Clause 10 of this Bill is related to the media, so what is the case with clause 11? It is conceivable that the media often search everywhere for sources of news to substantiate their reports. Yet they are not obliged to report to the Government even if they discover a murder case. Nevertheless, as a good citizen, every one of us should respond to the appeal made by the television programme "Police Report" by reporting crime to the police in order that the culprits can be brought to justice. Yet we must note that the media have no statutory responsibility to report. Neither will they be convicted and jailed even if they choose not to do so. It is also conceivable that newspapers, electronic media, and weekly magazines are not allowed to report what they happen to dig out because they are not supposed to reveal the truth of everything they know. They can only report what they know to the police. Furthermore, they cannot publish the related stories after the report has been made. To a certain extent, the media act like a spy for the Government when they dig out the dark side or truth of society. They must report what they know because they are covered as well. Should the media be exempted? Of course, it will be argued that if the media publish information concerning money laundering activities or terrorist property immediately after it is known to them, the offenders or terrorists will definitely run away. This makes it impossible for the police to bring the offenders to justice quickly. If the media choose not to do so, however, they may run into conflicts with their fundamental duties. I hope the Government can reconsider the matter.

Secondly, many Honourable colleagues share the view that members of the community will feel insecure if this provision is passed. I can provide some information concerning the Drug Trafficking and Organized Crimes Ordinance, that is, the one passed this morning after a 20-month deliberation period. We were told by the Government that a number of prosecutions had been made over the past 11 years. However, only one prosecution was successful since the offender had pleaded guilty. If the offender pleaded not guilty, the Government might end up having nil successful prosecution. According to the Government, it is very difficult to prove "believe" or "suspect". Should the relevant legislation remain unchanged, provisions making use of these elements can be described as practically useless. This is what the Government said in a certain Bills Committee meeting. I was reminded by Mr Albert HO that it was supposed to be a tragic thing for any person to be prosecuted, arrested or

suspected. However, the crux of the issue is that, as pointed out by me several hours ago, it is most important for us to let the United Nations know progress has been made in this aspect.

MS AUDREY EU (in Cantonese): Madam Chairman, it is really funny sitting here listening to all those speeches delivered by Honourable colleagues. However, I cannot laugh because people outside this Chamber might be teasing us. I hope Honourable colleagues can reflect on what they have done. A moment ago, we voted in support of the resumed debate on the Second Reading of the Bill. Now it seems like we have returned to the Bills Committee stage when the Bill was being deliberated. It is really surprising that we could still find some colleagues standing up and explaining at this stage why certain amendments were needed. Some colleagues (they are all members of the Bills Committee) even complained that they had not studied certain provisions and went on to give their comments on the provisions they consider good and those considered bad. They even added that they needed to have time to consider the matter before they could give their support. I find it really surprising that some Members have chosen to make such remarks at this stage. I hope Honourable colleagues can learn from this lesson and, in future, refrain from supporting the resumption of the debate on the Second Reading of the Bill before thorough discussion has been held in the Bills Committee. It is not advisable for issues to be discussed at this stage whereas they should have been thoroughly discussed in the Bills Committee. It is noted that those who rose to speak are all members of the Bills Committee. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I just wish to make a brief explanation. Concerning the liability of all the people, the wording of the provision is "Where any person" in fact, anti-money laundering legislation such as the existing Organized and Serious Crimes Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance have already adopted these wordings. Therefore, we can see that these wordings are not in contravention of the proposal of the Financial Action Task Force on

Money Laundering (FATF), that is, "If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect". Therefore, I think there is entirely no problem with the wordings of this provision.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK,

Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Dr David LI, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 54 Members present, 33 were in favour of the motion and 20 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Miss Margaret NG may not move her amendment to clause 11, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 11 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Heading before clause 12 and clause 12.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move an amendment to heading before clause 12 and deletion of clause 12, as set out in the paper circularized to Members.

Schedules 2 and 3 of the Bill empower law enforcement agencies to collect evidence and information in order to seize and detain property suspected of being terrorist property. The provisions of Schedules 2 and 3 are modelled on the provisions of the Schedule to the United Nations Sanctions (Afghanistan) Regulation, that is, the power vested in law enforcement agencies does not surpass powers conferred on them by other legislation.

Members of the Bills Committee considers the enforcement power laid down in Schedules 2 and 3 too wide, which may allow the executive to abuse search on and detention powers in the name of combating terrorism, and may disturb the life of the general public and the day-to-day operation of organizations. The Administration has readily accepted good advice and proposed the deletion of Schedules 2 and 3. Consequently, law enforcement officers could only rely on other legislation which empower them to exercise the power concerned.

Consequential to the deletion of Schedules 2 and 3, wordings concerning "evidence" in the heading before clause 12 will be deleted accordingly. Consequently, it is also unnecessary to retain provisions under clause 12 concerning the coverage of Schedules 2 and 3.

These amendments have been discussed and endorsed by the Bills Committee. I implore Members to support their passage.

Proposed amendments

Heading before clause 12 (see Annex IX)

Clause 12 (see Annex IX)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CHAIRMAN (in Cantonese): As the amendments to clause 12, which deal with deletion, have been passed, clause 12 is deleted from the Bill.

CLERK (in Cantonese): Heading before clause 12 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 13.

MISS MARGARET NG (in Cantonese): Madam Chairman, my amendments to clause 13 are found to be problematic since I have altogether moved two amendments. Under the first amendment, clause 13(1) should be deleted and substituted with "The Court of First Instance may, if satisfied on an application made by or on behalf of the Secretary for Justice that any property specified in the application is terrorist property order, subject to subsection (2), the forfeiture of property.". This is a consequential amendment to the one I previously moved with respect to the definition of "terrorist property". However, as the latter amendment on definition has been negatived, the former amendment will be in conflict with other provisions. May I seek leave from the Chairman to withdraw, without giving notice, this part of amendment and move an amendment only to subclause (4)?

CHAIRMAN (in Cantonese): Yes, you may.

MISS MARGARET NG (in Cantonese): Madam Chairman, the amendment to subclause (4) deals with the onus of proof, that is, the onus of proof required for the forfeiture of terrorist property. The Secretary for Security and Mr Albert HO will move amendments to this part later. Madam Chairman, should I move my amendment now or later?

CHAIRMAN (in Cantonese): Mr Albert HO has withdrawn his amendment. In accordance with the Rules of Procedure, the Secretary for Security shall now move her amendment.

MISS MARGARET NG (in Cantonese): Fine. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Secretary for Security, you may move your amendment to clause 13(4).

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 13(4) be amended, as set out in the paper circularized to Members.

Clause 13(4) as it stands provides that the standard of proof for the forfeiture of terrorist property is "the balance of probabilities". The Bills Committee is of the view that the standard should be substituted by "the standard of proof applicable to civil proceedings in a court of law" to allow the Court of First Instance to decide whether or not to grant an order for the forfeiture of property on the merits of each application. We have accepted the proposal of the Bills Committee and therefore move an amendment to clause 13(4). The amendment has been discussed in the Bills Committee and endorsed by most members. I implore Members to support its passage.

The amendment proposed by Miss Margaret NG is, in our view, neither reasonable nor practicable because her amendment proposes to change the standard of proof for the forfeiture of terrorist property to a criminal one. This would force criminal prosecution procedures unreasonably on proceedings about forfeiture of a civil nature. I consider Miss NG's amendment would render the forfeiture provision inoperative and would thus implore Members to oppose her amendment.

Proposed amendment

Clause 13 (see Annex IX)

MISS MARGARET NG (in Cantonese): Madam Chairman, I propose to change the standard of proof to one applicable to criminal proceedings. This standard is certainly very high. However, given the broad definition of "terrorist property", I agree with the Hong Kong Bar Association that, in some cases, the consequence of forfeiting a person's property can be as serious as, or even more serious than, that of convicting him.

This explains why it is necessary to examine the source of property to be forfeited. The first point I would like to raise is related to clause 5. Under this clause, the Secretary may freeze any property when she "has reasonable grounds to suspect" that it is terrorist property. No additional evidence is required to illustrate the offence committed. The property can be forfeited after a

considerable period of time. Under such circumstances, innocent people will easily be implicated. Therefore, a strict standard of proof must be adopted.

Madam Chairman, some colleagues asked me why such a high standard is set in relation to the forfeiture provision, whereas only the standard of proof applicable to civil proceedings is required for the revocation of other court applications. Actually, different standards of proof are applicable to civil proceeding, mainly dependent on what needs to be proved. The more serious the consequence of the case about which proof is required, the higher the standard of proof required by the Court. Even the standard of proof applicable to civil proceedings can be very high. While the order for revoking the permission granted by court to the Chief Executive in relation to the specification of terrorists or terrorist property is only temporary, the forfeiture of property is permanent in nature. The latter is therefore more serious than the former.

Furthermore, there are "imperative" grounds to do so. If the Chief Executive must observe the standard of proof applicable to criminal proceedings when making applications to court under clause 4, he will find it impossible to specify a certain person to be a terrorist within a short period of time, thus making it difficult to achieve the goal of the UNSCR 1373. In order to achieve this goal, it is "imperative" for the onus of proof to be set at the usual standard applicable to civil proceedings. Forfeiture of property, however, is not essential to the implementation of UNSCR 1373. A very strict standard of proof must therefore be observed before property can be forfeited. What can be done if the property cannot be forfeited? We must then examine whether the property is terrorist property. If there are grounds to believe that it is terrorist property, the Chief Executive can be requested to specify so and deal with it by other means. Since forfeiture of property is not indispensable to UNSCR 1373, and private property will be jeopardized as a result, it is fit to raise the standard of proof.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR ALBERT HO (in Cantonese): Madam Chairman, with the exception of this one before us, which I feel difficult to support, we agree to all the amendments proposed by Miss Margaret NG this evening.

I have raised some questions to her earlier. It is most important that "balance of probabilities" was originally adopted in the Bill. Now that the Secretary has amended it so that the standard of proof applicable to civil proceedings is adopted instead. As Honourable Members pointed out earlier, and according to the information provided by the Legal Adviser of this Council, the standard of proof applicable to civil proceedings can be very high. The probability is not necessarily 50%. Depending on the seriousness of a case, sometimes it can be higher. For instance, a very high standard will definitely be set by court if it is to prove certain persons are suspected of civil fraud, or to effect permanent forfeiture under this provision. Nevertheless, case law has shown that the standard is definitely lower than the one applicable to criminal proceedings. As Members should all be aware, under the standard applicable to criminal prosecutions, forfeiture of property will not be allowed even if there is only one reasonable doubt. Though the standard applicable to civil proceedings can be very high, it is definitely below the one applied for criminal prosecutions.

So what difficulty do I find? After going through the entire Bill, Members will realize that clauses 4A and 5 mainly deal with the specification of persons as terrorists. The persons affected, however, may appeal to court to revoke the specification or the freezing order issued under clause 5. Though the Government needs not resort to the standard of proof applicable to criminal prosecutions, these provisions would still have profound impact on an individual, particularly his reputation. Not only will he find himself in total isolation, his business will collapse and his prospects will be destroyed completely as well. Though I understand there is a limit to the freezing period, the person affected will still face a serious consequence. If the standard applicable to criminal prosecutions is considered to be unnecessary even under those circumstances, I find it hard to understand why this standard is needed for the purpose of forfeiting property. It is really hard for me to accept applying this standard to forfeiture.

If the standard of proof required under clauses 4A and 5 is high, and the one under clause 13 in relation to the exercise of the power of forfeiture is nearly as high, the standard applicable to criminal prosecutions will not be needed for the sake of consistency. If Members really feel the standard of proof should be as high as the one applicable to criminal prosecutions, the standard of proof under clauses 4A and 5 must not be lower than this. For these reasons, I cannot support this amendment proposed by Miss Margaret NG this evening.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): May I ask if two Members have pressed the "present" button only? Fine. Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Mr Albert HO, Dr Raymond HO, Mr Eric LI, Dr David LI, Mr Fred LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs

Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Andrew CHENG, Mr SZETO Wah, Mr Timothy FOK, Mr LAW Chi-kwong, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Mr Albert CHAN, Mr WONG Sing-chi, Mr IP Kwok-him and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr LEE Cheuk-yan, Miss Margaret NG, Mr LEUNG Yiu-chung, Mr Andrew WONG, Miss Emily LAU, Mr Michael MAK, Dr LO Wing-lok, Mr Frederick FUNG and Mr LAU Ping-cheung voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 53 Members present, 42 were in favour of the motion and 10 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Miss Margaret NG may not move her amendment to clause 13(4).

CLERK (in Cantonese): Clause 15.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 15 be amended, as set out in the paper circularized to Members.

The proposed amendments to the heading of clause 15 and clause 15(1) are consequential amendments to the deletion of Schedule 2 and Schedule 3.

Whereas the proposed amendments to clause 15(2) and (3) seek to prescribe that only public officers will be authorized by the Chief Executive or the Secretary for Security to exercise functions prescribed in the Bill.

The Bills Committee has already discussed and endorsed the amendments, so I implore Members to support their passage.

Proposed amendment

Clause 15 (see Annex IX)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 15 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 16.

CHAIRMAN (in Cantonese): The Secretary for Security and Miss Margaret NG have separately given notice to move amendments to the original clause 16 of the Bill.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate.

CHAIRMAN (in Cantonese): Secretary for Security, please speak and move your amendment.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that the original clause 16 of the Bill be amended, as set out in the paper circularized to Members.

Clause 16 provides for the relevant appeal mechanism. In relation to the mechanism of the specification of terrorist, terrorist associates or terrorist property by the Chief Executive, there will be two categories of designations, namely United Nations Security Council designations and non-United Nations Security Council designations, and the appeal mechanism will be amended accordingly. The eventually amended clause 16 provides for the appeal mechanism which is applicable to the terrorist, terrorist associates or terrorist property specified by the order issued by the Court of First Instance by virtue of an application under section 4(A) made *ex parte* by the Chief Executive, and the person specified in the order may make an application to the Court of First Instance to revoke the order. As to property specified in the order, the scope of appellants is broadened. In the original provision, only the holder, owner or

agent of the property may apply for revocation of the order. The eventually amended clause 16 allows any other person affected by the notice to apply for revocation. Unless the Court of First Instance is satisfied that the person or the property specified in the order is a terrorist or terrorist property, the Court of First Instance shall grant the application. In order to enhance the protection to persons affected by the order, the provision prescribes that the onus of proof should rest with the Government.

The appeal mechanism is also applicable to funds frozen by the Secretary for Security. Just as the same as the way to deal specified terrorist property, the scope of appellant is also broadened to include any affect person. The Court of First Instance shall grant the application unless it is satisfied that there are reasonable grounds to suspect that the funds are terrorist property. Likewise, the onus of proof rests with the Government.

Grace provision is also added to the eventually amended clause 16, which allows the appellant to give a copy of the application and other relevant documents to the Secretary for Justice and any other person within seven days.

Furthermore, in order to enhance the protection of the interest of persons affected by the freezing of the funds, the eventually amended clause 16 has made a new mechanism to allow those persons affected by the order to apply to the Court of First Instance for the grant of a licence under the following circumstances:

- (1) if the Secretary for Security refuses to grant a licence;
- (2) if they are not satisfied with the terms and conditions of a licence granted by the Secretary for Security.

The Secretary for Security should grant or amend the licence according to the order of the Court of First Instance.

The eventually amended clause 16 provides aggrieved parties and persons affected effective and comprehensive protection and channels of appeal, I hope Members will support the passage of the amendment.

With regards to the proposed amendments to clause 16, there are two major differences between the proposal of the Administration and that of Miss Margaret NG:

- (1) In case any person lodges an appeal to the Court of First Instance in respect of the funds specified in the order or notice, under Miss Margaret NG's proposal, besides revoking the relevant order or notice, the Court of First Instance may also vary the order or notice. We have considered the realistic situation and come to the view that whenever a person specified or affected lodges an appeal, he must be seeking to revoke the relevant specification or freezing notice. What the Court of First Instance has to deliberate is whether there is sufficient proof to maintain the original order or notice, thus there is no room for varying the order or notice. We therefore consider the proposal of Miss Margaret NG unnecessary;
- (2) With regards to appeals against the notice of freezing funds, Miss Margaret NG proposes that the Court of First Instance shall grant the application unless the Court of First Instance is satisfied that the relevant funds are terrorist property. We cannot agree with this, because the Secretary for Security orders to freeze the funds as she "has reasonable grounds to suspect" that the funds are terrorist property. Therefore, in judicial principles, the Court of First Instance should judge whether it should grant the application on the basis of the same criterion, otherwise the Secretary for Security should meet a higher standard of proof in order to prove that the funds are terrorist property. We consider this arrangement totally unreasonable.

Just now the relevant provisions of freezing funds were passed during Committee stage, including the criterion of "has reasonable grounds to suspect", so if any further amendment is made to them, it will be inconsistent with the preceding provisions. Owing to these reasons, I implore Members to oppose the amendment of Miss Margaret NG and support the Government's amendment to clause 16.

Proposed amendment

Clause 16 (see Annex IX)

MISS MARGARET NG (in Cantonese): Madam Chairman, I just wish to briefly explain why some parts of my amendment are different from the

amendment proposed by the Government while other parts are exactly the same. Firstly, I mainly consider that the Court should be allowed to handle the relevant cases flexibly; secondly, concerning the onus of proof, I think that since court orders have certain, equal legal effects, the same standard of proof should be adopted. In fact, we have no alternative but to set such a low standard in clause 5 that court proceedings are not required. It is because we have to give the Secretary for Security the authority within a very short period of time. The case to be handled by the Court would be less urgent.

Madam Chairman, I admit that I agree to the power under clause 5 because I have no alternative, therefore, I still think that the normal procedures and standard of proof should be adopted when the matter reaches the Court. I think it is appropriate to treat all cases equally without discrimination. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Dr David LI, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 54 Members present, 33 were in favour of the motion and 20 against it. Since the question was agreed by a

majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Miss Margaret NG may not move her amendment to clause 16.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clause 16 be further amended in order to add clause 16A to the Bill, as set out in the paper circularized to Members.

Clause 16A mainly provides for the mechanism of application for compensation, and the criteria adopted are modelled with reference to the existing compensation arrangement under the Organized and Serious Crimes Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance. That is, if the applicant has suffered loss as a result of serious default on the part of the Government, the Government should make compensations. The proposed compensation mechanism operates in parallel with the existing compensation mechanism under common law, that is, it will not affect the right of the relevant person to claim damages from the Government under common law. In accordance with the principle of common law, the Government shall make compensation only if a person has suffered loss due to the negligence on the part of the Government.

I am aware that some Members do not agree with the compensation arrangement proposed by the Government and criticize it as a flower in a mirror or the moon in the water, which is pure illusion. Therefore, some Members suggest that instead of "serious default" on the part of the Government, the Government should make compensation if a person has suffered loss as a result of "default" on the part of the Government. Some Members even suggest that as long as someone has suffered loss as a result of default on the part of the Government, the Government should make compensations.

I fully understand the concerns of Honourable Members, and I appreciate that their intention is to protect the interest of the aggrieved person who has suffered loss. However, according to the proposal of Members, the Government should make considerable changes to the existing compensation

policy, which will have inestimable financial implication to the Government and cause substantial deviation from the compensation criteria under common law and far-reaching implications to the compensation arrangement of all subsequent civil litigations. After consulting the relevant Policy Bureau and seeking legal advice, I deem it too difficult to accept the proposal of Members at the present stage. However, I undertake to continue the review with the relevant Policy Bureau and department as soon as possible and report to the Legislative Council in six months after the legislation is put into effect.

Anyway, a mechanism in place is better than none, I therefore implore Honourable Members to understand the situation of the Government, support this protection provision, and support clause 16A proposed by the Government, with reference to the compensation mechanism under other legislation.

Proposed amendment

Clause 16 (see Annex IX)

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MISS MARGARET NG (in Cantonese): Madam Chairman, Members may know that I have originally proposed a clause 16A related to the compensation mechanism. I think that the two requirements in the Secretary's amendment are unreasonable. First, it requires a person concerned to prove that he is innocent throughout the period; second, it requires proof that there is serious default on the part of the Government.

Madam Chairman, as you have not given me permission to propose an amendment, I should not explain the legal justification at this stage and I would only discuss the amendment of the Government. The biggest problem is that the requirements of the compensation mechanism proposed by the Government are even more rigorous than common law. Although the Secretary has just indicated that she does not intend to change the common law principles, is it legally practicable? If there are very clear express provisions in statutes that are different from common law, the Court would handle cases in accordance with such statutes. Thus, the common law principles would be narrowed down, which is not what the Secretary wants to see. We cannot look up what the

Secretary has said today when problems arise. According to the consistent principles of the Court, if there are explicit provisions, it is not necessary to go through what the Secretary said in advocating the passage of the legislation. If the common law will obviously be narrowed down, has it gone against the original intention of the Secretary in adding a clause on compensation? My failure to propose an amendment today would give rise to a lot of difficulties in future. The Secretary has just said that a further review would be conducted later, I can only hope that the requirements would be relaxed rather than maintained at that time.

Madam Chairman, the Secretary has also indicated that the compensation mechanism has existed under other laws. I know that the Secretary has referred to the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance. Although she has said that the provisions on compensation are the same as those under this clause, they are actually different. Under this clause, compensation is not made because property has been frozen by the Secretary. The Secretary must first file an application with the Court for the issue of a restraint order and, at the time of filing the application, she must promise to make compensation once there is default. What are the functions of the compensation mechanism under the two laws mentioned above? Under these laws, many people have enormous powers of investigation and the compensation provisions are particularly pinpointed at people who suffer loss in the course of investigation. There was no compensation mechanism under the United Nations (Anti-Terrorism Measures) Bill and a mechanism is now proposed to be added to it. Therefore, they are two entirely different matters.

Madam Chairman, in respect of this clause, I am afraid the case just mentioned by the Secretary would be doing evil out of good intentions. Madam Chairman, though I cannot propose an amendment today, I have to object to this particular clause. I have discussed the matter with Ms Audrey EU earlier on. Ms Audrey EU has said very optimistically that, if the clause is passed, the serious default may most probably violate the Basic Law and the Court would naturally remove it. If some clauses fail to come into operation because they have violated the Basic Law, we can sometimes remove them, and we would then have a compensation mechanism. In my view, it is too risky to do so. If the Court really thinks that the clause is already very explicit, we would be in great trouble indeed.

Therefore, Madam Chairman, I will vote against the clause later for safety's sake.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR HOWARD YOUNG (in Cantonese): Madam Chairman, as mentioned during the Second Reading debate, the Liberal Party attempted to propose an amendment to this clause. We definitely welcome a mechanism for compensation because of the Government has wrongfully frozen property and caused a person to suffer direct loss, it should make compensations. When the Bills Committee discussed the Bill and when we subsequently discussed the matter with the Secretary, we had cited the example of the recent news reports on the YU Man-hon incident. We pointed out that the Government also wished to settle the issue by making compensations. If a person suffers loss as a result of the Government's default, he should naturally be given compensation. In proposing the amendment, we did not say that all incidents would involve serious default but we should judge the seriousness of the default which might be a matter of opinion. As it would have a charging effect on public coffers, we could not propose the amendment without the Chief Executive's consent. But as I have said, the Liberal Party thinks that it is not necessary to seek the Chief Executive's consent to propose the amendment at this stage. We have been told that the Government is aware that we are very much concerned about the matter, thus, it would reconsider the matter six months after the legislation has come into operation. For this reason, it would not affect our thinking in respect of whether or not we support the clause.

MS AUDREY EU (in Cantonese): Madam Chairman, during the resumption of the Second Reading debate, I already expressed my views on clause 16A indeed, so I am not going to repeat my remarks here.

Madam Chairman, I agree with the Secretary that a provision on compensation is better than none at all. The Blue Bill did not contain the clause, but the Secretary has accepted the views of the Bills Committee and added clause 16A to the Bill. However, Members of the Bills Committee are unanimous in their view on the issue of serious default and they all think that there is something wrong with the drafting of "serious default". The Secretary has just said that the Government hopes that the provision would be similar to the common law principle, that is, once there is negligence, a claim for compensation can be made. As Miss Margaret NG has just said, we lawyers generally call it the *PEPPER vs HART* theory, that is, remarks made in this Council can be cited to interpret the

law. However, Miss Margaret NG has also said that, if the wordings in the legislation are clearly different from common law, for instance, "negligence" is used under common law but "serious default" is used in the Bill, then there is certainly a difference. For this reason, we cannot say, on the basis of the Secretary's remarks, that the objectives of the Government and Members of this Council are consistent with common law. Yet, since the Secretary has just said so and promised to reconsider the matter within six months and submit the matter for discussion in this Council, and since the Secretary has indicated that the Government's intent is identical to the criteria for compensation under common law, I am willing to support the amendment to clause 16A at this stage.

MR JAMES TO (in Cantonese): Madam Chairman, the views of the Democratic Party are identical to those of Ms Audrey EU. However, we have decided that we would not vote for the amendment, we would abstain from voting.

Moreover, we also wish to remind the Secretary that, since we have very strong views on the clause, they may affect how we vote on the Bill and even how we vote during the Third Reading. Of course, if the amendment proposed by the Secretary is passed, we would have no alternative but to support the Third Reading.

But I do not know what the Secretary thinks about the effective date. In that case, I think that clause 16A on compensation should not come into operation because it has to form a complete package with clauses 4, 4A and 5 and it sets a very high standard of proof for compensation. However, we cannot accept such a package. Therefore, I can give the Secretary advance notice that, when we consider the subsidiary legislation related to the effective date, we would stop the clause from coming into operation because we think that it should come into operation during the "second wave", that is, when subsidiary legislation is tabled and we have thoroughly considered this point. It is because I think these several clauses are a package.

However, the most interesting point that I appreciate most is that the Liberal Party to which Mr Howard YOUNG belongs was very much concerned about this point at the meetings of the Bills Committee. They had proposed an amendment but failed to push it through. If this clause is passed under such circumstances, I hope that the Liberal Party would specify like us that, without a

good package, it would not support the passage of the subsidiary legislation to be made by the Government in respect of the effective date.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MISS CYD HO (in Cantonese): Madam Chairman, the original Blue Bill is silent on compensation and this clause has been added after our discussion. This clause on compensation and the clauses preceding it form a package. The preceding clauses are rather loose, for instance, in regard to forfeiture. The amendment proposed by Miss Margaret NG has just been negated and Members do not accept the forfeiture of property requiring the criminal standard of proof. However, the subsequent clauses are very strict. Besides, we passed the original clause 9 an hour or so ago and it would give rise to a lot of problems. The Secretary has just said that she agrees and intends to conduct a review again, but it may not be financially affordable. If a looser compensation mechanism is adopted now, the Secretary fears that it may not be financially affordable. In this connection, I think the decision to reduce civil service pay has also been made at the expense of justice.

The law dictates what we should or should not do something, rather money. If we agree that compensation should be made but the fiscal deficit does not allow us to do so, we should set stricter requirements for proof so that people would not suffer loss so easily, and they would then have greater confidence. However, certain parts of the preceding clauses have deviated from common law, for instance, the reporting of an offence as we have just discussed. The Secretary fears that establishing the mechanism would deviate from common law.

We can hardly support it if there is an imbalance between the two sides. I hope the Secretary would submit the clauses for review to this Council as soon as possible. Since we do not have to discuss the policy address in October, we may focus our discussion on this point.

DR YEUNG SUM (in Cantonese): Madam Chairman, a compensation clause is better than none at all but the criteria for compensation can hardly be met. So, there would virtually not be any compensation even though there is a mechanism

for compensation. It is just like flowers in a mirror or the moon in the water — an illusion. But the Secretary has repeatedly emphasized during our scrutiny of the Bill that the Government would study in detail the method of compensation and it would give us an answer later. Let us just wait and see.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Dr David LI, are you prepared to vote?

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Miss LI Fung-ying, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr Frederick FUNG, Mr IP Kwok-him, Mr LAU Ping-cheung, Ms Audrey EU and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr LEE Cheuk-yan, Miss Margaret NG, Mr LEUNG Yiu-chung, Miss Emily LAU and Mr Michael MAK voted against the motion.

Mr Albert HO, Dr David LI, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Mr Albert CHAN and Mr WONG Sing-chi abstained.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 53 Members present, 34 were in favour of the motion, six against it and 12 abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the addition of subclauses (6) and (7) to clause 2, as set out in the paper circularized to Members.

New clause 2(6) is a judicial technical amendment and its purpose is to specify that the Court of First Instance may order any person who may be affected by an application to be joined as a party to the proceedings.

New clause 2(7) specifies that, in regard to an application made by the parties, an appeal should be heard by the Court of Appeal, and that the Bill is subject to the operation of Part XII of the Interpretation and General Clauses Ordinance, to regulate the search for news materials and fully protect the interests of the media.

The amendment has been discussed and endorsed by the Bills Committee and I implore Members to support its passage.

Proposed amendment

Clause 2 (see Annex IX)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 2 and 16 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 17 and 18.

CHAIRMAN (in Cantonese): The Secretary for Security and Miss Margaret NG have separately given notice to move amendments to clauses 17 and 18 of the Bill. I will first call upon the Secretary for Security to move her amendment, as she is the public officer in charge of the Bill.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clauses 17 and 18 be amended, as set out in the paper circularized to Members.

The existing clause 17 provides that the Court may make rules for different applications; clause 18 provides for the procedures of amending Schedules 1, 2, and 3; and, the original clause 19 empowers the Secretary for Security to make regulations on freezing terrorist property (other than funds).

As a result of the proposal to delete Schedules 2 and 3 and the amendments to the specification of persons and property as terrorists, terrorist associates or terrorist property, it is necessary to introduce consequential amendments to clauses 17 and 18.

Clause 17 as eventually amended empowers the Secretary for Security to make regulations for the purposes of handling suspected terrorist property (other than funds); facilitating the obtaining of evidence and information; enabling property suspected of being terrorist property to be seized and detained; authorizing public officers to perform functions or exercise powers prescribed by the Bill; providing compensation to be paid on grounds specified in the regulations made, and prescribing offences and penalties under the regulations.

All the regulations shall be subsidiary legislation subject to the approval of the Legislative Council by way of resolution.

Clause 18 as eventually amended provides that the Court may make rules with respect to various types of applications, including applications by the Chief Executive for the specification of persons and property as terrorists, terrorist associates or terrorist property, the forfeiture of terrorist property, the revocation of specification orders and funds-freezing notices, claims for compensation, and those under the regulations.

Miss Margaret NG proposes to delete the provisions empowering the Secretary for Security to make regulations. I note Miss Margaret NG's view that since the issues covered by the regulations are very significant and may produce far-reaching consequences, the Government should resort to primary legislation and set out the relevant provisions there in, instead of leaving them to subsidiary legislation.

But the arrangement whereby a principal ordinance empowers the executive authorities to make regulations is in fact a time-tested legislative means, and similar enabling provisions are found in many of our existing ordinances. However, I still very much appreciate Miss Margaret NG's concerns. I undertake to give priority consideration to the drawing up of an amendment bill to deal with the relevant provisions. At this stage, I implore Members to accept our proposal, that is, clause 17 as eventually amended, so that we can enjoy a bit more flexibility in the submission of the relevant provisions.

In addition, according to the requirements of the UNSCR 1373, all terrorist property, whether they are funds, must be frozen. For this reason, if we delete the provisions empowering the Secretary for Security to make regulations on handling the property of terrorists (other than funds), we will fail to fully comply with the requirements of the UNSCR 1373.

For all these considerations, I implore Members to oppose Miss Margaret NG's amendment and support that of the Government.

Proposed amendments

Clause 17 (see Annex IX)

Clause 18 (see Annex IX)

MISS MARGARET NG (in Cantonese): Madam Chairman, this is the last amendment proposed by me and I believe colleagues must be very happy to know that.

Madam Chairman, I wish to explain my amendment. Firstly, it seeks to delete clause 17 in the original Blue Bill that specifies the procedures. These procedures would be substituted by the relevant procedures under clause 18. The procedures proposed under clause 18 are exactly the same as those as amended by the Secretary. So the thrust of my amendment is mainly deletion of the original clause 17. The new clause 17 proposed by the Secretary is related to the authority of Secretary to make regulations. I do not intend to incorporate this provision into the clause and I oppose incorporating the clause into the Bill. Madam Chairman, there are two reasons for me to object it, but since the Secretary has just mentioned part of my reasons, I do not have to explain too much.

Firstly, besides specifying such an important matter as making regulations related to investigation in the primary legislation, we can also consider subclause (1), that is, "the Secretary may make regulations for the purposes of enabling persons to be prohibited from dealing with any property (other than funds)". The scope of control of the law, that is, the horrible authority of freezing and forfeiture that we have just discussed, is extended by subsidiary legislation to property other than funds. Such control should in fact be encompassed by the principal ordinance; thus, we can definitely not allow any public officer to expand the authority by subsidiary legislation. The Secretary has said that a review would be conducted on the clause, but I hope she would not have to conduct such a review. If Members support my amendment, clause 17 would disappear automatically and a review would not be necessary. Yet, there are a problem with the writing of the clause, for example, the expression "enabling persons to be prohibited" is illogical.

Madam Chairman, subclause (2) specifies that the Secretary may make regulations for the purposes of facilitating the obtaining of evidence from and detection in premises and vessels, applying for a search warrant or even breaking into and entering premises. Today, the Secretary has referred to other laws again and again, including the Drug Trafficking (Recovery of Proceeds) Ordinance and the Organized and Serious Crimes Ordinance. Madam Chairman, the two Ordinances have also mentioned the obtaining of evidence and detection, but the authority is covered by primary legislation and certain authority can only be exercised upon application filed on behalf of the Secretary for Justice.

Why does it favour one and is prejudiced against the other? Why have we so carefully given protection for the investigation of local criminal cases but specified the authority in respect of anti-terrorism measures in Schedules 2 and 3 in such a sweeping manner? Madam Chairman, this is absolutely unreasonable. The Secretary has just said that she is willing and promises to conduct a review. Now that the situation is so clear-cut, the Secretary might as well spare some efforts. She should not propose the provision, but she should include the provision on authority in the primary legislation in future.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR JAMES TO (in Cantonese): Madam Chairman, when the Secretary last spoke, she already answered Miss Margaret NG's question about why she would not include the authority as a component of the primary legislation in the future. The Secretary wants the Bill to more or less include all the matters set out in the UNSCR 1373. On the basis of the general principle and the practice in the past, such authority of a compulsory nature should be included in the primary legislation and I trust that even the public officers of the Department of Justice would support the principle as that was the practice in the past. However, perhaps time was pressing, so they had chosen to specify that regulations should be made in the form of subsidiary legislation. To procrastinate and race against time, they had specified that regulations should be made. After all, the Bill would specify that regulations should be made. I believe that is the case.

Yet, we find this unacceptable. Firstly, the regulations should, in principle, be incorporated into the primary legislation; secondly, if the Secretary is given the authority to make regulations on offences punishable by imprisonment up to seven years, then despite the Secretary having stated that regulations made under subclause (7) shall be subject to the approval of the Legislative Council, we think this arrangement and approach have completely deviated from the existing system. For instance, the imposition of imprisonment for not more than seven years for an offence has gone against the existing principle. Therefore, we cannot support the authority to make

subsidiary legislation. Even if the Bill is passed, since amendments are going to be made, we would still have plenty of time for consideration. Therefore, I hope that the Secretary would change the provision on subsidiary legislation into primary legislation so that we would be able to consider it in detail.

MS AUDREY EU (in Cantonese): Madam Chairman, with respect to the amendments proposed by Miss Margaret NG and the Secretary, the greatest difference lies in that the various powers were in fact specified under Schedules 2 and 3. But since there was insufficient time for discussion, the Secretary has incorporated the amendments into clause 17 to empower the Secretary to make subsidiary legislation. Why should this be done? In her reply to questions raised by Members, the Secretary explained that she understood Members' concern that these powers should have been provided in the principal ordinance, instead of being set out in the subsidiary legislation, and that these powers should be deliberated in the present meeting, but as there was not enough time for deliberations and examinations, the Secretary had resorted to setting out the power to make regulations in clause 17. Why does she want to do that? She implores Members to pass this proposal because it is the requirement of UNSCR 1373 that the authorities cannot merely freeze the funds of the terrorists and pay no attention to their property. So she urges Members to pass clause 17.

Madam Chairman, that reminds me of examinations which I used to take when I was young. It is like when the examination is about to finish and the teacher is about to collect the scripts, but I do not have time to write the answers and so I write on the script, "I know the answer but I do not have the time to write it down, please let me write the answer next time." Then I will say that I should be given a pass and then I hand the script to the teacher. Madam Chairman, this is self-deceptive. I do not understand why Members would agree to this practice. They know very well that this is not right and they know that these powers should be set out in the principal ordinance rather than in the subsidiary legislation. Then why are they handing a blank script and say that they deserve a pass, that they know the answers and are able to do it? It is the same thing as what the Secretary is doing now, to incorporate these powers into clause 17 and say that subsidiary legislation will be enacted in the future. That is absolutely unreasonable and ridiculous. That is not just a laughingstock for Hong Kong, but the whole world. I fail to understand why Honourable

colleagues would agree to such an approach to deliberate on laws and pass them. This is really a joke. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member responded)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

(The Secretary for Security indicated that she did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please their hands.

(Members raised their hands)

Miss Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Miss Margaret NG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Kenneth TING, Dr David CHU, Dr Raymond HO, Mr Eric LI, Dr LUI Ming-wah, Mr NG Leung-sing, Mrs Selina CHOW, Mr CHAN Kwok-keung, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr Andrew WONG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Ambrose LAU, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Dr TANG Siu-tong, Mr Abraham SHEK, Mr Henry WU, Mr Tommy CHEUNG, Dr LO Wing-lok, Mr IP Kwok-him, Mr LAU Ping-cheung and Mr MA Fung-kwok voted for the motion.

Miss Cyd HO, Mr Albert HO, Mr LEE Cheuk-yan, Dr David LI, Mr Fred LI, Miss Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Dr YEUNG Sum, Miss Emily LAU, Mr Andrew CHENG, Mr SZETO Wah, Mr LAW Chi-kwong, Miss LI Fung-ying, Mr Michael MAK, Mr Albert CHAN, Mr WONG Sing-chi, Mr Frederick FUNG and Ms Audrey EU voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 54 Members present, 32 were in favour of the motion and 21 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Security has been passed, Miss Margaret NG may not move her amendments to clauses 17 and 18, which are inconsistent with the decision already taken.

CLERK (in Cantonese): Clauses 17 and 18 as amended.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): The time now is twenty minutes to eleven o'clock at night. Originally, I hoped to finish dealing with this Bill tonight, but I am afraid we have to continue with it tomorrow.

If the meeting ends too late tonight and if it is to be continued tomorrow at 9.30 to handle other items on the Agenda, I think Members would be very tired. So I now suspend the meeting until 9.30 am tomorrow.

Suspended accordingly at twenty minutes to Eleven o'clock.

PUBLIC OFFICERS PAY ADJUSTMENT BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Civil ServiceClauseAmendment Proposed

Long title (a) By adding "certain" after "adjust the pay of".

(b) By adding "certain" after "payable to".

2 By adding -

"civil servant" (公務員) means a public officer employed by the Government on civil service terms of appointment at a civil service rank;"

New By adding in Part 1 -

"2A. Application

This Ordinance does not apply to -

(a) the pay of a public officer who is remunerated on a salary, being a starting salary, that is not lined to the annual civil service pay adjustment;

(b) the pay or allowances of a judicial officer -

(i) holding a judicial office

-

<u>Clause</u>	<u>Amendment Proposed</u>
	<p>(A) specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92); or</p> <p>(B) known as Senior Deputy Registrar, High Court; or</p> <p>(ii) appointed by the Chief Justice."</p>
4(3)	<p>(a) In paragraph (a), by adding "civil service pay scales or the" after "a point on the".</p> <p>(b) In paragraph (b), by adding "civil service pay scales or the" after "adjustments to the".</p> <p>(c) By adding "civil service pay scales as adjusted under section 3(1), or the" after "by reference to the".</p> <p>(d) By adding ", as the case requires" after "under subsection (1)".</p>
9	By deleting "to be read as expressly authorizing" and substituting "varied so as to expressly authorize".
Part 6	By deleting the Part.
Schedule 3	By deleting the Schedule.

Annex VIII

DRUG TRAFFICKING AND ORGANIZED CRIMES
(AMENDMENT) BILL 2000

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By adding ", and to consequentially amend the Mutual Legal Assistance in Criminal Matters Ordinance" after "Crimes Ordinance".
New	By adding - "5. Consequential amendments to Mutual Legal Assistance in Criminal Matters Ordinance - (Schedule 4) The Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) is amended as specified in Schedule 4."
Schedule 1, section 2	By deleting the section and substituting - "2. Interpretation Section 2 is amended - (a) in subsection (11), by adding - "(aa) when a person has been arrested for the offence and released on bail or has refused bail;"

ClauseAmendment Proposed

(b) by adding -

"(14) Subject to subsection (15), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege within the meaning of section 22.

(15) Subsection (14) shall not prejudice the operation of sections 20, 21 and 22."."

Schedule 1, By deleting paragraph (a) and substituting -
section 3

"(a) by repealing subsection (2)(c)(ii)(B) and substituting

-

"(B) subject to subsection (2A), a person whose exact whereabouts are not known

-

(I) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)); and

(II) notice of those proceedings, addressed to that person, has been published in a Chinese language

ClauseAmendment Proposed

newspaper, and an English language newspaper, circulating generally in Hong Kong; and";

(aa) by adding -

"(2A) Where subsection (2)(c)(ii)(B) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct.";

(ab) by repealing subsection (9)(b)(ii) and substituting -

"(ii) subject to subsection (9A), a person whose exact whereabouts are not known -

(A) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)); and

(B) notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English

ClauseAmendment Proposed

language newspaper, circulating generally in Hong Kong.";

(ac) by adding -

"(9A) Where subsection (9)(b)(ii) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct.";

Schedule 1, section 5 In the proposed section 5(9), by deleting "subsection (7)(b)" and substituting "subsection (7)(a) or (b)".

Schedule 1, section 7, (a) In paragraph (a)(ii), in the proposed section 9(1)(ba), by adding "subject to subsection (1A)," before "if".

(b) By adding -

"(aa) by adding -

"(1A) Subject to subsection (1B), where a power conferred on the Court of First Instance by section 10(1) or 11(1) is exercisable only on the ground mentioned in subsection (1)(ba), then the Court of First Instance shall specify a date on which any restraint order or charging order arising from that ground shall expire, being a date -

ClauseAmendment Proposed

- (a) subject to paragraph (b), not later than is reasonably necessary for the purposes of the investigation concerned mentioned in subsection (1)(ba); and
- (b) in any case, not later than 6 months after the date on which that order is made.

(1B) The Court of First Instance may extend a restraint order or charging order mentioned in subsection (1A) -

- (a) on the ground only that the Court of First Instance is satisfied that the defendant will be charged with the offence concerned after further investigation is carried out;
- (b) subject to paragraph (c), not longer than is reasonably necessary for the purposes of that investigation; and
- (c) in any case, for not more than 6 months."."

ClauseAmendment Proposed

- (c) By deleting paragraph (b).
- Schedule 1, section 8
- (a) In the proposed section 10(12), by deleting everything after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property."
- (b) By adding after the proposed section 10(13) -
- "(13A) A disclosure made in order to comply with a requirement under subsection (12) -
- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of -
- (i) the disclosure;
- (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure."
- (c) In the Chinese text, by deleting the proposed section 10(16) and substituting -

ClauseAmendment Proposed

"(16) 任何人犯第(15)款所訂的罪行 —

- (a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款額為\$500,000 或屬有關限制令的標的而在違反該限制令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或
- (b) 一經循簡易程序定罪，可處罰款 \$250,000 及監禁 2 年。 ” 。 ” .

Schedule 1, section 9 (a) In the proposed section 11(9), by deleting everything after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property."

(b) By adding after the proposed section 11(10) -

"(10A) A disclosure made in order to comply with a requirement under subsection (9) -

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of -
 - (i) the disclosure;

ClauseAmendment Proposed

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure."

(c) In the Chinese text, by deleting the proposed section 11(13) and substituting -

"(13) 任何人犯第(12)款所訂的罪行 —

- (a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款額為 \$500,000 或屬有關抵押令的標的而在違反該抵押令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或
- (b) 一經循簡易程序定罪，可處罰款 \$250,000 及監禁 2 年。 ” 。

Schedule 1, By deleting the sections.
sections 10,
11 and 13(b)

Schedule 2, By deleting the section and substituting -
section 2,

"2. Interpretation

Section 2 is amended -

(a) in subsection (15), by adding -

"(aa) when a person has been arrested for the offence and

ClauseAmendment Proposed

released on bail or has refused bail;"

(b) by adding -

"(18) Subject to subsection (19), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege.

(19) Subsection (18) shall not prejudice the operation of sections 3, 4 and 5."."

Schedule 2, By deleting paragraph (a) and substituting -
section 3

"(a) by repealing subsection (3)(c)(i)(B)(II) and substituting -

"(II) subject to subsection (3A), a person whose exact whereabouts are not known, reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)) and notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong; and"

(aa) by adding -

ClauseAmendment Proposed

"(3A) Where subsection (3)(c)(i)(B)(II) is applicable, and notwithstanding that the court is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct.";

(ab) by repealing subsection (7C)(b)(ii) and substituting -

"(ii) subject to subsection (7D), a person whose exact whereabouts are not known -

(A) reasonable steps have been taken to ascertain the person's whereabouts (including, if appropriate, a step mentioned in paragraph (a), (b) or (c) of rule 5(1) of Order 65 of the Rules of the High Court (Cap. 4 sub. leg.)); and

(B) notice of those proceedings, addressed to that person, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong.";

(ac) by adding -

"(7D) Where subsection (7C)(b)(ii) is applicable, and notwithstanding that the court

ClauseAmendment Proposed

is satisfied as mentioned in that subsection that actions have been taken, the court may, if it is satisfied that it is in the interests of justice to do so, require that notice of the proceedings mentioned in that subsection be given to the person mentioned in that subsection in such additional manner as the court may direct.";"

Schedule 2, section 4 In the proposed section 10(9), by deleting "subsection (7)(b)" and substituting "subsection (7)(a) or (b)".

Schedule 2, section 6 (a) In paragraph (a)(ii), in the proposed section 14(1)(ba), by adding "subject to subsection (1A), before "if".

(b) By adding -

"(aa) by adding -

"(1A) Subject to subsection (1B), where a power conferred on the Court of First Instance by section 15(1) or 16(1) is exercisable only on the ground mentioned in subsection (1)(ba), then the Court of First Instance shall specify a date on which any restraint order or charging order arising from that ground shall expire, being a date -

(a) subject to paragraph (b), not later than is reasonably necessary for the purposes of the investigation concerned mentioned in subsection (1)(ba); and

ClauseAmendment Proposed

- (b) in any case, not later than 6 months after the date on which that order is made.

(1B) The Court of First Instance may extend a restraint order or charging order mentioned in subsection (1A) -

- (a) on the ground only that the Court of First Instance is satisfied that the defendant will be charged with the offence concerned after further investigation is carried out;

- (b) subject to paragraph (c), not longer than is reasonably necessary for the purposes of that investigation; and

- (c) in any case, for not more than 6 months."."

- (c) By deleting paragraph (b).

Schedule 2,
section 7

- (a) In the proposed section 15(12), by deleting everything after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in

ClauseAmendment Proposed

his possession or control which may assist the authorized officer to determine the value of the property."

(b) By adding after the proposed section 15(13) -

"(13A) A disclosure made in order to comply with a requirement under subsection (12) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure."

(c) In the Chinese text, by deleting the proposed section 15(16) and substituting -

"(16) 任何人犯第(15)款所訂的罪行 —

(a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款額為\$500,000 或屬

ClauseAmendment Proposed

有關限制令的標的而在違反該限制令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或

- (b) 一經循簡易程序定罪，可處罰款 \$250,000 及監禁 2 年。”。

Schedule 2, section 8 (a) In the proposed section 16(9), by deleting everything after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property."

- (b) By adding after the proposed section 16(10) -

"(10A) A disclosure made in order to comply with a requirement under subsection (9) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted to be done in

ClauseAmendment Proposed

relation to the property concerned in consequence of the disclosure."

- (c) In the Chinese text, by deleting the proposed section 16(13) and substituting -

"(13) 任何人犯第(12)款所訂的罪行 —

- (a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款額為 \$500,000 或屬有關押記令的標的而在違反該押記令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或
- (b) 一經循簡易程序定罪，可處罰款 \$250,000 及監禁 2 年。 ” 。 ” .

Schedule 2, By deleting the sections.
sections 9
and 10

Schedule 2, By deleting paragraph (b) and substituting -
section 11

"(b) by repealing paragraphs 15 and 16 and substituting -

"15. Drug Trafficking
(Recovery of
Proceeds)
Ordinance (Cap.
405)

section 25(1) dealing with property known or believed to represent

Clause

Amendment Proposed

proceeds of drug trafficking

16. Organized and Serious Crimes Ordinance (Cap. 455)

section 25(1) dealing with property known or believed to represent proceeds of indictable offence".

Schedule 3, section 3 (a) In paragraph (b)(ii) -

(i) in the proposed section 10(12), by deleting everything after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.";

(ii) by adding after the proposed section 10(13) -

"(13A) A disclosure made in order to comply with a requirement under subsection (12) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of

ClauseAmendment Proposed

conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.";

(iii) in the Chinese text, by deleting the proposed section 10(16) and substituting -

"(16) 任何人犯第(15)款所訂的罪行 —

(a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款額為 \$500,000 或屬有關限制令的標的而在違反該限制令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或

(b) 一經循簡易程序定罪，可處罰款 \$250,000 及監禁 2 年。”；”。

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- (b) In paragraph (b)(iii) -
- (i) in the proposed section 11(9), by deleting everything after "to do so" and substituting ", documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.";
- (ii) by adding after the proposed section 11(10) -
- "(10A) A disclosure made in order to comply with a requirement under subsection (9) -
- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of -
- (i) the disclosure;
- (ii) any act done or omitted to be done in

ClauseAmendment Proposed

relation to the property concerned in consequence of the disclosure.";

(iii) in the Chinese text, by deleting the proposed section 11(13) and substituting -

"(13) 任何人犯第(12)款所訂的罪行 —

- (a) 一經循公訴程序定罪，可處監禁 5 年及罰款，罰款額為 \$500,000 或屬有關抵押令的標的而在違反該抵押令的情況下被處理的可變現財產的價值，兩者以款額較大者為準；或
- (b) 一經循簡易程序定罪，可處罰款 \$250,000 及監禁 2 年。”。

New

By adding -

"SCHEDULE 4

[s. 5]

CONSEQUENTIAL AMENDMENTS TO MUTUAL
LEGAL ASSISTANCE IN CRIMINAL
MATTERS ORDINANCE

1. **Interpretation**

Section 2 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) is amended by adding -

ClauseAmendment Proposed

"(10) Subject to subsection (11), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege within the meaning of section 13.

(11) Subsection (10) shall not prejudice the operation of Part IV."

**2. Enforcement, etc. of external
confiscation orders**

Schedule 2 is amended -

(a) in section 7, by adding -

"(11) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.

(12) A person who receives a notice under subsection (11) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned.

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(13) A disclosure made in order to comply with a requirement under subsection (11) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

(14) Any person who contravenes subsection (12) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

ClauseAmendment Proposed

(15) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence.

(16) A person who commits an offence under subsection (15) is liable -

(a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or

(b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years.";

(b) in section 8, by adding -

"(9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable

ClauseAmendment Proposed

to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property.

(10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the charging order concerned.

(11) A disclosure made in order to comply with a requirement under subsection (9) -

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of -

(i) the disclosure;

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- (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

(12) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year.

(13) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence.

(14) A person who commits an offence under subsection (13) is liable -

- (a) on conviction upon indictment to a fine of \$500,000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or

ClauseAmendment Proposed

- (b) on summary conviction to a fine of \$250,000 and to imprisonment for 2 years."."