

**OFFICIAL REPORT OF PROCEEDINGS****Wednesday, 12 June 1985****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)  
SIR EDWARD YOUDE, G.C.M.G., M.B.E.

THE HONOURABLE THE CHIEF SECRETARY  
MR. DAVID AKERS-JONES, C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY  
SIR JOHN HENRY BREMRIDGE, K.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL  
MR. MICHAEL DAVID THOMAS, C.M.G., Q.C.

DR. THE HONOURABLE HARRY FANG SIN-YANG, C.B.E., J.P.

THE HONOURABLE FRANCIS YUAN-HAO TIEN, O.B.E., J.P.

THE HONOURABLE ALEX WU SHU-CHIH, C.B.E., J.P.

THE HONOURABLE CHEN SHOU-LUM, C.B.E., J.P.

THE HONOURABLE LYDIA DUNN, C.B.E., J.P.

THE HONOURABLE WONG LAM, O.B.E., J.P.

DR. THE HONOURABLE THONG KAH-LEONG, C.B.E., J.P.  
DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.  
SECRETARY FOR TRADE AND INDUSTRY

DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.

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

THE HONOURABLE ANDREW SO KWOK-WING, O.B.E., J.P.

THE HONOURABLE HU FA-KUANG, O.B.E., J.P.

THE HONOURABLE WONG PO-YAN, O.B.E., J.P.

THE HONOURABLE DONALD LIAO POON-HUAI, C.B.E., J.P.  
SECRETARY FOR DISTRICT ADMINISTRATION

THE HONOURABLE JOHN JOSEPH SWAINE, O.B.E., Q.C., J.P.

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

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

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

THE HONOURABLE PIERS JACOBS, O.B.E., J.P.

SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.  
SECRETARY FOR SECURITY

THE HONOURABLE CHAN NAI-KEONG, C.B.E., J.P.  
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, J.P.  
COMMISSIONER FOR LABOUR

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

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

THE HONOURABLE YEUNG PO-KWAN, C.P.M.

THE HONOURABLE JAMES NEIL HENDERSON, O.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE KIM CHAM YAU-SUM, J.P.

THE HONOURABLE KEITH LAM HON-KEUNG, J.P.

THE HONOURABLE CARL TONG KA-WING

THE HONOURABLE JOHN WALTER CHAMBERS, J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.  
DIRECTOR OF EDUCATION

THE HONOURABLE PETER TSAO KWANG-YUNG, C.P.M., J.P.  
SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION

THE HONOURABLE CHRISTOPHER WONG KIM-KAM, J.P.  
SECRETARY FOR TRANSPORT (*Acting*)

THE HONOURABLE PANG YUK-LING, I.S.O., J.P.  
SECRETARY FOR HOUSING (*Acting*)

#### **ABSENCE**

THE HONOURABLE SIR ROGERIO HYNDMAN LOBO, C.B.E., J.P.

THE HONOURABLE PETER C. WONG, O.B.E., J.P.

THE HONOURABLE WILLIAM CHARLES LANGDON BROWN, O.B.E., J.P.

THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.

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

DR. THE HONOURABLE HENRIETTA IP MAN-HING

#### **IN ATTENDANCE**

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR. LI WING

**Affirmation**

MR. CHRISTOPHER WONG KIM-KAM made the Affirmation of Allegiance and assumed his seat.

**Papers**

The following papers were laid pursuant to Standing Order 14(2):—

*Subject* *L.N. No.*

## Subsidiary Legislation:

Water Pollution Control Ordinance.	
Water Pollution Control (Appeal Board) Regulations 1985 .....	164
Public Health and Urban Services Ordinance.	
Cheung Chau Cemetery, Sandy Ridge Cemetery, Sandy Ridge Urn Cemetery and Wo Hop Shek Cemetery (Removal and Disposal of Human Remains) Order 1985 .....	167
Juvenile Offenders Ordinance.	
Places of Detention (Juvenile Offenders) Appointment (Consolidation) (Amendment) Order 1985 .....	168
Protection of Women and Juveniles Ordinance.	
Protection of Women and Juveniles (Places of Refuge) (Amendment) Order 1985 .....	169
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Remand Home (Amendment) Rules 1985 .....	170
Hong Kong Industrial Estates Corporation (Amendment) Ordinance 1985.	
Hong Kong Industrial Estates Corporation (Amendment) Ordinance 1985 (Commencement) Notice 1985 .....	171
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Arbitration (Parties to New York Convention) Order 1985 .....	172
Metrication Ordinance.	
Metrication Amendments (Aerial Ropeways (Operation and Maintenance) Regulations) Order 1985 .....	173

## Sessional Papers 1984-85:

No. 60—Report of the UMELCO Police Group 1984

## Oral answers to questions

### High technology for manufacturing industries

1. MR. WONG PO-YAN asked:—*Will the Government make a statement about its policy and plans for developing high technology for manufacturing industries and report on progress achieved so far in this area?*

SECRETARY FOR TRADE AND INDUSTRY:—Sir, the Government sees its role as providing an adequate infrastructure to enable industry to function efficiently with the minimum of interference. In this way it is hoped that higher technology manufacturing industry will be attracted to Hong Kong.

Advice on the provision of services and facilities needed by industry is channelled to Government principally through the Industry Development Board (IDB) on which major trade and industrial organisations are represented.

On the recommendation of the IDB, public funds have been provided for three research projects related to electronics and computer-aided-design technology which are being undertaken by the two universities and the Hong Kong Polytechnic. In addition, a phased programme has been implemented to conduct, on a regular basis, techno-economic and market research studies on major sectors of the manufacturing industry viz. electronics, plastics, metals, light engineering and garments/textiles. Such research studies will examine the local characteristics of the major sectors, their strengths and weaknesses in the context of world-wide trends and will in addition identify, on a macro-level, technological development trends and market potentials of their products. They will assist individual manufacturers in formulating their plans for expansion, diversification or upgrading.

As a back-up service to encourage the development of technology for industry, the Hong Kong Government Standards and Calibration Laboratory was set up in September 1984. It maintains reference standards of measurement directly traceable to those maintained by premier institutions overseas and provides precision calibration service to industry and other organisations. Present services cover mainly the electrical and electronics fields. The facilities are planned to be extended into other measurement areas as additional needs are identified.

Of course, attraction of higher technology to Hong Kong is paramount in the Industry Department's efforts to promote investment in Hong Kong industry. The department has assisted in the establishment in Hong Kong of a significant number of factories employing manufacturing processes which represent the current state-of-the-art and are among the most efficient in this region.

Appropriate training through our tertiary educational establishments and the Vocational Training Council to form a pool of adaptable and trained

manpower is an essential ingredient in the attraction of higher technology manufacturing industry to Hong Kong.

The Industrial Estates Corporation was established by Government in 1977 primarily to make available fully serviced land to industrial undertakings which generally help to diversify and broaden Hong Kong's industrial base and to upgrade the technological level of industry. This has made possible the setting up of factories here which would not otherwise have been established under Hong Kong's normal circumstances. Today, the industrial estates house some of the most modern plants in Hong Kong and, indeed, in this region.

Industries having special land requirements can approach the Government for a private treaty grant of land under the Special Industries Policy. Some advanced manufacturing facilities are situated on sites granted under this policy.

Finally, the Hong Kong Productivity Centre assists industry to upgrade itself, and provides the necessary support services to facilitate the development of industries at a higher level of technology than that exists at present. Already, funds have been set aside in the current Estimates to allow the HKPC to expand its capabilities in computer-aided-design systems and electro-mechanical linkage support facilities. These will enable the centre to better assist industry's move towards automation. Meanwhile, plans for the Unified Approach project, which focuses on the provision of an integrated industrial automation service and on an expanded metal development service with special emphasis on precision tooling capabilities are under active consideration. To this end, it is envisaged that the technical capabilities of the HKPC will further be augmented in respect of mechanical design, electro-mechanical interface support, computer software support, precision machinery, CAD/CAM and tool service treatment and technology transfer.

We are making good progress in the various areas designed to assist the application of higher technology in our industries.

### **Filipina domestic helpers**

2. MRS. CHOW asked:—*Will Government inform this Council:*
- (i) *how many Filipina domestic helpers are currently employed in Hong Kong;*
  - (ii) *what has been the rate of increase in the last three years; and*
  - (iii) *are they prevented by their terms of contract from changing employers during the contract period and, if so, how is compliance with this condition enforced?*

SECRETARY FOR SECURITY:—Sir, at the end of May there were 24 008 Filipina domestic helpers working in Hong Kong.

The number has increased by 66 per cent since January 1982. The annual rates were 39 per cent in 1982, 23 per cent in 1983, minus 7 per cent in 1984 and plus 5 per cent in the first five months of 1985.

Filipina domestic helpers are *not* prevented by the terms of their contracts from changing employer during the contract period. But the 'conditions of stay' the Director of Immigration imposes on them when they arrive in Hong Kong will specify who their employers in Hong Kong are. If thereafter they want to change employer, then under the Immigration Ordinance they must get the Director of Immigration's approval. As regards enforcing compliance with the 'conditions of stay', a Filipina domestic helper who changes employer without getting the approval of the Director of Immigration will be guilty of an offence under section 41 of the Immigration Ordinance and liable on conviction to a fine of \$5,000 and to imprisonment for two years.

MRS. CHOW:—*Sir, what would be the criteria for the Director of Immigration to grant approval regarding the change of employer during the term of the contract?*

SECRETARY FOR SECURITY:—*Sir, normally the Director of Immigration will agree to a change of employer after the first year of the contract and provided that both the present employer and the future employer agree that the change of employer should take place.*

MRS. CHOW:—*Sir, how could this agreement from the former employer be secured or proved?*

SECRETARY FOR SECURITY:—*It is up to the former employer to agree or not agree to the change of employer.*

MRS. CHOW:—*Sorry, Sir, I don't think I made myself clear. What I'd like to know is how would the evidence of agreement by the former employer be required by the Director of Immigration, in other words, how would it be acceptable as evidence of approval given by the former employer?*

SECRETARY FOR SECURITY:—*The answer to that is that the Director of Immigration would expect the current employer to agree in writing to the change of employer.*

MRS. CHOW:—*What provision exists to protect the original employer's interests should his domestic helper choose to unilaterally or arbitrarily terminate a contract while remaining in Hong Kong to seek other employment?*

SECRETARY FOR SECURITY:—*First of all, if by her action she is in breach of the contract then of course he has recourse to civil law. The other thing he can do is*

to refuse to agree to her changing employment. If he refuses to agree to her changing employment then she cannot find another employer. The third thing he should do is to complain to the Immigration Department. These Filipina domestic helpers are allowed in on six-month periods of stay, so if the Immigration Department know that the girl is misbehaving in terms of her contract then it is most unlikely that the department will renew her conditions of stay after the first six months.

MRS. CHOW:—*Has the Director of Immigration actually withheld permission to stay from domestic helpers as a result of their breach of contract?*

SECRETARY FOR SECURITY:—Yes, Sir, he has.

### **Publication of Chinese textbooks**

3. MR. ALEX WU asked:—*Can the Government inform this Council when a decision will be taken on the recommendations contained in the Report of the Working Party on the Development of a Chinese Language Foundation submitted in March 1982, and, in particular, on the Report's recommendation concerning the publication of Chinese textbooks?*

SECRETARY FOR EDUCATION AND MANPOWER:—Sir, the Working Party on the Development of a Chinese Language Foundation, which Mr. Wu chaired, correctly identified the lack of adequate Chinese language textbooks as an inhibiting factor in raising the standard of Chinese language used by the community at large. It therefore recommended that, in promoting the better use of Chinese, a Chinese Language Foundation, if established, should give particular emphasis to the production of high quality textbooks in Chinese.

The Administration is at present examining a number of options as to how the production of textbooks written in Chinese should best be arranged. I anticipate that firm proposals on this, and on the other recommendations of the Working Party, will hopefully be taken to the Executive Council for advice within the next two or three months.

MR. ALEX WU:—*In paragraph 1 of the reply, it says 'if' the foundation is established. Can Mr. HENDERSON tell this Council whether it would be his recommendation to establish such a foundation?*

SECRETARY FOR EDUCATION AND MANPOWER:—I have to use 'if', Sir, because this decision would be the prerogative of the Executive Council.

MR. ALEX WU:—*As the recommendations contained in the report of the Working Party on the Development of a Chinese Language Foundation are in line with*

*those in the Education Commission's No. 1 Report concerning the teaching of Chinese in schools, does the Government consider that any delays in taking a decision in this matter will jeopardise the implementation of the many projects recommended by the Education Commission?*

SECRETARY FOR EDUCATION AND MANPOWER:—Sir, I agree that we should get on with this now and as fast as possible. The problem here is not one of policy; we know that we need to improve the production of Chinese textbooks. The question is one of method.

MR. ALEX WU:—*Could the Secretary confirm that the recommendations would go forward to the Executive Council within the time frame stated in paragraph 2 of his reply?*

SECRETARY FOR EDUCATION AND MANPOWER:—I will certainly do my best, Sir, but there are other people to be consulted.

### **Controls on pesticides**

4. DR. HO asked:—*Is Government satisfied that existing legislative controls are effective in safeguarding the health of the people of Hong Kong against hazardous insecticide sprays and pesticides?*

SECRETARY FOR HEALTH AND WELFARE:—Sir, legislative control of pesticides for agricultural use is provided by the Agricultural Pesticides Ordinance. Under this Ordinance controls are exercised on the import, supply, storage, transport, retail sale, labelling, bottling and maximum concentration limits of agricultural pesticides. These controls are considered to be generally adequate.

Regarding health hazards that might arise from the misuse of these pesticides, one of the labelling requirements is that instructions on how to use the pesticide as well as precautionary measures which should be taken should be printed in English and Chinese on the label of the container of the pesticide. In addition the Agriculture and Fisheries Department provides an advisory service and training programmes for users on the safe use and handling of agricultural pesticides.

There is at present no legislation which deals specifically with nonagricultural pesticides. However, the ingredients of some such pesticides are included in the Poisons List made under the Pharmacy and Poisons Ordinance and in these cases, the pesticides are subject to controls in respect of storage, transport, sale, labelling and bottling.

It is recognised however that the Pharmacy and Poisons Ordinance, which was not intended to control non-pharmaceutical poisons, is not really

appropriate for the control of non-agricultural pesticides. Following recent consultations between government departments it is accepted that there is a need for controls to be introduced in this area and new legislation will be considered.

DR. HO:—*Sir, with reference to the proposed new legislation mentioned in the last paragraph of the answer can the Secretary for Health and Welfare make sure that it is compulsory for the manufacturers or importers to provide information in Chinese and English on the containers of the insecticide sprays?*

SECRETARY FOR HEALTH AND WELFARE:—*Sir, I can assure Dr. Ho that any conditions of this sort will be required in both English and Chinese.*

### **Proposed centralised primary school in North District**

5. MR. YEUNG PO-KWAN asked:—*Will Government make a statement on how and when the proposed centralised primary school is to be established in North District?*

DIRECTOR FOR EDUCATION:—*Sir, as part of its policy to improve the quality of education in the rural areas, the Government intends to introduce central primary schools by combining a number of small rural schools in the neighbouring areas, subject to the acceptance of such a scheme by the school authorities concerned. One such school was successfully established at Ho Chung in Sai Kung in 1984. The one proposed for North District is another one in the series.*

In the case of North District, the Government proposes to combine five small rural schools in the neighbouring area into one, using the existing premises of one of these schools which is centrally located and can be suitably renovated for this purpose. Because of the very small size of the total enrolment in these five schools, a new school project is not considered justified.

In line with previous practice, the full consent and acceptance of the scheme by the school managers is to be obtained before the scheme can be implemented. Consultation with them began in February this year. Because of the unfavourable reaction from the school managers to being reconstituted into a new management committee, it was felt that wider consultation involving parents would be necessary to enable them to understand the benefits of the central school for their children.

At the present time, there are still differences of opinions among the parties concerned, and further discussions will be necessary. Pending the outcome of such discussions, it is not possible to say when the proposed central school can be established.

MR. YEUNG PO-KWAN:—*Sir, if favourable reaction were received from all parties concerned after wider consultation, how long will the Government take to renovate the existing premises of the chosen school and what measures will the Government adopt to locate the students of the five small rural schools during the period of renovation?*

DIRECTOR OF EDUCATION:—*Sir, at the present time, even if all the parties agree to this arrangement, it would take at least six to eight months to prepare estimates, to gain approval of finance and to construct or reconstruct the building. I think that the earliest we can aim at is September '86 if all parties agree to this arrangement. In the meantime unless the school is completed the children will remain where they are in existing schools.*

### **Preparatory Committee of the Media Council**

6. MRS. CHOW asked:—*Is the Government aware that a Preparatory Committee of the Media Council has been formed under the Chairmanship of Justice Simon Li and if so, what is the Government's position in this matter?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—*Sir, the Government is aware of the formation of a Preparatory Committee of the Media Council. A press statement was issued on 30 May by the Preparatory Committee announcing its establishment under the Chairmanship of Mr. Justice Simon Li.*

We welcome the initiative to consider the desirability of a media council for Hong Kong. The Government is not and does not intend to become directly involved in the work of the Preparatory Committee. We believe that the proposal for a Media Council is a matter which should be pursued by the media themselves.

MRS. CHOW:—*Sir, is the Government aware that the initial thinking of the Preparatory Committee is that the Media Council should have the endorsement of Government and the community so as to ensure that necessary and relevant input of the community as regards the role the council should play would be available to the Preparatory Committee and is the Secretary for Administrative Services and Information prepared to volunteer any such input?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION:—*Sir, we have not been approached by the Preparatory Committee for any contribution. As I have stated earlier, we do not intend to be directly involved in the work of the committee.*

## Criteria for provision of zebra-crossings

7. MRS. NG asked in Cantonese:—

政府可否就其在公共及私人屋邨內的道路設置斑馬線的準則作出聲明，及說明該等準則是否同樣適用於這些屋邨外的公共道路？

(The following is the interpretation of what Mrs. NG asked.)

*Can the Government make a statement on the criteria for providing zebra-crossings on roads inside public and private housing estates and whether the same rules apply to public roads outside such estates?*

SECRETARY FOR TRANSPORT:—Sir, there are three main criteria taken into account by the Transport Department when considering the need for zebra-crossings on public roads: pedestrian safety, the effect on motorists and nearby premises and traffic condition. Other factors would be the number of pedestrians likely to use the crossing, the position of the crossing and the gradient of the road. But these are only general guidelines. The circumstances of potential sites can vary very considerably and a decision can only be taken in any particular situation after a careful site investigation.

Inside *public* housing estates, the same arrangements apply when the road has been gazetted as a public road. Where a road has not been gazetted as a public road, the Housing Department is responsible and considers each location on its merits with regard to the density of pedestrian and vehicular traffic.

Inside *private* housing estates, the provision of zebra-crossings is left to the discretion of estate managers. This is because at present the Road Traffic Ordinance does not apply to such roads. However, the Executive Council has recently endorsed a recommendation that the road safety provisions of this Ordinance should apply to these roads and non-gazetted roads in public housing estates. This will bring the provision of such zebra-crossings under the control of the Transport Department and draft legislation is being prepared to give effect to this.

MRS. NG asked in Cantonese:—

閣下，在新法例未訂立之前，使用屋邨斑馬線的行人，有甚麼保障？

(The following is the interpretation of what Mrs. NG asked.)

*Sir, before the new legislation comes into force what safeguard is being provided for pedestrians using zebra-crossings within housing estates?*

SECRETARY FOR TRANSPORT:—Sir, as I said, inside private housing estates and before the enactment of necessary legislation, the provision of zebra-crossings must be left to the discretion of estate managers. But I'm quite sure that estate managers will take into account the best interests of the pedestrians.

### **Industrial development at On Lok Tsuen**

8. MR. YEUNG PO-KWAN asked:—*Could Government inform this Council what plans it has for industrial development at On Lok Tsuen in Fanling?*

SECRETARY FOR LANDS AND WORKS:—Sir, the intention is that On Lok Tsuen should be developed as a light industrial area providing scope for industrial investment and employment as part of the development of Fanling New Town.

A layout plan has been prepared for the area to produce 15 hectares of industrial land which, if developed to its full potential, could provide jobs for up to 30 000 people.

The land within the layout is largely in private hands and has been converted over the years from agricultural to temporary industrial use under short term waivers. A survey in 1983 indicated that about 130 undertakings were then operating and employing between one and two thousand people.

Implementation of the layout therefore involves upgrading by converting the temporary to the permanent through lease modifications and land exchanges with Government resuming some land to provide the necessary roads and drainage to serve the area.

Present arrangements provide developers with flexibility to develop to a plot ratio of between two and five and a building covenant period of 48 months. Progress is, however, slow because of the current state of the industrial land market. The few Crown land sites which exist in the area should begin to come onto the market next year.

MR. YEUNG PO-KWAN:—*Sir, what publicity has been made and will be made by the Government in regard to the provision of the scope for industrial investment and employment at On Lok Tsuen?*

SECRETARY FOR LANDS AND WORKS:—The industrial undertakings in On Lok Tsuen have been there for a considerable time and there has been a constant dialogue between the Lands Department and the local industrialists in On Lok Tsuen. The purpose of the On Lok Tsuen Industrial Development Plan is to enable the existing industrialists in On Lok Tsuen to upgrade themselves.

MR. STEPHEN CHEONG:—*Sir, is the current upgrading of facilities for roads and drainage completed for that particular area?*

SECRETARY FOR LANDS AND WORKS:—Stage I site formation work has been completed. The roads and drainage for Stage I works are in progress. Stage II works are going to be implemented.

### **Vehicle holding area at Man Kam To**

9. MR. YEUNG PO-KWAN asked:—*In view of the heavy traffic at Man Kam To, will Government consider building more lay-bys to relieve congestion?*

SECRETARY FOR TRANSPORT:—Yes, Sir, we are considering whether it would be useful to include an additional vehicle holding area—in effect a large lay-by in the expanded control complex at Man Kam To. The feasibility of expanding the Man Kam To road to a three-lane road is also being considered.

MR. YEUNG PO-KWAN:—*Sir, if the project is considered desirable to implement, when will the additional vehicle holding area be constructed and the Man Kam To road be expanded?*

SECRETARY FOR TRANSPORT:—Sir, there are two items concerning these two aspects—they are at the moment in Category B and will in due course be upgraded. I expect as far as the large lay-by in the expanded control complex at Man Kam To is concerned, it should be completed by the end of the year.

### **Statement**

#### **Report of the UMELCO Police Group for 1984**

MR. S. L. CHEN:—Sir, included in the papers tabled is the Report of the UMELCO Police Group for 1984. It covers in some detail, in the customary style, the work of the group during the year.

It will be seen that the group examined a record number of police investigation reports in continuation of the trend which has developed since the group was first established in 1977. I can only add that the same pattern is evident from the opening months of the current year.

In view of the group's increasing workload and the vital need to maintain public confidence in the system, a working party with representatives from the Attorney General's Chambers, the Security Branch, the police and the UMELCO Office, was set up to explore ways and means of improving the efficiency and working procedures for monitoring the handling of public complaints against the police. The working party has submitted its report and has recommended, among other things, the setting up of a full-time administrative and legal secretariat to service the group. The working party has also recommended the introduction of a filtering system under which the handling of serious complaints would be examined in-depth by the Members of the group, while the handling of less serious complaints would be examined on behalf of the group members by the full-time secretariat; the secretariat

reporting its findings to members. The group has endorsed these recommendations which, I understand, are now being considered by the Administration.

I would like to take this opportunity to thank the Commissioner of Police and all officers of the Complaints and Internal Investigation Branch for their cooperation and assistance rendered to the group. I would also like to express my appreciation for the dedicated support of members of the group and last, but not the least, the outstanding leadership and invaluable contribution by Mr. T. S. Lo, former Chairman, who led the group during the period under review and was a member from its inception.

### **Government business**

#### **First reading of bills**

#### **FOREIGN JUDGMENTS (RESTRICTION ON RECOGNITION AND ENFORCEMENT) BILL 1985**

#### **DANGEROUS GOODS (CONSIGNMENT BY AIR) (SAFETY) BILL 1985**

#### **MERCHANT SHIPPING (AMENDMENT) BILL 1985**

#### **WATER POLLUTION CONTROL (AMENDMENT) BILL 1985**

#### **PUBLIC BODIES (CONFIRMATION OF APPOINTED MEMBERS) (TEMPORARY PROVISIONS) BILL 1985**

*Bills read the first time and order to be set down for second reading pursuant to Standing Order 41(3)*

#### **Second reading of bills**

#### **FOREIGN JUDGMENTS (RESTRICTION ON RECOGNITION AND ENFORCEMENT) BILL 1985**

THE ATTORNEY GENERAL moved the second reading of:— ‘A bill to amend the law relating to the recognition and enforcement of foreign judgments; to bar the bringing of proceedings in Hong Kong as an alternative to the enforcement of a foreign judgment; and to provide for matters incidental thereto’.

He said:— Sir, I move that the Foreign Judgments (Restriction on Recognition and Enforcement) Bill 1985 be read the second time.

This Bill concerns foreign judgments obtained in another jurisdiction. Some of the present well-established rules are unfair and another diminishes the effect of arbitration clauses in international trading contracts. The Bill, following United Kingdom changes made in 1982, seeks to change these rules.

In Hong Kong we already have a statutory scheme which provides a relatively simple procedure for registering foreign judgments in the High Court for the purpose of executing them against assets in Hong Kong of defendant debtors. This appears to work quite well, even though the statutory scheme is limited by the number of countries whose courts come within the scheme.

In cases which fall outside the statutory scheme, it is possible for a judgment creditor who seeks to enforce his judgment against the Hong Kong assets of the debtor to do so in Hong Kong, but only by commencing legal proceedings here based on the foreign judgment for that purpose. A further possibility, and one which may be unjust to one of the parties to the dispute, is to commence fresh legal proceedings in Hong Kong for the purpose of obtaining a separate Hong Kong judgment.

Where a creditor comes to the courts of Hong Kong relying upon a judgment obtained in a foreign court, the courts here are bound to recognise that judgment if the debtor appeared in that foreign court. Where he appeared to make out his defence and failed, that is clearly right, but very often the debtor appeared in the foreign court only to persuade it not to entertain the claim against him because, for example, the dispute ought to have been referred to arbitration under a binding arbitration submission. This Bill relaxes the laws of Hong Kong to deal with that case. If that was the purpose of the debtor's appearance in the foreign court and he raised no claim himself, the foreign judgment will not now be recognised or enforced in Hong Kong. If Hong Kong is to be seen as an important international centre for arbitrations, then it is clearly right that the law should uphold arbitration clauses rather than see them circumvented.

The main purpose of this Bill therefore is to change this rule as to the effect of limited appearances in foreign courts by a 'victim party' in foreign courts and to positively restate and reinforce the need to give effect to arbitration clauses freely entered into. The Bill accomplishes this by clauses 3 and 4.

The second objective of the Bill is to prevent judgment creditors following the course I mentioned earlier, namely, commencing fresh proceedings in Hong Kong instead of enforcing the foreign judgment itself. A foreign judgment which is enforceable and entitled to recognition in Hong Kong will therefore operate as a bar to any attempt to obtain a separate Hong Kong judgment.

The remainder of the Bill is concerned with transitional and consequential provisions.

Members will be glad to note that this Bill has the support of the Bar Association and the Law Society, and it was prompted in part, I am glad to acknowledge, by the keen interest of Mr. Justice RHIND.

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

*Motion made. That the debate on the second reading of the Bill be adjourned— THE ATTORNEY GENERAL*

*Question put and agreed to.*

### **DANGEROUS GOODS (CONSIGNMENT BY AIR) (SAFETY) BILL 1985**

THE SECRETARY FOR ECONOMIC SERVICES moved the second reading of:—‘A bill to control, in the interests of safety, the preparation, packing, marking, labelling and offering of dangerous goods for carriage by air, and for matters connected therewith.’

He said:—Sir, I move that the Dangerous Goods (Consignment by Air) (Safety) Bill 1985 be read the second time.

The purpose of this Bill is to provide a legal framework for the implementation, in part, of Annex 18 of the Convention on International Civil Aviation and the associated Technical Instructions, which comprise a comprehensive set of standards and recommended practices for the safe transport of dangerous goods by air.

International Civil Aviation Organisation (I.C.A.O.) Contracting States are expected to enforce compliance with the provisions of Annex 18 of the Convention and the Technical Instructions by means of suitable legislation. They are also required to establish inspection, surveillance and enforcement procedures to ensure that those involved with the shipment of dangerous goods by air comply with such legislation. Indeed, I.C.A.O. set 1 January 1984 as the target date for full compliance with Annex 18 and Technical Instructions. Hong Kong is a party to the Convention through its application to British dependent territories by H.M.G. But, even if it were not, it is highly desirable that Hong Kong should apply internationally recognised standards for the safe carriage of dangerous goods by air.

A system of regulation and supervision of the transportation of dangerous goods by airline operators is presently enforced under Article 41 of the Air Navigation (Overseas Territories) Order 1977. Whilst the system is in compliance with I.C.A.O. standards and requirements, it falls short of full compliance with Annex 18 and the Technical Instructions in that, at present, there is no legislation to control the preparation, packing, labelling, marking or offering of dangerous goods for carriage by air.

The Bill provides that the Governor in Council may make regulations aimed at securing compliance with Annex 18 and the Technical Instructions by shippers, freight forwarders and others, subject to express exemptions, and it is intended that the approval of the regulations by the Governor in Council be sought once this Bill has passed into law.

The Bill also permits the Director of Civil Aviation or any officer authorised in writing by him to enter premises for the purposes of inspecting and searching premises, and seizing dangerous goods, and to detain vessels, vehicles or aircraft for purposes of search.

Lastly, the Bill provides for the liability of company directors and management where any offence under the Ordinance is committed by a company; and clause 6 empowers a Magistrate to order the forfeiture of any dangerous goods in respect of which an offence has been committed whether or not any person has been charged with the offence.

Sir, if the Bill is enacted, it is proposed that it be brought into operation on 1 August 1985 together with regulations to be made under its provisions by the Governor in Council.

The proposals reflected in the Bill have been drawn up in consultation with, and are supported by the Dangerous Goods Standing Committee and the Hong Kong Shippers' Council.

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

*Motion made. That the debate on the second reading of the Bill be adjourned*—SECRETARY FOR ECONOMIC SERVICES.

*Question put and agreed to.*

## **MERCHANT SHIPPING (AMENDMENT) BILL 1985**

THE SECRETARY FOR ECONOMIC SERVICES moved the second reading of:—‘A bill to amend the Merchant Shipping Ordinance’.

He said:—Sir, I move that the Merchant Shipping (Amendment) Bill 1985 be read the second time.

The purpose of this Bill is to amend the Merchant Shipping Ordinance to make it clear that the Governor may order the rehearing of an investigation by a Marine Court into a casualty affecting a ship.

Under section 56(1) of the principal Ordinance, the Governor's power to order a rehearing relates specifically to investigations into the conduct of a holder of a certificate of competency. There is some doubt as to whether the Governor may order a rehearing of an investigation into a casualty affecting a

ship even though the original hearing will usually have touched on matters concerning the conduct of certificate holders. Clause 2(a) of the draft Bill makes the position abundantly clear.

Whilst this Bill represents a necessary and desirable amendment to the principal Ordinance, it will be of direct relevance to the inquiry into the loss of the 'Osprey'. Since the Marine Court reported its findings in mid-1984, the wreck of the vessel has been discovered and positively identified in a location substantially different from that in which the court found the vessel was lost. This discovery, together with other new evidence, suggests that a rehearing should be ordered. Clause 2(b) of the Bill, which provides that such an order may be made in relation to any investigation whether held before or after the Bill takes effect, will enable this to be done.

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

*Motion made. That the debate on the second reading of the Bill be adjourned—* SECRETARY FOR ECONOMIC SERVICES.

*Question put and agreed to.*

## **WATER POLLUTION CONTROL (AMENDMENT) BILL 1985**

THE SECRETARY FOR HEALTH AND WELFARE moved the second reading of:—'A bill to amend the Water Pollution Control Ordinance'.

He said:—Sir, I move that the Water Pollution Control (Amendment) Bill 1985 be read the second time.

The Bill seeks to clarify certain provisions of the Water Pollution Control Ordinance. It does so in three ways.

First of all, it will bring within the scope of the Ordinance any discharge of oil, or a mixture containing oil, into waters—including inland waters—situated inside a Water Control Zone. At present, section 8 of the Ordinance which otherwise prohibits unauthorised discharges in a Water Control Zone does not apply to a discharge of oil or a mixture containing oil. All discharges containing oil are already subject to control under the Shipping and Port Control Ordinance, which applies even to discharges in very low concentration, whether they originate from sources at sea or on land. In practical terms, however, the controls under the Shipping and Port Control Ordinance are only effective in relation to substantial oil spills, and the original intention was that discharges containing only small concentrations of oil should be controlled under the Water Pollution Control Ordinance. This intention was not achieved and the possibility exists that an unscrupulous operator could escape effective controls

altogether by simply adding a small quantity of oil to his effluent. The deletion of section 8(3)(b) of the principal ordinance will remove this danger.

In addition, as the law stands at present, some oily discharges from sources on land, although they may be licensed under the Water Pollution Control Ordinance, would also be subject to the oil pollution controls in the Shipping and Port Control Ordinance. It is clearly undesirable that a discharge which is lawful by virtue of a licence granted under one Ordinance should then fall foul of another. This anomaly will be removed by clause 6(2) of the Bill.

Secondly the Bill seeks to specify who may claim compensation following the cancellation or variation of a licence or an exemption in respect of a discharge or deposit of matter into a Water Control Zone.

Thirdly, the Bill provides that, in the event of disagreement over the amount of compensation, the dispute would be referred to the Lands Tribunal for determination. After careful consideration the conclusion has been reached that the existing Lands Tribunal is the most appropriate body to deal with these matters rather than an *ad hoc* tribunal as at present provided for. The reference to the Lands Tribunal necessitates several consequential amendments including a minor amendment to the Lands Tribunal Ordinance.

Sir, the Water Pollution Control Ordinance which this Bill will amend, is largely an enabling ordinance, in that it sets out the basic principles and provisions of the water pollution control arrangements, while leaving the details of the methods of calculation of quantities and rates of discharges, the form and content of notices and applications and other such matters to be dealt with in regulations to be made by the Governor in Council. Comprehensive regulations have been drafted, and with your permission, Sir, I should like to take this opportunity to draw the attention of Members of this Council to the fact that we have published these regulations in draft form in Special Supplement No. 5 of the *Government Gazette* of 31 May 1985.

The draft Water Pollution Control (General) Regulations, as is inevitable with pollution control and environmental legislation, are quite lengthy and somewhat complex, and include a number of what may appear to be rather intimidating forms, despite the best efforts of the draftsman to keep them as straightforward as possible. Extensive consultation has taken place with industrial organisations and individual firms involved in the industries which will be affected by the regulations, but it is considered desirable that the general public should also have an opportunity to express their views on them. Hence we have invited the public to send in their views to the Health and Welfare Branch and I would also welcome any comments from honourable Members on the draft regulations. It does without saying that any such comments will be considered in the context of the preparation of a submission to the Executive Council. If Members have any general comments on the regulations, perhaps, Sir, with your permission, these could be raised during the debate on the second

reading of this Bill. Any comments on the detailed drafting could perhaps more conveniently be sent to my office in writing.

Sir, it would not be appropriate for me to expatiate at length on the contents of the draft regulations, but I would like to make two points. First, these regulations will initially apply only to the Tolo Harbour and Channel Water Control Zone, the only zone so far declared under the Ordinance, although it is the intention to declare other Water Control Zones in the future in the light of experience gained in the Tolo area. Secondly, detailed guidance notes, in both Chinese and English, will be issued to help industrialists to complete the necessary application forms. In addition seminars will be organised to explain the operation of the legislation, and the Authority will always be prepared to assist applicants in the completion of forms.

Reverting to the item on the Order Paper, namely the Bill to amend the Water Pollution Control Ordinance, I beg, Sir, to move that the debate on this motion be adjourned.

*Motion made. That the debate on the second reading of the Bill be adjourned*—SECRETARY FOR HEALTH AND WELFARE.

*Question put and agreed to.*

### **PUBLIC BODIES (CONFIRMATION OF APPOINTED MEMBERS) (TEMPORARY PROVISIONS) BILL 1985**

THE SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION moved the second reading of:—‘A bill to confirm certain appointments’.

He said:—Sir, I move that the Public Bodies (Confirmation of Appointed Members) (Temporary Provisions) Bill 1985 be read a second time.

It is not without some embarrassment that I do so, for the Bill arises as a result of an unfortunate oversight on the part of the Administration—the sort that occurs in the best of conducted organisations and for which we must accept responsibility.

The purpose of the Bill is to regularise the position of one Urban Council member and four District Board members who have been found to have been invalidly appointed to these bodies. The invalidity of their appointments stems from the fact that the Urban Council and District Boards Ordinances provide that no person may be appointed to membership unless he is registered as an elector under the Electoral Provisions Ordinance, that is to say, as an elector on the general electoral roll. It has recently been discovered that the five persons mentioned in the Bill are not so registered.

I shall mention that the legal status of these five members does not invalidate any acts already performed by them in the respective bodies. This is so because in both the Urban Council Ordinance and the District Boards Ordinance, there is a provision to the effect that the acts and proceedings of any member acting as such shall, notwithstanding his want of qualification or disqualification, be as valid and effectual as if he had been qualified.

As its title implies, the Bill is intended as a temporary measure to enable the five persons concerned to continue to act as members and, in the interim, to seek registration on the general electoral roll. The next registration period commences on 15 August and will culminate with the publication of the new final register of electors in January 1986, on which date it is proposed that the Bill should lapse. This will provide an opportunity to the five persons concerned to qualify themselves for appointment by securing registration, and thereafter to be validly appointed to the respective bodies in the normal way.

It is thus desirable, in the interest of these bodies, that the position of the five persons should be put right as soon as possible, and it is for this reason that it is proposed the Bill should be taken through all its stages at one sitting.

Finally, Sir, I should like to assure Members that steps have been taken to prevent repetition of the oversight. A procedure has been introduced to ensure that nominations for appointment in future will be checked against the general electoral roll.

Sir, I beg to move.

*Question put and agreed to.*

Bill read the second time.

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

## **LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) BILL 1985**

### **Resumption of debate on second reading (15 May 1985)**

*Question proposed.*

MISS TAM:—Sir, the Sino-British Joint Declaration on the future of Hong Kong was ratified on 27 May 1985 and we have moved into the ‘transitional period’. In four months’ time there will be 24 elected representatives of the people of Hong Kong joining the Legislative Council and in 12 years’ time this territory will be governed by an elected legislature. By then it will neither be appropriate or possible for the SAR Government to look to Westminster and seek reference

to its Parliamentary practices on how to manage the affairs of the Hong Kong legislature. It will be necessary therefore to enact our own rules.

The Legislative Council (Powers and Privileges) Bill is introduced to enact such rules in Hong Kong by an ordinance. An *ad hoc* group of the Legislative Council of which I am privileged to be the convener was formed to consider its provisions. This Bill seeks to codify the existing common law and Parliamentary practice which can be extended or has already been extended to the Hong Kong legislature under the doctrine of inherent necessity. Also, section 4 of the Oaths and Declarations Ordinance (Chapter 11) provides: 'the Legislative Council and any committee thereof may administer any oath to a witness examined before the Council or a committee, and for that purpose shall have the same powers, rights and privileges as are possessed or exercisable by the House of Commons of the United Kingdom or any committee for enforcing the attendance of witnesses and punishing persons guilty of contempt' and this forms the legal basis for the clauses on Evidence in Part III, and clauses 17 and 18 under Part IV of the Bill.

The considerations given into introducing this Bill at this point in time are as follows:—

1. After 1997 any inherent powers and privileges derived from the present status of the Legislative Council as a colonial legislature would cease to have effect in Hong Kong.
2. The powers and privileges derived from case laws have not really been brought out in court rulings and it is desirable that there should be a clear understanding of what right the legislature has.
3. We are already in the transitional period, and as we move towards representative government and move away from the tradition of consensus politics, it will assist the functioning of the Legislative Council if the powers and privileges that the legislature and its members can enjoy are clearly understood.
4. In the Green Paper on Further Development of Representative Government in Hong Kong, it was envisaged that the Legislative Council in future may elect its own president who will lack the other proofs of authority which the Governor has. The President must have clear legal sanction to which to point for his conduct of the business of the legislature.
5. With the developing public role of the Council's committee following on the opening up of the hearing of the Finance Committee and Budget estimates; and the Public Accounts Committee, and now the setting up of the Select Committee on Complex Commercial Crimes, it is timely that the position regarding the calling of witnesses and the hearing of evidence should be codified.

All these five reasons, judging from the positive response we have had towards a more representative government, argues for the codification exercise

to be done at this point in time, and indeed, until 10 June 1985, nearly all the groups or organisations that came and made representation to the *ad hoc* group supported the spirit and purpose of the Bill although they rightly criticised some individual clauses in its contents.

They support the main privileges defined in this Bill in respect of the statements made in debate in Council; protection of members from any action in the courts for defamation arising out of such statements; members' freedom from arrest while discharging their duty as Legislative Councillors within the precincts of the Council (or in the case of civil matter, while going to and coming away from its precincts); exemptions from Jury service and attendance in court as witnesses. There is a very strong support too on the development of the investigatory role of the committees of the Council.

However in spite of the obvious need for such a piece of legislation, the introduction of this Bill has met with a controversial reception. I believe it is rightly criticised that there was a lack of consultation on the Bill outside the Unofficial Members of this Council, and it is wrongly, though not deliberately, perceived as a bill which will attract only limited interest; and that in trying to adopt a safe and well tried formula in creating this Bill a little too much grafting is made from the equivalent acts of territories which were once British colonies but are now independent. But the most persuasive argument which caused the *ad hoc* group in charge of the Bill to embark on an overhaul of Part IV of this Bill was that soon after we received the first representation on this Bill on 24 May, we knew that the concept of parliamentary privileges and practices is far removed from the ordinary life of the Hong Kong community; that there is the need to reassure the public of their freedom of expression, and our commitment to a more open government and in particular the freedom of the press and the freedom of speech in the light of changes leading up to 1997.

After receiving the first representation made by the Hong Kong Affairs Society on 24 May 1985. The *ad hoc* group took immediate action to contact the Administration and the Attorney General's Chambers to work on amendments to the Bill, which first draft was ready as early as on 3 June 1985. These amendments in fact deals with 90 per cent of the complaints which was repeated by various groups, the legal profession and the news media on the following eight days to come, which by 10 and 11 June has developed into a strong demand to defer the second reading of this Bill.

Let me make it clear that the decision to go ahead with the second reading on the general principle and merits of the Bill is made not out of insensitivity to public opinion, but out of determination to firmly steer the Bill through the differences of opinions and balance on judgment between legislating for an effective and strong Legislative Council and accommodating the concerns of the public and the media over their freedoms. The Legislative Council must be able to exercise its judgment and authority as decision makers and representatives of the people both now and in the future by grasping the issues before it,

analyse and deal with them with a clear conscience that the decision is made in the interest of the public at large.

And the interest of the public need to be served by a legislature buttressed by legislation which gives a firm control over the management of its own affairs, effective investigatory powers and as much powers and privileges and respect as the courts of law enjoy in this territory.

In answer to public criticism to this Bill we have asked for the following amendments:—

- (1) *Clause 8*—to the effect that the sitting of the Council shall be open to the public subject to certain restrictions which has to be publicised in form of orders. The Honourable CHAN Ying-lun will speak on the subject of ‘strangers’ which is also mentioned under clause 21;
- (2) *Clause 13*—to restrict the President’s power to call for evidence only when it is lawful and relevant to the issue;
- (3) *Clause 14*—to give further protections to a witness from incrimination of self or spouse.

Dr. the Honourable Ho Kam-fai will speak on these two clauses.

- (4) *Clause 15*—to allow for the development of the practices of the committees or the Council and the President’s power in the determination of questions to be put to the witnesses by virtue of any resolution of the Council. The Honourable Andrew So will speak on this issue;
- (5) *Clause 16*—to acknowledge the witnesses’ privilege against incrimination of self and spouse; and amend it by putting in an equivalent section to section 44A of the Supreme Court Ordinance (Chapter 4); and to the effect that the evidence he has given before the select committee or the Council will be inadmissible against him;
- (6) Deletion of *clause 17(d)* concerning the offence of intentional disrespect;
- (7) Deletion of *clause 19(l)* which can be covered by section 4 of the Prevention of Bribery Ordinance and the Honourable Mrs. Pauline NG will speak on this clause as well as on clause 16;
- (8) *Clause 20*—by deleting it from this Bill but to explore other appropriate measures to protect from disclosure of certain proceedings of closed door meetings of the Council or a committee. The Honourable Mrs. Selina CHOW will speak on this clause and clause 17(d); and
- (9) *Clause 24*—which at the moment excludes the jurisdiction of the court in respect of the acts of the Council, the President or officers. The Honourable John SWAINE will speak on the amendments.

I believe that Members will make references in their speeches to representations made by the Hong Kong Affairs Society and Meeting Point. In fact those Points raised by these two groups were the points which have been repeated all through the last fortnight by other organisations such as the Hong Kong Federation of Students, the Hong Kong Journalists Association, a group of five lawyers, Septentrio Academy, Hong Kong Federation of Catholic Students and later on by the time we moved on to the

beginning of this week, two groups of District Board members and Urban Councillors as well as the Bar Association, Law Society and Hong Kong Branch of Justice, Christian Industrial Committee, S.O.C.O., Association for the Promotion of Public Justice, Social Workers General Union and the Education Action Group have asked for a deferment of the second reading of the Bill.

Each of the honourable Members who speak on this Bill or of their suggestions to amendments will give his or her reasons. At the end of the debate we shall vote on the second reading i.e. on the principle and general merit of this Bill with a clear understanding that it is subjected to the amendments reflecting the points that we have made in this Council. I believe a new version of this Bill will be gazetted in two days' time and the *ad hoc* group will scrutinise it and the public will no doubt do the same.

Sir, I wish in particular to answer three points of criticism. The first is that the existing Legislative Council Members have a vested interest in this Bill and therefore it should be deferred until it is debated by the new Legislative Council with its elected members. I hope this is not based on the assumption that appointed members are more prone to serve their own interest than elected members. The conduct of every Legislative Councillor elected or appointed must be and is indeed subject to the public's scrutiny. It is within our anticipation to work on a code of conduct following the ultimate passage of this Bill and possible amendments to the Standing Orders of the Legislative Council so that when we restrict others we restrict ourselves first.

Secondly, it has been suggested that there should be no restriction on reporting on the proceedings of the closed door meetings of the Council or a committee; and that the press must judge whether the reporting on such proceedings is in the public interest. I can see the concern of the press and media on such restrictions and I agree that clause 20,(c), should be deleted from this Bill and I also agree to the criticism that our own members should first be subjected to punishment before we penalise others. But I believe that appropriate legislative measures should be introduced in future to safeguard the interest of a witness who gives evidence in camera, or the disclosure of sensitive information given before a committee. It would be prudent to adopt the practice in the courts on proceedings in camera, and restrictions on report on evidence heard in camera, a practice with which the Hong Kong press and media are well familiar. I also believe that the chairman of any committee or the President of the Council must exercise his judgment on how to protect public interest, without abdicating such a responsibility and leaving it to the press.

Finally, there are criticisms that the Bill is not a mere codification exercise but new offences have been created, and new powers bestowed upon the Legislative Council under clause 24. We held a further session working on clause 24 with the Law Draftsman and the Attorney General to identify the areas we have codified and the areas covered by section 4 of the Chapter 11. This is an exercise

which we had carried out already once before the Bill was gazetted. It was explained to us again that clause 24 does fall within the scope of what is 'inherently necessary' to a colonial legislature and that the courts in Hong Kong would be extremely unlikely to question the exercise of such powers conferred on the Council under this Ordinance. However, in order to ensure that the new Legislative Council does not enjoy more power than what we have already, an amendment will be introduced to exclude the courts' jurisdiction under clause 24 on the lawful exercise of such powers and the corresponding clauses i.e. clauses 10, 13, 14(1) and 17 will be amended accordingly. In fact in this Bill there has never been the intention or the wording to seek the power to prosecute or enforce its provisions by the Legislative Council. The real power rests in the hands of the Attorney General and the courts of law.

I trust that there will still be criticisms that we have not deferred the second reading in order to allow more public comments on this Bill. The *ad hoc* group and our Unofficial colleagues are convinced of the intrinsic value of this Bill and that the Legislative Council is the proper forum for us to express our views. We have gone through many times the repeated criticisms and believe that we should make clear our support to its intrinsic value and give reasons for it before the public judgment on the merit of this Bill is so clouded by the criticisms made against parts of the Bill, which we know as early as on 3 June. These parts of the Bill will be subjected to deletion or amendments and we should not throw away the baby with the bathwater. To me, open government, whether its legislature is appointed or elected or a combination of both, means responsible and responsive government. It does not mean that it is open for everyone to govern. The Legislative Council *alone* must make the final decision. It must do so now; it will do so in the future.

Sir, I support the motion.

MR. TIEN:—Sir, the Legislative Council (Powers and Privileges) Bill 1985 has attracted considerable interest amongst the general public since its publication on 10 May 1985. Various groups and organisations have expressed concern about the Bill.

The Legislative Council *Ad Hoc* Group under the convenership of Miss Maria TAM have studied the Bill thoroughly and considered the various views expressed by the public. As a result, a series of amendments which have been accepted by the Administration will be made to the Bill.

The amendments will be published in the *Hong Kong Government Gazette* this coming Friday and the public can further comment on them. Having examined the proposed amendments, as well as considered further clarifications by the Administration, I am satisfied that the provisions of the Bill would not give any new or additional powers to this Council other than those already in existence.

Sir, I support the motion.

MR. S. L. CHEN:—Sir, this afternoon will be long enough and I will speak only briefly to the Bill. There are two points I wish to address.

When the Bill was introduced on 15 May it was presented as a measure to codify the existing powers and privileges of this Council. I think the scale and scope of the amendments proposed, in response to public representations and the views of the Unofficial Members of this Council, show that it went beyond that understanding.

My second point is also a presentational one. Powers and privileges as enshrined in this Bill do not reflect the common meaning of those words. The provisions of this Bill provide for the orderly conduct of the business of this Council and it would have been far preferable in my own opinion to present them as such. It has been argued that we are legislating ‘powers and privileges’ for ourselves. This is also misleading. In fact we are proceeding with the business of this Council and seeking to codify for Hong Kong Legislative Council of the future the powers and immunities we at present enjoy. With the amendments proposed, I am satisfied that they are necessary, indeed, essential, for the orderly, effective and lawful conduct of the business of this Council.

Sir, on this understanding, I am pleased to support the Bill.

MISS DUNN:—Sir, this Bill has quite rightly attracted a great deal of public interest and generated a great deal of comment. So much has been said by so many there is now a thorough state of confusion in many people’s minds.

What, for instance is the purpose of today’s debate? ‘To make a new law’ many would say. It is nothing of the sort. Our aim today is much simpler. It is to express our approval in principle that a law should be made to ensure in this legislature:—

- that Members should be able to speak freely without fear that they will be subject to legal action;
- that when we need the assistance of witnesses, there are proper legal arrangements to govern the way in which these witnesses can be of most help for the public good;
- that there are sanctions against mischievous attempts to frustrate the work of the body required to make laws for the good government of Hong Kong.

The purpose of our second reading debate is to resolve these matters of principle and record where, in substance, changes should be made to the draft of the Bill.

There is no doubt in my mind as to the merits of the principles that have been embodied in the Bill. We are moving away from the colonial era. We are moving towards a legislature ‘constituted by elections’ enjoying a high degree of autonomy. Legislators must feel free to speak their minds and their right to do so should be clearly stated in the laws of Hong Kong. These principles are sound and reasonable and timely. To vote against this Bill today would imply that I

did not accept these principles. I do and I shall vote in favour of reading this Bill a second time.

I have followed the public comment. I agree with many of the criticisms of particular aspects of the Bill. But this is not the stage in the legislative procedure when detailed changes in the words of the Bill, to take account of sound points of substance, can be settled. In the next stage, the committee stage, we shall be required to vote on the Bill clause by clause, on amendments proposed, on clauses as amended and ultimately, in the third reading, on the amended Bill as a whole. There is still some way to go, but I do support the principle of this Bill and I shall vote in favour of the second reading.

DR. HO:—Sir, the intentions of the Legislative Council (Powers and Privileges) Bill 1985 are to lay down some rules so as to enable members of this Council as a body to properly and efficiently perform their duties and responsibilities. However, quite a few critics seem to have the impression that the Bill confers more powers and privileges than those presently enjoyed by the Legislative Council. In particular, they think that the power to call witnesses to give evidence before the Council is a new invention and express concern that it might infringe on privacy or civil liberties.

As a matter of public information, I would like to invite attention to the fact that such power has for many years been provided under section 4 of the Oaths and Declarations Ordinance, Chapter 11 of the Laws of Hong Kong which reads:

‘(1) The Legislative Council and any committee thereof may administer an oath to a witness examined before this Council or committee, and for that purpose shall have the same powers, rights and privileges as are possessed or exercisable by the House of Commons of the United Kingdom or any committee for enforcing the attendance of the witnesses and punishing persons guilty of contempt.

(2) An oath may be administered by the presiding member of the Council or any committee thereof.’

It can fairly be asked that if the power to call evidence is already provided elsewhere, why is it necessary to lay down the same power under this Bill.

I think the answer to this question is two-fold. First, it would be preferable to tidy up and put together provisions on this Council’s powers and privileges scattered in different places so that the public as well as the future members of this Council may have a better idea of what those powers and privileges are. Secondly, in view of the change of sovereignty over Hong Kong in 1997, we cannot simply rely on the practice in the UK House of Commons as provided in the Oaths and Declarations Ordinance. We need to lay down now what exactly are those powers and privileges relating to the evidence and to build up our own tradition. After all, 12 years is not a long time.

Regarding the Finance Committee and the Public Accounts Committee, their power to call evidence is now governed by the Standing Orders.

Standing Order 60(9) says that the Finance Committee may call before them to give evidence the public officer responsible for the service or services provided under any head of the Estimates. According to Standing Order 60A(4), the Public Accounts Committee may call any public officer, or, in the case of a report on the accounts of or relating to a non-government organisation, any member or servant of that organisation, to give information or any explanation or to produce any records or documents which the committee may require in the performance of their duties; and the committee may also call any other person to assist the committee in relation to any such information, explanation, records or documents.

The purpose of summoning witnesses is to enable the Council or its committee to investigate matters of public policy, not private affairs of citizens. In case doubts still linger on the minds of some members of the public, I would like to assure them that under clause 13 of the Bill, a witness summonsed to give evidence or to produce any paper before the Council may refuse to answer a question or produce any such paper on the ground that it is of a private nature and does not affect the subject of inquiry. The President may then excuse the answering of the question or production of the paper.

Further protection is give under clause 14(1) which says that a witness is entitled to the same right and privilege as before a court of law, which includes non-disclosure of privileged information like that between a witness and his lawyer, and protection against self-incrimination.

Concern has been raised over the power of the President in deciding whether or not a witness may be excused from answering a question or producing a paper. My personal view is that someone has to decide on such matters. It appears to be a sensible arrangement for the President to make the decision. The President, who may be elected by members of the Council, will be held accountable to members for his exercise of power and should be trusted to act reasonably. If he were to act in a wholly unreasonable way or beyond his powers, then the witness may, as I understand the proposed amendment to clause 24, have recourse to the court for redress.

There is a suggestion that some kind of rules committee similar to the UK Parliamentary Committee on Privilege should be set up to handle any complaints witnesses might wish to lodge after giving evidence. Although it is not necessary to write this suggestion into the Bill itself, the recommendation merits some consideration in that it would give a witness an appeal channel to seek redress for any grievance, whether it be real or imagined. I hope that the Administration will reflect this proposal and arrive at some concrete plans.

With these remarks and subject to the proposed amendments, Sir, I Support the Bill in principle.

MR. SO delivered his speech in Cantonese:—

督憲閣下：本局成員在就職前必經宣誓，盡忠職守，誓詞是很神聖的諾言，許諾前，宣誓人必要徹底明白自己的權利與義務。當前的條例草案主旨是把那些基本的權利，明確地列出，因為來屆的立法局雖然職責不變，但在組織和會議環境上和現時有很多不同之處，其它的不說，單是特別委員會的設立，將有很大的差別，目前本局只有財務委員會和政府賬目委員會及閣下最近委派的嚴重商業罪案委員會。隨著立法局的地位日益提高，設立特別委員會處理職務的需要亦會相應增加。以往非官守議員在全數受委任的情況下，自設工作小組執行工作，議員們按照自己的興趣和特長參加這些工作小組，小組主席多數按其資歷深淺和按其姓名英文字母的先後決定由誰人擔當。這個安排辦法雖然很成功，但亦造成了本人做了將近七年議員，連一個小組主席也沒有擔當過的現象。這點雖然是因為非官守議員人材濟濟，但亦也和本人的姓名無論是中文筆劃或英文字母都排得很低有關。所以由閣下以議長身份委出特別委員會及其主席處理本局特別的事務，將會是較理想的安排。

法案第十五條規定立法局及其委員會為了顧全公眾利益，在發生與證供或提交文件有關的問題時，均須按照本草案施行前本局的一貫措施與慣例而予取決。這條規定基本上是正確的，但社會輿論與及太平山學會和滙點兩個團體認為應該明確地列出一貫措施與慣例。

本人認為隨著立法局的演變，在這方面應稍有彈性，不要一成不變地遵照有關一貫措施與慣例的硬性規定。我很高興知道，這條文將會在委員會審議階段作出修訂，規定可根據一貫措施與慣例，或根據本局的決議而決定如何處理上述問題。

閣下，本人是本條例草案特別工作小組的成員，曾經參與研究此草案的精神和字句。本人亦是本局現存三個特別委員會的成員，本人樂意支持草案的原則，並自私的希望能夠在十月卅日任滿前有機會投票贊成這項重要的條例草案及其修訂後的條文！

*(The following is the interpretation of what Mr. So said.)*

Sir, before taking office, Members of this Council must pledge an oath of allegiance. An oath is a sacred promise. We have to thoroughly understand our rights and obligations before we undertake to make the promise. The aim of the Bill before us is to set out explicitly these basic rights. When the new session begins, the Legislative Council will be very different from what it is now both in composition and in the atmosphere of its meetings, though its role will remain unchanged. To give just one example, there will be a much greater number of select committees to be set up under the Council. At present, we only have the Finance Committee and the Public Accounts Committee, plus the recently-appointed Select Committee on commercial crimes. As the status of the Legislative Council becomes increasingly important, the need to set up select committees to dispose of its duties will increase accordingly.

As all Unofficial Members are hitherto appointed, we have in the past, out of our own initiative, set up various working groups to carry out different tasks. Members take part in these working groups in accordance with their individual interests and specialties. In most cases, seniority and the alphabetical order of our surnames will decide who will be the convener of a working group. Despite the success of such an arrangement, it has contributed to the fact that in the past

seven years or so, I have never become a convener of any working group. One reason for this is, of course, that we have a galaxy of talents among the Unofficial Members, but I suspect that it also has something to do with the fact that my surname comes way down the list whether arranged in alphabetic order or according to the number of strokes which makes up the first character of my Chinese name. Therefore, a more desirable arrangement will be for you, Sir, in your capacity as President of the Council, to appoint select committees and their chairmen to deal with special affairs of the Council.

Clause 15 provides that when questions relating to evidence and the production of documents arise, the Council and its committee shall, in the interest of the public, make its decision in accordance with the former usage and practice prior to the commencement of the Ordinance. This provision is basically correct. However, both the Hong Kong Affairs Society and Meeting Point as well as the members of the public are of the opinion that these former usage and practice should be clearly spelt out.

In line with the development of the Council, I think there should be some flexibility in this respect, so that hard and fast rules of former usage and practice need not be followed slavishly. I am glad to note that an amendment will be made to this clause at the committee stage to provide that questions may be determined *either* in accordance with past usage or practice *or* by resolution of the Council.

Being a member of the *ad hoc* group on this Bill, I have been involved in examining its spirit and wording. Moreover, I am also a member of the three existing committees of the Council. Sir, I am willing to support the principle of this important Bill and selfishly hope to have the chance to vote on it and its amendments prior to the expiry of my term of office on 30 October.

MR. SWAINE:—I am able to support this Bill in the light of the amendments which will be made at the committee stage.

Of the provisions which remain, there can be no quarrel with those which seek to ensure freedom of speech and debate in the Council or its committees. Nor can there be any serious quarrel with the principle that the Council and its committees shall have power to compel the attendance of witnesses and to have them examined on oath. Such power would probably be implied anyway, and is in any event conferred by section 4 of the Oaths and Declarations Ordinance, which is an umbrella provision of very wide scope. This is to be replaced by the specific provisions of Part III of the Bill. Disobedience and contempts are to be punishable as offences, but the power of punishment lies not in the legislature, but in the courts. I regard this as a necessary safeguard against the arbitrary use of power.

Clause 24 of the Bill has been one of the most controversial and has led to the comment that it places the Legislative Council above the law. In the United Kingdom, where the legislature is sovereign, the doctrine of the separation of

powers applies in its full vigour, and it has been held by the highest judicial authority that Parliament is truly master of its own house, and is not subject to control by the courts. This unlimited immunity has never, however, applied in Hong Kong. Because the Legislative Council is not a sovereign body, the immunity which it possesses from judicial enquiry is limited, and this is founded on the doctrine that only those powers and privileges are to be implied which are necessary for the proper exercise of the functions of the legislative body. That principle was repeated only as recently in 1970 in a leading case in the Privy Council.

As the underlying principle of the Bill is to declare and codify the law, and not to effect any substantial change, clause 24 in its original form was open to objection as going beyond that mandate. Accordingly the Administration has agreed that an amendment will be made at the committee stage which will exclude the jurisdiction of the court only in respect of the *lawful*, I repeat *lawful*, exercise of the powers conferred by the Bill or Standing Orders. This amendment will leave intact the Court's power of enquiry as to (i) whether the power in question exists and (ii) whether the exercise of that power is lawful. This dichotomy is familiar to lawyers and preserves the Court's power of enquiry by the well established procedure of judicial review.

I am satisfied, Sir, that with this amendment a fair balance will be struck between ensuring sufficient freedom of action for the Legislative Council so that it will not be hamstrung in the exercise of its powers, and the preservation of the citizen's right of access to the courts to check the abuse of power.

With these safeguards, I would support the motion.

MR. STEPHEN CHEUNG:—Sir, Hong Kong must be a place blessed with very good 'Fung Shui'. Somehow, we always manage to have the right group of people with the right calibre responding to our ever changing needs and contributing positively towards our future developments. Take this Bill for example, prior to receiving the very belated avalanche of comments on the provision of this Bill, Members of the in-house *ad hoc* group, especially those who have had little or no legal training, were so overwhelmed by the dryness of the subject matter that we were unable to detect some very controversial yet important drafting oversights.

Even the public response was relatively docile from the date of the gazetting of the Bill to just about a few days before the Bill was scheduled to be read the second time in this Chamber two weeks ago. Suddenly then, the subject matter was given an unexpected lift and in this regard the Hong Kong Affairs Society should be commended for their catalytic efforts. Since then, UMELCO has received representations from no less than ten groups of public spirited organisations or commentators. Valid points raised by these representations did offer a lot of help in the process of further crystallisation of our thoughts on the subject matter.

For the past ten days tremendous efforts have been spent by us Unofficials as well as the Administration in going over in detail all the observations submitted to us. The guiding light of our deliberation has been the underlying principle that the detailed provisions are meant to be a codification exercise of the present practice and that they should seek no more or no less than is necessary to enable legislators to discharge their duties and obligations properly, without fear or favour.

We deliberated at length and in great detail particularly over the provisions of clause 20 and clause 24. The resultant consensus is that clause 20 will be deleted entirely and that clause 24 will be so amended as to reflect our agreement that unlawful acts of the Council or the President or officers of the Council would still be subjected to the scrutiny of the judiciary.

I will not attempt to dwell any further on the various amendments and the rationale behind them as I am sure they will be more competently covered by my colleagues in their respective speeches. Instead, I would like to comment briefly on one widely publicised assertion that it would not be conducive to public confidence in the legislature if this Bill is pushed through with 'indecent haste' during the current session before the arrival of the elected members. Such is forwarded as one of the principal reasons behind the call for deferment of the second reading of the Bill. Sir, I am sure I will not be alone in questioning the logic behind such an assertion and the validity of its implied assumptions. Public confidence in the legislature surely has to be earned, it does not come automatically with the arrival or otherwise of elected members. In any case, the implied assumption that elected members would have less vested interest than appointed members in this issue does not hold true. Why then should it follow that appointed members, sitting in the current session of the legislature, will not be able to look after the interest of the public whilst deliberating over the provisions of this Bill? In my view, if and when members, whether elected or appointed, are first satisfied that they have been conscientious and diligent in their deliberations and in so doing, secondly, have fully taken into consideration all representation whilst trying, thirdly, to take steps to amend what might have been wrong, then, their duties as legislators would have been discharged honorably.

Therefore, in closing, Sir, I would like to take this opportunity to emphasise that the final package, inclusive of all the amendments, has been arrived at with due care and objectivity and, in my opinion, it can be considered as a classic example of how meaningful improvements to the provisions of any bill can be achieved through conscious and reasonable public representations made to UMELCO. Therefore any further deferment of this Bill is totally unnecessary.

Accordingly, subject to the amendments as covered by the speeches of my colleagues being proposed and enacted in the committee stage of this Bill, I have great pleasure in declaring my whole hearted support to the motion.

MRS. CHOW:—Sir, during the Sino-British negotiations, the wish of Hong Kong to retain our many freedoms was unquestionable.

It is therefore understandable that much was voiced by the public in general and members of the media in particular on the necessity to safeguard existing freedom of speech and the press in the context of the Bill before us. I share the sentiment, and feel that certain amendments are necessary to alleviate concern.

Two points are often criticised in clause 17(d). The phrase ‘intentional disrespect’ is generally not favoured, as its definition is open to question. Moreover, the following phrase ‘to or with reference to the proceedings of the Council or a committee or to any person presiding at such proceedings’ could mean anything ranging from disrespectful words or act to genuine critical commentary made inside or outside the Council in spoken, written or published form. This grave reservation is justified, and in my view, clause 17(d) should be removed altogether.

May I move on to clause 20 which seems to cause the most problems as far as freedom of speech is concerned.

I certainly share the thinking of those members of the media the clause 20 should be deleted, so that we are left in no doubt that the present role of the media as the watchdog of Government will not in any way be eroded. The Legislative Council does not and should not require any more protection than is presently afforded by existing legislation. At this juncture, there must be no new legal provision that can be construed or interpreted as retrogression in the part that the media is allowed to play, particularly when we are moving towards a more open form of representative government.

In disposing of clause 20, there is just a small question mark that remains in my mind. First let me say that I am absolutely convinced that in the case of a closed meeting, the publisher of reports of that proceeding of that meeting should not be open to prosecution. This has been and is presently the case and must not change. However, should the Council decide to give an undertaking to a third party who come forward to give evidence that his submission as well as the proceeding of the meeting in which he is asked to take part will be kept confidential, there will be no legal safeguard that the Council or its committee can make good its promise regarding the publication of such evidence or proceeding. I hope this point will be given due consideration. Perhaps a leaf can be taken out of the book of section 5 of the Judicial Proceedings (Regulations of Reports) Ordinance in which the court is empowered to prohibit publication of certain proceedings and information relating to them, so long as the court takes an active decision to do so and states clearly that such publication would constitute contempt.

Subject to the acceptance of the proposed deletion of clause 17(d) and clause 20 at the committee stage, whereby I believe the present freedom of the media in its work on the Council will be preserved, I support the Bill.

MR. CHAN YING-LUN:—Sir, clause 8 of the Legislative Council (Powers and Privileges) Bill concerns with regulating the admittance of strangers to the Council Chamber.

This clause has attracted comments from seven interested groups and individuals.

Comments on the first part of clause 8(1) focus on the first sentence, which reads, ‘no stranger shall be entitled, as of right, to enter or to remain within the precincts of the Chamber’, in particular, the words ‘strangers’ and ‘as of right’ seem to be the most contentious. Some people have expressed concern that this would deprive members of the public, including the press, the right to observe the proceedings of the Council.

The second part of clause 8(1) gives power to the President to order withdrawal of strangers from the precincts of the Legislative Council Chamber. Some people are concerned that the President may have arbitrary power to exclude any person whom he does not like.

Clause 8(2) gives power to the President to issue such orders as he may deem ‘necessary or expedient’. Some people have again expressed concern over the possible abuse of power.

Clause 8(3) is purely administrative and has attracted no comments.

Taking all the representations on clause 8 as a whole, although two groups called for its deletion, there has been no denial that the President of the Legislative Council shall have power to regulate admittance of the public to the precincts of the Council Chamber as this power is already provided in the Standing Orders.

The overwhelming reaction of the interested groups to this clause is that it should be redrafted to state the right of the public to observe proceedings of the Council, and to prevent arbitrary use of power by the President. I consider these requests both legitimate and constructive.

I propose, therefore, that clause 8(1) should be redrafted to state that sitting of the Council shall be opened to the public, and the right of the public to enter the precincts of the Chamber shall be subject to the Standing Orders or any resolution of the Council.

As regards comments on clause 8(2) which concerns the issue of orders by the President, I agree with the representations that in addition to the qualification of ‘necessary and expedient’, the purpose of issuing such orders should be clarified, such as for maintaining the security of the precincts of the Chamber, ensuring the proper behaviour and decorum of persons and for other administrative purposes. To further allay any misunderstanding about abuse of power, the word ‘order’ can be substituted by ‘administrative instructions’ which is exactly what it means in the clause.

In line with the above proposed amendments, corresponding amendments should also be made to clause 21(a), (b) and (c) which deals with situations under which offences would be committed by members of the public.

Sir, I support the motion.

MRS. NG delivered her speech in Cantonese:—

督憲閣下：立法局（權力與特權）條例草案第十六條第一款容許任何在立法局或其委員會前作忠實證供的證人，經立法局的秘書或委員會主席，發出證書，證明他已作出滿意的證供後，則依據本草案第十六條第二款，法庭不再將此證人透露的民事或刑事罪狀提出起訴。當然，假如他其實是發假誓或作假證供，則不能受到保護。

現有第十六條的用字，可能令人誤解該證人是享有不被起訴的權利，甚至假如除了他向立法局所作的證供外，有別的獨立證據也不能將其繩之於法。因此，第十六條應予修改，訂明法庭只是不可利用該證人在立法局的口供以證明其刑事罪行或民事責任，但若另有證據可指證他，則仍可將其繩之於法。並可以根據高等法院條例第四十四條 A 之條文予以修訂。

另外，本草案第十九 A 條與防止賄賂條例第四條相近，故亦可刪除。至於有法律界人士批評本草案沒有限制立法局議員「收規」的條文，其實在防止賄賂條例中，立法局議員乃「公職人員」，換言之，他們已受到法例規限，不可收受任何利益。因此，不必再在本草案中提出了。

督憲閣下，本人謹此陳辭，支持動議。

*(The following is the interpretation of what Mrs. NG said).*

Sir, clause 16(1) of the Legislative Council (Powers and Privileges) Bill states that every witness before the Council or a committee who answers fully and faithfully any question or questions put to him by the Council or such committee shall be entitled to a certificate, signed by the Clerk or chairman of the committee, stating that he has done so to the satisfaction of the Council or the committee. And, in accordance with the provisions of clause 16(2) of the Bill, upon production of such a certificate in court, the court shall stay any proceedings against him whether civil or criminal arising out of that statement. But the witness will certainly not be protected by the Bill if he has made a false statutory declaration or given a false statement.

The wording of clause 16 of the current Bill may give people the wrong impression that the witness enjoys an immunity from prosecution and that even if there is independent evidence, the witness cannot be brought to justice. Hence, clause 16 should be amended to stipulate that the statement made by a witness to the Legislative Council cannot be used as evidence at court in a charge of criminal offence or civil liabilities against him, but he may still be prosecuted if there is other evidence to prove that he is guilty of such an offence. This provision may also be amended along the lines of section 44A of the Supreme Court Ordinance.

In addition, clause 19(a) of this Bill can also be deleted as it is similar to section 4 of the Prevention of Bribery Ordinance (Chapter 201). Some members of the legal profession have criticised that there is no provision in the Bill to prevent Legislative Councillors from 'accepting advantages'. As a matter of fact, Legislative Councillors are included in the definition of 'public servants' referred to in the Prevention of Bribery Ordinance, and are already, therefore, restricted by law to receive advantages from the public. It is therefore unnecessary to raise the same point again in this Bill.

Sir, I support the motion.

DR. FANG:—Sir, in the absence of our Senior Member, Sir Roger LOBO, it has fallen to me to wind up on behalf of my colleagues.

I do not think I can usefully add to the views they have expressed so eloquently and persuasively in the course of this debate, which reflect in general the many hours we have spent in discussion in the UMELCO Office on this important issue.

We are satisfied that, subject to the extensive amendments agreed, which will be introduced at the committee stage, the Bill before this Council will be provide those rights, and create those duties and obligations which are necessary for the orderly and lawful conduct of the business of this Council.

On this understanding, Sir, I am pleased to give my support to the consensus, if not unanimous, view of my colleagues that this Bill be read a second time.

THE CHIEF SECRETARY:—Sir, I am very conscious as I rise to make my first speech in this Chamber as Chief Secretary of the deep concern shown over this legislation by lawyers, journalists, public spirited groups of people and, in response to their anxiety, perhaps of a wider concern within the community that there was some hidden purpose behind the introduction of this legislation into this Council at the present time. I have no need to assure Members of this Council that this is not the case, but let me say so quite emphatically to this wider audience which is concerned about the proceedings of this Council today. There is no hidden agenda. Of course I could wish, indeed we all wish that it had had a happier and smoother passage than it has. But the debate and discussion of the past weeks have been most valuable and we have received a great deal of useful and constructive criticism arising from this public debate, and as Members have revealed in their speeches today, substantial amendments and deletions to the Bill are proposed. Before making some detailed points let me first say a few words about the need for the legislation and the principles involved.

Members of this Council, Sir, represent a wide cross-section of the community and theirs is the heavy responsibility and duty to decide on the desirability of passing legislation into law. Their task in past weeks has not been easy, there has been so much criticism of certain passages in the Bill that we

have been in danger of losing sight of the essential principles and objectives lying behind this legislation. That is not to say that there has not been welcome support for these principles from a number of quarters. The question before us today is to decide, having listened to criticism and advice whether we are prepared to proceed with the second reading of the Bill, doing so in the knowledge that we stick to the principles but make sufficient, and in some cases substantial amendments and deletions to take account of the legitimate concerns which have been expressed.

There is another reason why we need to proceed with this legislation at this time, before the new Council meets in the Autumn. We stand now at the beginning of a process of constitutional change starting with the election of 24 members to this Council next September but although the process of constitutional change has begun the responsibilities of the Council as a whole will not change. Those responsibilities, primarily the passing of all necessary legislation and the appropriation of funds for public purposes, are already defined. But, as the Council acquires an elected element, the responsibilities placed upon its individual members will indeed change, for those members will be directly accountable to the community for the adequate and proper fulfilment of their duties in the Council. It is to ensure that the future members of this Council have before them, when they take office, a statement of what powers and protection they have, so as to be able to meet their obligations and responsibilities to the community, and so as to ensure that the community can be satisfied that its representatives have sufficient powers with which to protect not their own individual interests but those of the community they serve; that is why it is necessary now to set down in law a clear statement of those powers.

It is also fitting that this should be done as the Legislative Council is about to move into its own premises. Until now, with the Council housed in this Secretariat building, there has not been a building occupied exclusively by the Members of the Legislative Council. That will be no longer the case in October when the Council moves down from this building and takes its place in the centre of our city. It is therefore necessary to have set out clearly in the law of Hong Kong the authority of the Legislative Council through its President to regulate the conduct of members of the public admitted to the new Council Chamber, to committee rooms and to rooms set aside for members of the public to meet members of this Council.

We are then, Sir, concerned today with the second reading of a Bill which seeks to assert the status of the Legislative Council under the Laws of Hong Kong. With regard to the question of the philosophy of the Bill, as the commentators would put it, I think it fair to point out that just as the provisions of the Bill are derived from the existing law, so the philosophy of the Bill reflects the philosophy of the law. And that law is parliamentary law. It is not the case that the Bill proposes to introduce parliamentary law in a situation where it is not already present. The essential point that must be emphasised is that parliamentary law is now being and has long been applied in Hong Kong in

respect of this Council. I am advised and I accept that in the context of Hong Kong this Bill is a faithful reflection of that law and the existing situation: it does not introduce new law.

The element of the Bill that is somewhat different from the classic traditions of parliamentary law is that instead of this Council claiming power to punish for breaches of privilege, that question is to be handed over to the courts. In other words the Bill makes the concession, and rightly so, that this Council should never act as judge in its own cause.

I do not propose to speak separately on all the points and amendments which have been put forward by Members today. Their proposals have been made after serious and prolonged deliberation and consultation and they will therefore be contained in an amended text of the full Bill which will be published in the *Gazette* at the end of this week for general information.

Nevertheless although I am not going to speak about all the proposals I should like to add to what Members have already said on some clauses within the Bill.

Many of the concerns about the Bill, particularly those of the press have focussed on clause 20 which deals with defamatory and unauthorised publications. The clause represents an attempt to impose limits on the exercise of the right to subject this Council, its members or proceedings to scurilous abuse or malicious attacks or to disclose in a public way what has been done and discussed in confidence.

In the context of accepted parliamentary law, it is a breach of the privilege of a legislature to subject it or its proceedings to contempt. That protection is necessary for the functioning of any body of the nature of this Council. If that is not agreed, then the argument becomes one that says bluntly that there is no limit to what might be said.

However, as has been pointed out the law of libel already exists which protects Members as ordinary persons and there may be other laws which are relevant. The Government therefore, if Members are content, is prepared not to proceed with this clause. However the Administration, as Mrs. Selina CHOW has drawn attention, continues to see merit in having provisions to guard against the disclosure of confidential information and proceedings, and will make an examination of the extent to which these objectives can be achieved.

Clause 24 has been denounced on the ground that it excludes the jurisdiction of the Courts in relation to the manner in which the Council, its President and its officers exercise powers conferred by the Bill or the Standing Orders, conferred by the Bill or the Standing Orders. I do not think the true meaning and effect of clause 24 is quite so far reaching as its critics have alleged.

The relationship between the legislature and the courts on the one hand, and the executive on the other, is finely balanced. It has been the tradition in

common law jurisdictions that neither the executive nor the legislature should enter upon the sphere of responsibility of the judiciary. The judiciary likewise does not enact legislation. This is sometimes referred to as the doctrine of separation of powers. I do not intend to dwell on the scope of the doctrine except to remind Members that it is not a new principle of constitutional law, and it is certainly not the subject of the provisions of this Bill. Nor do I need to remind Members that section II, Annex I of the Joint Declaration on the future of Hong Kong states quite clearly that the laws previously enforced in Hong Kong, that is to say, the common law and other laws shall be maintained.

The Bill does not purport to alter the constitution. On the contrary it is well within the authority and powers of this Council to debate such a Bill. As with any other legislature, no court can question the laws made by this Council in accordance with its constitutional powers; in the same way it must retain power over its own affairs and proceedings.

Having said that, there is nothing in clause 24 that would prevent a person challenging in the courts an unlawful exercise of powers. Indeed the most fundamental question that could be asked whether any such power which the Council or its President or officers purported to exercise under the Bill was indeed so conferred by the Bill. It is plain on a fair reading of clause 24 that questions of that sort are not excluded from the purview of the courts, subject only to clauses 3 and 4. But once it is clear that what was done was done in exercise of a power conferred by the Bill or by the Standing Orders, clause 24 would operate to prevent the courts giving any kind of directions or guidelines or laying down rules purporting to regulate the way in which the power should or should not be used. That is the sole purpose and effect of the clause.

I cannot therefore support the suggestion that clause 24 be deleted from the Bill. However the Administration accepts that the intention behind clause 24 may not have been adequately expressed in the Bill as published. An amendment to be tabled will make it clear that this clause deals with the 'lawful', the 'lawful' exercise of any power conferred under the Ordinance on the Standing Orders of the Council. The insertion of the word 'lawful' has some significance in law because it opens the exercise of powers to judicial review and if the courts decided that these powers had *not* been exercised lawfully the immunities conferred by this clause would not apply. Similarly the Administration proposes to amend clause 17(a) to make it clear that this is concerned with the disobedience of any *lawful* order.

As I have said, Sir, I do not intend to go through each of the amendments suggested by Members today but I trust that the changes to the Bill when it appears in the *Gazette* on Friday will meet most, if not all, of the criticisms which have been made. 'Strangers' will go; so will 'intentional disrespect;' a revised clause will express the general principle that Council business should be in public leaving Members to decide when, if at all, they need to conduct some

business in private. There must be trust in the Council to use its good sense and have regard to the public interest when deciding to exercise this power.

It is a necessary characteristic of all Legislative Councils that they should be free to debate the issues of the day and to reflect public opinion in the course of informed debate. For this purpose too, and in order to carry out properly their duty to scrutinise legislation and to control public expenditure, they need powers to be enabled to investigate relevant material. As Miss TAM has pointed out we have already seen in this Council the development of the work of the Finance Committee in public, the examination of witnesses in the Public Accounts Committee to audit public expenditure, and most recently, a select committee established to investigate problems associated with the modern phenomenon of complex commercial crimes. To enable Members of this Council to act in the public concern, the Council must enjoy powers to require the attendance of members of the public with information or knowledge to impart and to produce documents and to give evidence. As has been pointed out however the arrangements in paragraph 16 of the Bill as presently drafted are too far-reaching in protection of individual witnesses for they might affect the rights of third parties and defeat the ends of justice. Amendments will be proposed to make such evidence inadmissible in subsequent proceedings which I hope will be seen to be adequate protection for that purpose.

Sir, the public debate which has taken place since this Bill was published provides a clear indication of a heightened public awareness of the important role played by this Council in the affairs of Hong Kong. Members of this Council in particular the *ad hoc* committee with Miss Maria TAM as convenor have also put in many long hours of discussion and analysis and have made a great many helpful proposals and I should like, at this moment, to thank them for their hard work. I believe that the Bill in its amended form will commend itself to Members and to the public at large. It protects the principles, it establishes the procedures it will set the new legislature on course in its own Council Chamber and I have no hesitation, Sir, therefore in proposing that the Bill be read a second time.

*Question put and agreed to.*

Bill read the second time.

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

## **EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1985**

### **Resumption of debate on second reading (29 May 1985)**

*Question proposed.*

*Question put and agreed to.*

Bill read the second time.

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

## **LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL 1985**

### **Resumption of debate on second reading (15 May 1985)**

*Question proposed.*

(At this point Miss DUNN declared her interest as a landlord and stated that she would abstain from voting on this Bill.)

*Question put and agreed to.*

Bill read the second time.

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

## **BILLS OF SALE (AMENDMENT) BILL 1985**

### **Resumption of debate on second reading (29 May 1985)**

*Question proposed.*

*Question put and agreed to.*

Bill read the second time.

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

### **Committee stage of bills**

Council went into Committee.

**EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1985**

Clauses 1 to 12 were agreed to.

**LANDLORD AND TENANT (CONSOLIDATION)(AMENDMENT) BILL 1985**

Clauses 1 to 28 were agreed to.

**BILLS OF SALE (AMENDMENT) BILL 1985**

Clauses 1 to 4 were agreed to.

**PUBLIC BODIES (CONFIRMATION OF APPOINTED MEMBERS)(TEMPORARY PROVISIONS) BILL 1985**

Clauses 1 to 4 were agreed to.

Schedule was agreed to.

Council then resumed.

**Third reading of bills.**

THE ATTORNEY GENERAL reported that the

EMPLOYEES' COMPENSATION (AMENDMENT) BILL

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) BILL

BILLS OF SALE (AMENDMENT) BILL and the

PUBLIC BODIES (CONFIRMATION OF APPOINTED MEMBERS) (TEMPORARY PROVISIONS) BILL

had passed through Committee without amendment and moved the third reading of the Bills.

*Question put on the Bills and agreed to.*

Bill read the third time and passed.

**Adjournment and next sitting**

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Orders I now adjourned the Council until 2.30 p.m. on Wednesday, 26 June 1985.

*Adjourned accordingly at twenty-five minutes to five o'clock.*