

立法會
Legislative Council

LC Paper No. CB(2) 131/03-04

Ref : CB2/H/5

House Committee of the Legislative Council

**Minutes of the 2nd meeting
held in the Legislative Council Chamber
at 2:30 pm on Friday, 17 October 2003**

Members present :

Hon Miriam LAU Kin-yee, JP (Chairman)
Hon Fred LI Wah-ming, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon Eric LI Ka-cheung, GBS, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung, JP
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS

Hon LAU Chin-shek, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Dr Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok, JP
Hon WONG Sing-chi
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Members absent :

Dr Hon David LI Kwok-po, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP

Clerk in attendance :

Mrs Justina LAM Clerk to the House Committee

Staff in attendance :

Mr Ricky C C FUNG, JP	Secretary General
Mr Jimmy MA, JP	Legal Adviser
Mr LAW Kam-sang, JP	Deputy Secretary General
Ms Pauline NG	Assistant Secretary General 1

Mr Ray CHAN	Assistant Secretary General 3
Mr LEE Yu-sung	Senior Assistant Legal Adviser 1
Mr Arthur CHEUNG	Senior Assistant Legal Adviser 2
Mrs Vivian KAM	Principal Assistant Secretary (Complaints)
Miss Kathleen LAU	Chief Public Information Officer
Mrs Constance LI	Chief Assistant Secretary (2)5
Mrs Betty LEUNG	Chief Assistant Secretary (3)1
Miss Connie FUNG	Assistant Legal Adviser 3
Miss Kitty CHENG	Assistant Legal Adviser 5
Miss Monna LAI	Assistant Legal Adviser 7
Miss Lolita SHEK	Senior Assistant Secretary (2)7

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I. Confirmation of the minutes of the 1st meeting held on 10 October 2003
(LC Paper No. CB(2) 65/03-04)

The minutes were confirmed.

II. Matters arising

Report by the Chairman on her meeting with the Chief Secretary for Administration (CS)

2. The Chairman informed Members that CS had said that he respected Members' decision to appoint a select committee to inquire into the handling of the SARS outbreak. CS had also said that it would not be appropriate from the resources point of view for a Commission of Inquiry to be appointed, while Members had already decided to set up a select committee. He pledged full co-operation by the Administration in the select committee's work.

III. Business arising from previous Council meetings

Legal Service Division report on subsidiary legislation gazetted on 10 October 2003 and tabled in Council on 15 October 2003

(LC Paper No. LS 4/03-04)

3. The Legal Adviser said that there were six items of subsidiary legislation, including two Commencement Notices, gazetted on 10 October 2003 and tabled in Council on 15 October 2003.

4. Members did not raise any queries on these items of subsidiary legislation.

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5. The Chairman informed Members that the deadline for amending these items of subsidiary legislation was 12 November 2003, or 3 December 2003, if extended by resolution.

IV. Business for the Council meeting on 29 October 2003

(a) Questions

(LC Paper No. CB(3) 59/03-04)

6. The Chairman said that 20 questions (six oral and 14 written) had been scheduled for the Council meeting on 29 October 2003.

(b) Bills - First Reading and moving of Second Reading

7. The Chairman said that no notice had been received yet.

(c) Bills - resumption of debate on Second Reading, Committee Stage and Third Reading

Import and Export (Facilitation) Bill 2003

8. The Chairman said that at the House Committee meeting on 3 October 2003, Members did not raise objection to the resumption of the Second Reading debate on the Bill.

(d) Government motions

(i) Proposed resolution to be moved by the Chief Secretary for Administration under the District Court Ordinance

(Wording of the proposed resolution issued vide LC Paper No. CB(3) 38/03-04 dated 9 October 2003.)

(LC Paper No. LS 5/03-04)

9. The Legal Adviser said that the purpose of the proposed resolution was to seek the Council's approval for increasing the financial limits of the civil jurisdiction of the District Court from \$600,000 to \$1 million with effect from 1 December 2003. The Legal Adviser further said that the Panel on Administration of Justice and Legal Services (AJLS Panel) had been consulted at its meeting on 31 March 2003. The Panel had also received views from the Law Society of Hong Kong and the Hong Kong Bar Association.

10. Miss Margaret NG, Chairman of the AJLS Panel, said that the Law Society and the Bar Association supported the proposal to increase the financial limits of the civil jurisdiction of the District Court. However, they

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had expressed various concerns, including the quality of judges hearing civil cases in the District Court following the increase in its jurisdictional limits. Miss NG was of the view that these concerns were not within the scope of the proposed resolution and a subcommittee was not necessary. Miss NG added that the AJLS Panel would follow up the concerns raised by the two legal professional bodies.

11. Members did not raise objection to CS moving the proposed resolution at the Council meeting on 29 October 2003.

(ii) **Proposed resolution to be moved by the Secretary for Security under the Mutual Legal Assistance in Criminal Matters Ordinance**
(*Wording of the proposed resolution issued vide LC Paper No. CB(3) 58/03-04 dated 13 October 2003.*)
(*LC Paper No. LS 6/03-04*)

12. The Legal Adviser said that the purpose of the proposed resolution was to seek the Council's approval for the Mutual Legal Assistance in Criminal Matters (Netherlands) Order to implement a bilateral agreement signed with the Netherlands. The Legal Adviser further said that the subcommittee set up to examine the original Order had noted an error in the Chinese translation of "Requesting Party" and "Requested Party" in Article 14(5) of the Agreement. The Administration had undertaken to rectify the error and submit a fresh Order to the Council.

13. The Legal Adviser informed Members that the content of this Order was the same as the original one except that -

- (a) the Chinese translation error had been rectified; and
- (b) the territorial application of the bilateral agreement with the Netherlands had been extended to its dependent areas, i.e. Antilles and Aruba (as provided under Article 22 of the bilateral agreement).

14. The Legal Adviser added that the Netherlands Order would come into operation on a day to be appointed by notice published in the Gazette. No difficulties relating to the legal and drafting aspects of the proposed resolution and the Netherlands Order had been identified.

15. Mr James TO said that it was not necessary to form a subcommittee to scrutinise the proposed resolution.

16. Members did not raise objection to the Secretary for Security moving the proposed resolution at the Council meeting on 29 October 2003.

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17. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the proposed resolutions was Wednesday, 22 October 2003.

(e) **Members' motions**

(i) **Motion on "Reducing gas, electricity and water charges"**
(*Wording of the motion issued vide LC Paper No. CB(3) 68/03-04 dated 16 October 2003.*)

(ii) **Motion on "Expectations for the implementation of policies"**
(*Wording of the motion issued vide LC Paper No. CB(3) 64/03-04 dated 16 October 2003.*)

18. The Chairman said that the above motions would be moved by Mr TAM Yiu-chung and Dr YEUNG Sum respectively, and the wording of their motions had been issued to Members.

19. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the motions was Wednesday, 22 October 2003.

V. Report of the Subcommittee to prepare for the appointment of the Select Committee to inquire into matters relating to the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority

(*LC Paper No. CB(2)85/03-04*)

20. Referring to paragraphs 5 to 10 of the paper, Dr LAW Chi-kwong, Chairman of the Subcommittee, said that members had divergent views on the wording of the draft terms of reference prepared for discussion at the Subcommittee meeting on 15 October 2003. While the Subcommittee considered that the proposed scope was appropriate and flexibility should be allowed for the proposed select committee to conduct its inquiry, some members were of the view that reference to "senior" ("高層") officers should be deleted, to avoid sending a wrong message to the public that the proposed select committee had a pre-determined view from the outset that senior officers of the Government and the Hospital Authority (HA) were culpable of blunders in the handling of the SARS outbreak. Some other members, however, considered that the word "senior" ("高層") should be retained in order to respond to the public call for finding out whether, and if so, which senior officers of the Government and HA should be held accountable. They were also of the view that deleting the word "senior" ("高層") would create anxiety amongst all employees of the Government and HA. This would be unfair, as decisions on the handling of the SARS outbreak were invariably made by senior officers of the Government and HA.

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21. Dr LAW Chi-kwong further said that a vote was taken by the Subcommittee on the proposed terms of reference. Four members were in favour of retaining the word "senior" ("高層"), while five members were in favour of deleting it. The Subcommittee therefore proposed the following terms of reference for the House Committee's consideration -

"To inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority in order to examine the performance and accountability of the Government and the Hospital Authority and their officers in that regard."

"調查政府與醫院管理局對嚴重急性呼吸系統綜合症爆發的處理手法，藉此審視政府與醫院管理局及其人員在此方面的表現及須承擔的責任。"

22. Dr LAW added that the Subcommittee agreed that the areas of concerns to be investigated should be left to the select committee to determine. The Subcommittee also agreed that the proposed terms of reference were not intended to include examination of treatment protocols adopted in treating SARS patients, and adjudication on the legal liability of any individual or any party summoned to attend as witnesses.

23. Dr LAW said that the proposed motion for the appointment of the select committee was set out in Appendix II to the paper. The Subcommittee proposed that the motion should be moved by him as Chairman of the Subcommittee at the Council meeting on 22 October 2003 or 29 October 2003, depending on whether any Member(s) would consider proposing amendment(s) to the motion. Dr LAW added that the President's permission would have to be sought for the requisite notice period to be waived.

24. Dr LAW further said that the Subcommittee's recommendations on the practice and procedure, size and the procedure for nominating the Chairman, Deputy Chairman and members of the proposed select committee were detailed in paragraphs 14 to 17 of the paper.

25. Ms Emily LAU said the proposed scope of inquiry appeared very wide, and the select committee might not have sufficient time to complete its inquiry before the end of the current term. Ms LAU asked whether the Subcommittee had identified any specific areas of concern that would be covered in the inquiry. Ms LAU further said that to be fair to all parties concerned, it might be necessary to provide the draft report or any part of it to certain witnesses for comments, before the select committee finalised the report.

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26. Dr LAW Chi-kwong responded that the Subcommittee was of the view that the inquiry could either focus on major events or stages of development in the SARS outbreak. Dr LAW agreed that individuals and organisations concerned should be allowed to comment on the select committee's observations and conclusions, before the select committee finalised its report. As regards the timeframe of the inquiry, Dr LAW considered that the select committee should aim to complete its hearings by April 2004, and submit its report to the Council in June/July 2004.

27. Dr LAW added that in the event that the inquiry could not be completed before the end of the current term, the select committee would still need to submit a report to the Council. It would be for the Council of the next term to decide whether it would appoint another select committee to continue with the inquiry.

28. Ms Emily LAU said that there should be a dedicated team of experienced staff to provide support services for the select committee, and additional resources should be sought if necessary.

29. The Secretary General responded that a dedicated team comprising one Chief Assistant Secretary and up to three Senior Assistant Secretaries would be deployed to provide support services for the select committee. The Legal Adviser added that he and other legal staff in the Legal Service Division would fully assist the select committee in its inquiry. He pointed out that the select committee could engage the services of professionals and experts to assist in the inquiry, if necessary.

30. Referring to the procedure for the nomination of Members to the select committee proposed in paragraph 17 of the paper, Miss Margaret NG said that it was important for the select committee to conduct its work in a fair and transparent manner. Miss NG further said that Members who had been involved in, or invited to attend, the inquiries conducted by the SARS Expert Committee and/or the review panel of HA on the SARS outbreak should make such declarations, if they were nominated to the select committee.

31. Dr LAW Chi-kwong said that Members who wished to give evidence to the select committee should not join the select committee, as this could give rise to conflict in roles, and undermine the impartiality and integrity of the select committee.

32. Mrs Selina CHOW said that members of the select committee should make their best efforts to attend all its meetings. Dr YEUNG Sum concurred with Mrs CHOW. He added that any Member(s) belonging to the Democratic Party who joined the select committee would be fully committed to the work of the select committee.

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33. Referring to the proposed terms of reference, Ms Emily LAU asked whether the select committee would make recommendations on how existing systems should be improved, and how individuals who were found to be culpable of blunders in the handling of the SARS outbreak should be punished.

34. Dr LAW Chi-kwong responded that although the Subcommittee had not discussed this issue, the proposed terms of reference did not preclude the select committee from making such recommendations.

35. Dr LAW Chi-kwong said that the public was not satisfied that the Expert Committee and the review panel of HA had found no individual culpable of negligence or maladministration in the handling of the SARS outbreak. There was therefore high public expectation that the proposed select committee should find out whether any individuals should in fact be held responsible and accountable.

36. Dr LAW further said that his personal view was that, as the inquiry would focus on the performance and accountability of senior officers of the Government and HA, the terms of reference of the select committee should clearly reflect its focus, so as not to raise public expectation of the scope of the inquiry unnecessarily. Dr LAW was in favour of retaining the word "senior" ("高層") or replacing it with the expression "officers at policy-making and management levels" ("決策及管理階層"). Dr LO Wing-lok suggested that the expression "officers at policy-making and management levels" be added to the terms of reference.

37. Ms Emily LAU, Mr Andrew WONG, Ms Cyd HO, Mr Andrew CHENG and Dr LO Wing-lok expressed support for the proposed motion to include reference to "officers at policy-making and management levels", in order to set out clearly the focus of the inquiry.

38. Mr Michael MAK declared that he was an employee of HA. Mr MAK said that the scope of the inquiry should be confined to examining the responsibility and accountability of officers at policy-making and management levels in the handling of the SARS outbreak. The reference to such officers should therefore be made in the terms of reference of the select committee. This would avoid giving the impression that the inquiry would look into the performance of officers at all levels.

39. Mr Andrew WONG asked whether there would be conflict of interest for Mr Michael MAK, who was an employee of HA, to propose adding "senior officers" or "officers at the policy-making and management levels" to the proposed terms of reference of the select committee.

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40. Mr Michael MAK said that he was an employee of the Kwai Chung Hospital, and that both the Hospital and he himself had not been directly involved in the handling of the SARS outbreak. Miss Margaret NG and Mr Albert HO were of the view that since Mr MAK had not been directly involved in the handling of the epidemic, there would not be any conflict of interest for him to participate in the discussion of the proposed scope of inquiry.

41. Mr Martin LEE said that having or not having the word "senior" ("高層") in the motion would not make much difference. Mr LEE considered that while the proposed select committee should not have a pre-determined view that senior officers of the Government and HA were culpable of blunders in their handling of the SARS outbreak, the question of accountability would invariably apply more to the senior officers than to the junior officers. Mrs Selina CHOW and Mrs Sophie LEUNG concurred with Mr LEE.

42. Dr TANG Siu-tong said that reference to "senior officers" or "officers at policy-making and management levels" should not be made in the proposed terms of reference, to avoid giving the impression that the proposed select committee had a pre-determined view, and to allow flexibility for the proposed select committee to invite officers at all levels to give information. He added that it was difficult to define what "senior officers" meant.

43. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for Betterment of Hong Kong considered the wording of the proposed motion appropriate. Mr IP added that as the proposed wording already implied that senior officers would be the focus of the inquiry, it was not necessary to add any reference to "senior officers".

44. Miss CHAN Yuen-han said that it was not necessary to retain the word "senior" ("高層") in the proposed motion, as long as the focus of the inquiry was to examine the performance and accountability of the Government and HA and their senior officers. Nevertheless, she had no strong views about adding the expression "officers at policy-making and management levels" to the motion.

45. Dr YEUNG Sum said that it was not necessary to retain the word "senior" ("高層") in the proposed terms of reference. Dr YEUNG further said that accountability referred to both "administrative accountability" and "political accountability", and the two were not mutually exclusive. Dr YEUNG pointed out that as the accountability system for principal officials had been implemented for some time, the public was not satisfied that the SARS Expert Committee had not found any individual(s) to be accountable. He was of the view that the proposed select committee should find out whether any individual(s) should be held accountable, both

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politically and/or administratively, for any blunders or maladministration in the handling of the SARS outbreak.

46. Ms Emily LAU said that the proposed select committee should not limit its scope to examining the accountability of principal officials, as this would unduly restrict its inquiry to a few individuals.

47. Dr LAW Chi-kwong said that the Subcommittee had not discussed the definition of "accountability". He considered that "accountability" should be interpreted in a broad sense, and should not be confined to "political accountability".

48. At the request of Mr IP Kwok-him, the Chairman suspended the meeting for five minutes to enable Members to discuss among themselves.

(The meeting resumed at 4:10 pm.)

49. Dr LO Wing-lok proposed that the proposed terms of reference be amended by adding the words "at policy-making and management levels", as follows -

"To inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority in order to examine the performance and accountability of the Government and the Hospital Authority and their officers at policy-making and management levels in that regard."

“調查政府與醫院管理局對嚴重急性呼吸系統綜合症爆發的處理手法，藉此審視政府與醫院管理局及其決策及管理階層人員在此方面的表現及須承擔的責任。”

50. The Chairman put Dr LO's proposal to vote. The result was that 20 Members voted in favour of, 14 Members voted against the proposal, and two Members abstained from voting.

51. The Chairman said that the proposed motion for the appointment of the select committee would be amended accordingly.

52. Members agreed that the proposed motion should be moved at the Council meeting on 29 October 2003. Members also agreed that the President's permission be sought for the requisite notice period to be waived. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the proposed motion was Wednesday, 22 October 2003.

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53. Members also endorsed the recommendations of the Subcommittee detailed in paragraphs 11, 14 and 17 of the paper.

54. The Chairman said that subject to the passing of the proposed motion at the Council meeting on 29 October 2003, nomination of Members to the select committee would be made at the House Committee meeting on 31 October 2003.

VI. Position on Bills Committees/subcommittees

(LC Paper No. CB(2)84/03-04)

55. The Chairman informed Members that there were 15 Bills Committees and four subcommittees in action as well as four Bills Committees on the waiting list.

VII. Paper of the Committee on Rules of Procedure

Proposed arrangements for the debate on the next Policy Address

(LC Paper No. CROP4/03-04)

56. Miss Margaret NG, Deputy Chairman of the Committee on Rules of Procedure (CRoP), presented the paper.

57. Referring to paragraph 5 of the paper, Miss NG said that the purpose of the arrangement was to ensure that if there were only one or two officers speaking in a debate session, the first speaker would not use up most of the 45 minutes for that session so that the other speaker would have enough time, i.e. at least 15 minutes, to speak. Subject to such a restriction, it would be up to the officers to determine their actual speaking time.

58. As regards the arrangements for the release of Policy Address-related publications, Miss Margaret NG said that CRoP's view was that the timing and format for presenting such publications should not cause inconvenience to Members.

59. Miss Margaret NG further said that CRoP had proposed that subject to Members' endorsement of CRoP's views in paragraphs 5 and 6 of the paper, the House Committee Chairman should brief CS on the proposed arrangements and clarify the outstanding issues. Members agreed.

60. The Chairman said that she would explain the proposed arrangements to CS.

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VIII. Election of Members of The Legislative Council Commission
(*LC Paper No. AS10/03-04*)

61. The Chairman declared that the following Members elected as members of The Legislative Council Commission in accordance with the manner of election approved by the Council by resolution on 8 July 1998 -

Mr NG Leung-sing
Miss Margaret NG
Mr HUI Cheung-ching
Mr Bernard CHAN
Mr Howard YOUNG
Mr YEUNG Yiu-chung
Ms Emily LAU
Dr LAW Chi-kwong
Mr Henry WU
Mr IP Kwok-him

62. The Chairman added that the term of office of these 10 members would be for one year or until the next election, or until the next dissolution of the Legislative Council, whichever was the earlier.

IX. Election of a Member to fill the vacancy in the Public Accounts Committee

63. Mr Howard YOUNG was nominated for appointment by the President to the Public Accounts Committee.

X. Nomination of Members of the Legislative Council to serve on the Council of the Chinese University of Hong Kong and Court of the University of Hong Kong
(*LC Paper No. CB(2) 77/03-04*)

64. The following Members were nominated to serve on the Council of the Chinese University of Hong Kong (CUHK) -

Mr James TIEN
Mr CHEUNG Man-kwong
Mr CHAN Kam-lam

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65. The following Members were nominated to serve on the Court of the University of Hong Kong (HKU) -

Mrs Selina CHOW
Mr James TO
Mr LAU Chin-shek
Dr TANG Siu-tong
Mr IP Kwok-him

66. Ms Emily LAU requested the above Members, who were all re-elected, to provide information on their attendance rate at meetings of the Council of CUHK and the Court of HKU since 27 October 2000. Members agreed.

XI. Any other business

Hon LEUNG Fu-wah's letter regarding the successful launch of the Shenzhou V spacecraft

(Hon LEUNG Fu-wah's letter dated 15 October 2003 to the Chairman of the House Committee (Chinese version only))

67. Mr LEUNG Fu-wah proposed that the Chairman should, on behalf of the House Committee, write to congratulate the Central Government on the successful launch and return of the Shenzhou V spacecraft.

68. The Chairman said that she would write to Premier WEN Jiabao, subject to Members' view. Members agreed.

69. There being no other business, the meeting ended at 4:40 pm.