OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 18 May 1988

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE WILSON, K.C.M.G.
THE HONOURABLE THE CHIEF SECRETARY
SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.
THE HONOURABLE THE FINANCIAL SECRETARY
MR. PIERS JACOBS, O.B.E., J.P.
THE HONOURABLE THE ATTORNEY GENERAL
MR. JEREMY FELL MATHEWS. J.P.
THE HONOURABLE LYDIA DUNN, C.B.E., J.P.
THE HONOURABLE PETER C. WONG, C.B.E., J.P.
DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.
THE HONOURABLE ALLEN LEE PENG-FEI. C.B.E., J.P.
THE HONOURABLE HU FA-KUANG, O.B.E., J.P.
THE HONOURABLE WONG PO-YAN, C.B.E., J.P.
THE HONOURABLE DONALD LIAO POON-HUAI, C.B.E., J.P.
SECRETARY FOR DISTRICT ADMINISTRATION
THE HONOURABLE CHAN KAM-CHUEN. O.B.E., J.P.
THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., J.P.
THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.
THE HONOURABLE CHEUNG YAN-LUNG. O.B.E., J.P.
THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.
THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.
DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.
THE HONOURABLE CHAN YING-LUN, J.P.
THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, O.B.E., J.P.
THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.
THE HONOURABLE YEUNG PO-KWAN, O.B.E., C.P.M., J.P.
THE HONOURABLE KIM CHAM YAU-SUM, J.P.
THE HONOURABLE JOHN WALTER CHAMBERS, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE
THE HONOURABLE JACKIE CHAN CHAI-KEUNG
THE HONOURABLE CHENG HON-KWAN. J.P.
DR. THE HONOURABLE CHIU HIN-KWONG, J.P.
THE HONOURABLE CHUNG PUI-LAM

THE HONOURABLE THOMAS CLYDESDALE, J.P.
THE HONOURABLE HO SAI-CHU, M.B.E., J.P.
THE HONOURABLE HUI YIN-FAT
THE HONOURABLE RICHARD LAI SUNG-LUNG
DR. THE HONOURABLE CONRAD LAM KUI-SHING
THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.
THE HONOURABLE DESMOND LEE YU-TAI
THE HONOURABLE DAVID LI KWOK-PO, J.P.
THE HONOURABLE LIU LIT-FOR, J.P.
THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.
THE HONOURABLE PANG CHUN-HOI, M.B.E.
THE HONOURABLE POON CHI-FAI
THE HONOURABLE SZETO WAH
THE HONOURABLE TAI CHIN-WAH
THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING
THE HONOURABLE TAM YIU-CHUNG
DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.
THE HONOURABLE ANDREW WONG WANG-FAT
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.
THE HONOURABLE GRAHAM BARNES, C.B.E., J.P.
SECRETARY FOR LANDS AND WORKS
THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT
THE HONOURABLE EDWARD HO SING-TIN, J.P.
THE HONOURABLE GEOFFREY THOMAS BARNES, J.P.
SECRETARY FOR SECURITY
THE HONOURABLE PETER TSAO KWANG-YUNG, C.P.M., J.P.
SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION

ABSENT

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.
THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.
PROF. THE HONOURABLE POON CHUNG-KWONG
THE HONOURABLE HELMUT SOHMEN

IN ATTENDANCE

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

Papers

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

Subject *L.N. No.*

Subsidiary Legislation:

Pneumoconiosis (Compensation) Ordinance
Pneumoconiosis (Compensation) (Computation of Earnings) (Amendment) Regulations 1988 ..... 142/88

Registration of Persons Ordinance
Registration of Persons (Invalidation of Old Identity Cards) Order 1988 ..... 145/88

Sessional Papers 1987-88:

No. 60—Report of changes to the approved Estimates of Expenditure approved during the third quarter of 1987-88 Public Finance Ordinance: section 8

No. 61—Supplementary provisions approved by the Urban Council during the fourth quarter of the financial year 1987-88

Address by Member presenting paper

Report of changes to the approved estimates of expenditure approved during the third quarter of 1987-88 Public Finance Ordinance: section 8

FINANCIAL SECRETARY: Sir, in accordance with section 8(8)(*b*) of the Public Finance Ordinance, I now table for Members' information a summary of all changes made to the approved estimates of expenditure for the third quarter of the financial year 1987-88.

Supplementary provision of $549.9 million was approved, of which $231.7 million was offset either by savings under the same or other heads of expenditure or by deletion of funds under the additional commitments subheads. The balance of $318.2 million, being net supplementary provision, was approved for the early repayment in full of the four outstanding Asian Development Bank loans.

Approved non-recurrent commitments were increased by $325.6 million during the period, and new non-recurrent commitments of $810.6 million were also approved.

In the same period, a net increase of 1 623 posts was approved.

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

Oral answers to questions

Privatisation and corporatisation of public services

1. DR. CHIU asked: *Will Government inform this Council whether consideration is being given to privatising some of the public services and, if so, what services are likely to be privatised?*

FINANCIAL SECRETARY: Sir, the only public service currently under consideration for privatisation is that relating to the running of abattoirs. We are examining the possibility of transferring this service from the Urban Council to the private sector, with the Urban Council retaining its public health responsibilities.

DR. CHIU: *Sir, it appears that the Financial Secretary has restricted his answer to privatisation in a narrow sense, that is, excluding corporatisation and contracting out of public services. Will the Financial Secretary inform this Council whether any other public service, such as postal service, water supply, refuse transfer operations and operation of chemical treatment plants are being considered for corporation or contracting out?*

FINANCIAL SECRETARY: Sir, it was not I who restricted my answer; it was Dr. CHIU who restricted his question to privatisation. The only public service currently under consideration for privatisation, or indeed, for contracting out or corporatisation is, at the moment, the running of abattoirs. Of course, we do consider various other possibilities from time to time, and at all times our overriding criteria is to ensure that services to the public are provided in the most efficient and cost-effective manner.

Indulgence of youngsters in psychotropic drugs

2. MRS. FAN asked: *Will Government inform this Council of the underlying reasons for an increasing trend of young people under 16 to indulge in soft drugs and what actions are being taken to remedy the situation, in particular to curb trafficking of Mandrax tablets by young people?*

SECRETARY FOR SECURITY: Sir, of the many reasons why young people abuse these drugs, the main ones are assessed as being their curiosity and wish to experiment, peer pressure, and the belief that such drugs are harmless. Many young people also tend to imitate foreign fashions and for some, regrettably, this includes drug taking.

Remedial action has been taken by both the Action Committee Against Narcotics (ACAN) and by the police and customs. ACAN has initiated and directed the following measures:

—first, a survey, last autumn, of 110 000 students at 148 secondary schools and eight technical institutes, the full results of which will be issued next month;

—second, warning posters placed at all customs entry points;

—third, the Hong Kong Christian Service has opened a centre in 33 Granville Road, Tsim Sha Tsui, specifically aimed at providing counselling and other services for people abusing psychotropic drugs. We hope that this centre will be able to provide more accurate figures on the numbers and characteristics of people abusing these drugs;

—fourth, publicity to warn youngsters of the dangers of these drugs and the penalties that can be incurred through trafficking, has been stepped up since 1987 by means of posters, television announcements and through district campaigns; and

—fifth, the drug education kit supplied to school principals now has supplementary information on psychotropic drugs.

Police and customs action has resulted in 274 000 mandrax tablets being seized in 1986, dropping to 74 000 tablets seized in 1987. This dramatic reduction resulted from the action taken by the authorities in China, at the Hong Kong Government's request, to stop the manufacture and distribution of the drug.

Action against the trafficking of mandrax tablets by young people under 21 has resulted in 27 prosecutions in 1986 and 40 in 1987. The majority of prosecutions, however, for mandrax trafficking are taken against persons over 21 for which there were 98 prosecutions in 1986 and 127 in 1987. Such cases usually arise from police and customs raids on vice establishments and from information received by the investigating agencies.

Educational efforts to curb trafficking are also made by means of posters, announcements of public interest, school talks and the teaching kits to which I have referred.

I have used the term 'psychotropic', rather than 'soft' because the term 'soft drug', although commonly used, can be misleading. It suggests that these drugs are not particularly harmful compared with the more dangerous addictive drugs such as heroin, and could lull people into falsely underestimating the potential harm of such drugs. This could prove a grave error.

MRS. FAN: *Sir, I have statistics here which show that the number of young people who abuse psychotropic substances between the age of 13 to 15 has doubled in the first nine months this year, compared with the figures in 1986. Could the Secretary please tell this Council whether he considers the educational efforts to curb the abuse of psychotropic substances to be effective?*

SECRETARY FOR SECURITY: Sir, I think it is difficult to give an unequivocal yes or no to that answer. The Action Committee Against Narcotics keeps a very close watch on the trends in the abuse of all categories of drugs, and this of course includes psychotropic drugs and trafficking amongst youngsters.

At the moment, these figures are not considered to have reached a significant level but they are increasing, as Mrs. FAN has correctly said, and the Action Committee Against Narcotics will monitor this trend and will introduce such action as necessary. Action to curb psychotropic drug trafficking is, of course, taken in the context of the overall enforcement against illicit drug trafficking generally, including what are called 'hard drugs'. And it also forms part, as I have said, of the action taken by the police and customs in the course of their enforcement duties, in vice raids and in other investigative matters.

DR. TSE (in Cantonese): *Sir, are triad activities in schools related to the increase in the trafficking of LSD in schools?*

SECRETARY FOR SECURITY: Sir, I have no information about that but this is certainly a matter which I shall refer to the Action Committee Against Narcotics, and I undertake to give a written reply. (See Annex I)

MR. LAI: *Sir, will Government inform this Council whether the Administration will consider introducing the death sentence for drug trafficking offences, as in other Far East countries, such as Singapore and Malaysia?*

SECRETARY FOR SECURITY: I think I can say that the answer must be 'no', Sir.

Advanced specialist cardiac equipment in hospitals

3. DR. IP asked: *Since Grantham Hospital is the only cardiac referral centre for all emergency cardiac catheterisation and emergency heart operations in Hong Kong, will Government inform this Council:*

(a) whether the hospital is equipped with adequate and advanced specialist cardiac equipment to meet its needs; and

(b) whether other cardiac equipment now being used in government and private hospitals is available there?

SECRETARY FOR HEALTH AND WELFARE: Sir, it is the professional opinion of the Director of Medical and Health Services that the Grantham Hospital is sufficiently well equipped at present to fulfil efficiently its function as an emergency cardiac referral centre.

I am assured that there are no special items of cardiac equipment in government hospitals which are not available in the Grantham Hospital. The Medical and Health Department does not keep detailed records of the equip

ment available in private hospitals. In any case, the decision to acquire a particular piece of equipment must be a matter of professional judgement in relation to the specific services provided by the hospital in question and straightforward comparison may not be appropriate.

DR. IP: *Sir, I have been approached by the cardiologist and cardiac surgeons at the Grantham Hospital who have stated that the staff at the Grantham Hospital are experts in the field of cardiology and cardiac surgery in Hong Kong, but their professional freedom has been constrained by insufficient funding and staffing in the past 10 years. In this respect, I would like to ask the Secretary for Health and Welfare whether the Director of Medical and Health Services, in stating his opinion that the Grantham Hospital is sufficiently well equipped at present to fulfil efficiently its function as an emergency cardiac referral centre, has consulted the professional staff at the Grantham Hospital.*

SECRETARY FOR HEALTH AND WELFARE: Sir, I believe that applications from subvented hospitals are made on a regular basis in the context of the estimates exercise each year, and that these are considered by the Medical and Health Department in the light of the representations made by the hospital staff. And I am sure that these are fully taken into account when deciding on the allocation of the funds available for this purpose.

DR. IP: *Sir, in reference to the answer given earlier, could the Secretary clarify whether the following equipment will be made available to the Grantham Hospital:*

1. *'Colour doppler echocardiography' which the Grantham Hospital has applied for. I understand the Prince of Wales and Queen Elizabeth Hospitals have also applied for this equipment and can it be confirmed that these two hospitals now have this equipment?*
2. *'Digital subtraction angiography' which the Kwong Wah Hospital has now acquired, and*
3. *Equipment for 'dye dilution' in assessing severity of shunt which is now available in private hospitals?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I am afraid my professional knowledge does not extend to the details asked for by Dr. IP. I shall have to consult the director and give her an answer in writing. (See Annex II)

DR. IP: *Sir, the last question. Since the Catheterisation Laboratory at the Grantham Hospital performs more cardiac catheterisations per annum than the three Catheterisation Laboratories at Queen Elizabeth Hospital, Queen Mary Hospital, and Princess Margaret Hospital put together, would Government consider providing the Grantham Hospital with a second laboratory (1) to meet the increasing number of cases, and (2) to serve as a contingency for emergency cases when one laboratory is already in use?*

SECRETARY FOR HEALTH AND WELFARE: Sir, once again this is a professional matter which I am sure the Director of Medical and Health Services would be prepared to consider if the evidence demonstrates that the need is there.

Consistency between the Basic Law of the future Special Administrative Region and the Sino-British Joint Declaration

4. MR. LAI asked (in Cantonese): *Bearing in mind that the Hong Kong Government made a substantial contribution to the contents of the Sino-British Joint Declaration, what measures is it now taking in the interests of Hong Kong people to help to ensure that the draft Basic Law of the future Hong Kong Special Administrative Region is consistent with the Joint Declaration?*

CHIEF SECRETARY: Sir, the drafting of the Basic Law is, of course, a matter for the Chinese Government. However, in his statement to Parliament in January introducing the annual report on Hong Kong, the Foreign Secretary made it clear that the British Government has the right to satisfy themselves that the eventual provisions of the Basic Law fully and accurately reflect the Joint Declaration. At present, we are carefully studying the Basic Law consultation draft. It is a complex document. If the Hong Kong Government considers that there were provisions which appeared to be inconsistent with the Joint Declaration, it would make its views known to the Chinese authorities clearly and firmly in the most effective way. This would probably, Sir, be through the British Government.

MR. LAI (in Cantonese): *Sir, the general public of Hong Kong feel that the draft Basic Law will have a very great effect upon them. What measures has the Administration taken to ensure that the interpretation of different provisions in the Basic Law is consistent between the two governments?*

CHIEF SECRETARY: Sir, I believe I have answered the question in my original answer. As I have said, we are studying the draft very carefully. If we do consider that there are provisions which appear to be inconsistent, we will take the action I have indicated.

MR. MARTIN LEE: *Sir, does the Administration intend to sponsor public opinion surveys in relation to those parts of the draft of the Basic Law where options are left open, for example, in relation to the formation of the first government, the selection of the chief executive, and the composition of the legislature, to make sure that the public's view on these matters can be gauged properly?*

CHIEF SECRETARY: Sir, we believe that the consultation process is a matter for the Chinese Government and the Basic Law Consultative Committee.

MR. LAI (in Cantonese): *Sir, when the consultation document is issued, the general public have very diverse views, and may interpret the provisions in the draft Basic Law in different ways. So, the situation is rather chaotic. Will the Administration therefore consider compiling the diverse views so that the general public can really understand this consultation document? And, at the same time, there should be sufficient time for people to reflect their views.*

CHIEF SECRETARY: Sir, the time allocated for the consultation period is five months; that is a considerable period of time. As to the method of consultation and the explanation of the Basic Law, we believe that is a matter for the Basic Law Consultative Committee.

MR. DESMOND LEE: *Sir, the Chief Secretary mentioned that the Governments of Hong Kong and Britain were studying the draft Basic Law. May I ask whether or not departures from the Joint Declaration have been identified?*

CHIEF SECRETARY: Sir, the consultation is in its early period; as I have explained, we still have five months to go. I do not think it would be appropriate for me to comment on individual sections of the Basic Law at this stage.

DR. LAM (in Cantonese): *Sir, when the Administration discovers that the draft Basic Law goes contrary to the Joint Declaration, apart from communicating with the Chinese authorities, will such inconsistencies be made public to the Hong Kong people as well?*

CHIEF SECRETARY: Sir, as I have explained, if there were to be provisions which we believe to be inconsistent with the Joint Declaration, we would make our views known to the Chinese Government in the most effective way. We do not believe that that is necessarily so by making those representations public.

MR. MARTIN LEE: *Sir, the consultation on the draft of the Basic Law appears to be entirely in the hands of the Basic Law Consultative Committee, according to the answers so far given. So, is it the intention of the Hong Kong Government merely to play the role of an interested bystander?*

CHIEF SECRETARY: Sir, as I think I have explained in three previous answers, we understand our role very clearly, and that is to ensure that the draft Basic Law is consistent with the Joint Declaration. I do not believe, Sir, that that answer indicates that we are taking the role of a bystander. We take very seriously our responsibilities in this regard.

Enforcement of judgements of Labour Tribunal

5. MR. TAM asked (in Cantonese): *As some claimants who have won their cases in the Labour Tribunal are not able to obtain the awards due to them from their employers, will Government inform this Council of the number of cases heard in the Labour Tribunal during the past five years and the number of cases in which the employers refused to observe the judgements given; and whether consideration will be given to amending section 38 of the Labour Tribunal Ordinance in order to give the tribunal direct enforcement power to ensure that its judgements are properly observed?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, in the past five financial years, the Labour Tribunal has dealt with a total of 21 937 cases. Sixteen thousand two hundred and seventy-three of these were decided in favour of the plaintiff, and in 14 590 of these the claim was settled immediately. The proportion of cases being settled immediately has been increasing and in 1987-88 was 91.4 per cent, which I understand compares favourably with other courts.

In the remaining 1 683 cases, enforcement certificates had to be issued after employers failed to settle in accordance with the judgement of the tribunal. These certificates enable the judgement to be registered with the District Court for enforcement.

If the Labour Tribunal were to enforce its own judgements, it would have the power only to order the seizure of movable property. Section 6 of the Labour Tribunal Ordinance already provides for bailiffs to be attached to the tribunal for this purpose. However, this provision has not so far been used. The reason for this is that in practice it is more effective to enforce payment through the District Court or to use bankruptcy or winding-up petitions in the High Court.

Bankruptcy proceedings are liable to take some time to settle, but meanwhile, the plaintiff can apply for an ex gratia payment from the Protection of Wages on Insolvency Fund. The Labour Department advises all those pursuing a claim in the Labour Tribunal to apply at the same time to this fund.

Bankruptcy petitions are limited to claims for $5,000 and over. However, I shall shortly be recommending to this Council an amendment to the Insolvency Fund Ordinance to allow ex gratia payments to be made even in those cases where the amount owed is less than this $5,000 threshold.

Sir, the short answer to the question is that there appears to be no point in amending section 38 of the Labour Tribunal Ordinance to give the tribunal enforcement powers, since it already has such powers under section 6 of the Ordinance. However, these powers are not used because in practice it is more effective to use other means.

MR. TAM (in Cantonese): *Sir, we have 1 000 odd cases in which payment could not be made. This is not a small number. On top of that, because of the very complicated procedure, sometimes the enforcement certificates have not been applied for. I cannot see from the reply what sort of measures have been taken to improve the situation. The Secretary for Education and Manpower has just told us that there is no need to amend section 38 of the Ordinance. Could we be informed what measures could be taken to improve the situation for the 1 000 odd remaining cases?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Labour Department has been in frequent touch and had a number of meetings with the Registrar of the Supreme Court, the Director of Legal Aid and my branch to discuss improvements to the procedure. A number have been made, mostly in points of detail. Some of the more substantial ones I have already mentioned. The Labour Department, for example, now advises all plaintiffs to apply to the insolvency fund as soon as they apply to the Labour Tribunal. When they receive an enforcement order, that is accompanied by a note to the plaintiff advising them to go to the Labour Department for help. The insolvency fund itself, of course, has only been operational since 1985 so that is an enormous improvement in the position of plaintiffs. One of the main drawbacks at present is the $5,000 limit which we will be putting right, we hope, within the next few weeks by an amendment to the Ordinance which I have already mentioned. Other problems are being looked at from time to time. Another one is the enforcement orders with the district court. At present, the plaintiff has to go to another building to register his enforcement order. We have asked the registrar whether he can improve that situation by providing for registration in the Labour Tribunal itself. But turning back to Mr. TAM's comment on the large number of cases, I did make the point that this is the number of cases over a five-year period and I did make the point that, in fact, this is a small proportion of cases. These of course are the tough cases. The vast majority, over 90 per cent, are settled straight away. The ones that are not settled are, in the very nature of things, difficult ones. They are mostly cases where the employer has disappeared or is bankrupt or is just being bloody minded; so it is not a straight forward matter to deal with.

MR. CHAN KAM-CHUEN: *Sir, what is the estimated number of cases in the past five years where the amount owed was less than the $5,000 threshold as mentioned in paragraph 5 of the Secretary's reply?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I do not have figures of that.

MR. CHAN KAM-CHUEN: *May I have that in writing?*

SECRETARY FOR EDUCATION AND MANPOWER: I will try; I am not sure whether we have those figures available. (See Annex III)

Progress of the neighbourhood watch scheme

6. MR. LIU asked (in Cantonese): *With reference to the neighbourhood watch programme introduced by the police a few years ago in support of the Fight Crime Campaign, will Government inform this Council of its progress up to date and its assessment by the police?*

SECRETARY FOR SECURITY: Sir, the neighbourhood watch scheme was first introduced as a pilot scheme in Sha Tin in 1984. In October 1985, the first phase of its extension on a territory-wide basis took place as a vital element of the Fight Crime Campaign's emphasis on home security to combat the problem of residential burglaries.

The purpose of phasing was to avoid putting an undue strain on police resources and to try to ensure that each phase, covering approximately 16 000 households, was implemented effectively. The scheme is now in its fifth phase. So far, 7 474 neighbourhood watch units have been formed, covering a total of 77 983 households in 399 blocks. Those taking part represent around 10 per cent of all households in Hong Kong. The sixth phase is scheduled to start this year on 1 July.

The police assessment is that the scheme has been well received by the public and public interest has been maintained. This is demonstrated by the fact that apart from the enthusiastic response from residential blocks, which were jointly identified by the police and the district fight crime committees to take part in the scheme, many requests have been received from other households for implementation of the scheme in their blocks. There may, admittedly, have been cases where initial enthusiasm has worn off, but through the efforts of the police, a workable interest in such cases has been maintained.

Like many deterrent and crime prevention measures, it is often difficult to assess what has actually been achieved. For example, although the number of residential burglaries in Hong Kong dropped by 14.7 per cent in 1986 and 11 per cent in 1987, the figures for the first quarter of this year showed an increase of 12 per cent compared with the corresponding period in 1987. Nevertheless, the overall situation is better than it was two years ago; and there can be no doubt that the scheme has played an important and valuable part in developing people's awareness of the need to take more care of their homes, the need for community participation to prevent crime, and the need for neighbours to co-operate with each other. An added, and welcome, development arising from the scheme has been its success in improving relations and co-operation between the police and the community.

MR. LIU (in Cantonese): *Sir, in view of the fact that there has been an increase in the number of burglary cases, will the Government inform this Council whether there will be other measures to be taken apart from the neighbourhood watch scheme; and whether more publicity will be arranged for the Neighbourhood Watch Scheme so that its effect can be manifested to its full?*

SECRETARY FOR SECURITY: Sir, it is perhaps a little early to confirm an increasing trend in burglaries despite the figures for the first quarter of this year but it is definitely intended that the neighbourhood watch scheme will continue to expand. As I have said, the sixth phase starts on 1 July this year. Additionally, all categories of crime, including burglaries, are carefully monitored by the police and by the Fight Crime Committee and discussed in the Fight Crime Committee; measures to counter any particularly worrying trends in each category of crime are taken as necessary. As regards the question of more publicity, certainly as the scheme expands publicity will be given in those areas which are going to be affected. If we get any suggestion that the publicity is insufficient in any way I can assure you that it will be stepped up.

MR. CHUNG (in Cantonese): *Sir, a question for the Secretary for Security. I would like to know how many police officers are involved in the neighbourhood watch scheme and whether sufficient police manpower has been provided for the scheme?*

SECRETARY FOR SECURITY: Sir, the police deploy at the moment 79 sergeants in 19 districts to act as neighbourhood police co-ordinators. The work of these police officers covers community relations as well as the most prominent aspect of that which is the neighbourhood watch scheme. Police community relations officers in each district are also involved in running the scheme, as are the staff of the Crime Prevention Bureau. Having regard to other commitments in the Government and in other categories of crime and the fact that an expansion rate of 16 000 households for each phase is about right for effective management, it is not intended at the moment to increase police manpower in that area.

Fire-fighting capability in temporary housing and squatter areas

7. DR. HO asked: *In view of recent claims that outbreaks of fire in some temporary housing areas or squatter areas have been caused by unauthorised persons in vacant THA units or squatter structures and that fire-fighting installations in these areas have not been properly maintained, will Government inform this Council what measures are being taken to ensure that unauthorised persons cannot enter vacant structures in temporary housing areas and squatter areas and that fire-fighting installations in these areas are in proper working order?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, vacant temporary housing units are boarded up by Housing Department staff so as to prevent trespassing. These units are regularly checked by Housing Department management staff and security guards. Moreover, the police are given lists of vacant units so that they can inspect them during routine patrols. Vacant squatter huts are demolished wherever possible so as to prevent re-occupation. Where this cannot be done,

for example because of the effect on the stability of adjacent huts, the premises are boarded up. These huts are also inspected at regular intervals by Housing Department's squatter control staff.

The above measures are generally effective. So far, this year, there have been four fires in temporary housing areas, two of which were started in vacant units and were believed to be connected with suicidal attempt. Of the 15 squatter fires this year, only one was started in a vacant hut.

Fire-fighting equipment including fire-mains and hydrants, fire hose reel and manual fire alarm systems are provided in temporary housing areas, and maintained by registered fire services installation contrators in accordance with statutory requirements. Housing Department staff inspect these installations once every three months. In addition, the equipment is tested annually by authorised fire services contractors. As for squatter areas, fire hydrants and firemains, installed under the Squatter Area Improvement Programme since 1983, are checked monthly by the Fire Services Department. Any defects are reported to the Housing Department for repair.

DR. HO: *What are the ratios of the Housing Department management staff and security guards to residents in temporary housing areas and does the Administration consider these ratios adequate for the proper management of these areas?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, I do not have the exact manning scale but temporary housing areas have been in existence for a long time and have been managed properly over the years but I will certainly check the number and supply the figure to Dr. HO. (See Annex IV)

MR. CHAN YING-LUN (in Cantonese): *If all the measures described in the reply for managing squatter areas were taken, I am sure it will be very effective. However, I wonder whether these measures are mandatory or are they simply optional and will Government ensure that all these measures will be undertaken?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, what I have just mentioned are regular services. If there are any areas where there is evidence that this is not followed, I shall be very happy to refer the matter to the Housing Department for investigation.

DR. HO: *Sir, what steps has the Administration taken to teach the residents, including women and teenagers, in temporary housing areas and squatter areas how to use the fire fighting installations?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, the equipment is normally manned by the management staff who are on site during the working hours and sometimes by the caretakers who actually live in the areas. As for education, there are regular talks for the residents on the general knowledge of prevention of fire but not necessarily on the operation of fire fighting equipment.

DR. HO: *Sir, will the Government consider holding this kind of training courses to teach the residents how to use the equipment?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, I shall be very happy to refer the matter to the Housing Department.

Exhaust emission from motor vehicles

8. MR. EDWARD HO asked: *Will Government inform this Council of the measures being taken to enforce the law against excessive exhaust emission from motor vehicles and whether Government is satisfied that such enforcement action is effective?*

SECRETARY FOR HEALTH AND WELFARE: Sir, all motor vehicles imported into Hong Kong and those already registered here must comply with emission standards set out in the Road Traffic (Construction and Maintenance of Vehicles) Regulations. On 1 January this year, a Vehicle Emission Control Section was set up in the Environmental Protection Department. This section now exercises overall control of excessive exhaust emissions from motor vehicles. The control programme involves the reporting of smoky vehicles by appointed spotters and police officers, the notification of vehicle owners to repair defects and to report to a testing centre to verify that the smoke problem has been rectified. Since the scheme started on 1 January, about 1 750 vehicles have been checked, of which 90 per cent subsequently passed the test, whilst the remainder were required to carry out further work prior to re-examination.

In addition, both the Transport Department and the police retain some responsibilities for the control of excessive smoke. The Transport Department examines vehicle emissions in the course of its annual inspections of certain classes of vehicle. The police continue to stop excessively smoky vehicles and to issue owners with fixed penalty tickets or examination orders as appropriate.

The initial results of the vehicle smoke control programme appear to be encouraging as indicated by the high pass rate obtained at the testing centre. The Environmental Protection Department will, however, review the present arrangements after they have been in force for six months. In addition, it is considered that there may be room for improvement in emission standards and we intend to undertake a thorough review of these standards and to introduce amendments to the legislation, if necessary.

MR. EDWARD HO: *Sir, will the Secretary inform this Council of the capacity for the testing centre to verify smoke problems and whether it is working to its capacity, and if not, why not?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the planned capacity of the testing centre at Sheung Lok Street is 17 000 vehicles per year. At the moment, the centre is approximately half-staffed which is largely caused by the problem of recruiting sufficient staff to operate the centre but a recruitment programme is under way. At present, it is operating at a capacity of about 600-700 vehicles per month and we hope, will be up to the full capacity as soon as the additional staff have been recruited.

MR. POON CHI-FAI (in Cantonese): *Sir, regarding the answer in paragraph 3, will the Government inform this Council why the Government decides that there is a need to review thoroughly the emission standards? Secondly, does the intention to have the review contradict with the earlier comment that the initial results of the vehicle smoke control programme is encouraging?*

SECRETARY FOR HEALTH AND WELFARE: Sir, we intend to review the standards to see whether they are still appropriate. They were incorporated in legislation some time ago. My comment that the initial results of the present programme are encouraging, means that at the standards as they exist in the legislation at the moment most of the vehicles which are called up do seem able to comply with these standards the first time they come. To that degree, the initial results are satisfactory but we need to look at the standards from time to time to see if they need adjusting themselves.

MRS. CHOW: *Sir, with reference to the last sentence of paragraph 2 of the answer, how many excessively smoky vehicles have been issued with fixed penalty tickets or examination orders in the last 12 months, and does this figure indicate an increase or decrease over the previous two years and has such police action been an effective deterrent?*

SECRETARY FOR HEALTH AND WELFARE: Sir, I have the figures for 1985, 1986 and 1987 which of course were before the new Vehicle Emission Control Section of the Environmental Protection Department came into operation. One thousand five hundred and fifteen fixed penalty tickets were issued in 1985, 3 071 in 1986 and 5 307 in 1987. The numbers of vehicles that were called up for inspection were: 1 096 in 1985, 2 853 in 1986 and 3 550 in 1987. With the new centre in operation there should be an increase this year. I think it is a little early with the new system in operation to indicate how satisfactory this is going to be. As I have said, the new Vehicle Emission Control Section of the Environmental Protection Department will be reviewing the position after the first six months; that will be at the end of the next month and we then should have a better indication of the success of the project.

DR. CHIU: *Sir, will the Secretary of Health and Welfare inform this Council whether owners of defective vehicles are issued with fixed penalty tickets by the Vehicular Emission Control Section if they fail to pass the test?*

SECRETARY FOR HEALTH AND WELFARE: No, Sir, the procedure is that the vehicles are called up for the first time. If they do not meet the standards on this occasion, they are told to go away and carry out work to rectify the problem, and they may be called back several times to see whether the problem has been rectified. In due course if it has not been rectified, the Commissioner for Transport can be asked to consider cancelling the registration of the vehicle but there is no question of a fixed penalty ticket being issued.

MR. PETER POON: *Sir, if I heard the Secretary for Health and Welfare correctly, he just mentioned that the examination centre is only half-staffed. If it is going to carry out efficiently the work to stamp out these sort of emissions, he has to recruit more staff. Can he inform this Council how long will it be before the centre is fully operational?*

SECRETARY FOR HEALTH AND WELFARE: I hope that the centre will be fully staffed within the next three months.

MR. EDWARD HO: *Sir, would the Secretary inform this Council whether using appointed spotters and police officers rather than organised duty officers is effective and whether it would be subject to abuse? If 90 per cent of the spotted vehicles subsequently pass the test, does it mean that these vehicles have been subject to arbitrary information leading to unnecessary waste of time and in certain cases, loss in income on the part of professional drivers?*

SECRETARY FOR HEALTH AND WELFARE: Sir, as far as I know we have not yet had any complaints that vehicles have been called up unnecessarily. We think that the fact that most of the vehicles pass the test means that after they have been notified they do take action to have the defects in the vehicles corrected.

MRS. CHOW: *Sir, will the Government consider publicising extensively the telephone number to which complaints relating to vehicle emissions can be directed to encourage the public's co-operation in reporting problem vehicles?*

SECRETARY FOR HEALTH AND WELFARE: Yes, I think we would hesitate to publicise the number so that the general public could call in and report smoky vehicles. There then, I think, might be a danger of abuse and malicious calls and so on. We did consider this but we decided it was better to go for selected spotters as we call them who would be people that we hoped can be trusted to report only genuine cases of smoky vehicles.

Written answer to question

Public hospital charges for visitors

9. DR. LAM asked: *Will Government inform this Council whether there is a difference in public hospital charges for Hong Kong citizens and visitors; if so,*

what is the difference, what is the rationale for the difference, and if the scale of charges for visitors is higher, is Government aware that some visitors may not be able to afford them?

SECRETARY FOR HEALTH AND WELFARE: Sir, with the exception of treatment at Accident and Emergency Departments, which is provided free, visitors using public hospital services in Hong Kong are regarded as non-entitled patients and are charged medical fees representing the full cost of any treatment provided. Holders of valid British passports are exempted from such charges because of a reciprocal arrangement with the United Kingdom Government which grants Hong Kong residents access to free medical treatment under the national health service.

While charges for private wards are the same for both visitors and local residents those for public wards are different. Visitors being treated in a public ward in a general hospital are required to pay a composite fee of $950 per day as compared with $23 a day for Hong Kong residents. The corresponding charges in psychiatric hospitals are $350 and $23. These fees are inclusive of maintenance and treatment. Charges for visitors attending general and specialist outpatient clinics are $65 and $130 per visit respectively. The corresponding charges for local residents are $12 and $18.

The rationale behind this policy is to discourage non-entitled patients from coming to Hong Kong with the express intention of seeking medical treatment at heavily subsidised rates, which would be unfair to the Hong Kong taxpayer. Accordingly, higher medical charges for visitors were introduced in September 1987.

Non-entitled patients who require medical attention during their stay in Hong Kong are now subject to these higher charges but the Government is aware that some visitors may not be able to pay. In such cases, the Director of Medical and Health Services has discretionary powers to waive or reduce fees.

Government Business

First Reading of Bills

DANGEROUS GOODS (CONSIGNMENT BY AIR) (SAFETY) (AMENDMENT) BILL 1988

ADMINISTRATION OF JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 1988

GUARDIANSHIP OF MINORS (AMENDMENT) BILL 1988

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

Second Reading of Bills

DANGEROUS GOODS (CONSIGNMENT BY AIR) (SAFETY) (AMENDMENT) BILL 1988

THE FINANCIAL SECRETARY moved the Second Reading of: 'A Bill to amend the Dangerous Goods (Consignment by Air) (Safety) Ordinance'.

He said: Sir, I move that the Dangerous Goods (Consignment by Air) (Safety) (Amendment) Bill 1988 be read the Second time.

The purpose of this Bill is to amend the Dangerous Goods (Consignment by Air) (Safety) Ordinance to impose on a person who is convicted of an offence under the said Ordinance the liability for payment of the expenses incurred in the seizure, removal and detention of dangerous goods, and for those expenses to be recoverable as a civil debt.

The principal Ordinance was enacted in 1985 to establish a legal framework for the regulation and supervision of the transport of dangerous goods by air.

Section 4(1)(*h*) of the principal Ordinance empowers the Director of Civil Aviation to seize, remove and detain anything in respect of which he has reasonable ground for suspecting that an offence under the Ordinance has been committed. The Ordinance does not, however, require the owner of the seized goods to be liable for payment of costs associated with the seizure or storage of the goods in question. Any expenses incurred in exercising the powers under this section have to be borne by the Government, even if the person, from whose custody or possession the goods were removed, is convicted.

While no significant expenditure has been incurred in respect of such action since the enactment of the Ordinance, it is conceivable that costs could be considerable, if, for example, a large consignment of dangerous goods were seized and had to be held in storage at Government expense. It is wrong in principle that expenses arising from the commission of a criminal offence should be a charge on public funds.

The amendment proposed in this Bill, if enacted, will rectify the situation by making the person convicted responsible for the costs incurred.

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

Question on adjournment proposed, put and agreed to.

ADMINISTRATION OF JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 1988

THE ATTORNEY GENERAL moved the Second Reading of: 'A Bill to make better provision for the administration of justice in relation to the jurisdiction of the courts and tribunals and for connected purposes'.

He said: Sir, I move that the Administration of Justice (Miscellaneous Amendments) Bill 1988 be read the Second time.

The main purpose of this Bill is to increase the limits of jurisdiction of the district court in civil matters and of the Small Claims Tribunal. The Bill also makes one or two other changes which I will come to in a moment.

At present, the district court has general jurisdiction to deal with claims in contract or tort where the amount claimed is, or is worth, not more than $60,000; similarly, in relation to such matters as the administration of an estate or of trust property the district court has jurisdiction where the property is worth not more than $60,000. Where the proceedings are for the recovery of land or relate to the title to land, the jurisdiction limit is that the rateable or annual value of the land must be not more than $45,000. These limits were set in 1983, five years ago.

The present position in the Small Claims Tribunal is that it has jurisdiction to deal with a range of civil matters where the amount involved is, or is worth, not more than $8,000. That limit was set in 1986.

Increases in these jurisdiction limits were recommended in December 1986 by Mr. Peter ROBINSON in his Report on the Hong Kong Judiciary. He took the view that some civil work is being done at too high a level. This, he said, resulted in an inefficient use of human resources, high litigation costs for claims that were not, in today's terms very large and consequent discouragement of some potential plaintiffs. He also thought that the district court was underloaded with civil work and could relieve the High Court of some of its burden. He accordingly recommended that the district court's general jurisdiction should be raised to $250,000.

Consultations on this recommendation have revealed, however, that an immediate increase to that level would not be advisable. It would bring into the district court a class of litigation involving quite sizeable sums of money for which its rules of procedure do not at present provide adequate interlocutory procedures.

The proposal in this Bill is, therefore, that for the time being the district court's general civil jurisdiction should be increased only to $120,000—that is to say double the previous figure—and that the jurisdiction in relation to land be increased to $100,000. Meanwhile, work will be set in hand to make the necessary improvements to the district court's rules of procedure. And that has been done, the question of increasing the general civil jurisdiction to $250,000 will be looked at again.

As regards the Small Claims Tribunal's jurisdiction, the Government accepts that the burden on persons litigating or contemplating litigation for sums between $8,000 and $15,000 can be lightened by increasing the jurisdiction of the Small Claims Tribunal to that figure. This implements ROBINSON's recommendation on this point.

Sir, the Bill also makes two other changes. First, it amends the Small Claims Tribunal Ordinance and the Labour Tribunal Ordinance so as to make it clear that no appeal lies to the Court of Appeal from a refusal by the High Court to grant leave to appeal to itself from the Labour Tribunal or the Small Claims Tribunal. This brings the position in these tribunals into line with what it is under the general principles that apply elsewhere.

Finally, clause 4(*a*) of the Bill provides for the repeal of section 46 of the District Court Ordinance. That section, which can trace its ancestry back to a provision relating to small debts which was first enacted in Hong Kong in 1845, prevents persons under the age of 21 from relying on the common law defences available to minors when they are sued for debt or other liabilities. In its report on 'Young Persons—Effects of Age in Civil Law' in 1986, the Law Reform Commission recommended the repeal of section 46. However, since the publication of this Bill the Government has decided to look again at the question whether this is the right time and vehicle for the implementation of this recommendation, and it is likely that the Government will be proposing amendments to clause 4(*a*) at a later stage.

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

Question on adjournment proposed, put and agreed to.

GUARDIANSHIP OF MINORS (AMENDMENT) BILL 1988

THE ATTORNEY GENERAL moved the Second Reading of: 'A Bill to amend the Guardianship of Minors Ordinance'.

He said: Sir, I move that the Guardianship of Minors (Amendment) Bill 1988 be read the Second time.

Section 22 of the Guardianship of Minors Ordinance excludes the jurisdiction of the district court in relation to minors over 16 years, unless the minor is physically or mentally incapable of self-support. This restriction on the district court's powers has been in the Ordinance from the outset and has its origins in the Guardianship of Minors Act 1971 of the United Kingdom. This restriction was, however, abolished there in 1978.

The restriction is anomalous as the district court is empowered to deal with all minors under both the Matrimonial Causes Ordinance and the Matrimonial Proceedings and Property Ordinance. The Bill before the Council today seeks to remove this anomaly by repealing section 22 of the Ordinance.

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

Question on adjournment proposed, put and agreed to.

FILM CENSORSHIP BILL 1988

Resumption of debate on Second Reading (9 March 1988)

Question proposed.

MR. YEUNG: Sir, although the Film Censorship Bill 1988 was read for the First time in this Council on 9 March 1988, its history dates back to March 1987 when a Legislative Council ad hoc group was set up to examine a White Bill published by the Government to invite public views on the proposed three-tier film classification system and various measures to regularise control on the film industry. Our task appeared to be straightforward at first. But, as things turned out, the group found itself facing an increasingly complex assignment. I am most grateful to my colleagues in the group for the time and dedication they have devoted in the past 14 months to scrutinise this Bill, the Administration for its receptive attitude to suggestions made by the group, as well as the film industry for putting forward its invaluable views.

Given the complexity of the Bill, it will not be possible for me to deal with every aspect on which the group had focussed. I shall, therefore, attempt to concentrate only on the major areas. My colleagues speaking this afternoon will no doubt elaborate further on the remaining points.

The first major area concerns the censor's power to ban or excise a film on the ground that its exhibition would seriously damage Hong Kong's 'good relations with other territories'. Concern has been expressed that to retain this power would infringe upon freedom of expression and the International Covenant on Civil and Political Rights. It took a long time before consensus emerged on this issue. I am now happy to say that an amendment will be made to provide for express statutory recognition of the principle of expression enshrined in article 19 of the covenant. I shall deal with this aspect in detail in my speech moving the amendment in Committee.

In order to ensure that the board of review can function effectively as an appeal channel for film producers aggrieved by a censorship decision, the group has also looked carefully into the membership of the board. Specifically the group feels strongly that the board should be chaired by a non-official to highlight its independent role. This will, to a certain degree, enhance the safeguards available in the Bill to prevent abuse of power by the censor. The Administration is receptive to our proposal and a suitable provision has been made in the Bill.

The Bill provides for the Chief Secretary to 'direct' the board of review upon the request of an aggrieved person to reconsider a censorship decision. The group is concerned that the word 'direct' might give a false impression of there being undue interference by the Administration in the board's proceedings. Sharing the group's concern, the Administration has agreed to refine the

wording of relevant provisions in the Bill so that the Chief Secretary will only be empowered to 'refer' requests from aggrieved parties to the board. An amendment will be moved in Committee in accordance with this agreement.

There is one issue on which I would like to allay the film industry's anxiety. Concern has been expressed by the industry on the abolition of the existing censorship mechanism for advertising material related to films, with the intention that individual film producers should bear their own risks for prosecution under the Control of Obscene and Indecent Articles Ordinance. The industry is worried that the new arrangement, which represents a departure from existing practice, would result in a tighter control on advertising material related to films and cause operational problems. After seeking clarification with the Administration, the group is satisfied that the existing standards governing advertising material related to films will not change. Although it is the Administration's intention to remove the inconsistency whereby censorship principles drawn up having regard to the impact of films on the audience are applied without modification to film advertisements published through various media, existing standards will be maintained by way of a special arrangement which ensures that the Commissioner for Television and Entertainment Licensing acts as the only authority for referrals of film advertisements to be made to the Obscene Articles Tribunal.

One of the most debated topics in the Bill is the three-tier classification system which gives rise to a category of films limited to audience over 18. Cinema operators charged with enforcement responsibilities are naturally concerned with possible practical difficulties. Whilst there is a defence in the Bill for cinema operators should they be able to demonstrate that they have taken 'reasonable precautions' to prevent underage people from entering their premises, the group is sympathetic with the industry's concern. As a compromise, therefore, an agreement has been reached with the Administration that a set of guidelines listing out what constitutes 'reasonable precautions' will be worked out in consultation with the industry before the system is put into operation. I am sure that Members of this Council will be kept informed of progress in this regard.

Sir, the Bill has broken at least two records. It is the first piece of legislation, as far as I am aware, which has been preceded by two White Bills; and it is the first Bill which necessitated a total of 37 meetings, including discussion on 12 occasions with the Administration and on six occasions with the film industry, before the ad hoc group could reach full agreement. Although some people may well say that the group could have finished its work much earlier, I believe the time taken for the group to complete its task simply reflects the importance and complexity of the Bill. In any event, the important point is whether we are fulfilling effectively our role as lawmakers to scrutinise and improve legislation. I am confident that the Bill before us today represents a package which not only takes into account the interests of all parties, but is also acceptable to the great majority of the people of Hong Kong. I have no hesitation to recommend it to our colleagues in this Council.

With these remarks, Sir, I support the motion.

MR. CHEONG: Sir, before debating the provisions of this particular Bill, I believe it is important to recognise the background leading to its introduction.

Fourteen months ago, an article appeared in a leading newspaper in Hong Kong, possibly using government confidential documents as a source, exposed possible legal deficiencies on the guidance notes issued to our film censors. As a result, questions were raised on the legality of government's practice of censoring films. There were quite a lot of adverse comments on the government's oversight. When the issue was discussed in the Legislative Council in-house meeting, we were unanimous in our view that steps had to be taken to correct the anomaly. The Administration agreed and also at the same time taking the opportunity to review in depth the principles and practices of film censorship, published a White Bill for public consultation. A Legislative Council ad hoc group was formed to study this issue.

As a result of our deliberations and with the help from the film industry and the Administration, it is fair to say that many improvements have been made. The final package, as presented today, is a much improved package over the original White Bill. I have no doubt this package will be acceptable to a great majority of our community. I will not wish to go into great details on what had been achieved by the group, but suffice only to say that our effects have produced general satisfaction with all parties concerned. I would simply like, Sir, to urge hon. Members of this Council to take three points into consideration when deciding to vote 'yes' or 'no' to this Bill.

First, the practice of film censorship in Hong Kong including censoring films that may damage good relationship with other countries had been going on for the past 30 odd years. This practice did not impede the growth and development of the film industry in Hong Kong. The people of Hong Kong did not cry foul of being deprived of the opportunity to appreciate art, culture or to be entertained by films shown in Hong Kong. Nor did they feel that film censorship had deprived them of the freedom of expression. In short, there were no major complaints over the practice of censoring films. On the contrary, recent public sentiments called on the Government to exercise stricter control over publications that depict an excessive degree of violence and obscenity. If the people of Hong Kong called for stricter control on published materials, then it would be logical to deduce that they would not call for less or even no control on films. Hence, the principle of government having a degree of control on films shown to the public is, in my view, generally supported by our community.

Secondly, with regard to the controversial clause which empowers the Administration to continue to censor films which might damage good relations with other nations, there have been a lot of comments on this issue from a vocal minority of the community. They have zeroed in from a political angle and tried to propagate a notion that this clause will give rise to a situation whereby after 1997, Hong Kong's freedom of expression will be curtailed. They opine that whereas the Administration under the British flag can be trusted to respect the

principle of freedom of expression, the SAR Administration under the Chinese flag after 1997 cannot be trusted to pay heed to this important principle as enshrined in the International Covenant on Civil and Political Rights. They have indeed deployed stunning persuasive tactics for such arguments, playing up and appealing to the fears of our people over the uncertainties associated with the change of sovereignity in 1997. I can well understand those fears but we must ask ourselves, hon. Members, whether for the good of the community at large, we should allow ourselves to be so overridden by fears as to lose sight of the need to make assessments and decisions on a rational and pragmatic basis.

Everyone understands that the 'one-country-two-system' is a novel concept and Hong Kong will not be the only Special Administration Region of China in future. The success of the Hong Kong SAR will have an important bearing on the issue of total unification of China and the road of total unification is a long and hard one. Given our unique circumstance as the first major experiment of this concept and in considering the 'damage good relations' clause in this Bill, should we not ponder whether, without this clause, Hong Kong might unwittingly be open to the risk of becoming a battleground for opposing political propaganda warfare? Should not the Administration, now or even after 1997, be given the necessary power to minimise such risks that have the effect of destabilising Hong Kong?

Finally, Sir, the ad hoc group did recognise the concern that the powers conferred on the Administration might be open to abuse now or after 1997. We have sought to inject the necessary checks and balances into the structure. The composition of the board of review is one of the proposals unanimously supported by all Members. Additional checks and balances will be proposed by the convener of the group to require the censor to take into account the principle of freedom of expression as promulgated in the covenant. Our convener will explain in more details later, this clause does have the necessary binding legal force to ensure that the censor and the Administration will not disregard lightly such important principle. Sir, we have gone a long way from where we started and I am totally satisfied that the Bill before Council today, together with the hon. YEUNG Po-kwan's proposed amendments, constitute an acceptable package to Hong Kong.

Sir, I support the Bill.

MRS. CHOW: Sir, I support the film classification system contained in the Bill so long as its practice complies with the Administration's stated intention that it is a liberalising move to enable footage, which under the present censorship standards, would be either excised or banned, to be shown to audiences aged 18 or above in the future. It has been put by the trade that there are signs of the tightening of standards relating to sex and violence now in anticipation of the passage of this Bill. If this has happened, I can understand why. The Administration has assured that films currently marked unsuitable for children will all be classified as category II films without legal restrictions on age in the future.

But this assurance will present difficulties to the censors in future, for films that are unsuitable for children nowadays include those which can only be described as adult films and belong only in category III in the future scheme of things. I suggest—therefore—that the Government clarifies this point, but more importantly, ensures consistency and clarity in standards by spelling out in simple terms for the censors as well as the trade what constitutes category III. The application of these terms would obviously require common sense. This would not only save a lot of time and argument in the long run, but also establish a fairness and consistency in our system of censorship which are necessary to gain the trust and support of the trade and the public.

An outstanding matter which I believe has not been resolved at this time is an unanswered question raised by the trade as to what constitutes reasonable precautions (as contained in clause 20(3)). I can understand the Administration's reluctance to be involved in a definition, given that whatever definition will not have any legal effect, and at the end of the day it will be up to the courts to decide whether precautions taken have indeed been reasonable.

However, as it will be the inspectors under the Commissioner for Television and Entertainment Licensing who will be enforcing this part of the Bill, and as 'reasonable precaution' is a defence, it is not an excessive request to ask the department concerned to familiarise itself with the practice to be generally adopted by the trade, and to indicate whether in its view such practice is reasonable.

Up to last week, I have still received views put forward by the trade that enforcement of admission for category III films might still present grave problems. However, it is difficult to accept that what has worked elsewhere cannot work equally well here, if the censors get it right. We need to watch it closely to see whether the new system achieves the original objective of liberalising censorship standards for adults without causing unnecessary hardship. We also need to watch closely the actual workings of inspections, where we have five inspectors covering 124 cinemas and screens on a permanent basis, an arrangement which can give rise to various problems. I would much prefer to see seconded officers from a disciplined service to take on this rather thankless and difficult task on a rotation basis. I urge the Administration to give it serious consideration.

Sir, I support the motion.

DR. LAM (in Cantonese): Sir, allow me to refer to article 19 of International Covenant on Civil and Political Rights. Section 2 of the article states that everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers either orally, in writing, or in print, in the form of art or through any other media of his choice.

If we introduce political censorship on films, similarly, the same can be extended to television, radio, magazines, newspapers and even public statements and personal opinions as well. This will seriously infringe the principles of freedom of expression and freedom of speech. I have watched two films previously banned because of political sensitivity. I found that the contents of the films are neither exaggerating nor misleading. If we enact laws which might be considered by the public as infringement of freedom and cutting back of their civil rights and freedom, it will definitely affect Hong Kong's prosperity and stability in the future.

Sir, in implementing any film censorship law, I hope the Government should take into consideration the operational difficulties encountered by those in the trades, and try its best to help them, including review of the situation when it is necessary.

Sir, with these remarks, I support the motion.

MR. MARTIN LEE: Sir, on the Second Reading of this Bill, I shall be extremely brief. The first point I wish to make is in relation to clause 10(2)(*c*) of the Bill, which, in effect, gives the censor the power to ban a film or excise a portion thereof, if he is of the opinion that the exhibition of that film in that form is likely to seriously damage good relations with other territories. Sir, I am opposed to political censorship of any kind; and I am glad to have the support of Mr. Helmut SOHMEN in this respect. Although he is unable to speak on this Bill on this occasion, being away from Hong Kong, he has asked me to convey his views to this Council.

Sir, the hon. Stephen CHEONG said that for many, many years political censorship has in fact been applied to Hong Kong; but of course he rightly reminded us that it was in fact a wrongful exercise of power on the part of the censor for over 10 years. With respect to him, the fact that the people of Hong Kong have long been wrongfully deprived of one aspect of the freedom of expression cannot be a reason why we today should legalise this long-standing illegal practice. Sir, I do not intend to go through these well rehearsed reasons again, as they have been well documented in our Hansard during our debate on 8 July 1987, and I will simply state my view on clause 10(2)(*c*).

Sir, provided that we are satisfied that clause 10(2)(*c*) will not infringe article 19 of the International Covenant on Civil and Political Rights, then I am prepared to support it. In order to bring that about, we have to satisfy ourselves that the law as passed will only give the censor limited powers, to ensure that when he does exercise his powers to ban a film or excise a portion thereof on the ground that it would seriously damage good relations with other territories, he could only do so within the terms of paragraph 3 of article 19. In other words, he must be satisfied that it is necessary for respect of the rights or reputations of others, for example, the reputation of foreign dignitaries; or that it is necessary

for the protection of national security or public order or *ordre public* or of public health or morals.

Sir, I shall therefore in due course be moving an amendment by the addition of clause 10(4A), which now appears on a paper circulated to Members and I will give my detailed reasons then.

Sir, with respect to the constitution of the board of review, I would respectfully urge the Administration to seriously consider allowing a High Court Judge or a District Judge to chair the board of review whenever the ground of complaint relates to clause 10(2)(*c*), that is, in relation to political censorship; because it is quite likely that authorities will be cited to the tribunal based on decisions in the European of Human Rights; and it would require a chairman with good experience in law to fully appreciate these submissions.

Sir, may I remind hon. Members of the provision of article 2 of the International Convenant on Civil and Political Rights. Paragraph 3 reads: 'Each State Party to the present Covenant undertakes:

(*a*) to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy,...and

(*b*) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities,...and to develop the possibilities of judicial remedy.'

Sir, the mose effective judicial remedy available under the scheme proposed in this Bill is to ensure that the board of review will be chaired by a judge. So, for these reasons, I will not oppose this Bill including clause 10(2)(*c*), but I shall, in due course, move my amendment.

MR. DESMOND LEE: Sir, as the ad hoc group to study film classification and censorship held so many meetings (37 to be exact), including consultation with the Administration and the industry, most of the issues have been resolved. I shall speak only on the 'damage good relations' clause and the reference to article 19 of the International Covenant on Civil and Political Rights, which deals with the principle of freedom of expression.

There is specific mention of this international covenant in the Joint Declaration on the future of Hong Kong. It is, therefore, the common intention of both Britain and China that the people of the future Hong Kong Special Administrative Region should enjoy the privileges and rights which are provided by this covenant. For this reason, if the 'damage good relations' clause is to be included, the legislation must contain sufficient safeguard that the commitment to compliance of this covenant will be honoured. The safeguard must be spelt out in unequivocal terms which leave as little room as possible for different interpretations. The intention behind the Joint Declaration can be realised only in this way. There are two formulations of this Bill arising from the international covenant, namely the 'taking into account' version and the

'compliance' version. I would prefer the latter because it does not allow too much personal judgement which may lead to variations in censorship standards.

In the pre-1997 period, the laws of Hong Kong should incorporate international legal practices and standards as much as possible. These laws will hopefully be inherited by the future SAR Government and help to maintain the status of Hong Kong as an international city. I would, therefore, encourage that appropriate steps be taken to write into Hong Kong's legislation binding commitments based on international agreements. The reference to article 19 of the International Covenant on Civil and Political Rights in the film censorship legislation is a good example to be followed. Legal systems of the Western world, which have taken centuries to develop, must be superior to what exists in China, which remained an absolute monarchy without the rule of law until about 70 years ago. It will be of advantage to introduce suitable components of western legal systems into the laws of Hong Kong prior to 1997. This will help to strengthen the confidence of Hong Kong people to some extent. People who are afraid of China are worried that the rule of law is not as effective in the Mainland as it is in Hong Kong today.

Sir, it is dangerous to create restrictions and conditions on freedom of expression. There is a Chinese saying. 'If the authorities wish to incriminate a person, they would not worry about not having an excuse' (欲加之罪,何患無詞). Throughout the history of China which spans 5 000 years, there have been innumberable blatant examples of this. If it is absolutely necessary to legislate some conditions on freedom of expression in Hong Kong, effective safeguards must be spelt out to prevent abuse of power by the authorities in the application of such legislation. We must remember that we legislate not only for ourselves but also for future generations. I trust the present Government in Hong Kong because it has a past record of performance. I cannot, however, convince people to have the same degree of trust in a future government which has not yet been formed.

Sir, I would support the compliance formulation when the amendment is moved in the Committee stage.

MRS. TAM: Sir, the Film Censorship Bill 1988, on which debate is resumed today upon its Second Reading in this Council, is a long awaited one. The Legislative Council ad hoc group has spent more than a year holding a total of 37 meetings to study the Bill. Though the ad hoc group has taken a relatively long period of time in its deliberation, we must realise that this Bill is a very significant one in that it does not only bring a number of changes to the existing film censorship system in Hong Kong, but also involves certain aspects of international law. The ad hoc group members have demonstrated their sense of responsibilities, enthusiasm and perseverance by conducting a careful and comprehensive scrutiny. I, therefore, would like to congratulate my hon. Friend, YEUNG Po-kwan, the convener, for the group's work.

The general spirit of the Bill is to introduce a more specific classfication system to films for public exhibition in Hong Kong, whereby films subject to a more relaxed censorship standard is allowed for exhibition to adults, while our young people are protected from the adverse effects of obscene and violent films. Thus the Bill recommends that films for public exhibition in Hong Kong should be classified into three categories, one of which will be prohibited from exhibition to persons below the age of 18. In case of any contravention, the cinema operators concerned are liable to prosecution. Sir, as we all know, the film industry is doing a thriving business in Hong Kong and it has far-reaching influence on our society. To monitor this trade in a reasonable manner so as to prevent film operators from selling ideas of obscenity and violence to young people who are not yet mature, I think, will be most welcomed by everyone who cares for youth development. Being a youth worker myself, I fully support the spirit of the Bill and the aforesaid recommendations.

However, in our attempt to prevent young people from viewing obscene and violent films in cinemas, we must also consider how to help those young people who have got into the bad habit of viewing these films. At present, the idea that the authorities concerned have in mind is to issue a letter of warning to inform the parents of the underage viewers if they are found viewing films not approved for exhibition to persons below the age of 18 by a public officer. I think this is the most sensible and logical thing to do. It is a sensible course of action because parents are the young people's next-of-kin and it is necessary for them to know how their children behave outside the family. It is also logical because parents ought to provide their children with proper discipline. To inform them of their children's behaviour is a way to enable young people to get the necessary help from their parents.

However, we must also realise that in Hong Kong today, efforts made by parents alone are not sufficient to enhance the healthy growth of the young people—they also need help from outside their families. In this respect, there are at least the school social workers who pay close attention and give guidance to the young people at school. We should give due weight to their work for our young people. Therefore, I think that if young students are found viewing category III films in cinemas, apart from their parents, the school social workers of their schools should also be informed. The aim is to ensure that these young people can be given full assistance in getting rid of the bad habit of viewing obscene and violent films or even in solving some of their latent problems. Some may worry that by copying the warning letters to the school social workers, the behaviour of the young people concerned will be made known in their schools, bringing them stress and troubles. In this connection, I would like to point out that all school social workers are bound by the guiding principles of their profession and will keep all information concerning their clients, that is students receiving counselling, strictly confidential. As long as the information concerning the behaviour of the young people in question is passed on to the social worker directly and no other person is informed, I believe that these young

people will not be exposed to stress or get into troubles in their schools. Instead what they get will be care and guidance from the school social workers. The above is not only my personal view but is shared by several members of the ad hoc group. I hope that this proposal will be given careful consideration by the authorities concerned.

Sir, with these remarks, I support the motion.

MR. ANDREW WONG: Sir, I rise in support of the motion that the Film Censorship Bill 1988 be read a Second time. On the outset, may I congratulate all parties concerned, that is, the Administration, the film industry, various public-spirited organisations such as the Journalist Association, the Law Society, the Bar Association and so on, and the Legislative Council ad hoc group on the Bill of which I have the honour to be a member, for their contribution and for their spirit of co-operation, if not also compromise, but all done in the pursuit of the public interest.

I have been told that politics is the art of the possible, that the world is imperfect, and that any attempt towards imposing a perfect blueprint brings about even greater imperfections. It is in this light that I lend my support to the present Bill. However, this does not mean that I am in total agreement with all the provisions, and it is important for me, or anyone who has other strong views to have them registered, and registered in public, so that in future and on reflection, such provisions could be further improved.

Sir, I do not propose to go into all provisions. My strong views relate to only one provision, and in fact to only one aspect of that particular provision, in which censorship which is the heart of the matter and after which the Bill is so named.

Sir, you will recall that during the debate on 8 July 1987 on Mr. Martin LEE's Motion to amend the Film Censorship Regulations 1987, which were meant to be an interim measure pending the passage of the present Bill and which would be revoked if and when the present Bill were enacted, I said to the effect that for censorship, a negative approach should be adopted, that is, a film should not be banned unless it contravenes one or more of the censorship criteria or standards. I said this was in line with the spirit of British Law and with article 19 of the International Covenant on Civil and Political Rights. I did not elaborate though, Sir, but went on to tell you and hon. Friends in this Council, Prof. Samuel FINER's joke that 'in England, whatever is not prohibited by law is permitted; in Germany, whatever is not permitted by law is prohibited; in France, whatever is prohibited by law is still permitted, and in Russia, whatever is permitted by law is still prohibited'.

Sir, I now wish to elaborate my thoughts further and hope that you will bear with me as they are of relevance not only to the present Bill but also to the Draft Basic Law which the Basic Law Consultative Committee of the People's

Republic of China has recently released for public consultation in Hong Kong. Do not be alarmed, Sir, I am not going into the Basic Law.

Article 19 of the said covenant reads:

'1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (*a*) For respect of the rights or reputation of others;
   (*b*) For the protection of national security or of public order (*ordre public*) or of public health or morals.'

Now I note paragraphs 1 and 2 categorically uphold freedom and paragraph 3 should be interpreted as limiting the powers of the Government to restrict those freedoms. This is what I mean by the negative approach.

Now article 21 reads and I quote: 'The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.' Now I note that this formulation of article 21 is precisely identical to article 19.

However, article 20 reads:

'1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'

I note and I hope you will agree with me that this formulation which, I call positive, is diametrically opposed to that for articles 19 and 21. No wonder Her Majesty's Government when ratifying the covenant had this reservation registered upon ratification, and I quote: 'The Government of the United Kingdom interpret article 20 consistently with the rights conferred by articles 19 and 21 of the covenant and having legislated in matters of practical concern in the interests of public order (*ordre public*) reserve the right not to introduce any further legislation. The United Kingdom also reserve a similar right in regard to each of its dependent territories'.

Now, Sir, on 8 July 1987, during the above mentioned debate, I supported the Film Censorship Regulations 1987, and one of the reasons I advanced was this

'negative' approach (now please do not take it negatively). Part of section 5 of the 1972 Film Censorship Standards—A Note of Guidance reads:

> 'a film or any particular part of a film, trailer or advertisement will not be banned by the censor, unless in his considered opinion there is a likelihood that its showing in a public place would—(and there are some eight such criteria, but I will read out the three most important ones):
>
> (ii) corrupt morals or encourage crime, particularly crimes of violence, or encourage the unlawful taking of drugs;
> (iii) provoke hatred between persons in Hong Kong of differing race, colour, class, nationality, creed or sectional interest;
> (vii) damage good relations with other territories'.

The negative formulation was followed and the same eight criteria were adopted in regulation 3A of the Film Censorship Regulations 1987.

However, Sir, the present Bill changes this negative formulation into a positive one, and I refer Members to clause 10(2) and 10(3).

Now subclause 10(3) is now to be amended as agreed between the Administration to the effect that (*d*) will be added to clause 10(3). This is still a positive formulation which is the undesirable formulation in my view having the effect that censors and the board of review will also take into account, as in Mr. YEUNG Po-kwan's amendment, article 19 of the International Convenant on Civil and Political Rights.

However, in the course of the ad hoc groups's deliberations, an alternative amendment was considered which used what I termed the negative approach. The exploratory draft was written by the Legal Adviser to the Office of Members of the Executive and Legislative Councils, Mr. Jonathan DAW, and which I think should not be omitted from our open public records. I have, therefore, appended it to my speech and I shall hand a copy to the Clerk after the meeting for Hansard. It is a complete rework of the proposed clause 10. I will simply read out the proposed clause 10(4) (now please note that this numbering is different from the numbering in the Bill). I read this out simply to highlight the difference between the two formulations. The revised clause 10(4) reads as follows:

> 'The censor, when making his decision under subsection (2), shall take into account the following matters:
>
> (*a*) the artistic, educational, literary or scientific merit of the film and its importance for cultural or social reasons, having regard particularly to the preservation of freedom of expression;
> (*b*) the effect of the film as a whole and its likely effect on the persons likely to view the film; and
> (*c*) in relation to the intended exhibition of the film, the circumstances of such exhibition,

and shall not refuse to approve the film under subsection 2(*b*), or make a decision under subsection 2(*c*), or assign it a classification under section 12(1)(*b*) or (*c*) unless he is satisfied that the film:

(i) unwarrantably portrays, depicts or treats cruelty, torture, violence, crime, horror, disability, sexuality or indecent or offensive language or behaviour; or
(ii) denigrates or insults any particular class of the public by reference to the colour, race, religious beliefs or ethnic or national origins or the sex of the members of that class; or
(iii) will seriously damage good relations with other territories.'

Sir, this negative and more desirable alternative and the positive hence less desirable alternative in my view, to be moved by Mr. YEUNG Po-kwan, were both rejected by the Administration when they were first made. As the Administration has now come round to accepting the consensus recommendation of the group instead of mine, I concede defeat and support the Bill as amended by either Mr. YEUNG Po-kwan's amendment. However, I voice my misgivings, in the strongest possible terms, in the hope that my hon. Colleagues, Government and non-government Members alike, will eventually be persuaded. As Chairman MAO once said: 'I can wait for a thousand years', of course, that is, if I do live that long, but Hansard does and longer too.

Sir, with these remarks and misgivings, I support the motion.

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION: Sir, I am most grateful to my hon. Members for their support for this Bill. As Mr. YEUNG Po-kwan has pointed out, much time and effort have been devoted to this exercise. I shall record our very great and sincere appreciation for the work done by the ad hoc group.

I am personally indebted to the convenor, Mr. YEUNG Po-kwan, for his forbearance and patience in dealing with what he must have regarded as a somewhat stubborn Administration.

May I, Sir, refer to some of the points that have been raised today. I doubt, Sir, I need to say much about the relevance of article 19. Suffice it to say that we have given assurance in the past, and I shall repeat this assurance, that the Bill before this Council is not incompatible with article 19 of the covenant.

Mr. Martin LEE referred to the desirability of having a judge to chair the board of review, if the board should come to examine a film which is banned under clause 10(2)(*c*) that is on the grounds that the exhibition of that is likely to cause serious damage to the relations with other territories. I can only note his comment on this particular aspect, and when it comes to making an appointment, it will be a matter under the new Bill, for the Governor. And I am sure the Governor will have this on record when such an appointment is made.

As Mr. YEUNG Po-kwan has pointed out, representatives from the film industry, and cinema operators in particular, have raised some practical matters related to the Bill in its present form. The original Bill contains provisions for the existing practice whereby film distributors submit advertising materials for films to the Commissioner for Television and Entertainment Licensing.

It was considered, subsequently, that there was no justification for film advertising material to be dealt with differently from any other printed advertising material, and so, this provision was removed from the Bill. To elaborate on Mr. YEUNG's statement on the need to maintain consistent standards in dealing with such advertisements, I can confirm that besides the Attorney General, only the police, the Customs and Excise, and the Commissioner for Television and Entertainment Licensing, have delegated authority to refer suspected obscene or indecent articles to the tribunal. The police and customs and excise have agreed that they will make all their referrals, both those related to films and those related to other publications, through the Commissioner for Television and Entertainment Licensing, in the first instance, thereby ensuring a consistent approach at the initial stage of enforcement.

The hon. Mrs. Selina CHOW has expressed concern over possible problems arising out of the nature of work and lack of career structure for the film inspectors which number five. We cannot anticipate all such problems but we have taken advice from the Corruption Prevention Department of the ICAC and we will be establishing procedures to minimise corruption opportunities. This principally involves rotating the inspectors between different districts. If and when other problems should arise, we will deal with them in the light of experience again.

I am grateful to Mrs. CHOW for her suggestion that consideration should be given to seconding officers from other disciplinary services to carry out inspection duties. When I can see some attraction in the idea, I rather suspect that my Finance Branch colleagues may well conclude that to use highly trained law enforcement officers to perform inspection duties in such a restricted area, would not be value for money.

Mr. YEUNG and Mrs. CHOW both refer to the need for guidelines for cinema operators when dealing with category III films. The Commissioner for Television and Entertainment Licensing has already drafted a set of administrative guidelines to cinema operators. The operators, in permitting people to gain admittance to their cinemas, are entitled to take steps to see that their legal duties are discharged. These steps include requiring persons whom they suspect of being under age to show proof of their age, and excluding them if they are under age. Clearly, the effort required to do this is more than is required under the present legislation, but cinema operators are by no means obliged to show category III films. They are free to carry on operating with category I and category II films as at present. I foresee that certain cinemas may become specialised in category III films in future. Others, who do not welcome this liberalisation, can continue to operate under the status quo.

Mrs. CHOW has sought an assurance that the current standards of censorship would not be tightened in order to accommodate category III films in the future. I have been assured by the Commissioner for Television and Entertainment Licensing that the current standards have not been tightened. For the future, and if the Bill is passed into law, films currently classified as suitable for general exhibition would be category I. Those currently classified as not suitable for children would be category II. Any films which go beyond category II but nevertheless can be approved for restricted exhibition to adults will be classified as category III.

Sir, I believe that it is common ground that under age persons caught in cinemas watching category III films should not be deemed to have committed an offence. Members have suggested that such young persons should be properly identified and that letters should be sent to their parents to serve as a deterrent. This step will be implemented.

Mrs. Rosanna TAM has suggested that the Administration should go further than this and circulate such letters, confidentially, to school social workers. Such a step would require an examination of broader issues. I can already see several difficulties. First, we doubt whether the inspectors would have powers to require anyone to identify his parents or school. second, we feel that even if such information were volunteered, it might be inaccurate or misleading, giving rise to the risk of libel action against the Administration if a person were misidentified in a letter. Finally, the Director of Education has expressed the view that it might be advisable not to give the impression that the supervision of children's social life is anything other than the responsibility of the parents. Given these difficulties, I feel there is a need to examine further the feasibility of Mrs. TAM's proposal.

Sir, I will not attempt to respond to Mr. Andrew WONG's lengthy speech. I will only say that while he may see things differently from us, perhaps the best way to respond would be to say that when he sees the bottle as half-empty, we see it as half-full.

With these remarks, Sir, may I beg to move.

Question put and agreed to.

Bill read the Second time.

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

4.27 pm

HIS EXCELLENCY THE PRESIDENT: Members might wish to take a short break at this point before we move into the Committee stage.

4.54 pm

HIS EXCELLENCY THE PRESIDENT: The Council will now resume.

Committee stage of Bill

Council went into Committee.

FILM CENSORSHIP BILL 1988

Clauses 1 to 9, 11 to 18 and 20 to 33 were agreed to.

Clause 10

HIS EXCELLENCY THE PRESIDENT: I would like to make a point here. Mr. P. K. YEUNG and Mr. Martin LEE have given notice to move two separate amendments to clause 10. We will consider them in the order in which they relate to the text of the Bill, thus we will consider Mr. YEUNG's amendment first.

Members will wish to note that under Standing Order 45(4)(*b*) if an amendment is approved by the Committee then no subsequent amendment inconsistent with it can be considered.

MR. YEUNG: Sir, I move that clause 10(3) be amended as set out in the paper circulated under my name to Members. This amendment deals specifically with the concern that, to empower the censor under clause 10(2)(*c*) to ban or excise a film if there is likelihood that its exhibition 'would seriously damage good relations with other territories', represents an infringement upon freedom of expression as provided for under the International Covenant on Civil and Political Rights. The necessity for this power has been thoroughly debated both within and outside this Council and I do not intend to repeat the arguments this afternoon. Suffice it to say that the ad hoc group, after careful consideration of advice tendered by various legal experts, has reached a common view that this power should be retained subject to there being adequate safeguards to prevent or remedy possible abuse of power by the censor. My amendment is, therefore, aimed at providing an additional safeguard in the Bill to ensure that freedom of expression is duly recognised in the film censorship process.

The amendment, if agreed in Committee today, will add a new sub-clause (3)(*d*), requiring the censor to take into account 'article 19 of the International Covenant on Civil and Political Rights (which deals with the principle of freedom of expression)'. The effect of this amendment is twofold. First, it gives express statutory recognition to the principle of freedom of expression enshrined in article 19 of the covenant and obliges the censor to give full effect to it, subject only to the limited restrictions on the freedom which are set out in the article. Second, it provides a clear statutory recognition of article 19 for the

purposes of the board of review when it considers the legitimacy of a censorship decision. This is important because the board, with its majority of non-official members, is intended by the Bill to fulfil the role of a competent administrative tribunal for those aggrieved by a censorship decision. The statutory recognition of the principle of freedom of expression will surely enhance this role, and is in accordance with Hong Kong's obligations under article 2 of the covenant to provide a competent authority for those seeking remedies for infringement of individual rights under the covenant.

Sir, the ad hoc group is aware that doubts have been expressed as to the effectiveness of the form of wording proposed in this amendment. It is said that the amendment does not go far enough to protect freedom of expression because the form of wording does not appear to expressly oblige the censor to 'comply' with article 19.

On behalf of the majority of the ad hoc group, it is, therefore, necessary for me to explain why it is considered that the formula 'take into account' is preferable to 'comply with' in the context of article 19. In so doing, I shall attempt to avoid wearying Members by excessive length. But since the hon. Martin LEE has given notice of his intention to move an amendment to clause 10 to adopt the 'comply with' formula, it may be helpful to this Committee if, with your permission, Sir, I now deal comprehensively with the respective merits of both formulas so that Members will have, I hope, a clear picture in their minds.

The starting point for an objective analysis of the relative merits of the two formulas is 'what are they intended to achieve?'. This is of fundamental importance, for unless we are clear as to the intended effect, we cannot make any sensible judgement as to which wording will achieve the intention better. Now, I will deal with the 'take into account' formula first.

First, what is the intended effect of the 'take into account' formula? It is to oblige the censor to act in accordance with the principle of freedom of expression set out in article 19. But what does 'act in accordance with the principle of freedom of expression set out in article 19' actually mean? 'The right to freedom of expression,' both in common sense terms and as used in article 19, cannot be an absolute and unqualified right to be elevated above all other considerations.

To illustrate this point briefly, if the right to freedom of expression were to be treated as absolute and unqualified, there could be no lawful constraints upon violence or pornography in films or in any other media.

Article 19, therefore, recognises that the right to freedom of expression is not absolute or unqualified. This is why the article states, in paragraph 3, that the right 'carries with it special duties and responsibilities' and may be subject to certain restrictions so long as the restrictions are provided by law and are necessary to protect, among other things, the individual countries' or territories'

national interest (described in the covenant by the French concept of 'ordre public').

A fundamental question which arose during the ad hoc group's scrutiny of this Bill was whether there was a case for legislating a restriction to freedom of expression in the case of films which would be likely to seriously damage good relations with other territories. After very careful consideration, the majority of the ad hoc group concluded that, in principle, such a restriction was necessary and should be provided by law (hence clause 10(2)(*c*)), but that the Bill should be amended to safeguard against abuse of this restrictive power by, amongst other things, obliging the censor to exercise the power in accordance with article 19. And this is precisely the intention of the 'take into account' formula, which was endorsed by the majority of members at a full in-house meeting.

Turning now to the intention of the 'comply with' formula, I must say immediately that it is Mr. LEE's privilege to explain how, if at all, that intention is different from the 'take into account' formula. This is a crucial point because of Mr. LEE's intention in proposing the 'comply with' formula is that the right to freedom of expression should take precedence over all other factors which the censor must consider, he is in effect proposing an amendment which will nullify a basic principle of the Bill, namely, that the censorship process inevitably involves a balancing of conflicting factors. Since Mr. LEE is too experienced a legislator to seek to achieve changes to the principles of a Bill after it has been agreed to on Second Reading, it must follow that the intention of his amendment is not to nullify all other factors for the censor to consider as set out in clause 10, but rather to ensure that the censor is effectively obliged to act in accordance with article 19. And this, as I have already stated, is exactly the intention of the 'taking into account' formula.

Having, I hope, established that the two formulas share the same intention (and here I must point out again that I hope Mr. LEE will agree that the intention of his amendment is not to give freedom of expression precedence over all the other factors provided for in clause 10(2) and (3)), I now turn to consider which formula best achieves the intention.

On a superficial analysis, there is no doubt that the words 'comply with' suggest a stronger degree of obligation that 'take into account'. But the ad hoc group has gone beyond a superficial analysis and has tested the merits of the two formulas, not in the abstract but rather in the context of legislative drafting.

The result of the analysis, put shortly, is that the 'take into account' formula is, in legislative terms, as effective as the 'comply with' formula but better drafted. The reasons are as follows:

First, as to the effectiveness for the purposes of judicial review, it is a rule of law that when an international covenant is binding on a state or territory (as is the case here in Hong Kong with the International Covenant on Civil and Political Rights) and that territory's domestic legislature then enacts a provision

requiring that the covenant be 'taken into account', the courts will interpret those words as intended to carry out the obligation of the covenant. The point is that the courts recognise that the legislature has enacted the domestic legislation in full knowledge of the states' or the territories' obligation under the covenant. And what is the obligation under the covenant? It is to give effect to article 19. The formula 'comply with', therefore, achieves no greater obligatory effect in legislative terms than 'take into account'. The court's supervisory role upon judicial review will thus be the same under both formulas.

Second, as a matter of drafting clarity, it is entirely inappropriate to require in our legislation that a censor 'comply with' article 19 since part of article 19 itself as stated in paragraph 3 requires that any restriction on the right to freedom of expression be provided by law. A censor is simply not competent to provide restrictions by law. That is the job of the legislature.

Third, even overlooking the drafting deficiency noted above, the 'comply with' formula is unnecessary and inappropriate in the context of the role of the board of review. It is unnecessary because, for the reasons already given, it achieves no more than the 'take into account' formula; and it is inappropriate because it implies that nothing short of an order from the legislature will induce the board to give due weight to the principle of freedom of expression. Such an approach is entirely inconsistent with the legislature's intention as the function of the board, which comprises a majority of non-official members with a non-official chairman, performing an independent role.

In summary, Sir, I believe, as do the majority of the ad hoc group (whose views were endorsed by the majority of the in-house meeting on 6 May 1988) that the amendment which I am proposing, is a valuable and effective improvement to the Bill and, with great respect to Mr. Martin LEE, I commend it to this Committee.

HIS EXCELLENCY THE PRESIDENT: I shall now call Members who have indicated that they wish to speak to this amendment.

MR. MARTIN LEE: Sir, on 8 July 1987, I moved the motion to amend the Film Censorship Regulations 1987, made under the Places of Public Entertainment Ordinance, by deleting regulation 3A(vii), the effect of which was to revoke the power of the censor to refuse to approve the exhibition of a film when he was of the opinion that the showing of the film in a public place would 'damage good relations with other territories'. That motion was in connection with an interim measure introduced by the Government pending this Bill, and that motion was defeated.

The central issue of the debate then was whether or not the censor should be given the power to ban a film for political reasons on the ground that its exhibition would damage good relations with other territories. My principal

objection was that the relevant regulation infringed article 19 of the International Covenant on Civil and Political Rights.

During the meetings of the ad hoc group studying the interim measure, a number of my hon. Colleagues supported the relevant regulation but only on the basis that it was a temporary measure. And they stated then that before they would support the proposed Bill—which is now before Members—they would have to be satisfied that it would not contravene article 19. Since then, the ad hoc group, chaired by the hon. YEUNG Po-kwan, has had numerous meetings on this Bill, and much improvement has been made thereto. There was also unanimity achieved in not wishing to see article 19 being infringed by clause 10(2)(*c*) of this Bill which gives the power of political censorship to the censor.

The hon. YEUNG Po-kwan's motion to amend is taken word for word from a counter proposal by the Administration during a meeting with the ad hoc group on 20 April 1988. The proposal appeared to be an improvement on the ad hoc group's own proposal to the Administration which was objected to by the Administration until that very meeting, when it put forward its own counter proposal. At first blush, the Administration's proposal appeared to be unobjectionable in that it requires the censor to take into account article 19.

I did not then see the full significance of the inter-play between clause 10(2)(*c*) which confers a power on the censor to ban a film on the ground that its exhibition would seriously damage good relations with other territories, and the hon. YEUNG Po-kwan's proposed clause 10(3)(*d*) which provides that the censor shall take into account article 19 of the International Covenant on Civil and Political Rights (which deals with the principle of freedom of expression). However, I am now convinced that a combination of the two subsections will not ensure that the censor's new powers, or his exercise thereof, will not infringe article 19.

That being so, the enactment of clause 10(2)(*c*) and clause 10(3)(*d*) as proposed by the hon. YEUNG Po-kwan will be in contravention of article 19.

My proposed amendment requires the censor *to comply* with article 19 of the International Covenant on Civil and Political Rights. Indeed, I do not claim originality of this formula because it was based on a joint representation of the Hong Kong Bar Association and the Law Society of Hong Kong. In proposing my amendment, I am greatly indebted to the legal profession in Hong Kong, and I am happy to take up their cause as I find myself in complete agreement with it.

Now that it is the avowed intention of Members of the ad hoc group, including the hon. YEUNG Po-kwan, that the power of political censorship given to the censor must not infringe article 19, it is difficult to see why my formula is not preferred to the hon. Mr. YEUNG Po-kwan's.

Let me give to Members an illustration of how the censor will discharge his duties if clause 10(2)(*c*) is enacted together with clause 10(3)(*d*). Assume the

censor takes his work very seriously and views a potentially controversial film together with a political adviser as well as a legal adviser. At the end of the viewing session, he turns to the political adviser who tells him that the film has been strongly objected to by the New China News Agency on the ground that a certain Chinese leader has expressed the view that it should be banned, and that if it was to be exhibited in the cinemas of Hong Kong it could sour relations between the People's Republic of Chain and the Hong Kong Government. The censor then turns to the legal adviser who advises him that in his view, the banning of the film will contravene article 19, because it is not necessary for respect of the reputations of others, or for the protection of national security, or of public order, or *ordre public.*

In these circumstances, if the censor decides to ban the film, after taking into account the advice of both the political adviser and the legal adviser, there is very little the aggrieved party can do about it. If it takes the matter to the court on the ground that in banning his film the censor has acted outside his powers conferred upon him by clause 10(2)(*c*) in relying on a reason which falls outside the exceptions allowed for in article 19(3), the court is likely to say that because the censor had taken article 19 into account, to the extent of seeking advice from the legal adviser, it cannot be said that he had acted outside the law.

Further, following well recognised legal principles, a judge cannot substitute his own discretion for that of the censor. This illustration shows very clearly that by merely requiring the censor to take article 19 into account, without requiring him to comply with it, will result in a situation where a film can legitimately be banned under clause 10(2)(*c*) even though it contravenes article 19.

If Members of this Committee really want to ensure that article 19 will be adhered to—and that seems to be the avowed objective of Members, including the hon. YEUNG Po-kwan—by the censor in exercising his powers under clause 10(2)(*c*), then I urge Members to adopt my formula. For to adopt the Government's proposal now contained in the hon. YEUNG Po-kwan's amendment is but to pay lip service to article 19.

Indeed, for reasons which I will develop later on when I deal specifically with some of the objections to my proposal, I believe that it is better to introduce clause 10(2)(*c*) without the proposed clause 10(3)(*d*) than with it.

In any event, since the intention of my hon. Colleagues is to pass a law which makes it necessary for the censor to comply with article 19 rather than to infringe it, and since the hon. YEUNG Po-kwan's proposal is open to uncertainty, whereas my proposal is clear beyond argument, I would submit that on that ground alone, my proposal should be adopted.

Before I deal with the arguments which have so far been raised against my proposal, it is pertinent to note that the United Kingdom Government has not signed the option of protocol of the International Covenant on Civil and Political Rights. Private citizens in Hong Kong have no right to apply to the

Human Rights Committee set up under part IV of the covenant, to consider violations of the convenant by Hong Kong Governemnt. In other words, any person aggrieved by the decision of the Hong Kong Government, through the censor, cannot bring the Hong Kong Government before the Human Rights Committee for a determination as to whether or not the censor has violated the rights conferred upon him by the covenant.

Let me now deal with the principal arguments put forward in opposition to my proposal, many of which have been advanced this afternoon by the hon. YEUNG Po-kwan. The first argument is that the International Covenant on Civil and Political Rights is an international agreement between states, rather than individuals, that to require an individual censor to comply with the covenant is inappropriate; and that to require him to take into account article 19 avoids this problem, whilst at the same time imposing on him an express duty to respect the principle of freedom of expression.

Sir, while it is true that the covenant imposes a duty on the contracting state rather than individuals within that state, there are two levels of 'compliance' we are looking at. First, a contracting state must not pass any law which contravenes the covenant. Secondly, the contracting state must not do anything which would constitute a breach of the covenant. Members of this Committee have to satisfy themselves that clause 10(2)(*c*) which introduces political film censorship does not infringe article 19 of the covenant. And before we can so satisfy ourselves, we must ensure that the censor, when he does exercise the statutory powers given to him by subclause 10(2)(*c*), will not be in a position to ban the film for reasons other than those which fall within the exceptions allowed for in article 19(3).

The censor, and for that matter, the board of review, are agents of the Hong Kong Government. The Hong Kong Government, therefore, cannot argue that it is not responsible for the acts of either the censor or the board of review if a film is banned under subclause 10(2)(*c*) in circumstances which fall outside the exceptions to article 19(3) and therefore constitute a breach of it. To require the censor to 'take into account' article 19 is unsatisfactory for the reasons already explained.

The second argument advanced is that to legislate to allow a censor a margin of appreciation normally afforded to governments while requiring him to comply with article 19 is, in effect, no different from requiring him to take it into account but is less satisfactory in terms of clarity. I cannot see, with respect, how any lawyer can argue that my formula is less clear than the hon. YEUNG Po-kwan's formula, for the hon. YEUNG Po-kwan's formula merely requires the censor to take article 19 into account whereas my formula requires him to comply with it. To say that the two are not different from each other is to turn a blind-eye to the obvious.

The third argument advanced is that it is part of the purpose of the new subclause for it to apply also to the board of review with its majority of non-official members, and that it is not necessary or appropriate to assume that this board need to be directed to comply with article 19. This is a fallacious argument because it is unnecessary to legislate so as to require the board of review also to comply with article 19. The board of review in effect hears appeals from the decisions of the censor. If the complaint is that the censor is wrong in having banned a film in breach of article 19, then in deciding whether there is merit in the appeal, the board of review must determine whether the censor has complied with article 19. In short, under my formula, the board of review must ensure that article 19 is complied with by the censor.

The fourth argument advanced is that if my formula were adopted, a precedent will be created whereby binding commitments based on international agreements are imported directly into Hong Kong's domestic legislation. This is, with respect, a specious argument. First, if we are starting a good precedent, what possible objection can there be to it? Secondly, I am concerned that if the hon. YEUNG Po-kwan's formula were to be adopted, we would be starting a very bad precedent, in that this Committee would knowingly enact a law which is in breach of an international covenant. Thirdly, under article 2 of the covenant, a contracting state—that is the United Kingdom—has an obligation to pass the appropriate domestic laws to give effect to the principles enshrined in the covenant. What I am seeking to do in proposing my amendment is to ensure that we, in Hong Kong, will comply with article 2 although the British Government has for years been neglecting its duties cast upon it by article 2.

The fifth argument advanced is in fact from the Legal Adviser of OMELCO which the hon. YEUNG Po-kwan has fully adopted. It is based on a principle of construction of statute 'that the words of a statute passed after a treaty has been signed and dealing with the subject matter of the international obligation of the United Kingdom are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligation and not to be inconsistent with it'. These words come from the House of Lords case of *Garland v. British Rail* (1982) 1 CR 420. The argument is that applying this principle to clause 10(2)(*c*), a court, when called upon to interpret it together with the hon. YEUNG Po-kwan's proposed clause 10(3)(*d*) 'would undoubtedly interpret it as being intended to carry out the international obligation of Hong Kong under article 19. And that obligation is to give full effect to the right to freedom of expression, subject only to limited restrictions'.

But this argument is good only if clause 10(2)(*c*) is introduced *without* any reference to article 19. In such a case, if an aggrieved distributor brings the matter to a court in Hong Kong on the ground that the censor was wrong in banning his film under clause 10(2)(*c*) for a reason which falls outside the

exceptions allowed for in article 19, the court will be faced with two alternative constructions. First, that it is the intention of the legislature to confer a new power on the censor but subject to article 19; or secondly, that the legislature's intention is to give a power which is completely independent of article 19(3).

Now, the application of this principle in *Garland v. British Rail* would mean that the court should adopt the first approach, namely, that the legislature's intention in enacting clause 10(2)(*c*) is that the power of the censor should not be exercised in such a way as would be inconsistent with article 19. But this would have been the position only *without* any reference being made to article 19, in the terms of the hon. YEUNG Po-kwan's formula or mine. But a totally different result would obtain if clause 10(3)(*d*) were enacted together with clause 10(2)(*c*), for the former merely casts a duty on the censor to take article 19 into account. It would then be open to the Government to argue before the court that the intention of the legislature is clear, namely, that a censor need only take article 19 into account but that he need not comply with it. This would effectively exclude the application of the principle in *Garland v. British Rail*; for such an express provision would preclude the application of the presumption. I therefore thank the Legal Adviser to OMELCO for bringing this principle to my attention. But, with respect to him, it does not help him or the Administration, in supporting the hon. YEUNG Po-kwan's formula. On the contrary, it shows quite clearly that this Committee should either make no mention of article 19 at all, or it must adopt my formula.

I must point out that these arguments have all been advanced by the Administration, including government lawyers. And indeed, Members of this Council were advised by the Legal Adviser of the Foreign and Commonwealth Office, last year, in relation to the interim measures, that regulation 3A(vii) of the Film Censorship Regulations 1987, which is not much different from the present clause 10(2)(*c*), would not infringe article 19. Unfortunately, the track record of the United Kingdom Government before the European Commission of Human Rights is far from impressive, being the Government which consistently ranks top—both in relation to the number of complaints brought against any government, and the number of unfavourable judgements received by any government. It is also significant to note that up to date, all the lawyers who openly support clause 10(2)(*c*) and clause 10(3)(*d*) happen to be government lawyers. And I shall leave hon. Members to draw their own conclusions.

Quite frankly, I have not heard a single argument advanced which is sound, as to why my proposal using the words 'comply with' should not be accepted, particularly, after two further provisions in my proposed amendments to make sure that the Hong Kong Government will not be disadvantaged thereby, by expressly enacting in the same Bill so as:

(*a*) To ensure that the Government is able to rely on the doctrine of governmental margin of appreciation in the actual implementation of the law; and

(*b*) To provide that the only method to challenge the findings of the board of review in court shall be by way of judicial review.

These suggestions were made because I had understood that the Administration had been apprehensive that if my proposal were to be adopted:

(*a*) the court might apply a strict interpretation to article 19 without giving the Government any margin of appreciation in the interpretation of the law; and

(*b*) that if the decision of the board of review was to be challenged in court, unless the remedy is by way of judical review only, the court might not follow the precedents in the European Commission of Human Rights applicable to aritcle 19.

I would now remind hon. Members of the provisions of article 2 of the International Covenant on Civil and Political Rights.

'(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as...political or other opinion,...

(2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.

(3) Each State Party to the present Covenant undertakes: (*a*) to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;...'.

It is obvious that if the hon. YEUNG Po-kwan's proposal is adopted in preference to mine, then the United Kingdom Government by the act of this Council, will be failing to fulfil its obligations under the covenant in failing (*a*) to ensure to all individuals within it territory and subject to its jurisdiction the rights recognised in article 19; (*b*) to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in article 19; and (*c*) to ensure that any person whose right to free expression guaranteed by article 19 is violated shall have an effective remedy.

Sir, lastly may I urge hon. Members to take great care over these amendments, for if clause 10(2)(*c*) were enacted together with clause 10(3)(*d*) as proposed by the hon. YEUNG Po-kwan, we would be passing a law which would

contravene article 19. We would be creating a very undesirable precedent during this very sensitive period in the history of Hong Kong. Further, we must not be blind to the possible consequences of such a law in that it may be the thin end of the wedge, since the same approach may be extended to other forms of the mass media in future.

Sir, if one freedom is violated today, then no freedom is safe tomorrow.

DR. LAM (in Cantonese): Sir, the purpose of legislation is to make sure that our citizens will comply with such legislation, and if we only take the law into account and do not comply with the law, then it is against the purpose of any legislation. Similarly, the same logic applies to the proposals made by our two colleagues. If we do not use the words 'comply with' and merely use the term 'take into account', then can we, when necessary, achieve the necessary effect; this will be very questionable. On 6 May, the Bar Association wrote a letter to the Legal Adviser of OMELCO and it stated very clearly that if we took the term 'take into account', then the court would not be able to protect human rights.

Sir, after comparing what is said by our two hon. Colleagues, I think Mr. Martin LEE's amendment can more concretely protect the freedom of expression.

MR. PANG (in Cantonese): Thank you, Sir, for giving me the right to speak. Having studied Mr. YEUNG's and Mr. LEE's proposed amendments, and the reasons for their amendments, I feel that most Members are in favour of the spirit of article 19 of the International Covenant so as to maintain the freedom of expression in Hong Kong. That is the consensus. Since everyone here likes to see article 19 being complied with, then it seems that Mr. YEUNG Po-kwan's wording for the amendment has given rise to doubt among the legal profession, particularly the two legal organisations.

Mr. LEE's amendment is clearer requiring that the censor must comply with the International Covenant. I have heard Mr. YEUNG say that article 19 does not afford absolute freedom. There are still restrictions. Hong Kong is now in a very sensitive period, the Legislative Council must be prudent and careful, and must try its best not to take any action that might jeopardise the confidence of the people.

If we clearly decide that censors must comply with the International Covenant, then that would be conducive to public confidence. For that reason, I support Mr. LEE's proposal.

MR. SZETO (in Cantonese): Sir, I think that the amendment notified by Mr. Martin LEE is a sensible one. I pay tribute to his indomitable spirit and I will abstain from voting on the Bill

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Political censorship has all along been the focus of the most heated debate. To safeguard the freedom of speech, from the very beginning, I have been objecting to the idea of censoring films politically, and I have been fighting for the deletion of the 'damage good relations with other territories' clause since it amounts to political censorship.

Britain is a State Party to the International Covenant on Civil and Political Rights. The part of the covenant on freedom of speech is applicable to Hong Kong. If the provision under the covenant is to be implemented, then the clause I mentioned just now in the Bill, should be deleted, but the Government still refuses to admit that the aforesaid clause goes against the spirit of the International Covenant and rejected outright any requests for its deletion. The stubborn attitude of the Government is no different from that when the Public Order (Amendment) Bill steamrolled through this Council. I fought hard for the deletion of the clause for very long, and to no avail, because the Government was being so very stubborn, therefore, I tried another approach. That was to import the part of the covenant on freedom of speech into the Bill, so as to counter-balance, to a certain extent, the effect of political censorship under the Bill. This is a retrograde step. It can also be described as a compromise for the sake of consensus without giving up on principles. At first, the Government still fought the compromise very hard, but within this Council there has been greater and greater consensus, under the pressure of which, the Government gave in at the last minute. But the Government's giving in means no more than you saying 'To take into account formulation', while still rejecting the compliance formulation.

According to the Bar Association and the Law Society, the 'take into account' formulation does not give any counter-balancing effect, meaning that the concession made by the Government has no substance. It is merely a gesture. I agree with the Bar Association and the Hong Kong Law Society on this, but after all, this is the first time an international covenant was referred to in local legislation, so while it may not have immediate substantial effect, in the long run, it will has some meaning and historical significance.

The Government's compromise is only a gesture and a gesture is a gesture, no more, but it is a little better than no gesture at all. I will keep on fighting for the deletion of political censorship from the Bill. I have been told that the much criticised Public Order (Amendment) Ordinance that steamrolled past the Council is to be reviewed soon.

I will continue fighting for, and battling on, the review of the Bill in the near future. I am a Legislative Councillor representing the education functional constituency. Members of the Professional Teachers Union (PTU) account for 80 per cent of the members in the constituency. The Executive Committee of the PTU has discussed what stand should I take regarding the Bill. I was instructed by PTU to abstain from voting on the Bill.

Once again, I have to pay tribute to my hon. Colleague Mr. Martin LEE. Sir, these are my remarks.

MR. ANDREW WONG: Sir, I said earlier during the Second Reading debate that I had strong misgivings about the positive formulation being proposed by Mr. P. K. YEUNG or Mr. Martin LEE. I therefore take strong exception to the remarks made by Mr. Peter TSAO in his reply that to some a half-empty bottle is to some others a half-full bottle. My rejoinder there, and forgive my language, is very simple, that only a half-full bottle or half-full brain will choose to describe a half-broken marriage to be a marriage half intact and pretend to live in nuptial bliss.

Sir, as I explained, I have no objections to the amendment agreed to between the Administration and ad hoc group which is now moved by the convenor of the group, Mr. YEUNG Po-kwan. In fact, I even agreed at the 37th ad hoc group meeting, a Guinness record I would imagine, that I would support it instead of Mr. Martin LEE's amendment. However, after having reviewed all the arguments, and having seen the formal version of Mr. LEE's amendment for which notice has already been given, I am prepared to accept it rather than the group's amendment. I, of course, owe hon. Members of this Council who are also members of the ad hoc group, an apology and also an explanation, and I do hope that I will be forgiven and forgotten, but in the latter regard, this might be wishful thinking, if not for Members' magnanimity.

Sir, let me not only explain myself but also take this opportunity to persuade my hon. Friends that both amendments fall short of my desired formulation which you will recall I have termed 'the negative approach', and in the formulation appended to my speech without any specific mention of article 19, which when mentioned, creates all kinds of problems as we experience now, but that in spite of this, Mr. Martin LEE's proposed amendment is the more preferable or the less unpreferable amendment. I will not venture into very elaborate discussion of the intricacies. To do so in any case might be beyond my abilities as I am no lawyer, and even if I were a lawyer, no expert in human rights law. I simply wish to make two simple points:

(1) If the argument was that Mr. LEE's amendment tips the balance in favour of the film makers and the film distributors, and that this were true, then surely in the interests of freedom (here I do not mean licence), Mr. LEE's amendment ought to be the preferred amendment.

(2) If the argument was that the two amendments are really identical, or do not really differ in effect, given that Government do have margin of appreciation and that if this were true, then surely Mr. Martin LEE's amendment ought to be preferred, as it gives people the added psychological satisfaction of being free, or the reduced psychological feeling of being repressed.

Sir, some of Mr. LEE's arguments may well be irrelevant, for example, the illegality of the previous Film Censorship Note of Guidance and so on, the insistence of the phrase 'take into account' instead of 'comply with', indicating Administration's intention to pay lip service and so on. However, on the whole, he has put up a very strong case and I am sure all Members share his conviction that Hong Kong survives and thrives because of our free institutions and that liberties should not be eroded, lest we chip away the single most important pillar we stand on.

Sir, on balance I support Mr. Martin LEE's amendment rather than Mr. P. K. YEUNG's amendment.

MR. CHEONG: Sir, I am a Member of the ad hoc group. I would like to correct one possible misimpression given to Members, and that is as if all the arguments that are forwarded this afternoon in support of the Mr. Martin LEE's amendment, were new grounds; in fact, they were not, Sir.

Throughout the past 14 months, we have discussed this particular issue, in the first place, as to whether or not Hong Kong needs a clause for the Administration to have a measure of control over films and the films censorship. The principle has been fully discussed. Everything, in fact, centred around this particular principle, and required all of us, in the hope of finding consensus, to conduct 37 meetings.

No doubt I agree with Mr. Andrew WONG that Hong Kong is a free place. We respect each and everyone's liberty. I hope that what I am going to say is taken with the same respect, not only by Members of this Council, but by the rest of Hong Kong, because it is important to recognise, in discussing this particular issue, that first it is said that Government, by having this particular clause together with Mr. YEUNG's amendment, is acting against the International Covenant. Repeatedly, whether people believe it or not, there is legal advice being sought to clarify this particular point, and the majority of the ad hoc group members is satisfied that this particular point has been clarified by lawyers.

Second, when we consider whether we need this particular clause, it has something to do with the fact that in the International Covenant, the concept of ordre public which is in French, is terribly confusing, and if we were to have in the amended version of the Bill 'comply with', it will be difficult to have the censors and the administrators to interpret by themselves that margin of appreciation, without clear understanding of what it meant.

As Mr. YEUNG has clearly explained in his speech, we have taken into consideration of their concerns and of the need to maintain freedom of expression. We have agreed the version 'to take account' because we have to consider the practical effects as well as the theory.

Sir, I support Mr. YEUNG's amendment.

MR. LAI (in Cantonese): Sir, first of all, I wish to pay tribute to the ad hoc group on the Film Censorship Bill under the convenorship of Mr. YEUNG Po-kwan, because they have put in a lot of work in the past 14 months.

The Bill under discussion is extremely important. It touches freedom of speech of the people of Hong Kong. My own principle is, all legislation that may affect freedom of expression, should be dealt with very carefully in order to meet the requirements and the spirit of the International Covenant of Civil and Political Rights, and the wording involving degree of tolerance is particularly important. After 1997, the Hong Kong Special Administrative Region will be using the same laws that we have now, or are being amended now.

Having heard the very clear explanations offered by Mr. YEUNG and Mr. Martin LEE, the question as to which of the two is the better choice in order to ensure freedom of expression, is a very technical one and is difficult for someone outside the profession to make a decision, but if the question is merely a legal one, and if Mr. YEUNG's amendment is sufficient to safeguard freedom of expression, then the question I ask is why is it that we have two legal associations, that is the Bar Association and the Law Society strongly against that formulation, and why is it that the Journalists' Association are also strongly against it? If our intention is to abide by the International Covenant, why do we not simply say the formulation of 'comply with' and allay the fears of these professional bodies.

Sir, under the premise and for that reason, I support Mr. Martin LEE's amendment.

MR. YEUNG: Sir, I think I have already dealt comprehensively with the relevant aspects of both formulas, and I do not wish to take up the time of this Committee any more than necessary.

Whilst I respect the views of those Members who advocate the 'comply with' formula, nothing that has been said this afternoon has caused me to doubt the validity and effectiveness of the amendment standing in my name.

MRS. CHOW: Sir, I support Mr. P. K. YEUNG's amendment. I can well understand what exactly the censor is required to do with his formulation. He should consider a film by taking into account the covenant as it is applied in Hong Kong. I cannot understand what exactly the censor is required to do with Mr. LEE's formulation. His amendment to insert 'comply with' is qualified with the margin of appreciation normally afforded to governments. Now what does it exactly mean and which government, the Soviet Government, the Australian Government or other signatories of the covenant? With this amendment, will our courts then be required to determine what the margin of appreciation normally afforded to Government is?

On balance, I would like to give more discretion rather than less to our censors, bearing in mind the very sensitive political position we are in and the

likelihood that we could very well be caught in the cross-fire of external political propaganda. I believe I am reflecting the feeling of the community here, notwithstanding our very clear desire to preserve freedom of expression. I do not believe Mr. YEUNG's amendments put that in jeopardy, neither does it contravene article 19.

Before I close, I would like to refer to Mr. LAI's comment about the legal profession's representation. I do not doubt whatsoever their sincerity in putting forward the representation in the hope of preserving the freedom of expression, but I would like to repeat that I do not believe that Mr. YEUNG's amendment puts in jeopardy that freedom of expression. I also do not believe that we need to abide by every opinion put forward by the legal profession. We are legislators here and we need to consider all views put forward.

I have no reservation in supporting Mr. YEUNG's amendment.

MR. DESMOND LEE: Sir, if and when we pass the piece of legislation, we must be reasonably sure that this legislation will work. A formulation which may lead to substantially different interpretations will not be too effective a legislation because this is unlikely to work properly. 'Taking into account' means to consider or to have regard to. Different people may arrive at different conclusions. The other formulation, namely the compliance formulation, conveys a much more precise meaning. It means that article 19 of the covenant should be followed and freedom of expression will be protected. I would, therefore, support this latter version. In the event that this version is rejected, I would, like the hon. SZETO Wah, abstain from further voting on this Bill.

ATTORNEY GENERAL: Sir, in his speech Mr. Martin LEE has raised some legal issues that I would like to address. I limit myself to the issues that flow from Mr. LEE's proposed amendments as contained in the Order Paper.

Before proceeding to deal with Mr. Martin LEE's proposed amendment I would like to say a little about judicial review a concept that has been much talked about this afternoon. Judicial review is a procedure that enables the courts to supervise the executive in the exercise of its powers. Under this procedure, an aggrieved person may challenge a decision by a public officer, but only on limited grounds. If the court is satisfied that the person making the decision has made an error of law, or that the correct decision-making procedure has not been followed, or that he has acted irrationally, the court will strike down that decision. This latter ground needs some explanation. In considering the discretion exercised by the public officer, the court will not interfere if the decision made by that person was one that was open to him. In other words, if more than one view were possible, the court will not interfere: it will not as Mr. Martin LEE has explained, substitute its own view for his decision. If, however, the decision reached was one which on reasonable person could possibly have reached, the court will intervene and strike it down.

Sir, with these principles in mind, I would now like to deal with the amendments proposed by Mr. Martin LEE and to analyse the way they would operate in practice. Mr. LEE's amendment would require any challenge to be by way of judicial review. Therefore, the court would, in relation to a decision of the censor, consider whether he had lawfully exercised the power given to him. For example, was the ground of the censor's decision one within the provisions of clause 10(2) of the Bill? Next, the court would consider whether the censor had followed the correct procedure. Did the authority assign a censor to view the film? Did the censor view it?

Unless the court was able to deal with the issue on these two grounds, it would then ask itself whether the decision of the censor under clause 10(2) was such that no reasonable censor could have reached the decision he did. As I have said, the court will not concern itself with the question of whether the decision was the right decision, but only whether the decision was one open to the censor. In reaching its own decision, the court will take into account the fact that the legislature has qualified the duty of the censor to comply with article 19 and give him a latitude, called by Mr. LEE 'a margin of appreciation'.

The practical effect of Mr. Martin LEE's amendment which I have outlined would be substantially the same as the practical effect of the amendment proposed by Mr. YEUNG Po-kwan as he has so clearly explained. Following Mr. YEUNG's amendment, any person aggrieved by a decision of the censor or the board of review could challenge that decision by way of judicial review. The same three tests or principles would be applied by the court and, at the end of the day, the court would need to decide whether the decision-making process was defective.

There is, however, a world of difference in the terms of the drafting of the two amendments. I do not know how the courts in Hong Kong would interpret the words 'the doctrine of governmental margin of appreciation'. As the Attorney General explained in this Council last July, it is not, in fact, a doctrine of international law, but an approach adopted by international courts in interpreting the permitted exceptions to the rights guaranteed by the International Covenant. I think I know what Mr. Martin LEE hopes the words mean. But I cannot say with any degree of certainty that a court will necessarily adopt his meaning. So in my view, the phrase fails the fundamental test of legislative drafting which is certainty. I think it follows from what I have said that if Mr. Martin LEE's proposed amendment to clause 10 would make the Bill consistent with article 19, and so does Mr. YEUNG Po-kwan's amendment. Sir, for these reasons, I would support Mr. YEUNG's motion.

MR. MARTIN LEE: Sir, may I speak in response to the learned Attorney General's submission.

Sir, those two safeguards were put in by me in order to appease the Attorney General, but if he thinks that the introduction of those two safeguards would

make it more difficult to comply with the law, then I am only too happy to forgo them. If he is happy that the formulation in my proposed amendment, namely, that the censor in making his decision under subclause 10(4), shall comply with article 19 of the covenant, without giving the Government the margin of appreciation which the Hong Kong Government, for the benefit of Mrs. CHOW, has always enjoyed, so be it. Likewise, if the learned Attorney General does not like to confine any application to the court to proceedings for judicial review, who am I to quibble?

Sir, with respect to the Attorney General, we are dealing with two conflicting considerations if the hon. Mr. YEUNG Po-kwan's formula is to be adopted. The censor has to take into account...

6.00 pm

HIS EXCELLENCY THE GOVERNOR: Mr. LEE I am sorry. I must interrupt you because the clock has now just gone past 6.00 pm and under Standing Order 8(2) the Council should now adjourn.

CHIEF SECRETARY: Sir, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be concluded.

Question proposed, put and agreed to.

MR. MARTIN LEE: Sir, we are dealing with two conflicting considerations before the censor if the hon. Mr. YEUNG Po-kwan's formula is to be adopted. On the one hand, he will take into account whether the exhibition of the film would seriously damage good relations with other territories; and on the other hand, he must take into account article 19. The question is: which does he give more weight to? I agree with the Attorney General that in those circumstances, if having considered both, he decides to ban the film, then the matter is not subject to judicial review in the courts. And it is for that reason that I have suggested a more definite formula to be adopted, which would require the censor to comply with article 19.

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION: Sir, I am most grateful to the Attorney General for his elucidation on the legal aspects. I would merely wish to add that we owe it to those who would be affected directly or indirectly by this Bill, the effect of the legislation that eventually appears on the statute book must be certain.

Sir, I support Mr. YEUNG's amendment.

Proposed amendment

Clause 10

That clause 10(3) be amended by adding after paragraph (*c*) the following—

'(*d*) Article 19 of the International Covenant on Civil and Political Rights (which deals with the principle of freedom of expression).'.

Question on the amendment put and agreed to.

Question on Clause 10, as amended, put and agreed to.

Clause 19

MR. YEUNG: Sir, I move that clause 19(2) be amended as set out in the paper circulated under my name to Members. This amendment will prevent the Chief Secretary from being seen to have the power to 'direct' the board of review, upon request by an aggrieved person, to reconsider the suitability for public exhibition of a film. The amended wording will enable the Chief Secretary to 'refer' to the board requests from the public for a censorship decision to be reviewed.

The amendment will not affect the channel through which members of the public may lodge complaints against a film, nor will it impair the role served by the Chief Secretary as a filtering mechanism to handle frivolous complaints. The change in wording is only intended to highlight the board's status as an independent appeal body free from any interference by the Administration.

With these remarks, Sir, I beg to move.

Proposed amendment

Clause 19

That clause 19(2) be amended by deleting 'direct the Board to review' and substituting the following—

'refer to the Board'.

Question on the amendment proposed, put and agreed to.

Question on clause 19, as amended, proposed, put and agreed to.

HIS EXCELLENCY THE PRESIDENT: I have received notification from Mr. Martin LEE that he wishes to withdraw his notice to propose the inclusion of a new clause 31A. We therefore proceed direct to the schedule.

Schedule was agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

FILM CENSORSHIP BILL 1988

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

Question on the Bill proposed, put 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 adjourn the Council until 2.30 p.m. on Wednesday, 25 May 1988.

Adjourned accordingly at eight minutes past Six o'clock.

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

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WRITTEN ANSWERS

Annex I

Written answer by the Secretary for Security to Dr. TSE's supplementary question to Question 2

I believe you intended to use the term 'LSD' as a generic term for psychotropic drugs.

I have now had an opportunity to obtain up to date information from the police force. They have no evidence to hand to indicate that school students are peddling psychotropic drugs in schools or that alleged triad infiltration of schools has anything to do with drugs. Also they have no evidence of organised triad penetration or recruitment in schools. The level of triad activities amongst students is believed to be restricted to individuals who may or may not have gone through some perfunctory ceremony and who bully others into following them. The motives of these so called triads are self glorification rather than the furtherance of criminal enterprises such as drug trafficking.

The Commissioner for Narcotics will now raise your question for discussion in the next meeting of the Action Committee Against Narcotics (due on 21 June) to enable it receive further attention from the wide membership of that committee. I will let you know if there is anything more of substance to tell you.

Annex II

Written answer by the Secretary for Health and Welfare to Dr. IP's supplementary question to Question 3

With regard to colour doppler echo cardiography equipment the Director of Medical and Health Services has confirmed that the Prince of Wales and Queen Elizabeth Hospitals have applied for such equipment and that their applications were successful. In the case of the Prince of Wales Hospital funding will be provided by the Royal Hong Kong Jockey Club. The equipment will however not be available in these hospitals for some time.

In this context I understand that the Grantham Hospital applied for two doppler echo cardiograph machines last year, one colour and one black and white. Only the black and white model was approved for funding. Should the Grantham Hospital feel that a colour-doppler machine is essential to meet their operational requirements. a fresh application, giving full justification, should be made through the normal channels.

I understand that no application for digital substraction angiography and 'dye dilution' equipment has been made to the Medical and Health Department

WRITTEN ANSWERS—*Continued*

by the Grantham Hospital, but I am assured that if an application for this equipment is made through the normal channels it will receive sympathetic consideration.

Annex III

Written answer by the Secretary for Education and Manpower to Mr. CHAN Kam-chuen's supplementary question to Question 5

Since April 1985 a total of 16 employees have approached the fund for assistance after failing to obtain from their employers amounts owed of less than $5,000. The Commissioner for Labour estimates that, after the Ordinance is amended, there could be up to 30 such cases each year, involving a maximum of $150,000 in payments. As wage levels increase, the numbers of claims involving below $5,000 is likely to fall gradually, so the long-term effect on the fund is not likely to be significant.

Annex IV

Written answer by the Secretary for District Administration to Dr. HO's supplementary question to Question 7

At the district level, management staff are provided on the following basis:

1 Housing Manager	per 6 000 tenancies
1 Assistant Housing Manager 1 Housing Assistant 1 Tidiness team	per 3 000 tenancies
(1 Artisan & 16 Workmen I)	per 6 000 tenancies

The tidiness teams are responsible for hawker control, clearing obstructions, sealing vacant premises, controlling restricted roads, assisting with cleanliness campaigns, fire prevention and so on.

Within the THAs themselves, the following staff are provided:

1 Housing Assistant per 500 tenancies, plus supporting minor staff;
1 security guard for every 1 000 person spaces, 24 hours per day.

Experience has shown that these staffing levels are adequate to ensure satisfactory management of temporary housing areas.

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