

# CONSTITUTIONAL AND PARLIAMENTARY INFORMATION

*published by the*

ASSOCIATION OF SECRETARIES GENERAL  
OF PARLIAMENTS



*under the auspices of the*

INTER-PARLIAMENTARY UNION

GENEVA, PLACE DU PETIT-SACONNEX

1st Series - No. 153

1st Quarter 1988

THE POWERS OF AN UPPER CHAMBER  
OVER LEGISLATION  
TOPICAL DISCUSSION ON CHECKS ON THE  
ATTENDANCE OF MEMBERS OF PARLIAMENTS  
TOPICAL DISCUSSION ON THE ROLE  
OF PARLIAMENTARY GROUPS  
RETIREMENT OF SIR KENNETH BRADSHAW  
THE OFFICE OF CLERK  
OF THE UK HOUSE OF COMMONS

## INTER-PARLIAMENTARY UNION

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The Inter-Parliamentary Union whose international Statute is outlined in a Headquarters Agreement drawn up with the Swiss federal authorities, is the only world-wide organization of Parliaments.

The aim of the Inter-Parliamentary Union is to promote personal contacts between members of all Parliaments and to unite them in common action to secure and maintain the full participation of their respective States in the firm establishment and development of representative institutions and in the advancement of the work of international peace and co-operation, particularly by supporting the objectives of the United Nations.

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1. *The Inter-Parliamentary Conference* which meets twice a year.
2. *The Inter-Parliamentary Council*, composed of two members from each affiliated Group. *President*: Mr. H. Stercken (Federal Republic of Germany).
3. *The Executive Committee*, composed of twelve members elected by the Conference, as well as of the Council President acting as *ex officio* President. At present, it has the following composition:

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4. *Secretariat of the Union*, which is the international secretariat of the Organization, the headquarters being located at: Place du Petit-Saconnex, CP 99, 1211 Geneva, Switzerland.

*Secretary general*: Mr. Pierre Cornillon.

### OFFICIAL PUBLICATION

The Union's official organ is the *Inter-Parliamentary Bulletin*, which appears quarterly in both English and French. This publication is indispensable in keeping posted on the activities of the Organization. Subscription can be placed with the Union's Secretariat in Geneva.

INTER-PARLIAMENTARY UNION

**CONSTITUTIONAL AND PARLIAMENTARY  
INFORMATION**

*First Series - Thirty-eighth year*

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## **THE POWERS OF AN UPPER CHAMBER OVER LEGISLATION**

### **Introductory Note for the Topical Discussion**

by Alan Cumming Thorn, Clerk of the Australian Senate

1. As a preface to this introductory note, a couple of brief comments on the background of both the subject and the author would appear to be in order. First, the topic originally submitted to the Executive Committee of the Association was "The Powers of an Upper Chamber", which was, at the decision of the Committee, "narrowed" to the present title. As the principal parliamentary power of any Chamber is to make laws, the restriction may prove more imaginary than real. Second, there is clearly no established model for upper houses throughout the parliamentary world. The variations in constitution, including electoral basis, or lack of it, are so great that one is forced to describe, or emphasize, one's own institution. Third, as the servant, for more than 30 years, of a fully elected, constitutionally powerful upper house, and as its present Clerk, the author predictably reflects a degree of commitment to, and support for bicameralism, whilst recognizing that only a little over 30% of parliamentary institutions represented in the Association, and in the Inter-Parliamentary Union, are, in fact, bicameral and, of those, five have upper houses consisting, wholly or in part, of appointed members.

2. The drawing up of the Australian Constitution, hammered out over a decade of conventions held in the 1890's to discuss the possible federation of the then existing States, to a considerable extent hinged upon the establishment of a parliamentary chamber in which the federating states would be equally represented. This was seen by the representatives of the smaller States (in population terms) as an essential prerequisite to joining with the larger States (New South Wales and Victoria) in the new Federation — the Commonwealth of Australia. It was also seen as essential that such a chamber should have virtually the same powers as the lower House, to give some reality to the concept of protection from the weight of numbers in the Chamber consisting of representatives elected on a population basis.

3. The Australian Constitution therefore gives almost equal legislative powers to both Houses of the Parliament. The exceptions relate to bills dealing with the appropriation of revenue or the imposition of taxes. This element of the Constitution is consistent with the practices of the Westminster parliamentary tradition.

4. The relevant constitutional provision (section 53 — see attachment A,) precludes the introduction of such "money bills" into the Senate, the amendment of them by the Senate or the amendment of any legislation in such a way as to "increase the burden or charge on the people". The use of the words "ordinary annual services" (in s.53) has given rise to some difficulties over the years. A significant report on the subject was tabled in the Senate in 1967 (Parliamentary

Paper No. 55 of 1967) which, apart from describing the basis of a developed "compact" with the Government for the introduction of separate Appropriation Bills for ordinary annual services and for other expenditure, the second being amendable by the Senate, also gave impetus to an eventually successful campaign for the introduction of separate, amendable Appropriation (Parliamentary Departments) Bills into the Parliament — Parliament not being seen as an ordinary annual service of the government.

5. An uncommon, but significant provision in section 53 of the Constitution gives to the Senate an additional capacity to return to the lower House any Bill which the Senate may not amend with a Message requesting that House to amend the Bill in any way decided by the Senate. This also has given rise to argument as to the Senate's right (power) to press any such request not acceded to by the House of Representatives — an action consistently upheld by the Senate but opposed by the House of Representatives.

6. The last, and perhaps most significant, sentence in section 53 gives the Senate, with the exception of those matters mentioned previously, equal power with respect to all proposed laws (bills). This includes the power to defeat any bill, appropriation, taxation or otherwise, and gives rise to historical events which have puzzled those not familiar with the constitutional history or provisions.

7. As there is often a great and clear distinction between the existence of powers and their exercise it is unprofitable to describe the existence of powers without some reference to their exercise. Here again the Australian Senate situation is unusual. Since the introduction, at the 1949 elections, of proportional representation as the system for the election of Senators, governments of the two predominant persuasions in Australian political life have lacked a majority in the Senate in 24 out of the succeeding 36 years. Predictably, under that system, smaller parties, and independent Senators, have been able to exercise what is often referred to as the balance of power. Taking the year 1985 as the most recent example of what this means in terms of legislation amended, defeated or proposed, Attachment B — a statistical summary of legislation in the Senate for the year — reflects a pattern of parliamentary activity certainly unusual in upper houses and unheard of, perhaps, in lower (dare one say government!!) houses. The figures of 56 government amendments and 80 non-government amendments agreed to, plus 4 clauses being negatived (in effect, amendments listed in a separate category) support those (including the author) who claim that the Senate has an important legislative role to play, but it may also be claimed by others less sympathetic to the bicameral form of legislature that they reflect an obstructive attitude to the detailed wishes of the government of the day or the lower House. Here lies the dilemma — if an upper house has legislative power and uses it, it is described as obstructive, but if it either has little or no power and cannot, or does not use what it has, it may justifiably be open to the criticism of being little more than a "rubber stamp". This is close to the "no win" situation — "you're damned if you do, and you're damned if you don't".

8. It will be noted that the statistical summary also reflects a considerable legislative input by the representatives of minority electors. Although few such measures pass the Senate, and cannot in practice pass the House of Representatives without government support (they are usually never even brought on for any debate in that House) it is not unusual for there to be parliamentary, and therefore

public, debate, in respect of those proposals. Although the subject is not strictly relevant to a discussion on legislative powers, the extension of the capacity for non-government representatives to initiate, debate and give public exposure, in other than legislative form, to matters not necessarily within the desired programme of the government of the day is seen by many as an important, if not fundamental, aspect of the parliamentary process. This capacity is appropriate to second chambers and is utilized in many such bodies.

9. An important aspect of the legislative process, which is the subject of serious consideration in many parliamentary and academic quarters, but which is often largely ignored by parliaments themselves, is the role of parliament in the control or scrutiny of delegated legislation. These legislative provisions, made by executive, administrative action under the authority of parent Acts of the Parliament, constitute both a difficult area for parliamentary activity and possibly the greatest area of influence on the daily lives and conditions of the electors. Reference can properly be made therefore to the powers of upper houses (and lower houses) with regard to such legislation.

10. The Australian Senate has a long and successful record in its consideration and treatment of all forms of delegated legislation — regulations, ordinances, by-laws and other instruments of a legislative character. The history of the Senate's treatment of such matters, principally through its Standing Committee on Regulations and Ordinances, which has operated since 1932, is documented in a number of Reports and papers (see Attachment C) and there is no need to give details in this note. It is sufficient, perhaps, to say there is a vital role to be played in the proper conduct of public affairs by the active participation, by legislative bodies, the people's elected representatives, in the oversight of what Lord Hewitt described in his book "The New Despotism" — the growth of government by regulation.

The power of either House of the Australian Commonwealth Parliament to disallow delegated legislation is provided in a number of Acts concerning different types of instruments. The most extensive and significant of those is the Acts Interpretation Act 1901. The relevant provisions of that Act are Sections 48 and 49 (see attachment D) which cover the greatest number of pieces of delegated legislation — Regulations made under enabling Acts and tabled in both Houses of the Parliament. This power provides the basic strength for the activities and effectiveness of both the Senate and its Regulations and Ordinances Committee in this area, a role and example which resulted in the establishment, in 1981, of the Senate Scrutiny of Bills Committee which looks at all Bills from the same critical standpoint as the Committee on delegated legislation — the likely effects of their provisions on the rights and liberties of citizens. A very full report on that Committee's activities was tabled in the Senate on 11 September 1985 (Parliamentary Paper No. 317 of 1985).

### *Suggested points of discussion*

The typically dispassionate views of members of the Association, as senior parliamentary officers serving their legislative institutions "without fear or favour", would be of interest on the following questions —

- (a) How do the legislative powers of other Chambers compare with those of the Australian Senate, referred to above? Out of respect for the rule of relevancy, this should no doubt be restricted to upper houses, but a comparison with other chambers would be of value.
- (b) How extensively are the legislative powers of chambers used to reflect the view of the members — perhaps as compared with the views of the government of the day?
- (c) Is the exercise of legislative power restrained, or removed by the discipline of political party rules or practices? If the answer is yes, is this reflected in any way in the public perception of the role of parliament, particularly with regard to the concept of responsibility of government to parliament, whether in the Westminster tradition or otherwise?
- (d) Is an effective role played by legislative chambers in the scrutiny of delegated legislation? Is that role supported by any statutory or other provisions, establishing the power of disallowance for example?
- (e) Over the years, have there been any signs of weakening of the powers (or perhaps more importantly the resolve) of chambers to exercise the "ultimate authority" of parliament? If so, are these in any real sense symptoms of terminal illness in the parliamentary institution?

## ATTACHMENT 'A'

### *The Constitution*

Powers of the  
House in re-  
spect of  
legislation

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

**ATTACHMENT 'B'**  
**SENATE**  
**STATISTICAL SUMMARY**  
**1 January-31 December 1985**  
**LEGISLATION**

*Consideration of Bills — Origin**Bills introduced in Senate*

— Government Bills. . . . .	21
— Private Senators' Bills. . . . .	47

<i>Bills received from House.</i> . . . .	205
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Total. . . . .	273
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*Consideration of Bills — Outcome**Bills passed both Houses*

— Government Bills. . . . .	202
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*Bill passed both Houses but not assented to*

— Government Bill. . . . .	1
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*Bills negatived at second reading*

— Government Bills. . . . .	3
— Private Senators' bills. . . . .	3

*Bills disposed of by amendment to motion for second reading*

— Private Senator's Bills. . . . .	2
------------------------------------	---

*Bill disposed of by amendment to motion for third reading*

— Government Bill. . . . .	1
----------------------------	---

*Bill passed Senate, still before House*

— Private Senator's Bill. . . . .	1
-----------------------------------	---

*Bills passed both Houses, with Senate amendments to be considered by House*

— Government Bills. . . . .	2
-----------------------------	---

*Bills passed both Houses, with Senate amendments disagreed to by House but insisted on by Senate*

— Government Bills. . . . .	3
-----------------------------	---



<i>Bills with requests for amendments insisted on by Senate</i>	
— Government Bills. . . . .	2
<i>Bills still before Senate or Senate committees</i>	
— Government Bills. . . . .	12
— Private Senators' Bills. . . . .	39
<i>Bills discharged from Notice Paper. . . . .</i>	2
	273

*Consideration of Bills — Other*

Bills to which second reading amendments moved. . . . .	35
Bills referred to committees. . . . .	3
Bills to which amendments moved in Senate. . . . .	50
Government amendments — agreed to. . . . .	56
— negatived. . . . .	1
Opposition amendments — agreed to. . . . .	71
— negatived. . . . .	53
Democrat amendments — agreed to. . . . .	9
— negatived. . . . .	38
Independent Senator's amendments — negatived. . . . .	2
Clauses negatived. . . . .	4
Total. . . . .	234
 Bills to which requests for amendments moved. . . . .	 5
Opposite requests — agreed to. . . . .	1
— negatived. . . . .	3
Democrat requests — agree to. . . . .	8
— negatived. . . . .	16
Total. . . . .	28
 Bills in which Senate amendments accepted by House. . . . .	 18
Senate Bills amended by House. . . . .	2
Bills to alter the Constitution. . . . .	5

ATTACHMENT "C"

SELECTED REFERENCES TO SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

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*Australian Senate Standing Committee on Regulations and Ordinances — Seventy First Report*  
50th Anniversary of the Committee 11 March 1982.

Material contained in —  
*Commonwealth Conference of Delegated Legislation Committees Report, Documents and Transcript* 3 volumes. A.G.P.S. Canberra 1981.

Material contained in —  
*Second Commonwealth Conference on Delegated legislation — Report, Documents and Transcript*, 1 volumes, Ottawa 1983.

D.C. Pearce *Delegated legislation in Australia and New Zealand* Buttenvorths, Sydney 1977.

Robert Walsh and John Uhr "Parliamentary Disallowance of Delegated Legislation. A History of the Basic Provisions in the Acts Interpretation Act" *Legislative Studies Newsletter* No. 10, 5 November 1985 (Australasian Study of Parliament Group).

ATTACHMENT "D"

*Acts Interpretation, Act 1901*

REGULATIONS

48. (1) Where an Act confers power to make regulations, then, unless the contrary intention appears, all regulations made accordingly —
- (a) shall be notified in the *Gazette*,<sup>5</sup>
  - (b) shall, subject to this section, take effect from the date of notification, or, where another date is specified in the regulations, from the date specified; and
  - (c) shall be laid before each House of the Parliament within 15 sitting days of that House after the making of the regulations.
- (2) Regulations shall not be expressed to take effect from a date before the date of notification in any case where, if the regulations so took effect —
- (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) existing at the date of notification, would be affected in a manner prejudicial to that person; or
- Regulations  
Added by No. 10  
1937, s. 3  
Sub-section (i)  
inserted by  
No. 144, 1976,  
s. 9  
  
Amended by  
No. 80, 1950,  
s. 3

- (b) liabilities would be imposed on any person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification,

and where, in any regulations, any provision is made in contravention of this sub-section, that provision shall be void and of no effect.

(3) If any regulations are not laid before each House of the Parliament in accordance with the provisions of sub-section (1), they shall be void and of no effect.

(4) If either House of the Parliament, in pursuance of a motion of which notice has been given within 15 sitting days after any regulations have been laid before that House, passes a resolution disallowing any of those regulations, any regulation so disallowed shall thereupon cease to have effect.

(5) If, at the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament, being notice given within 15 sitting days after the regulation has been laid before that House —

- (a) the notice has not been withdrawn and the motion has not been called on; or
- (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the regulation specified in the motion shall thereupon be deemed to have been disallowed.

(5A) If, before the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament —

- (a) that House is dissolved or, being the House of Representatives, expires, or the Parliament is prorogued; and
- (b) at the time of the dissolution, expiry or prorogation, as the case may be -
- (i) the notice has not been withdrawn and the motion has not been called on; or
- (ii) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the regulation shall, for the purposes of sub-sections (4) and (5), be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation, as the case may be.

(6) Where a regulation is disallowed, or is deemed to have been disallowed, under this section, the disallowance of the regulation shall have the same effect as a repeal of the regulation.

49. (1) Where, in pursuance of section 48, either House of the Parliament disallows any regulation, or any regulation is deemed to have been disallowed, no regulation, being the same in substance as the regulation so disallowed, or deemed to have been disallowed, shall be made within 6 months after the date of the disallowance, unless —

Amended by  
No. 144, 1976,  
s. 9

Substituted by  
No. 19, 1963,  
s. 4; amended by  
No. 144, 1976,  
s. 9

Substituted  
No. 19, 1963,  
s. 4;  
amended by  
No. 144, 1976,  
s. 9

Inserted by  
No. 19, 1961,  
s. 4;  
amended by  
No. 144, 1976,  
s. 9

Disallowed  
regulations not to  
be re-made unless  
resolution  
rescinded or  
House approves

- (a) in the case of a regulation disallowed by resolution — the resolution has been rescinded by the House of the parliament by which it was passed;  
or
- (b) in the case of a regulation deemed to have been disallowed — the House of the Parliament in which notice of the motion to disallow the regulation was given by resolution approves the making of a regulation the same in substance as the regulation deemed to have been disallowed.
- (2) Any regulation made in contravention of this section shall be void and of no effect.

Added by No. 10,  
1937 i s. 13  
Sub-section (1)  
amended by  
No. 19, 1963,  
^ .44 , 976,  
s. 9 ' ,

## TOPICAL DISCUSSION

### 2. Extracts of the minutes of the Spring Session (Mexico-April 1986)

*Mr. Cumming Thorn* said he was happy to have this first opportunity of addressing the Association as a full member. In preparing his introductory note for the topical discussion he had concentrated on the powers of Upper Chambers in federal countries, in particular Australia. When the Australian Constitution was devised, at the end of the 19th century, some elements of the concept of equal state representation had been grafted onto the Westminster parliamentary model. This concept was central to the existence of the upper chamber with strong powers in Australia; countries which did not have federal systems did not always recognise the necessity of a second chamber with such powers. The Australian Senate had strong powers over the full range of matters within government responsibility with the exceptions of appropriation (expenditure) and taxation. A distinction could be drawn between possessing powers and exercising them.

It could generally be said of upper chambers that they took more time in their consideration of business, were more active in committee work and exercised greater control over delegated legislation than lower chambers. It was by these means that the Senate carefully examined the government's appropriation bills. 6 Estimates Committees studied the appropriation bills and questioned ministers and senior officials on them. This process of questioning and answering had proved an interesting development in the exercise of the Senate's powers over government operations.

*Mr. Lussier* (Canada) asked about the role of government ministers in the Senate.

*Mr. Cumming Thorn* explained that the Australian political system involved 2 large parties and a number of minor parties and independents. The government could not be confident of controlling a majority in the Senate. There had been a division of opinion about whether there should be ministers in the Senate. In some ways the Senate's oversight of government role could be better exercised without government interference; on the other hand, if the Senate was to play a large part in the legislative process, it was important that representatives of the government that initiated legislation were present in the Chamber. On balance it was concluded that it was better to have ministers present to be answerable on legislation and questions of policy. Ministers themselves had to exercise considerable powers of persuasion to get legislation through. So Senators tended to respond to bills on their merits and the fact that their power bases were in the States made them fairly independent-minded.

*Mr. Davies* (United Kingdom) said that ministers were represented in the House of Lords which was an unelected body whose Members joined it by appointment or inheritance. There were some 1,180 Peers of whom 800 or so attended at some stage during the session and 300 would be present on any particular day. The House of Lords played an important part in the legislative work of Parliament but its final right of veto was subject to the Parliament Acts and its powers over money bills were very limited. The House of Lords could initiate or amend legislation. Even a Conservative government with a majority in the House of Commons could not be confident at present of commanding a majority in the House of Lords. In the past year, the government had been defeated 16 times in the House of Lords on relatively important matters. In 1984-85 the Lords had made 1 500 amendments to Commons bills of which 36 had been adopted by the Commons and the Commons had made 1 000 amendments to Lords bills. Occasionally, the fact the Lords had insisted on an amendment to a bill had led to the bill being effectively lost. Many of the amendments which were moved in the Lords were ones proposed by the government for drafting, technical or substantive reasons. The powers of the House of Lords over delegated legislation were not limited by the Parliament Acts and in this area there had been very occasional upsets for the government. At present, proceedings in the House of Lords were televised, (unlike those in the House of Commons) and this had drawn more attention to the House of Lords' activities.

*Mr. dimming Thorn* said that the figures for the amendments agreed to or negated in the Australian Senate appeared in attachment 'B' to his introductory note. It was often the case that bills were prepared in haste and needed rectification later in their passage through Parliament. Consideration of bills in the Senate also became an opportunity for the government to adjust to convincing points made during the passage of the bill through the House of Representatives. One recent bill had required 92 tidying-up amendments proposed by the government.

*Dr. Ziller* (Federal Republic of Germany) referred to a note he was submitting (see Appendix B). He said the existence of the Bundesrat provided an opportunity for the 11 "lands" or states to participate in federal legislation. Members of the Bundesrat were elected by the land parliaments. The Bundesrat had the right to initiate legislation and it was the practice for bills to start their passage through parliament in the Bundesrat before proceeding to the Bundestag. All bills had to pass both chambers and if there was a difference between the Bundestag and the Bundesrat this would be resolved by the Mediation Committee comprising an equal number of Members of both Houses. There were no political party groups in the Bundesrat because its Members were representatives of the land governments, some of which were coalitions of different parties in the states. Inevitably party politics did play a role in Bundestag activities and the federal chancellors sought to obtain a majority in the Bundesrat. For this reason land elections had a significant effect on federal politics. Like other second Chambers the Bundesrat faced the dilemma of appearing either a rubber stamp or being obstructive to the elected lower chamber. He wondered whether there was any formal link in Australia between state governments and the Senate.

*Sir Kenneth Bradshaw* (U.K.), speaking as the Clerk of a lower chamber, said that it was remarkable how the House of Lords avoided questions of their political legitimacy by choosing with great skill issues on which to challenge the Commons.

Generally the House of Lords was very circumspect about amending legislation approved by the House of Commons. When they chose to insist on an amendment it was often when they felt that public opinion was behind the position adopted by the Lords.

*Mr. Cumming Thorn* said that the situation in Australia differed from that in the Federal Republic of Germany in that Senators were directly elected and represented political parties within each state rather than the state itself. The Senate considered the full range of national responsibilities including foreign affairs. If the state government did want to influence the government through the Senate it would certainly do so mainly on political lines but there was no formal constitutional link between the two. With regard to political legitimacy, the fact that the Senate was directly elected was the largest factor in its success. The development of the committee system and the use of public hearings had enabled the Senate to show to the public how effective it was.

*Mr. Charpin* (France) said that the upper chamber, by whatever means its Members were elected, had to be different from a lower chamber and the way individual Members conducted themselves could emphasise that difference. He was impressed by the number of amendments passed in the Australian Senate to legislation but was surprised that it appeared that no bills introduced in the Senate had been passed by the House of Representatives as well in 1985.

*Mr. Cumming Thorn* confirmed that this was the case and said that it was unusual for a private Senator's bill to be passed into law. The introduction of such a bill could serve a political purpose and very occasionally such bills were passed by both Chambers.

*Mr. Lussier* said that in Canada a joint committee of both chambers was responsible for examining delegated legislation. Although the government was obliged to reply to their reports they were not usually acted on. When a bill was introduced into the House of Commons, it was also considered immediately by a Senate committee whose informal amendments were sent to the government and often incorporated into the bill before the formal consideration of it in the Senate.

*Mr. Cumming Thorn* said in conclusion that the political legitimacy of the Australian Senate derived from direct election of its Members. In fact the party composition of the Senate more closely reflected the total votes cast in the country as a whole than did the party composition of the House of Representatives. He was grateful for the opportunity to introduce the topical discussion and for the many valuable comments which had been made. The Association was one of the few bodies in the world with whom a responsibility lay for continuing a parliamentary system and the role of parliamentary officials in that work was much understated.

*The Vice-President* thanked *Mr. Cumming Thorn* for his contribution and remarked that the discussion had been one of the best the Association had had on matters on which the Secretaries General themselves were professionally expert.

## APPENDIX A

### THE SENATE OF JORDAN

Note for the topical discussion by Mr. Khair (Jordan)

By virtue of the Constitution of Jordan, bills are referred by the Executive Authority to the House of Deputies (Lower House) which studies same. Post endorsing them, they are referred to the Senate (Upper House). The Senate refers the bills to the Legal Committee thereof for consideration upon which it files its report. The recommendation as regards such bill provides either for the acceptance, amendment or rejection thereof. In the case of amendment or rejection, the bill is returned to the House of Deputies. But in the case of acceptance, it is referred to His Majesty the King for endorsement and consequently publication in the Official Gazette to become a law to take effects as from the publication thereof in the Official Gazette.

In the case when the bill is returned to the House of Deputies, said House considers the remarks made by the Senate. Should the Deputies insist on their previous stand, the bill is thus referred once again to the Senate. Should the Senate insist on its stand, then a joint session of both Houses is held to decide the fate of the said bill either by acceptance or rejection by the majority vote of both Houses knowing that the number of votes in the joint session is 90 (60 Lower House + 30 Upper House).

The Senate derives its legislative powers from the Constitution of Jordan and from the Internal Regulation thereof which provide in Article 95 and 15 thereof, respectively, that "any ten Senators may propose any law. Such proposed law shall be referred to the relevant Committee in the House for opinion.

Should the House be of the opinion that it be accepted, it refers same to the Government to be put in the form of a draft law and to submit it to the House either during the same session or in the following one. Any law proposed by the Senators as previously stated and rejected by the House may not be re-submitted during the same session".

The general rule as regards the legislative powers of the Senate is that they reflect the view of the members themselves though sometimes the opinions of some of the members reflect those of the Government, all indeed for public good and interest.

As regards the discipline of political party rules or practices, Article 16 of the Constitution provides, "Jordanians shall have the right to establish societies and political parties provided that the objectives thereof are legitimate, the methods are peaceful and their By-Laws are not inconsistent with the provisions of the Constitution.

This provision came in the Constitution issued after 1952 which is one of the most recent in the world. However the incidents of the 1950's and 1960's in the Arab world in particular and the whole world in general led to the importation of concepts into the country which are inferior to our principles and policies which

resulted in the breach of security and consequently the Government had to issue a law prohibiting political parties.

Thus we have no representatives of political parties in the House as such parties are not existent in Jordan.

Therefore the Senate does in practice play an effective role in the scrutiny of delegated legislation as may be evidenced in the previous elaboration.

Notwithstanding the fact that over the years there have been signs of weakening of the powers of the chambers in some countries, we can safely say that this is not the case of the Senate of Jordan. This is due to the Constitution which guaranteed such powers for the House as may be witnessed in Article 25 thereof which provides "The legislative Power shall be vested in the National Assembly and the King. The National Assembly shall consist of a Senate and a House of Deputies", and Article 65 which provides:

"(i) The term of office of Senators shall be for four years, and their appointment shall be renewed every four years. Senators whose term of office has expired may be reappointed for a further term.

(ii) The term of office of the Speaker of the Senate shall be for two years but he may be reappointed for a further term".

The term of office of Senators is thus four years which generates confidence and gives them the freedom to express opinion and to legislate as they are not subject to being dissolved as is the case with the House of Deputies which was often dissolved due to differences in viewpoints with the Executive Authority.

We herewith attach as an annex a statistical summary related to the function of the Senate over legislation for the year 1985.

ANNEX  
STATISTICAL SUMMARY  
Reconsideration of bills by the Jordanian Senate  
1985

Total number of bills introduced in Senate. . . . .	161*
Bills passed by Senate in the form received from House of Deputies ..	129
Bills rejected by Senate. . . . .	13
Bills returned to Deputies after amendment by Senate and passed by Deputies as per Senate amendment . . . . .	4
Bills returned to Deputies after amendment by Senate but Deputies rejected amendments by Senate. . . . .	3
	149

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\* The difference between both totals represents the number of bills still being considered by Senate.



## APPENDIX B

### THE BUNDES RAT OF THE FEDERAL REPUBLIC OF GERMANY

Note by Dr. Gebhard Ziller, Secretary General of the Bundesrat  
of the Federal Republic of Germany

#### Composition and organization

Along with the Federal President, the German Bundestag, the Federal Government and the Federal Constitutional Court the Bundesrat is one of the five constitutional bodies in the Federal Republic of Germany.

Representing the eleven Länder the Bundesrat is composed of members of Land governments. The Bundesrat does not have a legislative term; its composition changes rather as a result of Länder elections and government reshuffles. The distribution of votes among the eleven Länder is a compromise between federative and democratic representation. Each Land has at least three votes, medium-sized Länder have four votes and the most populous Länder have five votes. The Bundesrat has a total of 45 members.

Each Land has to cast a block vote; as a consequence, the individual Land governments have to come to an agreement on how to vote. The Bundesrat's members are bound by the decisions taken by their Land government.

#### Functions

"The Länder shall participate through the Bundesrat in the legislation and administration of the Federation" (Basic Law, article 50).

The Bundesrat has the following tasks in the legislative process:

- it has the right to initiate legislation
- bills proposed by the Federal Government are first submitted to the Bundesrat for assessment and then sent to the Bundestag
- all bills adopted by the Bundestag must be transmitted to the Bundesrat.

Bills particularly affecting Länder interests can only become law if the Bundesrat gives its express approval. In practice about half of the bills require Bundesrat consent. In the case of the "objection bills", representing the other half, the Bundesrat may lodge an objection which the Bundestag can override with a corresponding majority.

Whenever a bill passed by the Bundestag is unacceptable to the Bundesrat, the latter can request the convening of the Mediation Committee. It comprises an equal number of representatives from both chambers. The Mediation Committee has the task to elaborate compromise proposals on the basis of which Bundestag and Bundesrat have to take a decision.

As an integral part of the system of distribution of powers the Bundesrat fulfills three functions:

- it gives effect to the Länder interests at the federal level

- it incorporates the political and administrative experience of the Länder — they have to implement most federal laws — in the Federal legislation and administration
- like the other constitutional bodies it bears responsibility for the Federal Republic as a whole.

Thus, the Bundesrat is a counterweight to the Bundestag and the Federal Government and at the same time a link between Federation and Länder.

*Bundesrat*  
*Statistical record from 7.9.1949 till 18.3.1986*

Bills introduced by Cabinet	3.636
Bills introduced by Bundesrat	317
Bills introduced by Bundestag	2.020
Bills passed by Bundestag	3.962
Applications to Mediation Committee	505
of which by the Bundesrat	460
Bills denied Bundesrat approval	39
Objections	25
of which overridden by Bundestag	18
Ordinances dealt with by the Bundesrat	about 4.700