# Constitutional and Parliamentary Information

# ASGP


## The U.K. Parliamentary System

## The International Parliamentary Assemblies

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# INTER-PARLIAMENTARY UNION

## Aims

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-Patliamentary 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.

In pursuance of this objective, the Union makes known its views on all international problems suitable for settlement by parliamentary action and puts forward suggestions for the development of parliamentary assemblies so as to improve the working of those institutions and increase their prestige.

## Membership of the Union as off 12 November 1988

Albania, Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Belgium, Benin, Bolivia, Brazil, Bulgaria, Cameroon, Canada, Cape Verde, Central african Republic, China, Colombia, Congo, Costa Rica, Côte d'lvoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Democratic Yemen, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Finland, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guatemala, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Liberia, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mexico, Monaco, Mongolia, Morocco, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, Singapore, Somalia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, USSR, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Associated member: European Parliament.

## Structure

The organs of the Union are:

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. Baouda Sow (Sénégal).

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:

*President:* Mr. B. Sow (Sénégal)

*Members:* Mr. R. Bitat (Algeria); Mr. B. Friesen (Canada); Mr. Huan Xiang (China), Mr. S. Khunkitti (Thailand), Mr. J. Maciszewski (Poland), Mr. N.C. Makombe (Zimbabwe), Mrs. M. Molina Rubio (Guatemala), Mr. L.N. Tolkunov (USSR), Mr. M. Marshall (United Kingdom), Mr. M.A. Martinez (Spain), Mr. I. Noergaard (Danemark), Mr. C. Nunez Tellez (Nicaragua), Mrs. L. Takla (Egypt).

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.

# Constitutional and Parliamentary Information

Association of Secretaries General of Parliaments

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*Contents*

## The U.K. Parliamentary System

Presentation on the U.K. Parliamentary System . . . . . 1

Note on the U.K. Parliamentary System . . . . . 9

## Parliament, the Constitution and the Courts

Introductory note on areas of overlap between Parliament and the courts, by Mr. Ndiaye . . . . . 21

Introductory note on Parliament's role in interpreting the law and the Constitution, by Mr. Chibesakunda . . . . . 25

Topical discussion on areas of overlap and conflict between parliament and the courts and on the role of parliament in the interpretation of the law and the Constitution . . . . . 27

## Public opinion and the legislative process

Introductory note by Mr. Bakinahe . . . . . 36

Topical discussion on consultation of public opinion during the legislative process . . . . . 41

## Committee meetings in public or behind closed doors

Introductory note by Mr. Sune K. Johansson . . . . . 49

Topical discussion . . . . . 52

Summary of replies to Mr. Sune Johansson's mini-questionnaire . . . . . 59

## Civil liability of members off parliament for opinions and votes given during their parliamentary duties

Introductory note by Mr. Giovanni Bertolini . . . . . 64

Topical discussion . . . . . 69

## Relations between national parliaments and international parliamentary assemblies

Topical discussion introduced by Mr. Klebes . . . . . 73

## The Development off International Parliamentary Institutions

Report by Heinrich Klebes . . . . . 77

# The U.K. Parliamentary System

## A. Presentation on the U.K. Parliamentary System

### Extracts from the Minutes of the London meeting in September 1989

Mr. Clifford BOULTON, Clerk of the House of Commons, said that he and Sir John SAINTY, Clerk of the Parliaments, had made available papers setting out some facts about the UK parliamentary system. Rather than repeat those details they preferred to speak briefly about the character and personality of the two Houses.

The character of the House of Commons was very much determined by the UK constitution. The country was not a federal state and did not have regional devolution. Local government bodies derived all their powers from legislation enacted by Parliament. This meant that the House of Commons was very busy—it was also very large with 650 members meeting on about 170 days a year for about 43 hours of plenary business each week plus many hours of committee sittings. Each Member was elected from a single geographical area by a system of simple majority—there was no national list or proportional representation. The system tended to produce a majority for a single party: at present there were about 375 members of the Government party and 275 members of other parties.

The system had been called a "winner takes all" system or even an "elected dictatorship", but one of the main purposes of the procedure of the House of Commons was to make sure that the Government did not feel like dictators. Since all Ministers were members of one House or the other, they were subject to its daily pressures. One method of keeping them aware of such pressures was to guarantee opportunities for minorities. For instance, on 20 days a year opposition parties chose the business for debate (on 17 days it was the main opposition party and on 3 the minor opposition parties). Salaries were paid to 4 senior members of the Opposition and financial assistance was given to finance the staff of the Shadow Cabinet. Time was also guaranteed to individual Members to introduce legislation or initiate debates on the equivalent of 23 days a year. These backbench opportunities were

often the vehicle for introducing social legislation which was not pursued on a party political basis by the main parties. The parliamentary system was not so draconian that dissent was prevented and there were no secret caucus meetings producing an agreed party line. Both the main parties contained a wide spectrum of opinions.

One hour each day was devoted to questioning Cabinet Ministers (whose turn for answer came up about once month). The Prime Minister answered questions for a total of 30 minutes on two occasions a week on a wide variety of subjects. Members could also table questions for written answer that were required to be answered within a set time. In this way the Government was in a position of always having to defend its policies in the House. The oversight of government departments was also conducted by Select Committees. Each government department was monitored by a Select Committee and some of these Committees had opposition chairmen. Although they did not have executive powers they could examine Ministers and civil servants and the Government was required to reply to their reports. Committees relied on a small staff, drawing on experts when required but there was a reluctance to set up a counter bureaucracy.

The role of the Speaker was important. Presiding over the Chamber was a task performed by an individual elevated to a position of authority and not by a collective bureau. The Speaker, when elected to the post, left his party and would never re-join it. He had discretionary powers over the selection of who to speak, choice of amendments, whether to allow closure of debate and whether to allow urgent questions or emergency debates. In practice minorities probably got more than their mathematical share of speaking time; on the other hand this was balanced by the likelihood that their point of view would lose in the eventual vote.

Governments tended to respect minority rights and observe these conventions, partly because of the experience of serving on both sides of the House made them conscious that they might be in a minority again one day.

The Clerk of the House was appointed by the Crown and headed the Department of some 55 Clerks and 100 other staff. These were part of the 900 or so staff employed by the House of Commons Commission (not including Members and their own personal staff). Although directly responsible for the Clerk's Department, the Clerk of the House was also Accounting Officer for staff of the other Departments of the House (the Serjeant at Arms, Library, Official Report, Refreshment Department and the Administration Department). The career structure and conditions of Clerks were bound by statute to those of the government service and the Clerk of the House was

on the equivalent salary to a Permanent Secretary of a Government Department.

Sir John SAINTY spoke as follows:

Rather than rehearse the facts on the information sheet which has been distributed, I thought that I would try to give a brief account of the changes which have occurred in the House of Lords since I first entered its service 30 years ago.

Perhaps I might begin by very briefly setting the House in its historical context. At the earliest period of Parliamentary development the House of Lords played a predominant role composed as it was of the magnates and the King's principal counsellors. It took time for the Commons to emerge and to be regarded as an indispensible element in the institution of Parliament. The power and influence of the House of Lords was in gradual decline from the early eighteenth century. During the course of the nineteenth century it was decisively displaced in political authority by the House of Commons as it came to be accepted that Governments derived their authority exclusively from their ability to command a majority in that House. At the same time in view of its composition the House of Lords naturally gravitated towards allegiance to the Conservative Party which tended to support the rights of property and this brought the House into conflict with Governments of a Liberal or Labour complexion when they promoted measures for social reform or for the redistribution of wealth. In 1911 the Commons were given legislative primacy by means of the Parliament Act which provides a mechanism for ensuring that the will of the Commons can prevail despite the disagreement of the Lords. However, the Act even in its amended form of 1949, still leaves the House of Lords with the power to obstruct and delay measures which are not to its liking.

When I came to the House in 1959 the first Life Peers had only just begun to be appointed and the House was overwhelmingly composed of male hereditary Peers by succession. The Conservative Party, which was then in Government, had a large majority which enabled it to win most Divisions without difficulty. The other parties were numerically weak and there were few independent Peers. There was a widespread view that the composition of the House was indefensible in that it unduly favoured the Conservative Party and this naturally fuelled demands for radical reform and even abolition.

In 1959 the House of Lords was not an active Chamber. For most of the time it sat for only three days a week, while the Commons sat for five days. It often rose at about 6.00 pm after a sitting of only 3'/2 hours.

Today the House has changed almost out of recognition and it is interesting to note that this change has come about through a process of evolution rather than revolution. A comprehensive legislative scheme of reform which was promoted by a Labour Government at the end of the 1960s failed as a result of opposition in the House of Commons, but some of its objectives have been brought about through the passage of time. While hereditary Peers are still in a majority, the number of life Peers has increased to the point where they amount to about one-third of the overall membership and over half the active membership. Women Peers, who were introduced for the first time only in 1958, have grown in numbers and are now a significant force. The strength of the political parties other than the Conservatives has increased substantially. One of the most interesting developments has been the growth of independent Members unattached to any political party who have increased from a small group to a body nearly 300 strong. The net result has been that the Conservative Party can no longer command a certain majority in the House and can be, and quite frequently is, defeated in Divisions. These developments have gone far to reduce the sense of unfairness previously felt about the composition of the House and demands for its reform or abolition are now correspondingly less strident.

As I have already stated, machinery exists to ensure that the will of the Commons can prevail over the Lords in matters of legislation, but this machinery takes time to operate. It has not been invoked for the last 40 years and this illustrates the point that Governments generally prefer to obtain their legislation earlier by reaching an accommodation with the Lords rather than waiting to secure it in exactly the form they originally desired. This gives the Lords an opportunity to influence the final shape of the legislation.

The prospect of defeating the Government in the House of Lords is particularly attractive to Opposition Parties when the Government commands a secure majority in the House of Commons and this, amongst other factors, has served to make the House a much livelier place than it was thirty years ago. It now almost invariably sits for 4 days a week and Friday sittings are becoming increasingly common. Individual sittings are much longer and now average more than 7 hours. If the House rises as early as 6.00 pm in modern conditions there is almost a sense of failure.

The average attendance at sittings of the House has risen by 2'/2 times since 1959—from about 130 to about 320. Assiduity varies considerably, ranging from those who attend almost every sitting to those who come on only two or three occasions a year. This is not surprising in a House, where apart from the Bishops, all members hold their seats for life. It should also

be remembered that, while members are entitled to recover expenses incurred for the purpose of attending the House, they receive no salaries as such. No stigma attaches to those who participate only rarely. It is one of the recognised strengths of the House that the nucleus of regular attenders is leavened by the occasional presence of Members with special knowledge or experience.

Despite the developments which I have described, the procedures of the House have altered little in the last thirty years. The House has remained a self-regulating body in which the Presiding Officer has no power to rule on matters of order. Order is in the hands of the House itself and its maintenance is crucially dependant on Members knowing and observing procedures and exercising self-restraint. It has to be said that this system of self-regulation was easier to operate when the House was less active. Increasing participation has placed it under strain. Two years ago a questionnaire was circulated to Members of the House inviting them to express their views on the procedure of the House. There was virtually unanimity that a Speaker with authority to enforce order should not be introduced and that the system of self-regulation should be continued.

The increased activity on the floor of the House has been matched by a significant expansion in the work of Select Committees. Thirty years ago Select Committees, except those concerned with purely domestic matters, had practically fallen into disuse and this largely remained the case until 1974. In that year, following the United Kingdom accession to the European Community, the House appointed its European Communities Committee with the primary task of scrutinising proposals for Community legislation. The Committee, which now operates through six Sub-Committees, soon attracted the services of some of the most able and experienced members of the House. Select Committee procedure, with its emphasis on the collection and analysis of evidence from interested parties, has proved to be particularly well adapted to this type of scrutiny. The quality of their Reports established the authority and influence of the Committee at an early stage. In 1979 the House established a smaller Committee on Science and Technology, which has had similar success. It is doubtful whether these developments could have been foreseen when the Committees were first established but they have served to illustrate the manner in which the resources of the House can be exploited to good purpose.

Over the last 30 years the House has, I believe, risen in public esteem. This process has to some degree been assisted by the introduction of Parliamentary broadcasting. Sound broadcasting was introduced for both Houses in

1977. In 1985 the House of Lords allowed its proceedings to be televised on an experimental basis and this arrangement was made permanent in the following year.

The PRESIDENT (Mr Lussier) asked whether the Government could refuse to act on a Bill passed through Parliament against the Government's wishes. Mr. BOULTON said that the Government was bound by the law passed by Parliament but if the Statute contained any permissive powers the Government might do nothing to implement parts of the Act.

Mr. LAUNDY (Canada) asked what influence regional committees had in Parliament. Mr. BOULTON said that while the Standing Committees on Scottish and Welsh Affairs met occasionally it had not been possible to set up the Select Committee on Scottish Affairs in the current parliament and the Standing Committee on Regional Affairs had fallen into disuse.

In reply to questions about the reading of speeches, Sir John SAINTY said that it was a long-standing rule in the Lords that speeches should not be read but this was honoured more in the breach than in the observance. Some Peers did rely on "extended notes" and the Chair had no authority to rule on this matter.

Mr. BOULTON said that Ministers and Oppositions Spokesmen often read the text of their speeches. In general the House wanted progress and brevity and "copious notes" sometimes helped Members curtail their speeches. Reading was definitely not allowed at Question Time but otherwise the Chair was fairly indulgent unless reading was used to prolong proceedings. Members were not able to have their undelivered speeches written into the Official Report.

In reply to Mr. VLACHOS (Greece) Mr. BOULTON said the Speaker, when he resigned his post, was given a pension and became a member of the House of Lords.

Mr. KIRBY (Canada) asked about the new parliamentary buildings. Mr. BOULTON said that phase one of the development would provide some offices for Members and room for the Library to move out from the main building giving more space nearer the Chamber for Members.

Mr. MBOZO'O (Cameroon) asked why the Speaker abstained from any political activity. Mr. BOULTON said that his role was quasi-judicial and he could not be respected in his exercise of the various powers if those he was dealing with knew that he would return in due course to active politics.

Mr. BAKINAHE (Rwanda) asked whether there was any effective difference between hereditary and life peers. Sir John SAINTY said that there is no clear pattern about attendance which distinguished between hereditary and life peers. A nucleus of regular attenders was needed in any parliament but the House benefited from the occasional participation of individuals however infrequent. No stigma attached to non-attenders.

In reply to Mr. BAKINAHE's question about Ministers from the House of Lords, Mr. BOULTON said that the Prime Minister had to form a Government after the election from among Members of Parliament or Peers. Most senior Ministers came from the House of Commons. The PRESIDENT commented that in Canada people who had been sceptical about the Senate often became more enthusiastic once they had been appointed to it.

In reply to Mr. NDIAYE (Senegal), Mr. BOULTON said that a draft Law (a Bill) had to be approved in the plenary before it was considered in detail in Committee. Any Member of Parliament could introduce a Bill and no constitutional test had to be satisfied. The difficulty an MP faced was to find time for it to be debated. If there was no opposition to the Bill it could pass through all parliamentary stages quite speedily. For parliamentary questions, different rules applied in the two Houses and there was no co-ordination between them but in each House the Government had to reply to such questions.

In reply to Mr. JEMBERE (Ethiopia), Mr. BOULTON said that the staff of the Parliamentary Commissioner for Administration was completely separate from the staff of Parliament. The vast majority of Bills actually passed in each session were Government Bills although a small number of Private Members' Bills were enacted each year.

Mr. AMELLER (France) asked about spontaneous questions. Mr. BOULTON said that notice had to be given of the subject of the question but the supplementary question on the floor of the House was spontaneous. Naturally Ministers prepared themselves for a variety of supplementary questions. About 20 different oral questions would be reached in any question period. Most questions to the Prime Minister were open questions about her engagements which enabled a Member to raise a topical issue.

Mr. SAUVANT (Switzerland) asked about some Select Committees being chaired by opposition MPs. Mr. BOULTON said that in general Select Committees conducted objective enquiries based on the evidence and were not overtly partisan. The Public Accounts Committee was traditionally chaired by a member of the Opposition and this added confidence to its

impartiality. The allocation of chairmanships between the parties was the result of negotiations between them.

Mr. SATYAL (Nepal) asked whether the Government always had a majority. Mr. BOULTON said that it was not necessarily the case. The Queen had to decide who to ask to try and form a Government. The test was who would command a majority or be tolerated as a minority Government. It was possible for a Government elected with a majority to lose that majority in the course of a parliamentary term.

Mr. AGARWAL (India) asked whether a peerage could be inherited by an adopted child and about the role of joint committees of both Houses. Sir John SAINTY said that a peerage could only be inherited by a blood relative and not by an adopted child. Normally the peerage passed to the heirs male of the original grantee but there were a few peerages which passed down the female line. There had not been many joint committees recently but there were joint committees on Statutory Instruments and on Consolidation Bills.

In reply to Mr. DIAKITE (Mali) Mr. BOULTON said that a government might be reluctant to be pressed by a Select Committee. A civil servant might very occasionally say that he was not empowered by the Minister to answer a question put to him in a Committee. In those circumstances the Minister would come to the Committee himself or take political responsibility for not doing so. In the end if the Committee wanted to pursue it, they had to raise the matter on the floor of the House.

Sir John SAINTY said that not since 1708 had the Sovereign refused assent to a Bill passed by both Houses of Parliament. The Government could only delay implementation of a Bill if the Bill itself provided for the Minister to make Statutory Instruments bringing all or part of the Bill into effect.

Mr. KAITOUNI (Morocco) asked about challenges to the constitutionality of the law and acts of the Government.

Mr. BOULTON said that the Parliamentary Commissioner for Administration could investigate maladministration if the case was referred to him by an MP. Alternatively any citizen could apply to the courts for judicial review of the exercise of ministerial powers. There had been several recent cases of this and one Minister had four or five cases decided against him.

The PRESIDENT thanked Sir John Sainty and Mr. Boulton for their presentation and the answers they gave to questions.

## B. The U.K. Parliamentary System

*Note by the Clerk of the Parliaments and the Clerk of the House of Commons for the Association of Secretaries General of Parliaments.*

COMPOSITION

*House of Commons*

1 There are 650 elected Members of Parliament. Each is elected by simple majority vote in a single member constituency with about 65,000 electors. With limited exceptions all those over the age of 18 are entitled to vote. Average turnout in the last three general elections was 73-75%.

2 The balance between the political parties after the 1987 general election was:

| | |
|---|---|
| Conservative | 375 |
| Labour | 229 |
| Democrat | 22[1] |
| Scottish Nationalists | 3 |
| Welsh Nationalists | 3 |
| Northern Ireland | 17[2] |
| The Speaker | 1[3] |

3 There are 42 women MPs.

4 In the thirteen general elections since 1945, one party or other has achieved an absolute majority of seats in the House of Commons on all but one occasion. Each general election brings about 100-120 new Members into the House (either through the retirement of the sitting Member or his defeat in the election).

---

'formerly Liberals and Social Democrats

Unionists 13, Social Democratic and Labour Party 3, Sinn Fein 1

[3]Re-elected on a non-party basis

*House of Lords*

5 There are 1185 holders of peerages entitled to membership of the House of Lords. 759 have become members by inheriting their title from a relative and a further 25 have been created hereditary peers themselves. 353 have been created life peers themselves (and so will not pass on their title to any successor). 26 bishops and 22 serving or retired judges sit in the House of Lords because of their office. There are 65 women peers, 20 of whom inherited their title. The potentially active membership (excluding those with leave of absence and those under age etc) is 932.

6 The political balance of the House of Lords is :

| | |
|---|---|
| Conservative | 426 |
| Labour | 113 |
| Democrat | 57 |
| Social Democrat | 23 |

A large number of peers are independent or "cross-bench".

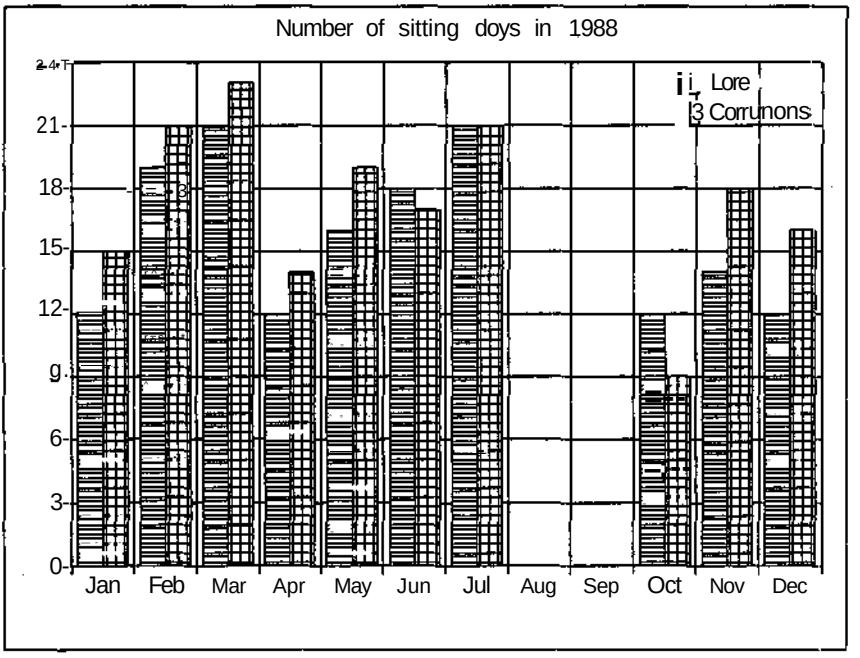
7 These figures are for November 1988, but the size and composition of the House of Lords are not fixed. The average daily attendance is 333 (1987-88). 404 members attended one third or more of the sittings in 1987-88 and the highest recorded number of members voting in recent years was 509 in 1971. Members of the House of Lords may not be MPs, but there is provision for an MP who inherits a peerage on the death of a relative to renounce the peerage for his lifetime and thus remain an MP. Members of the House of Lords, like MPs, may be members of the European Parliament.

**TIMESCALE**

8 The maximum length of one "Parliament" is five years from the date of the previous election. The Prime Minister can call a general election at almost any time. The average length of a parliament since 1945 has been 3.66 years.

9 Each parliamentary term is divided up into sessions, usually starting in November and lasting for a year. In a normal session the House of Commons sits for some 35 weeks or 170 days (1985-6). The House of Lords sits for about 165 days, spread over 39 weeks. There are recesses of 2-3 weeks in December/January, 1 week in March or April,1 week at the end of May and 10-12 weeks in August to October.

10 Both Houses start their sittings in the afternoons on Mondays to Thursdays and in the mornings on Fridays. The House of Commons usually sits until at least 2230 (except on Fridays when the House rises at 1500). The average length of the daily sittings in 1987-88 was 9 hours, 4 minutes. The House of Lords' average daily sitting time in that year was 7 hours, 6 minutes.

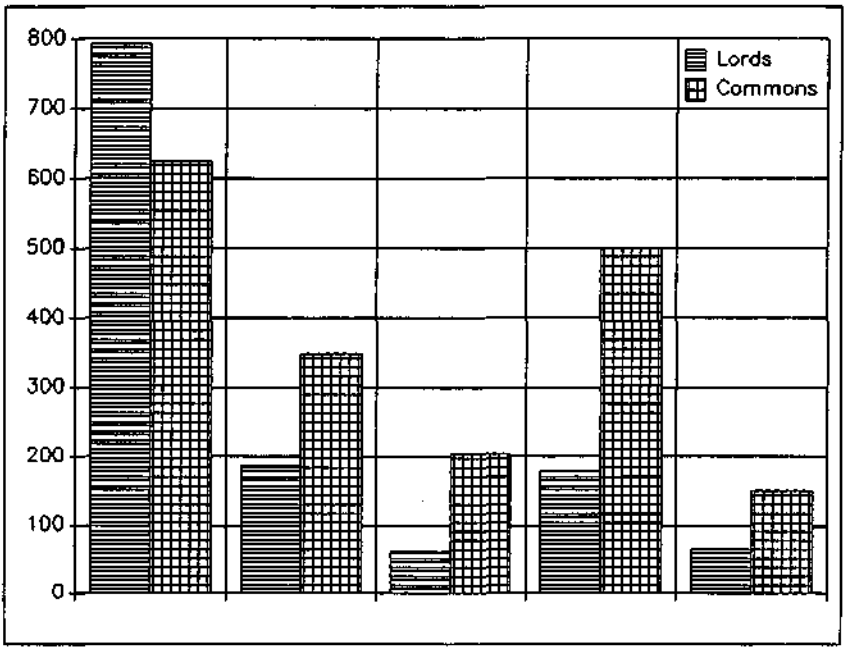



11 The division of time between different activities in the Commons is: nearly one-half of the time spent on the floor of the House is devoted to legislation; and one-quarter each to main debates and to scrutiny of government (through questions, short debates etc).

12 Although any proceedings on the floor of the House provide opportunities for the Government, Opposition and back-benchers, the initiative for choosing the subject under consideration lies mainly with the Government (though they consult with the Opposition). In 1987-88, 58% of business was at the choice of the Government , compared with 30% for back-benchers and 7% for the opposition. One of the Opposition's main weapons is the choice of subject on the 20 Opposition Days, which occur by agreement twice every three weeks. 17 of these days are at the disposal of the main Opposition party; 3 at the disposal of the smaller parties.

13 The equivalent proportions in the House of Lords were : Two thirds of time devoted to legislation; and one-sixth each to debates and scrutiny of government.

14 The time spent on the floor of the House on different types of business in the 1987-88 session is as follows :



**ROLE OF THE SPEAKER**

*House of Commons*

15 The Speaker is elected from among the Members of the House at the start of each parliamentary term on the basis that he will be able to command the respect of the whole House. He relinquishes all political activities and does not return to party politics when he leaves the position. He exercises important powers in controlling debates and chairs the House of Commons Commission, which employs the staff of the House. Mr Speaker Weatherill was elected in 1983 and (having fought his constituency without a party label) was re-elected in 1987. Previously he was Deputy Speaker for four years and deputy chief whip of his party before that.

*House of Lords*

16 The Speaker of the House of Lords is the Lord Chancellor, a member of the Cabinet appointed by the Prime Minister and the head of the judiciary in the UK. He plays an active part in promoting Government business in the House of Lords and his duties in presiding over sittings are purely formal. (Order in the House of Lords is kept by the House as a whole). He ceases to be Speaker when he relinquishes the office of Lord Chancellor. The current Lord Chancellor, Lord Mackay of Clashfern, was appointed in 1987, following the retirement of his two predecessors within the space of six months. He does not come from a political background and is the first Scottish lawyer to occupy the Woolsack.

**LEGISLATIVE PROCESS**

17 The bulk of the legislative work of both Houses is provided by the Government. Some of it is primary legislation, which has to pass through both Houses in the same form. An increasing amount is secondary legislation (known as statutory instruments) for which there is a variety of simpler parliamentary procedures.

18 Legislation introduced by private Members is allotted specific days for consideration in the Commons and only a small proportion of the bills introduced actually pass into law. In addition, each House also passes legislation (known as Private Bills) to deal with a specific matter affecting only one area or group of people.

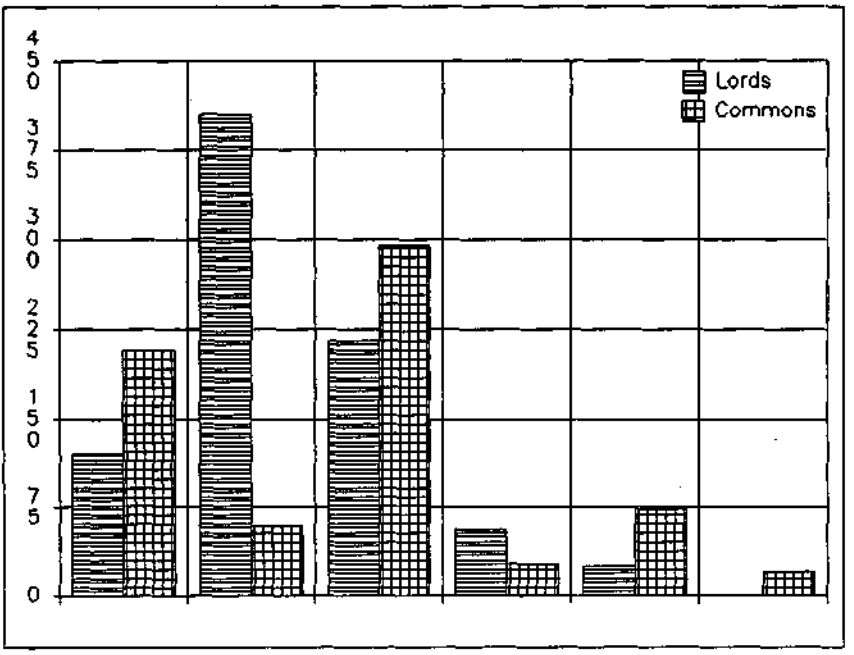
19 The stages every Bill has to pass through in each House are set out below:

| Stage | Commons | Lords |
|---|---|---|
| First Reading | Formal | Formal |
| | <7-10 days> | |
| Second Reading | Debate on principles (one day) | Debate on principles |
| | <7-lO days> | |
| Committee | Detailed consideration in Standing Committee (up to 80 hours) | Detailed consideration (in plenary) |
| Report | Committee amend-ments discussed in plenary | Further detailed consideration |
| Third Reading | Debate on prin-ciples (for 3 hours) | Further detailed consideration plus debate on principles |
| Lords/Commons Amendments | Considered as necessary in both Houses | |

Royal Assent : formal announcement in both Houses

20 Legislation may be introduced in either House, but the Government's main political legislation is usually introduced in the Commons.

21 The number of hours spent in plenary between these different stages of legislation in the 1987-88 session is shown in the chart below:




22 The Commons has power to override the Lords if the Lords twice reject the same Bill passed by the Commons. In practice the Lords' power of rejection has been used very sparingly and the Commons' power to override has not been put into effect since 1949.

23 The Lords' powers over raising and spending public money are also limited. Legislation involving taxes or expenditure cannot be initiated or delayed by the Lords.

24 Despite these apparent restrictions on their power, the Lords play an significant part in the legislative process, both by detailed revision of bills and by giving the Commons the opportunity to reconsider particular controversial points. In 1987-88 the Government was defeated 17 times in the Lords on the details of legislation and in only 4 of those cases was the Lords' amendment completely overturned in the Commons.

25 When there is a disagreement between the two Houses, the bill in question travels back and forwards until a common text is agreed. In practice, the pressure for compromise is great. Normally only one or two Bills actually shuttle between the two Houses each session. In the last 15 years one Bill went to and fro six times.

26 The progress of legislation may be controlled in the Commons, but not in the Lords, by allocation of time ("guillotine") motions introduced by the Government and by the selection of amendments by the Speaker.

27 **Bills introduced and passed in 1987-88 session:**

| | | |
|---|---|---|
| Bills which received Royal Assent | | 62 |
| Government Bills | | 49 |
| started in Lords | 14 | |
| started in Commons | 35 | |
| Private Members' Bills | | 13 |
| started in Lords | 2 | |
| started in Commons | 11 | |
| Bills introduced into but not passed by Commons:103 [4] | | |
| Bills passed by Commons but not passed by Lords:1 | | |
| Bills passed by Lords but not passed by Commons:2 | | |

[4] all Private Members' Bills

29 Prominent among the Select (inquiry) Committees are those which monitor the expenditure, policy and administration of specific government departments. Their pattern of activity is as follows :

1- Members nominated by Committee of Selection
2- Committee chooses own Chairman (may be an Opposition MP)
3- Committee chooses own subject(s) of inquiry
4- Written evidence sought from interested parties
5- Oral evidence heard from key witnesses
6- Study visits conducted at home and abroad
7- Chairman's draft report considered, amended and adopted
8- Government replies within 60 days
[9- new subject chosen]

30 Departmental Select Committees meet at least once a week, produce between two and six reports a year and have a full-time staff of two graduates and two others. They rely on part-time advisers for specialist assistance.

*House of Lords*

31 Detailed discussion of legislation takes place on the floor of the House, so there are no legislative Committees. There are two main Select Committees. The European Communities Committee works through six sub-committees, produces some 25 reports per year and involves some 80 peers. Its activities are widely respected in the European Community. The Science and Technology Committee works through two sub-committees and has a membership of about 25 peers. Membership of both Committees is based more on personal expertise than political allegiance. Special Select Committees are set up, more frequently than in the Commons, to address particular issues.

**SCRUTINY OF GOVERNMENT**

*House of Commons*

32 A variety of weapons is at the disposal of backbenchers to test the Government. Ministers from each Department answer oral questions on the floor of the House for between 25 and 55 minutes once a month or so. MPs have to give two weeks' notice of the first question but can then ask an unexpected supplementary. The high level of interest in this activity means that only a proportion are successful in asking a question on a particular day. In the 1987-88 session, 24,940 questions were put down for oral answer (and about one quarter received replies on the floor of the House). Questions seeking information cam also be tabled for written answer within a minimum of two days:. 47,726 such questions were tabled in the 1987-88 session (219 per sitting day).

33 On matters of urgency, an MP may ask a Private Notice Question (two or three a week are granted at the Speaker's discretion) or make a three minute speech pressing for an emergency debate (although such applications are usually granted by the Speaker only two or three times a year). Pressure for a statement by the Government on a topical issue also gives an opportunity for airing current concerns. Other opportunities include the half hour adjournment debate at the end of each day's sitting, when a minister will have to reply for up to 15 minutes to the issue raised.

*House of Lords*

34 Each day's business starts with up to four oral questions with supplementaries. 742 questions were asked in this way in 1987-88. Questions can also be put at the end of the day's business and give rise to debate. (51 in 1987-88) and written questions are also asked (1405 in 1987-88). Private Notice Questions are rarer than in the Commons, with only three asked in 1987-88.

**COSTS AND MONEY**

35 Members of the House of Commons receive an annual salary of £24,107 which now rises automatically each year in line with a grade in the civil service. They also receive an index-linked allowance of £22,588 for the employment of a secretary and/or research assistant and for office equipment. Those who live outside London receive an accommodation allowance of £9,468; London MPs receive an allowance of £1,222 instead. MPs also receive free travel between their homes, constituencies and Westminster and a car mileage allowance linked to the size of their personal car.

36 Members of the House of Lords are unpaid but can recover expenses within current daily limits of £57 for overnight accommodation, £21 for subsistence and incidental travel and £22 for secretarial expenses. They can also claim the cost of travel between their home and London.

37 The identifiable costs of running each House in 1989-90 :

House of Lords £20.06 million

House of Commons £95.65 million

(plus maintenance of the Palace of Westminster : £26.5 million)

38 In addition to official salaries for the Leader of the Opposition and 3 other Opposition officers, about £ 1 m is provided per annum to assist Opposition parties in their parliamentary duties.

**BROADCASTING**

39 Both Houses are recorded for sound broadcasting. The Housie of Lords has been televised since January 1985. The House of Commons has recently voted to conduct an experiment in televising starting in November 1989.

**CLERK OF THE HOUSE**

40 The Secretary-General of the House of Lords is called the Clerk of the Parliaments. He is appointed by the Queen on the advice of the Prime Minister and holds his position until the age of 65. Sir John Sainty has been Clerk of the Parliaments since 1983 and previously served as a Clerk in the Lords for 20 years. As well as attending in the Chamber and giving procedural advice, he is the head of the 300 staff employed by the Lords..

41 The Clerk of the House of Commons is appointed by the Queen on the advice of the Speaker. He is appointed for life but, by convention, retires at the age of 65. Mr Clifford Boulton became Clerk of the House in 1987, having served in the Clerk's Department for 34 years. His time is divided equally between procedural and administrative duties. As well as being head of the Clerk's Department, he has overall responsibility for the financial management of the administration of the House.

**FURTHER READING**

*How Parliament Works* by Paul Silk and Rhodri Walters (Longman 1987)

*The Commons Under Scrutiny* edited by Michael Ryle and Peter Richards (Routledge, 1988)

*The House of Lords by* Donald Shell (Philip Allan, 1988)

*The New Select Committees* by Gavin Drewry (OUP, 1988)

Other papers available on request:

Short factsheets on specific aspects of the House of Commons and the House of Lords (in English)

Description of the Chamber and procedure of each House (in English, French, German, Spanish [and Italian and Arabic for the Lords])

Booklet on the British Parliament, produced by the Central Office of Information (in English)

**COMMITTEES**

*House of Commons*

28 There are two types of Committees : legislative ("Standing") and inquiry ("Select"). Legislative Committees are set up to deal with the Committee stage of particular Bills, and Member are appointed separately for each Bill. Select committees are normally set up for the whole parliamentary term, have wide-ranging terms of reference and freedom to choose particular subjects within their overall remit.

| | Standing | Select |
|---|---|---|
| Size | 16 - 50 | Departmental :11 others [7 - 21] |
| Chairman | neutral (chosen by Speaker) | active (chosen by the committee) |
| Subject | Bill referred from House | chosen by committee |
| Duration | specific Bill | full parliamentary tam |
| Proceedings | formal debate, standing | informal, sitting |
| Public | all meetings | most evidence in public, deliberate in private |
| Party balance | reflects party balance in the House as a whole | |
| Report | Bill [as amended] and proceedings | Substantive recommendations and evidence |

# Parliament, the Constitution and the courts

## A. Introductory Note on areas off overlap between Parliament and the courts by Mr. Ndiaye (Senegal)

Any discussion of areas of overlap between parliaments and courts must cause one to refer to the basic document which in general governs all countries which claim to be democracies, namely, the Constitution.

The Constitution is the main basis of the legal system in Senegal because it sets out general principles and rules which govern legislators and the exercise of powers of the State. It is therefore a fundamental document on which all other rules and procedures depend.

Nonetheless our main concern is the jurisdiction of the different institutions that exist in the country. These are described in Article 5 of the Constitution in these terms: "The institutions of the Republic are (i) the President of the Republic, (ii) the National Assembly, (iii) the Supreme Court and the courts and tribunals". In Article 56, the Constitution of Senegal sets out the matters that are dependent on the basic law passed by Parliament and those which are governed by Executive regulations. At the same time it defines the relations between the different powers. The separation is thus well pronounced and thus there should not be overlaps which are likely to create conflicts between them since a clear division should avoid any collisions. But it is evident that, in practice, unforeseen conflicts could arise. But first we will deal with shared jurisdiction before addressing conflicts.

### I. Shared jurisdictions

The consultative powers of the Supreme Court do not necessarily fall into the area of shared jurisdiction even if there are some similarities to note. In effect, during the process of legislation, all bills examined by Parliament are also submitted for consideration by the Supreme Court, which gives its opinion to the Government. This opinion does not address the advisability of the draft bill and therefore does not bind the Government. Our study concentrates moreover on the committees of inquiry set up by the National Assembly and

by the High Court of Justice, which is exactly where an area of shared jurisdiction can arise.

## a. Committees of inquiry

A Committee of inquiry is set up by resolution of the National Assembly, and comprises Members of Parliament who are set the task of gathering information and conducting investigations. The Committee has the power to hear witnesses, in the same way as courts can. It is easy to say that these parliamentary committees have "judicial powers". In France, under the Third Republic, this doctrine amounted to an encroachment by the legislative power on the powers of the courts.

In Senegalese parliamentary history, several committees of inquiry had been set up to inquire into the running of certain public services; for example, the National Electricity Society, the hospitals, the telephone company. Under the Standing Orders, a committee inquiry did not have the power of seizure or arrest. Its purpose was to produce a report at the end of an inquiry. If the similarity of jurisdictions was barely perceptable in this case, then it was more significant with regard to the High Court of Justice.

## b. High Court of Justice

Set up in 1961, the High Court comprises seven Judges and seven substitute Judges elected by the National Assembly. The High Court itself has a preliminary committee comprising its President, four full Members and two substitutes. The public interest is exercised by the Procurator General assisted by the Advocate General.

The High Court of Justice has a dual character. First, political: in its composition it is derived solely from the National Assembly. Professional magistrates assist with its operation with regard to training. Its jurisdiction is limited to infringements committed by Ministers and government officials in the exercise of their duties. Secondly, judicial: members of the High Court take the same oath as a magistrate. In the exercise of those duties the Court is governed by the normal penal legislation. Thus, the same facts give rise the proceedings in the High Court if a member of the government is involved or the ordinary courts if a citizen is involved: hence the overlapping jurisdiction.

In practice, the High Court operates through the preliminary committee when investigating matters (powers comparable to those of an ordinary Judge) and the Committee decides whether the accused should be referred to the High Court. In its consideration, the High Court votes on guilt and attenuating

circumstances and then on the penalty. These powers have not yet been put fully into effect in Senegal. In 1962, before the Court's creation, the Prime Minister and several Ministers were tried before a special tribunal for attempting a coup d'état and condemned to heavy sentences. At that time,, it was a major news story.

Situations where the law gives shared jurisdiction to two different institutions, do not give rise to conflicts as frequently as areas where the respective jurisdictions are carefully defined by the Constitution.

## II. Conflict between parliaments and courts

Senegal chose a presidential system different from that practised in the United States. The Constitution sets out in a rational way, the powers of the different institutions of the Republic. Thus parliament has the sole right to pass laws, and has, like the executive, the right to initiate laws. At the same time, in order to preserve democracy, there is an established system of guaranteed human rights founded in the law itself and the means of upholding those liberties.

There exists a procedure for checking the constitutionality of laws which enables, in certain circumstances, a legal action on whether a law is contrary to the Constitution. The idea that a legislator can be wrong, or become oppressive is singular and is not admitted by all systems of thought. Thus it seems in the spirit of the British Parliamentary system (in which little of the Constitution is written) it could not be conceived that a legislator could make a mistake, and the very idea that a law could be annulled is unthinkable.

In Senegal, it is different and there are two means of exercising this control.

The first so called "constitutional guarantee" consists in the fact that the Constitution creates the liberties and itself governs the conditions for their exercise. In this hypothesis, it is the Constitution itself which offers the model to which laws passed by Parliament must conform. Liberties are then subjective rights, and when they are violated, those affected can follow legal means to have the actions stopped by a judge. Here, the judge concerned effectively fulfills his role as an arbitrator when he compares the law with the model provided by the Constitution to declare whether or not it conforms or not (i.e. the American system). The second, and the more generally used method provided in Senegalese law, is called legislative and regulatory. Under this hypothesis, the Constitution confines itself to creating liberties and delegates to

the ordinary legislator the power to arrange them. When this is done, the legislator is the co-author with the Constitution of public liberties.

***"Under this system there can arise a conflict between Parliament and the judicial bodies"***

Here the Constitution does not give the judge any standard to refer to because it delegates to the legislator the responsibility of setting such a standard. For example, the Constitution affirms that citizens are equal before the law without saying what type of equality is involved; so it could mean a mathematical equality or again the different treatment for people in different situations. Or again the Constitution provides that voting is secret but does not indicate what comprises secrecy, so that there are several different ways of arranging a secret vote.

Under all these hypotheses, where the Constitution gives to Members of Parliament the task of setting the details, the Deputies (as co-authors) exercise at the time they vote sovereign confidence which cannot be questioned before a judge. If such a law is challenged, the responsible judge does not rule strictly speaking as a judge, but takes a political decision and encroaches on the powers of parliament, thus creating a conflict. Because the judge indicates at that moment that his understanding of the meaning of the law should be preferred to that of the elected Members.

Thus the decision taken by the judge is all the more dangerous when it takes the form of the decision taken behind closed doors, and cannot be challenged. Although one can modify a bad decree, or replace bad law with another, under the rule of law, one can do nothing against a bad judicial decision. Thus by a singular paradox, the independence of the judge can lead to arbitrariness and constitute a menace for liberties.

## B. Introductory note on Parliament's role in interpreting the law and the Constitution by Mr. Chibesakunda (Zambia)

In Zambia, the organs of Government are the Legislature, the Executive and the Judiciary. Each of these has separate, though overlapping functions.

In strict legal theory, law-making is the domain of the Legislature while the Judiciary interprets such law and the Executive administers and executes it. However, in pratice, the organs of Government are not water-tight compartments as their functions in most cases are complementary and overlap.

The Constitution of Zambia vests the power to legislate in Parliament. Parliament consists of the National Assembly and the President. When acting within the powers conferred to it by the Constitution, Parliament can pass a law on any subject matter, even of a fundamental constitutional nature and can do so by the ordinary procedure of an Act of Parliament.

In Zambia the courts are under a duty to apply the legislation made by Parliament. It is the duty of courts to interpret the meaning of statutes and then apply them to relevant facts of particular cases. However, the power to interpret the laws is not strictly limited to the courts of law. Parliament can and does play a very restricted role in the interpretation of the law and the Constitution.

Where a Bill contains ambiguities and uncertainties in its literal meaning, Parliament has the power to amend such a Bill so as to make its meaning clear and unambiguous. Furthermore, where the ordinary meaning of an Act leads to any absurdity or repugnance, Parliament has powers either to repeal or amend such an Act. In these cases, Parliament will be exercising its interpretative powers. However, the Zambian Parliament plays a very restricted role in the interpretation of the law and the Constitution in the sense that Parliament can only act as adjudicator where a specific Act or Statutory Instrument designates Parliament as the seat of arbitration in a stipulated case. For instance, Article 18(1) of the Constitution guarantees protection from "deprivation of property". To this general rule is the exception that property can be compulsorily acquired while a state of emergency is in force under the Emergency Powers Act. The Constitution also provides for the payment of compensation for the property so possessed and gives jurisdiction to the National Assembly to determine the amount of compensation payable where the state and the owner of the property fail to agree on the amount of compensation. The pertinent provision reads in part:

"... the amount of the compensation shall in default of agreement be determined by resolution of the National Assembly."

Article 18(4) of the Constitution goes further to give the National Assembly absolute discretion in the determination of the said compensation and it stipulates:

"No compensation determined by the National Assembly in terms of any such law as is referred to in clauses (1) and (3) shall be called in question in any court on the grounds that such compensation is not adequate."

The role of Parliament, therefore, where it involves adjudication is stipulated under an enabling Act which will declare the National Assembly as the seat of arbitration. The normal procedure in such instances is that such a matter is resolved by a Select Committee of the House and the procedure of that Select Committee is governed by the Standing Orders of the National Assembly.

Parliament also plays an interpretative role through its work on the Committee on Delegated Legislation. This Committee is empowered to scrutinise all Statutory Instruments issued by the Executive to ensure that Statutory Instruments are *intra vires* the Acts under which they are issued.

In order to carry out these functions, the National Assembly has recourse to a number of Acts, amongst which is the Interpretation and General Provisions Act, Cap. 2 of the Laws of Zambia. This Act provides for the amendment and consolidation of the law relating to the construction, application and interpretation of written laws, and for the exercise of statutory powers and duties. The National Assembly is also guided by Cap. 17, the National Assembly (Powers and Privileges) Act. This Act is pertinent in that it guarantees members of the Assembly immunity from legal proceedings for "words spoken before, or written in a report to, the Assembly or to a Committee thereof by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise".

Another example of when the Zambian Parliament interprets the law and the Constitution is when an Hon. Member who feels that the Executive is infringing the Law or indeed the Constitution, by performing or omitting to perform a particular act raises a Point of Order, seeking the Hon. Mr. Speaker's ruling on whether or not the Executive would be in order to continue performing or omitting to perform a particular act.

When giving his ruling, Mr. Speaker interprets what the law is in accordance with the facts of a given case. The rulings by the Hon. Mr. Speaker on Points of Order thus resemble the decisions of judges in courts of law.

Mr, Speaker's rulings constitute precedents by which subsequent Speakers, Hon. members and Officers are guided. The Executive is required to take serious note of such rulings.

When making a ruling on 11th February, 1986 on whether or not it was legal to insist that a recruit had to be a Member of the ruling Party before joining the Zambia Army, the Hon. Mr. Speaker among other things, stated as follows:

> "Hon. Members, I find it illegal to insist on Party membership as a qualification for entry into the Zambia Army as well as the involvement of the Party in the recruitment drive because such moves are not backed by any legal instrument".

The Hon. Mr. Speaker further ruled:

> "The instructions issued by the Ministry of Defence for the initial selection of candidates into the Zambia Army to be done by Party officials at Ward and District levels and that these Party officials should write brief bio data on each candidate with special emphasis on how active the candidate has been in the Party are both illegal and unconstitutional".

The Government noted this ruling and rescinded its earlier decision which required recruits to be Party members.

It can, therefore, be seen that Parliament plays a very restricted though important role in the interpretation of the law and the Constitution. The question to be answered is to what extent should Parliament go in interpreting the Law and the Constitution.

## C. Topical discussion on areas of overlap and conflict between parliament and the courts and on the role off parliament in the interpretation off the law and the Constitution

### Extracts from the minutes off the Guatemala meeting in Apriii 1988

The PRESIDENT (Mr. Lussier) thanked Mr. Ndiaye and Mr. Chibesakunda for producing their introductory notes for the discussion. In the absence of Mr. Chibesakunda, the two topical discussions would be taken together.

Mr. NDIAYE (Senegal) recalled that in his introductory note he had described the problems which had arisen in Senegal in relation to commissions of inquiry, the High Court of Justice and the control of the constitutionality of laws. These three themes illustrated well the areas of shared competence and the areas of conflict which could arise between parliaments and the courts.

In reply to a question from Mr. LUSSIER, he said that in Senegal, the Supreme Court (which exercised control on the constitutionality of laws after they had been adopted but before they had been promulgated) could consider a question referred to it either by the President, or by a tenth of the Members of the National Assembly. In the latter case, an argument between the parliamentary majority and the opposition could be put before the Supreme Court, which would have to decide on very similar grounds to those of the Parliament. From the juridical point of view, there was no conflict between the Court and Parliament in so far as its decisions applied to all public authorities; nonetheless, one could speak of some conflict between the Supreme Court and whichever party had lost the case.

. Mr. OLLE-LAPRUNE (France) said that the doctrine in France under the Third Republic was that committees of inquiry did not hinder the judicial authority insofar as their activities as committees were aimed at producing a report and not a judicial decision.

Mr. CHARPIN (France) said that discussion of the constitutionality of a law should not necessarily be described as an area of conflict. Thus the distinction in France between the law and regulations had given rise to a number of points on which the Constitutional Council had had to pronounce. Even so, these difficulties had not become a matter for political conflict. Nonetheless, the expansion of the means by which matters could be referred to the Constitutional Council in 1974 (under which the Presidents of the Republic, the Prime Minister and the Presidents of each Chamber, sixty Deputies or sixty Senators could refer an issue to the Constitutional Court) had led to a certain politicisation of the Court. Since that date, all important or contentious legislation had been referred to the Court.

Mr. LAUNDY (Canada) said that in the countries with a British parliamentary tradition, there was some check on the constitutionality of laws. Thus in Canada, the Federal Government could refer to the Supreme Court, the issue of the constitutionality of a law before the Bill was tabled or adopted. The Court could examine the constitutional validity of a law in a case arising between individuals affected and the State.

Mr. NYS (Belgium) said there was no control on the constitutionality of laws in Belgium. Although in general, Parliament could take into account the constitutional aspects of its legislative activity and the Council of State could issue consultative opinions on draft bills, the Constitution nevertheless provided for no check on the constitutionality of legislation.

Mr. JOHANSSON (Sweden) said that in Sweden, the Legislative Council comprised judges of the Supreme Court and of the Supreme Administrative Court who could give an opinion on the constitutionality of draft laws. Article 11 Chapter 14 of the Constitution gave to the Court the power to decide the constitutionality of regulations. For laws that had already been promulgated this was only possible if the lack of constitutionality was not: in dispute. The Constitution provided for neither the form nor the procedure of such an examination. Courts were all the more careful to be extremely prudent in the application of this provision.

Mr. CASTIGLIA (Italy) said that in Italy the independence of the courts in relation to the executive power was guaranteed by the Constitution: judges were dependent neither on the Ministry of Justice nor on Parliament but on an independent body, the High Council of the Judiciary presided over by the President of the Republic and whose Members were elected—two-thirds by the judges themselves and one-third by Parliament. Thus the exercise of judicial authority was not affected by the influence of other powers. If the principle of the separation of powers was applied, there was no problem of either shared or conflicting jurisdiction between Parliement and the Courts. It was thus the role of both Chambers to make laws and for the judges to interpret them and apply them in their decisions. These principles only applied if it was argued that the authentic interpretation did not constitute a case of conflicting jurisdictions even when Parliament legislated with the sole aim of altering the interpretation which the Courts had given to a particular law. It was when the law recognised typically judicial functions not of judges but of other public bodies that the problems of shared jurisdiction and conflict could arise between Parliament and the courts.

In Italy, the Constitutional Court judged the constitutionality of laws, conflicts of responsibility between the different powers of the State, and cases raised against the President of the Republic and against ministers. It should, nonetheless, be emphasised that the Constitutional Court belonged neither to the legislative power nor to the judicial power, nor to the executive power. It existed independently from the classic separation of powers. But there were, nevertheless, parliamentary bodies which did exercise judicial functions. The Committee on Elections to the Chamber and to the Senate

were parliamentary bodies responsible for deciding on contested political elections. Parliamentary committees of inquiry could examine questions of public interest in the same way as judicial bodies could. This situation could occasionally give rise to conflicts if at the same time criminal proceedings were pending. In this latter case, a dispute would be referred to the Constitutional Court for decision.

The Court of Cassation had decided that it was impossible to resort to the courts against parliamentary committees of inquiry on provisional detention of witnesses and arrest. The Parliamentary Committee on Direction and Control of Public Radio and Television had stated that access to transmissions and distribution could give rise to this issue.

Mr. RYLE (United Kingdom) said that until the 19th Century, it had been common in the United Kingdom for there to be conflict between Parliament and the courts. This had been particularly true in the period 1648-1688. Since 1800, nonetheless, there had been a double movement towards relaxing the tension. Parliament had become careful not to impinge on judicial authority, although it could happen that Parliament had to give its opinion on certain matters, it had nonetheless avoided commenting on matters awaiting decision by the courts. The courts at the same time had recognised immunities and privileges of Parliament from 1689. Parliamentary exemption from civil liability was no longer contested. Immunity protected parliamentarians in the precincts of Parliament and on their way to and from Westminster. But this immunity did not extend to criminal matters. This latter principle had occurred on the question of national defence. A Member of Parliament had been threatened with prosecution in 1938 for having raised the issue of anti-aircraft defence of London in the course of a debate. The Privileges Committee had ruled that he should not be prosecuted.

Mr. LAUNDY said that the question of parliamentary immunity in Canada had led to different judicial decisions. Thus a minister had been convicted for having repeated within the parliamentary precincts to journalists, the opinions that he had stated during the parliamentary session. On the other hand, in the similar case, a minister had been acquitted by a court on the grounds that the opinions that he had expressed to the press were no more than an extension of the ideas that he had defended in the Chamber.

Mr. NDIAYE was surprised that this immunity had been challenged and said that parliamentary immunity in Senegal was aimed at protecting the Member of Parliament in the exercise of his duties, a concept which had been interpreted fairly broadly.

Mr. AZIZ (Pakistan) said that in Pakistan a concept of separation of powers had been adopted which left little place for conflict between Parliament and the courts. It was up to the individual citizen to argue before the courts that the application of particular law and that the Parliament could at any time amend or rectify any judicial decision which it did not consider in line with the original spirit of the law.

Mr. CHARPIN and Mr. NDIAYE said that in their countries they could not say that parliament interpreted the law, except in the sense that it could alter a law. This was where parliament exercised its legislative power more than the power of interpretation.

Mr. ANDERSON (United States of America) said that the only way in which the US Congress could oppose a decision of the Supreme Court was to amend the law which had given rise to conflict, or, indeed, seek to amend the Constitution itself.

Mr. BULATOVIC (Yugoslavia) said that in Yugoslavia there was no body with the constitutional task of interpreting the Constitution. It could be said that in carrying out the Constitution the various bodies of the State were interpreting it. Each Chamber was accustomed to present the authentic interpretation of a law on which it had voted.

> "As regards the interpretation of the SFRY Constitution and of its individual provisions, the Basic Principles of the Constitution itself lay down that that particular section shall be both the basis of and a directive for the interpretation for the Constitution and for the action of all and everyone (Section X).
>
> Accordingly, neither the SFRY Assembly nor any other body in the federation has been specifically designated under the Constitution as the body which is exclusively to interpret the provisions of the SFRY Constitution, but rather, in the Yugoslav constitutional and political system this right has been vested in everybody, organisation or individual in the direct application of the Constitution of the SFRY.
>
> As regards the interpretation of laws the applicable principle is that every assembly of a socio-political community has the right to render an authentic interpretation of the laws which it passes. In compliance with this, the Rules of Procedure of each of the Chambers of the SFRY Assembly specifically regulate the precept of the rendition of an authentic interpretation of laws. As the ruling principle is that each of the Assembly houses (the Federal Chamber and the Chamber of Republics and Provinces) autonomously passes laws falling under its jurisdiction as

an assembly, each of the Chambers also renders an authentic interpretation of the laws it passes.

According to the Rules of Procedure of the Federal Chamber regarding the rendition of an authentic interpretation of the laws it passes, the provisions of the Rules prescribing the procedure for the passage of laws (Article 276 of the Rules) are applied as appropriate.

According to the Rules of Procedure of the Federal Chamber, a bill can be introduced by a delegate, a working body of the Chamber, a joint working body of the Chambers of the SFRY Assembly and by the Federal Executive Council (Article 189 of the Rules of Procedure of the Federal Chamber).

A request for the introduction of a bill, i.e. the passage of a law can be made by the Chamber of Republics and Provinces, the assembly of a republic or the assembly of an autonomous province, by the Federal Court, the Federal Public Prosecutor, the Federal Public Attorney and the Federal Social Attorney of Self-Management, by socio-political organisations in the federation, the Chamber of the Economy of Yugoslavia and by other self-managing organisations and communities in the federation (Article 191 of the Rules of Procedure of the Federal Chamber).

All these bodies and organisations may submit a proposal or a request for the rendition of an authentic interpretation of a law passed by the Federal Chamber, which falls within its competence or within the shared juridictional ambit of the Federal Chamber and the Chamber of Republics and Provinces.

A request for the rendition of an authentic interpretation not submitted by any of the previously enumerated bodies and organisations is referred to the Commission for Petitions and Proposals of the SFRY Assembly.

If the Chamber accepts a request for the rendition of an authentic interpretation of a law, it will define the way in which the proposal for the rendition of an authentic interpretation is to be drawn up and presented to the Chamber for its discussion and adoption (Articles 224-237 of the Rules of Procedure).

Accordingly to the Rules of Procedure of the Chamber of Republics and Provinces, a formal proposal for the rendition of an authentic interpretation of laws can be submitted by the assembly of a republic or autonomous province, by the delegation of that assembly in the Chamber of Republics and Provinces, or by the Federal Executive Council as the executive body of the Assembly, but such interpretation can also be

initiated by other organs and organisations in the federation. A proposal so submitted is referred to the Commission for Legislation and Law of the Chamber, which prepares an authentic interpretation, which is then submitted to all the delegates to the Chamber and to the presidents of the assemblies of the republics and provinces and to the President of the Federal Executive Council. The proposal of the authentic interpretation of a law is then debated and adopted at a session of the Chamber, and thereafter submitted to the proponent (Articles 247-2154, of the Rules of Procedure).

May I also on this occasion draw your attention to the fact that in their constitutions and rules of procedure similar solutions exist for the interpretation of the constitutions of the socialist republics and socialist autonomous provinces, as well as of the laws passed by their assemblies."

## ANNEXES

Mr. HJORDTAL (Denmark) submitted notes on the subject of areas of overlapping and conflicts between Parliements and Courts and the roles of Parliaments in interpreting the Constitution as follows:

### *I*

### *Areas of overlap*

"In accordance with Section 3 of the Constitutional Act, Denmark has a three-way division of authority. Legislative authority shall be vested in the King (i.e. the Government) and the Folketing conjointly. Executive authority shall be vested in the King. Judicial authority shall be vested in the Courts of Justice.

Problems of where to draw the line between legislative and judicial authorities occur when a definition has to be made as to what is understood by judicial authority.

The main spheres of competence of the Courts of Justice are according to tradition:

1) Sentences for infringement of the law,
2) Settlements of disputes between citizens,
3) Court of highest justice, i.e. in the relationship between authorities and citizens.

The areas in which legislative and judicial authorities may overlap are those in which the Courts of Justice make decisions on matters concerning which legislation is inadequate or in which decisions are made which are contrary to Acts, usually older ones, on the matter in question. Both things happen to a certain extent.

Furthermore there is no clear indication stating to what degree the Folketing can take upon itself cases pending a decision of the Court. However, the Courts of Justice are not bound to follow other declarations from the Folketing than Acts. But the Folketing can adopt ex post facto Bills which do actually decide cases pending a decision of the court. The Courts of Justice decide whether such a procedure is in accordance with the division of authorities laid down by the Constitutional Act, but the practice of the Courts of Justice when verifying whether Acts are in accordance with the Constitutional Act allows for a large scope of action on the part of the legislative authority.

The sphere of competence of the Courts of Justice has often been a matter of debate but there has not been any power struggle between legislative authority and judicial authority. As mentioned, the Courts of Justice have, in practice, allowed for a very large scope on the part of the legislature and has never rejected an Act on the ground that it was contrary to the Constitutional Act. Nevertheless it should be mentioned that in 1971 one single provision in an Act, according to which a foundation was bound to hand over the original Islandic manuscripts to Iceland, did not meet with the approval of the Supreme Court. In 1980 a claimant was granted a compensation strictly in accordance with the provision on expropriation in the Constitutional Act having made an infringement provided for by the Act and which the maker of the law had not considered a question of expropriation."

## *II*

### *Interpretation of the Constitution*

"As a point of departure, it can be stated that the Folketing is omnipotent which means that it does itself interpret the Constitutional Act as

there is no link in the administration of the State above the Folketing. And the Constitutional Act does not provide for any access for the Courts of Justice to try the constitutional validity of the Acts. The question whether an Act is made in accordance with the Constitutional Act has, however, been brought before the Courts of Justice several times this century. The Courts of Justice have not proved willing to reject the question, and the Government has accepted, acting the role of the defendant. However, the examination has been conducted with great caution. It often happens during the reading of draft Bills that the constitutional validity is questioned. In such cases, problems are always pinpointed by the leading bodies of the Folketing and debated in a very thorough manner.

If an Act has been passed by the Folketing, this does not, however, imply that it is necessarily in accordance with the Constitutional Act.

1. Firstly, the question of whether an Act has been passed in accordance with the principle of constitutional validity may be asked. Up to the present, this has not given rise to any serious problems. In the year of 1941 during the German Occupation, the Supreme Court laid down that a shortcoming could not under the present extraordinary circumstances entail invalidity.
2. Furthermore, questions as to whether an Act allows for a division of competence (a division between the various links in the administration of the State) may be raised e.g. if an Act which delegates legislative authority to an administrative body is in accordance withe the Constitutional Act.
3. There may also be questions as to whether the conditions laid down by the Constitutional Act regarding the fact that an Act can decide or allow infringements on the rights of the individual person have been fulfilled, or whether infringements not provided for by the Constitutional Act occur".

The PRESIDENT thanked Mr. Ndiaye for introducing the topical discussion and members for their contributions to it.

# Public opinion and the legislative process

## A. Introductory note on consultation of public opinion during the legislative process by Mr. BAKINAHE, Secretary General off the National Development Council of Rwanda

### Introduction

It is an undeniable fact that in the political life of modern democratic societies, parliamentarians (Deputies) are seen in fact and in law as the highest representatives of the people. Public opinion and legal provisions recognise this pre-eminence.

Most basic constitutional documents of democratic states present the legislative power as both derived from the people and the expression of their will and desire to organise freely under laws reflecting their ideals. Such provisions are equally the guarantee and safeguard of law and these rights.

By definition, a Deputy or Member of Parliament is a member of a legislative assembly. (In Rwanda, the legislative assembly is called the "National Development Council"). Two questions of primary importance arise when introducing this subject: the first is to grasp the socio-political philosophy intended in these basic texts on legislative power; and secondly, then to examine the machinery provided in the same text and how it works in practice.

### 1. On the nature off a Deputy's mandate or socio-political approach

The Constitution of the Republic of Rwanda provides in Article 6: "All power comes from the nation. National sovereignty belongs to the people of Rwanda, and is exercised by their representatives or by means of a referendum."

If one admits that there is no fuller way of exercising that sovereignty than by the right to introduce one's own laws, it makes sense to recognise that the nation, in choosing its representatives to exercise legislative power, carries out that duty and right.

The first sub-paragraph of Article 52 of the same Constitution confirms the exercise of this right: "The National Development Council comprises Members called 'Deputies of the National Development Council'." Deputies are elected for a period of five years by "universal and direct suffrage". Two points arise from what has just been said: on the one hand, the Deputies are representative of the nation, elected by the nation; on the other hand, this representation is limited in time to five years.

When one examines the nature of the exercise of this representation, a preliminary definition of terms is necessary. To "represent" currently signifies "to be in the place of someone". The Deputy can represent the people as an independent representative or play the role of its spokesman (in the direct sense of the term) as a delegate. It is the first situation which applies in Rwanda. In legal terms Article 53 confers this by insisting on the strictly personal character of a Deputy's work. The terms of this article are thus "All mandation is void; Deputies are entitled to a personal vote". This supremacy of the representation of Members of Parliament is reinforced by the automatic transformation of the will of the electorate of a particular constituency into the national will. In effect, even if someone is elected only by the population in a particular area, a Deputy in Rwanda is a Deputy for the whole country.

## 2. Contacts between the Deputy and public opinion

Even if the Deputy is independent in the exercise of his mandate, he cannot forget that he is the representative of the people. On this account, he must give consideration to public opinion in the carrying out of his duties. There are two ways in which he can achieve this, the formal and the informal.

### a. Formal means

It should be noted that there are formal limits on contact between a Deputy and the population. Article 22 of the Electoral Law adopted in August 1983 provides for a list of posts which cannot be held at the same time as being a Deputy. The first paragraph states the functions of Deputy in the National Development Council are incompatible with those of:

"— President of the Republic;

— Magistrate in the Judicial Courts;

— Magistrate in the Administrative Courts;
— Magistrate in the Court of Accounts;
— Official of the Central Administration;
— Official of a public body;
— Official of an administrative commune;
— Member of the Rwandan armed forces;
— Holder of a private sector salaried post."

These incompatibilities exclude the Deputy from the positions where contact with the population is very easy.

As had been noted the mandate of a Deputy is not incompatible with a political office, such as being a Minister or active in a political organisation. In his capacity as a Member of one or other such organisation, a Deputy can have opportunities of meetings to hear points of view, and public opinion on different questions affecting national life which will assist him in carrying out his duties. It is worth noting that many Deputies in Rwanda are also Members of the local, regional or national councils of the National Revolutionary Development Movement (our single party), or of its committees or specialist bodies.

Although a Deputy is prevented from working in private or public organisations, he is not banned from belonging to private associations designed to promote social development. Their meetings also provide occasions to learn about public opinion on specific matters.

## b. Informal means

Laws and regulations to enable a Deputy to keep in touch with public opinion in an informal way have been introduced; other measures have been taken to enable public opinion to be expressed.

Thus the Constitution and the Standing Orders of the National Development Council provide in Article 59 of the Constitution, the sittings of the National Development Council should be held in public. The summary report of debates will be published. However, "at the request of the President, or from a third of the Members, or at the request of the President of the Republic, the Council can, by absolute majority, decide to hold a closed sitting". Article 17 of the Standing Orders states "sittings of the National Development Council are public". Nonetheless, if its President or a third of its Members of the President of the Republic, so request, the Council can decide by an absolute majority, to hold a closed sitting; this decision is duly published at the entrances to the building where the Council is sitting.

Holding debates in public, as provided in the two texts quoted reflects a double and fundamental aim. On the one hand, it enables the public to understand the work of their elected representatives; on the other it gives them the opportunity express themselves in appropriate ways on the proposals being considered. These ways are, first, private and direct exchange of views (at interviews) between Deputies and members of the public who are present and, secondly, the use of intermediary channels.

These two means of communication, direct and informal discussions between Deputies and the population and press are undertaken when there is a documents under consideration and at any time or when no other matter is occupying the attention of the Deputy.

Given this dual approach, the two ways constitute significant means of involving public opinion in the legislative process.

In addition to the opportunities offered to the public to follow parliamentary debates, there are other practical ways to enable Deputies and members of the public to consult each other and exchange views. One such is the parliamentary recesses between the two ordinary sessions, and the occasional extraordinary sessions which can be convened under Article 57 of the Constitution. In the same way, Article 2 sub-paragraph 1 of the Standing Orders provides that "the length of ordinary sessions cannot be less than 90 days or longer than 120 days". The agenda for parliamentary work is obligatoiy. Article 3 of the Standing Orders stipulates in its first sub-paragraph "Deputies are summoned to the ordinary session by the President of the National Development Council in a letter stating the order of business and by radio announcement at least 15 days before the sitting".

As far as extraordinary sessions are concerned, it is provided in sub-paragraph 2 of Article 5 of the Standing Orders that "the summons contains the precise order of business which the Deputies need to know and beyond which the Council cannot consider".

As far as the public is concerned, Article 18 in the Standing Orders provides "at the end of each sitting and having consulted the Council, the President fixes the time and date for the next sitting as well as the Agenda which is published at the entrance to the Council Chamber".

All these constitutional and regulatory provisions and practices have been established to enable both Deputies and public opinion to be in their different ways participants in the passage of legislation.

## Conclusions

Although he is an independent representative in carrying out his duties as a legislator, the Deputy is obliged constantly to take account of public opinion which is the justification for his existence.

Despite the existence of formal and informal means of communication between the Deputy and public opinion, as described above, it is important to know that there is no constitutional or regulatory mechanism designed to require Deputies to consult public opinion. This situation reinforces their independence and protects them from the danger of formalised communication with the people and the voters such as would, instead of improving collaboration between them, make it more difficult.

Within the scope of this brief introductory note, several practical questions on the arrangements in different parliaments ought to be raised:

1. Does the sovereign (independent) nature of the Deputy's mandate apply in all parliaments? What are the advantages and disadvantages?
2. Are there in some parliaments purely parliamentary and formal means of consultation with public opinion? If so, how do they work?
3. What is the nature and frequency of public access to parliamentary work (access to public galleries, contacts between press and Members of Parliament etc.).

## B. Topical discussion on consultation of public opinion during the legislative process

### Extracts from the minutes of the Guatemala Meetings in April 1988

The PRESIDENT (Mr. Lussier) said that Mr. Bakinahe (Rwanda) had circulated an introductory note on this subject, but had been unable to attend the session. He thanked Mr. Batumeni (Congo) for agreeing to introduce the topical discussion.

Mr. BATUMENI referred to the main points in Mr. Bakinahe's introductory note.

The PRESIDENT said that in Canada it was generally assumed that an elected MP's mandate was personal but attention had been drawn to this question recently. The Supreme Court had ruled that the current law on abortion was unconstitutional, and a section of public opinion was demanding that the government should introduce new legislation. For obvious reasons, the government was reluctant to do so and individual MPs did not want to commit themselves one way or the other on the issue, prior to the general election. These MPs were saying that they would study the views of their constituents before reaching a decision on which way to vote on any new legislation. This implied that the mandate was not personal but was dependent on the views of the constituency.

Mr. BATUMENI said that in Rwanda, a Deputy was expected to be free of influence from any source other than his colleagues. The law in Congo said that the Deputy was accountable only to the electorate for his actions. He also presented a report to the standing committee of Parliament, on the views expressed by his constituents. Members were elected on a party list in a single-party system. The voter had no choice between policies but could choose between individual candidates.

Mr. NDIAYE (Senegal) said that he thought it was wrong to describe an elected Member as a national deputy, because Members were elected on local party lists, and inevitably represented local interests.

Mr. BATUMENI said that Members were not elected by regions of the Congo, but on a single national list. Although local organisations nominated candidates for inclusion on the list, they often put up party activitists from other areas, who were chosen on the basis of their earlier work elsewhere. Elected Members were specifically forbidden from working solely for their

local organisation or region. If a Member raised only local issues in Parliament, the Speaker would remind him that he had a national mandate.

Mr. NDIAYE said that in Senegal, there were 16 different parties, so the situation was clearly different.

The PRESIDENT asked whether the rule preventing a member of the Rwandan armed forces from being a Member of Parliament prevented armed forces people from taking unpaid leave to run for election. He also asked about the reference in the introductory note to the Rwandan Parliament deciding to sit in private.

Mr. BATUMENI said that he did not know for certain the position in Rwanda. Generally speaking, the risk of losing income while running for election (with the prospect of not succeeding) might deter people from taking unpaid leave. It was unlikely that closed sessions of the Rwanda Parliament were held often. In the Congo, all legislative activity took place in public, but some administrative matters were dealt with in private.

In response to Mr. CHARPIN (France), the PRESIDENT said that public opinion in Canada was almost equally divided on the abortion issue. While some voters liked to be consulted by their Members of Parliament, others preferred to say to him that he had been elected, that he should take decisions for himself and face the consequences at the next election.

Mr. CHARPIN asked about the incompatibility between membership of the Rwandan Parliament and "the holder of a private sector salaried post".

Mr. BATUMENI said that this probably did not preclude Members of Parliament from continuing to practice in the liberal professions, such as lawyers and doctors.

Mr. NYS (Belgium) asked whether the incompatibilities listed were ones which prevented someone standing as a candidate or simply ones which could not be held at the same time as membership of the House. If holders of private sector salaried posts were excluded from running as candidates, not many people could become Members of Parliament. He recognised the obvious incompatibility between the holding of a public service post and membership of Parliament.

Mr. OLLE-LAPRUNE (France) said there were two different concepts: ineligibility (which prevented someone standing as a candidate) and incompatibility (which prevented someone holding another post while also being a Member).

Mr. BATUMENI said such problems did not arise in the Congo, because Members of Parliament were unpaid and were expected to continue their normal work, even in the public sector, when Parliament was not sitting.

Mr. ANDERSON (United States of America) said that the US Constitution prevented anyone from holding two positions of trust on the Constitution. Members who had other occupations, could not earn more than 20% of their federal salary. There was no limit on unearned income from investments (though these were usually kept in a blind trust) nor was income from partnerships restricted, provided the Congressmen played no active role in the partnership. Royalties etc., could also be earned. If a public servant wanted to run for Congress, he had to take unpaid leave of absence, during the campaign.

Mr. RYLE (United Kingdom) referred to the point in the introductory note about a Deputy being obliged constantly to consult and react to public opinion, because the central function of most Parliaments was to be a forum for consultation and communication: the sounding board of the nation, as the former British Prime Minister Lloyd George had said. If parliament reflected public opinion, it would have influence on the government, and if it v/as leading public opinion, that would also cause the government to heed it. The government (and to a certain extent the official opposition), consulted mainly the different pressure groups over proposed legislation. A backbench Member of Parliament on the other hand had a whole range of informal contacts through constituency surgeries, all-party groups, party committees, mass lobbies etc.

***"The central function of most Parliaments was to be a forum for consultation and communication"***

There were more formal ways in which public opinion was brought to bear in parliament. Recently, there had been a substantial increase in the number of petitions (which were printed but not debated) presented to parliament about proposed legislation. Select committees took oral and written evidence from official and private sector organisations. There was a procedure for special standing committees involving such evidence-taking directly in relation to a particular bill, but this was rarely used.

In addition, Members' attitudes were influenced by opinion polls, press articles, television programmes about particular legislation. The second part of parliament's role as a communications forum would be enhanced by the

introduction of television to the House of Commons. The fact parliament met in public had received considerable press coverage. It was also an important part of influencing public opinion.

Mr. BATUMENI said that it was important for Members of Parliament to be given enough time away from parliament in which to consult the public and for Deputies to have sufficient advance notice of proposed legislation in order to assess public reaction to it.

Mr. PARK (Republic of Korea) said that the rules on incompatibility had been relaxed recently to enable Members of Parliament to continue with a greater number of outside occupations, thus giving them better access to a range of public opinion. He wondered what the experience of other parliaments had been in relation to public hearings of committees.

Mrs. LEVER (Canada) said that in addition to the Canadian provisions, similar to the ones described by Mr. Ryle for the United Kingdom, it was a regular practice for committees to hold public meetings across Canada. These tended to be general inquiries, rather than hearings in relation to specific legislation. On a question whether an MP was a delegate or a representative, it was worth noting that the Canadian Study of Parliament Groups had commissioned an opinion poll in 1983 which had shown that 50% of people felt that MPs should vote in accordance with their constituent's wishes, 38% thought they should use their own judgement, and 7% thought they should tow the party line.

Mr. BATUMENI said that both the Congo and Rwanda had single party system. The party itself was closely involved in public consultation through the media and the meetings, and initiatives often flowed from the party to the government and thence to parliament.

***"The process of taking evidence from experts prior to legislation could lead to better drafted laws"***

Mr. NYS said that in Belgium the ultimate test of public opinion was obviously at elections. Between them, Members could be influenced by opinion polls and press articles. Members were specifically designated as representatives of the whole country. There had been some recent discussion for enhancing the participation of individual citizens in political life by allowing referenda, for which there was at present no provision in the Constitution. The process of taking evidence from experts prior to legislation could lead to better drafted laws.

Mr. CASTIGLIA (Italy) said that under the Italian Constitution there were various means for direct consultation of the people. A draft law could be presented to parliament if supported by 500,000 citizens. Parliament v/as not obliged to consider and pass the draft law, but it could do so if it wished. A law passed by parliament could be challenged in a referendum if that was called for by 50,000 people. The Senate and the Chamber of Deputies had recently started holding hearings in public with outside experts and private individuals as well as ministers and officials, although the committees had no decisive power over legislation, these hearings enabled Members to obtain information about proposal bills.

Mr. RYLE said, in relation to the referendum, that it used to be the practice in the United Kingdom for amendments to legislation calling for referenda to be ruled out of order on the grounds that they were unconstitutional. More recently, referenda had been held in the United Kingdom on membership of the European Economic Community, devolution and the future of Northern Ireland.

Mr. HADJIOANNOU (Cyprus) said that all plenary meetings of the Parliament of Cyprus, were held in public. Committee meetings could be attended by individuals or pressure groups. The text of draft laws was published in the official gazette and committees received a considerable number of letters or papers about them. There was no provision for referenda in Cyprus.

Mr. ORBAN (Belgium) said that televising of proceedings was a very important aspect of this subject. The Chamber of Representatives allowed television cameras in at half a day's notice whenever the TV companies wanted it.

Mr. LAUNDY (Canada) said that Canada had been a pioneer in the televising of parliamentary proceedings. When the Queen opened the Canadian House of Commons in 1957, her speech had been televised. When she came again in 1977, the cameras were installed full-time. Proceedings were broadcast live on a special channel, and recorded in what was known as an "electronic hansard".

Mr. OLLE-LAPRUNE said that television access to the French Senate required the authority of the President. The cameras were always present for topical debates in the afternoon.

Mr. ANDERSON said that some 150 of the 240 million American citizens had daily access to proceedings of the House of Representatives and proceedings of the Senate had recently started to be televised. Television of proceedings was a mixed blessing, it had led to a certain amount of duplica-

tion and repetition and a more bitter partisan atmosphere. As in Canada, no reaction shots or panning round the Chamber were allowed, though the exception to this was non-legislative debates for one hour at the end of the day. The rule had been relaxed for these debates, so that the viewers could see that an individual Member haranging the Chamber was usually addressing empty benches.

Mr. NDIAYE said that television coverage had given rise to some problems in Senegal. MPs had not been happy with the selection of extracts for broadcast by the Ministry of Information and placing the choice in the hands of journalists had not been satisfactory either.

Mr. RYLE said that the House of Lords had had television for some years. The cameras could be brought in whenever the broadcast was wanted and there was no limitation on reaction or pann shots. The House of Commons had recently agreed in principle to the televising of its proceedings.

Mr. LAUNDY said that question period was the most popular parliamentary event for TV viewers. There had been some public complaints about parliamentary behaviour shown on television.

Mr. BULATOVIC (Yugoslavia) submitted written comments as follows:

"In the Yugoslav Constitutional and political system the applicable principle is that the assemblies of all socio-political communities, including the Assembly of the SFRY, operate on the basis of delegate work and decision making. Thus when preparing laws and other acts and defining policies in the Assembly of the SFRY, the delegates of the Chamber - of the Assembly are bound to consult their constituency, (which actually means self-management organisations and communities and their delegations), on all the major issues to be regulated by a certain law or other act. This is a regular form of work through which all the voters, i.e. the entire delegate base of the Assembly of the SFRY, are consulted.

With regard to public opinion, and consultations with the public concerning various issues and acts adopted by the Assembly of the SFRY, there are several requirements in the rules of procedure. First of all, the rules of procedure of both Chambers provide for the putting up of draft laws or other bills or individual issues governed by such acts for the public discussion (articles 244 to 249 of the Rules of Procedure of the Federal Chamber and articles 167 to 171 of the Rules of Procedure of the Chamber of Republics and Provinces).

The decision on whether a draft law or individual issue will be put up for public discussion is brought by the competent Chamber of the Assembly of the SFRY, on the basis of an initiative of the proposer of the draft law or a socio-political organisation in the Federation. When a Chamber brings such a decision, it decides on the manner of announcing or submitting a draft law or individual issue for public discussion, determines the period in which it is to take place, and the manner of monitoring the public discussion and collectiny opinions and proposals produced by; it also designates a working body to be in charge of this process. After the public discussion, the working body submits a report on the opinions and proposals of our Senate, which the proposer of the law is obliged to take into account when preparing the law in question.

In addition, there is also the process of consulting certain organs, organisations and communities which is applied by both Chambers in keeping with their rules and procedure. Most often when the opinions and proposals are scientific and professional bodies are required.

Another process known and applied in parliamentary practice is that of public opinion polls, to ascertain the opinion of the public on whether the SFRY Assembly was taking appropriate measures within its field of confidence concerning various topical socio-economic development issues.

Finally, through various forms of social control over the work of the Assembly of the SFRY and of other organs of the federation, carried out either in an organised manner through the Socialist Alliance as the broadest based social organisation, and also informally, by citizens and the public through the mass media (the press, TV etc.), informal insighl: is gained into democratic and public opinion on the legislative and other work of the Assembly of the SFRY."

Mr. HJORTDAL (Denmark) submitted a note as follows:

*Referenda*

In accordance with Section 42 of the Constitutional Act, one third of the members of the Folketing may, within three weekdays from the final passing of the Bill, request that the Bill be submitted to a referendum. If the Folketing does not arrive at the conclusion that the Bill shall be withdrawn, a referendum is to be taken. For the Bill to be rejected a majority, and not less than thirty per cent of all persons entitled to vote, shall have voted against the Bill. In Subsection 6 of the Section 42, a number of Bills which shall not be submitted to referenda are enumerated

e.g. Finance Bills, Supplementary Appropriation Bills, Salaries and Pensions Bills, Bills introduced for the purpose of discharging existing treaty obligations etc. This possibility of taking a referendum has only been made use of in 1963 in connection with the land laws.

Changes in the age qualification for voters (Subsection 2 of Section 20 of the Constitutional Act) as well as in the very Constitutional Act (Section 88) shall be submitted to a referendum. Likewise questions on delegating and handling over powers to international authorities shall be submitted to referenda, if the Bill is not passed by a majority of five-sixths of the members of the Folketing (Subsection 2 of Section 20 of the Constitutional Act). The last mentioned procedure was recurred to in connection with the referendum on Denmark's accession to the E.E.C.

Consultative referenda have only been taken twice: in 1916 on the occasion of the sale of the West Indian Islands and in 1986 on the accession to the E.E.C. package. Consultative referenda are not binding on the legislative authorities in a formal sense but may be so in actual fact.

*Hearings before and during the introduction of bills*

Before (governmental) Bills are introduced, members of the public have often had the opportunity to voice their points of view to the Minister concerned. In practice, draft Bills are submitted to hearings undertaken by relevant organisations, authorities, researchers etc. Members of the Folketing, who introduce draft Bills, without consulting the Government, are of course free to decide whether a contemplated draft Bill is to be submitted to a hearing, and if so, by whom.

Before and after a draft Bill has been introduced, all individual persons and organizations etc. may address any Committee of the Folketing in writing. All requests for a personal interview with members of any of the Committees are granted, though there are no actual rules to this effect."

The PRESIDENT thanked Mr. Bakinahe for introducing the topical discussion and responding to the points made by members of the Association.

# Committee meetings in public or behind closed doors

## A. Introductory note by Mr Sune K. Johansson, Secretary General of the Riksdag of Sweden

### 1. Introduction

The demand for committee meetings to be held in public is of course greatest in countries where a major part of the work of parliament is carried out in such committees. Another significant factor is whether the members of parliament are elected personally or whether they are mainly elected to parliament as representatives of a party.

The conditions prevailing in Sweden's Parliament at present are an appropriate point of departure for a discussion about whether committee meetings should take place in public or behind closed doors. Committee meetings in Sweden have previously always been held behind closed doors. After more than twenty years' consideration of this matter, it has finally been decided to try a procedure somewhere between the two alternatives, i.e. a committee can decide by a majority vote to let its proceedings take place in public insofar as they are concerned with collecting information. Committee's deliberations and decision-making will, however, continue to take place behind closed doors.

### 2. The advantages of committee meetings behind closed doors

The fact that the public and the media do not have admittance to these meetings allows reports and discussions to be made in a cordial and relaxed atmosphere, where a committee member can, without losing face, change his opinion if convinced by argument. This increases the possibility of consensus solutions. People who are summoned to meetings to give their views or information do not hesitate to give detailed answers to committee members, since they can be assured that such information will be treated in a competent and confidential manner. When making statements in public, however, they tend to exercise greater caution.

## 3. Arguments in favour off public committee meetings

The arguments in favour of public committee meetings are more concerned with the work of parliament as a whole than a desire to change the work of the committees. It can hardly be claimed that public committee meetings would improve the prospects of committees performing their duties in a conscientious and competent fashion. The main argument is that public committee meetings would stimulate political debate and satisfy the democratic need for openness.

It is anticipated that public committees will provide material for and stimulate public discussion outside Parliament. They will help to make the work of Parliament better known and increase interest in it, in particular the work of the committees, which tends to be overlooked. They will also throw light on the relationship between Parliament and the Government. Public hearings with ministers and prominent officials will allow Parliament to exercise timely and effective control over the work of the Government.

The greatest advantage to the voting public, however, is that public committees will give them a chance to get to know the individual members of parliament better; the latter are normally rather anonymous, since media attention is almost exclusively focused on the party leaders and a handful of other prominent members.

Learning about political issues at the committee stage will give the public an opportunity to influence the decision-making process earlier than is otherwise the case.

The information given at hearings will be of greater value, since hesitation and refusal to answer questions will be plain for all to see.

## 4. The risks involved in public committee meetings

Public committee meetings may become yet another forum for party politics and tactical rhetoric. If party groups or individuals decide to take advantage of the opportunities for publicity offered by public committee meetings, the real issues may take second place. Public committee meetings require careful preparation, which leaves the committees less time to discuss the issues at hand. The reluctance of those being heard to give detailed information in public may make it necessary to repeat hearings behind closed doors.

Public committee meetings may also detract from public interest in the debates at Parliament's plenary meetings.

## 5. Organization and other practical matters

In order to hold public committee meetings there must be suitable *premises* with sufficient room for the press and the public. They must be conveniently situated and appropriate for the purpose, as well as having the necessary equipment. Special attention must be paid to the safety aspects and the need to make records of the meetings.

A great deal depends on *the conduct of the meetings* by the chairman of the committee. Generally speaking, all committee members are anxious to have the opportunity to appear in public. For the sake of fairness, the best solution may therefore seem to be to divide the available time in accordance with some kind of mathematical formula. However, this may entail the disadvantage that careful discussion of the relevant issues will become subordinate to party political speeches of a general character.

Ultimately, of course, the success or failure of public committee meetings will depend on *the conduct of the committee members.* There is a risk of the members' performance being judged by its entertainment value on television. The debating traditions of Sweden's Parliament do not, however, suggest that there is any risk of public committee hearings degeneraing into publicity stunts. All that is required of the committee members is that they speak intelligibly and to the point and with sufficient conviction to capture the attention of the audience.

## 6. Press comments on the Swedish **public** committee hearings

The comments on the first public committee hearings organized by the Swedish Parliament at the start of 1988 varied a great deal. The papers that had advocated the reform were generally favourable, while those that had opposed the idea generally found their apprehensions well-founded. The following leader headlines from a selection of daily newspapers will give some idea of the widely differing reactions:

*Successful première*
*Parliamentary show a hit*
*An interesting experiment*
*Well-produced and undramatic première*
*Low-key parliamentary première*
*Committee hearings not a success*
*Committee hearings a failure*

*Devastatingly dull*
*What a sleeping pill*

After the system of public committee hearings had been tried for a few months, a newspaper that had been critical from the start drew the following conclusions:

> "Whenever Swedish politicians appear in public, and that goes for committee hearings too, they play a party political role; in other words, they act in a way best calculated to benefit their own party. ... But the most serious thing is that the work of the committees takes on a new character too. The previous arduous, usually secret, discussions have been moved to new surroundings, and sometimes with new participants."

This criticism was challenged by other newspapers. To quote a typical view:

> "The public committee hearings cannot, however, be dispensed with out of hand. The prospect they offer of vitalizing the work of Parliament and the information given to the public should definitely not be rejected before it has even been given a fair try."

## 7. Questions about committee meetings in the parliaments off other countries

1. What is the role of the committees/in examining the issues?
2. Does the Constitution contain any provisions stipulating whether the meetings should be public, completely or in part?
3. Who decides in a particular case whether a meeting is to be public and, if so, to what extent?
4. Are the committees themselves at liberty to decide about the premises, debating rules, record-keeping etc. in the case of public committee hearings?

## B. Topical discussion

### Extracts from the minutes of the Sofia meeting in September 1988

The PRESIDENT (Mr Lussier) thanked Mr. Johansson (Sweden) for the introductory note which he had circulated, and which perfectly addressed the advantages and disadvantages of public and private meetings of committees.

Mr. JOHANSSON said that since his introductory note had been circulated in advance he would only give a brief resume of its main points. He would also like to add some remarks on the hearings before the Constitutional Affairs Committee during the summer on a subject which had led to the resignation of the Minister of Justice.

The fact that hearings were now taking place in public, after more than 20 years of discussion, had not brought about a significant change in the political life of Sweden. A meeting took place in public only if the majority of the committee concerned decided accordingly. Only evidence-taking sessions were held in public. Deliberative meetings of committees continued to take place behind closed doors. One obvious advantage of having private meetings, was that Members of the committee were not deterred from changing their mind in the course of a discussion. Furthermore, witnesses tended to be less reticent in giving information to Members of the committee if they knew that it would not be divulged outside the committee.

***"The principal aim of public meetings was to make the work of Parliament and its members better known..."***

The decision to hold meetings in public had not significantly improved the working methods of committees. The principal aim of public meetings was to make the work of parliament and its Members better known, to improve parliamentary control of the government, and to give the public greater influence on the decision-making process. The evident risk of public sittings of committees, was that they had become a form of entertainment to the detriment of their more serious and proper purposes. Preparation for public meetings took much time. Furthermore, it was possible that public interest could move from plenary sittings of the Chamber to committee meetings. The comments in the press after the first public meetings were extremely varied. Some newspapers said the experience had been interesting and it had been a great success, while others, on the other hand, found it disappointing, boring and sleep-inducing.

During the inquiry into the assassination of Prime Minister Olaf Palme, there had been major developments during the summer; the Minister of Justice had been forced to resign and senior police officers had encountered great difficulties. The controversy had probably been exacerbated by the fact that an election campaign was imminent. The Constitutional Affairs Committee had organised a series of public hearings, during which the Prime Minister, the Minister of Justice, the prosecutors and senior police officials had been questioned. These hearings had shown: (1) that technical discussions on the activities and conduct

of ministers and senior officials were much more interesting than political debates; (ii) the practice of allowing each Member of the committee (of which there were 15 in all) to put at least one question, made the hearings less effective; (iii) that Members of the committees, in general, lacked the knowledge and experience to pose pertinent questions; (iv) the Members had some difficulty sometimes in distinguishing between their role as a committee Member and their role as a politician, which led to some arguments during the public meetings of committees.

Mr. JOHANSSON recalled the main questions that he had posed in the introductory note, and which he hoped would be addressed by those taking part in the discussion, namely, (i) what were the rule governing the public hearings of committees in each country; (ii) who decided whether a meeting would take place in public, and to what extent, and (iii) were committees at liberty to decide for themselves where the meetings were held, what rules governed them, and in what form the proceedings were reported.

In reply to a question from Mr. CHARPIN (France), Mr. JOHANSSON said that initially public hearings had taken place in the usual committee meeting room. The change to the unicameral parliament had enabled two rooms to be made available for public committee meetings. In the first, a witness appeared in front of Members of the committee. In the second, the witness sat next to the Chairman and Vice-Chairman of the committee, opposite the committee Members. In each room, there was no problem about access for the public and television.

Mr. AMELLER (France) said he was particularly interested in the topical discussion, because the National Assembly was considering changing its procedures to enable committees to meet in public for hearings. At present, all the committee meetings took place behind closed doors. Article 46 of the Rules of Procedure provided, in effect, that the minutes of committee meetings were confidential. The only publicity comprised the press releases published after each meeting, and the publication, in agreement with the individual concerned, of a summary report, of all or part of certain hearings conducted by the committee. This means of publication had been introduced in 1969, but had been used only very rarely. He would at a future meeting of the Association give details of the proposals currently being studied and how they began to work in practice.

Mr. CHARPIN (France) said that no such reform was planned in the French Senate.

The PRESIDENT said that the Canadian Constitution did not deal with the work of parliamentary committees. Committee meetings were held in public, unless the committee decided otherwise. It was rare for a committee to decide to meet in private. It would, on the other hand, require a decision of the Chamber for committee proceedings to be televised.

Mr. JOHANSSON said that he was surprised by the distinction between committee proceedings being held in public, and them being broadcast. Such a distinction did not exist in Sweden, since television was a means by which the hearings were given publicity.

Mr. LAUNDY (Canada) said that the relatively large number of permanent committees in Canada (20 in each Chamber), explained why committees could not decide themselves whether their proceedings would be televised or not. The technical problems of broadcasting committee proceedings, as well as the competitition between different committees to have their hearings televised, explained why only the two Chambers at a plenary sitting could decide how much publicity should be given to a particular committee meeting. It was the case that if a committee decided to meet behind closed doors, the vote leading to that decision was itself secret. Many problems had arisen in Canada from the press finding out pieces of information which had been revealed at private committee meetings. These leaks were not attributed to the committee staff, but were often to Members of Parliament (particularly the Opposition), or other individuals invited to take part in private committee meetings.

In response to questions from the President, Mr. JOHANSSON said that, to a certain extent, the deliberative meetings of committees were published, insofar as the remarks of individual Members of the committee could be annexed to the official report. It was therefore fairly easy to find out what position had been taken by a political group, or by each Member on each of the committee's decisions.

Mr. JUUL (Denmark) said that in accordance with the Standing Orders of the Folketing, all committee meetings took place behind closed doors. Nonetheless, the President of the Folketing, concerned about the lack of interest shown by public opinion in plenary debates, had recently said that he was in favour of greater publicity for committee discussions.

***"All committee meetings took place behind closed doors"***

Mr. WAN ZAHIR (Malaysia) said that committee meetings were not in general open to the public or to television. General opinion in Malaysia was that decisions on public matters should take place in private.

Mr. BAKINAHE (Rwanda) said that the Constitution of Rwanda made no provision about whether committee meetings were heard in public or in private. The situation was rather ambiguous. Committees had never commented on whether greater publicity should be given to their work. He wondered whether greater publicity for committees might not reduce the attention given by the public to plenary sessions.

Mr. JOHANSSON said that in Sweden many political commentators ascribed the lack of public interest in plenary discussions to the fact that only the last phase of discussion of a document took place there. Public opinion could take little interest in proceedings whos results seemed to be predictable in advance, and which were conducted in highly political conditions. The publicity given to committee meetings had led the Swedish public to show a greater interest in parliament and a certain surprise at the serious work carried out by committees.

Mr. KATALA (Zambia) said that all committee meetings in his parliament took place behind closed doors. Nonetheless, the results of those meetings were published in the form of the committee's report to the Assembly on the document which had been discussed.

Mr. HADJIOANNOU (Cyprus) said the situation was in every respect the same in his country, although many proposals had been made for giving greater publicity to committee meetings.

Mr. ANDERSON (USA) said that in the United States committee meetings took place in public, unless a committee decided to the contrary. That decision in itself, would have to be taken in public. He recalled that the congressional buildings had been built in 1908 and leant themselves to public meetings. This did not mean to say that all committees meetings were covered by television. It was up to the committees themselves to decide, and negotiate the technical arrangements for broadcasting.

## *"Some committees only met behind closed doors"*

There were no general rules on the practicalities of the public committee meetings, insofar as each committee was independent. Few Americans followed televised broadcasts of committee debates on the grounds that the subjects were very technical. On the other hand, high television ratings had been achieved by the committee inquiring into the sale of arms to Iran and, in general, by most committees of inquiry. There were some committees which only met behind closed doors, these included the Ethics Committee, and all meetings of commit-

tees dealing with matters such as defence or the vital interests of the United States. This form of indirect participation for the public in the legislative process caused a fair degree of interest among television viewers who followed proceedings (as evidenced by the post and telephone calls received at the House of Representatives and the Senate).

Mr. ROLL (Federal Republic of Germany) said that the procedure which applied in the Bundestag was almost identical to that described by Mr Johansson. On the initiative of a quarter of its Members, a committee could decide to hold a public sitting to hear certain witnesses or individuals. Two issues were currently under discussion in the Federal Republic of Germany: (i) the Liberal Party wanted to amend the Rules to provide that in principle all committee meetings would be in public, unless the decision was taken to the contrary; (ii) another group, of comparable strength, wanted to give the committee a proper legislative role, and in this case, their proceedings would have to take place in public.

Mr. JOHANSSON commented that the procedure in the Federal Republic of Germany tended to reinforce the rights of the opposition insofar as it gave to a minority of Members the possibility of requiring that a sitting of a committee be held in public.

***"Reports were based on evidence heard in public"***

Mr. MBOZO'O (Cameroon) said that the Standing Orders of the National Assembly provided that committee meetings should take place behind closed doors. Nonetheless, Ministers, as well as Members of Parliament, who wished to commend the text under discussion, could take part in the committee's work. At the end of each committee meeting, a press release was issued by the committee staff. Furthermore, the committee could decide to transmit to the Assembly the full minutes of its sitting.

Mr. WHEELER-BOOTH (United Kingdom) said that committees had only been set up in the House of Lords since 1972. All their meetings took place in public and, unlike in the House of Commons, proceedings of committees could be broadcast on television. The Appellate Committe (the House of Lords in its judicial capacity) had always met in public. The general principle for committees of inquiry was that their reports were based on evidence heard in public. The power to take evidence in private existed, but was little used.

Mr. SWEETMAN (United Kingdom) said that as a general rule committees had met in private until about 20 years ago. Nowadays evidence-taking sessions were held in public unless they touched on matters of national security or commercial confidentiality, but deliberative meetings had to be held in private. The public meetings of select committees were not thought to be the main reason for a decline in interest in the plenary sittings of the House. Nonetheless, the public nature of committee work had contributed greatly to its popularity among Members.

Mr. YOO (Republic of Korea) said that the Constitution did not touch on this matter specifically. It was up to each of the 16 committees to decide whether or not to publish their proceedings.

Mr. M'BARI (Central African Republic) said that the Standing orders did not cover this question in his parliament. He had found the discussion extremely useful and hoped that Mr. Johansson's conclusions would provide for a young parliament, such as his own, some guidelines to enable it to give greater publicity for its committee meetings.

Mr. MAHRAN said that the Egyptian Constitution did not cover whether committee meetings should be held in public. Standing Orders of the Assembly, on the other hand, said that meetings would be held in public unless the committee decided to the contrary. Even if they did so, experts on economic, political or social or cultural matters could still be invited to attend committee's meetings. Interested citizens could always write to a committee expressing their views on its agenda. The press and mass media could only attend a committee meeting if authorised to do so by the Chairman of the committee. Public meetings of committees were held in the National Assembly buildings, unless, with the permission of the President of the Chamber, the committee decided to meet elsewhere. For each meeting a list of those present and a summary report of discussions held and decisions taken was compiled. A verbatim report could be produced if a majority of Members of the committee, the President of the Assembly or the government so wished. The President of the Assembly could decide to print and publish the summary reports and to give them whatever publicity he thought necessary.

Mr. HALIM (Sudan) said that there was no provision in the Constitution of Standing Orders governing whether the committees met in public. Under committee procedure, meetings were held behind closed doors. The press and other information agencies' representatives were allowed to attend at the Chairman's discretion. Although committee meetings were generally held in

the buildings of the Assembly the Chairman could decide, after consultation with the Speaker, to meet elsewhere.

Mr. KHAIR (Jordan) said that the Standing Orders did not require committee meetings to be held behind closed doors. Nonetheless, the committee regulations expressly provided for meetings to take place in private. Experience had shown that public hearings did not enable all Members of Parliament to express themselves completely freely. Members were particularly reluctant to modify their views once they had been expressed in public. Furthermore, witnesses seemed more reluctant to give full information at meetings held in public.

The PRESIDENT said the discussion had been most informative and suggested that Mr. Johansson circulate as a mini-questionnaire the questions at the end of his introductory note with the aim of making a short presentation at the session in Budapst. This was *agreed.*

## C. Summary of replies to Mr Sune Johansson's mini-questionnaire (February 1989)

See on the following pages.

| | No provision | Principal rule | | Exception through | | Decisionmaker | Decisionmaker's means of influencing the organization and conduct of meating in public | Remarks |
|---|---|---|---|---|---|---|---|---|
| | | Closed | public | provisions | separate decision | | | |
| AUSTRALIA | | | | | | | | |
| Hearings | | | x | | x | The committee | Yes | |
| Deliberations | | x | | | | | | |
| AUSTRIA | | x | | | | | | Amendments suggested in order to make exceptions possible |
| BELGIUM | | | | | | | | |
| Senate, hearing | x | | x | | x | The committee | N.a. | |
| Senate, deliberations | x | x | x | | | | N.a. | |
| House of Representatives | | x | | | | | No | |
| BRAZIL | | | x | x' | x | The committee | Only detail | " War declaration, transition of foreign troops |
| CAMEROON | | x | | | x | N.a | N.a | |
| CANADA | | | | | | | | |
| Senate | | | x | | x | The committee | Yes, with the approval of the senate | |
| House of commons | x | | x[2] | | x | The committee | Publication of protocols | [2)] Meetings concerning committee reports to the House are closed |
| CHINA | | | x | | x | The committee | Yes | |
| DENMARK | x | x | | | x[1] | The chairmanship of the Parliment | | [1)] Few exceptions. The holding of public hearning is being discussed in Parliament |
| EGYPT, ARAB REPUBLIC OF | | x | | | x | The chairman of the committee | Place of meeting outside the Parliament need permission by the Speaker | |

| | No provision | Principal rule: Closed | Principal rule: public | Exception through: Provisions | Exception through: Separate decision | Decision-maker | Decisionmaker's means of influencing the organization and conduct of mealing in public | Remarks |
|---|---|---|---|---|---|---|---|---|
| EUROPEAN PARLIAMENT | | | | | | | | |
| opinion and advice | | | x | | | | Place of meeting outside the Parliament need permission by the speaker | |
| other meetings | | x | | | x | The committee | Place of meeting outside the Paliament only after agreement with the Bureau of Parliament | |
| FRANCE | | | | | | | | |
| inquiring and control | | x[3] | | | | | | [4] Breach against the rule of closed meetings is a criminal offense |
| other meetings | | x | | | x[5] | The committee | Yes | [5] Exceptions permitted only for hearings |
| GERMAN FEDERAL REPUBLIC | | | | | | | | |
| Bundestag, hearings | | | x | | | | Participation, stenographer services etc. | |
| Bundestag, deliberation | | | | | x[61] | The committee | Minutes only by permission by the Speaker | |
| Bundesrat | | x | | | x | The committee | Place of meeting outside the Parliament only by permission of the Speaker | |
| ISRAEL | | x | | | x | The committee | Rules of debate | |
| ITALY | | | | | | | | |
| Senate | | | x[71] | | | N.a. | No | |
| Chamber of Deputies | | | x | | x | The committee | Yes | |

| | No provision | Principal rule: closed | Principal rule: public | Exception through: provisions | Exception through: separate decision | Decision-maker | Decisionmaker's means of influencing the organisation and conduct of meating in public | Remarks |
|---|---|---|---|---|---|---|---|---|
| KOREA, REPUBLIC OF | | | | | | The committee[8] | Yes | [S)] No. Principal rules |
| NETHERLANDS<br>Second Chamber | | | x | | x | The committee | Yes | |
| NORWAY | x | x" | | | | | | [9)] At the present no exceptions to the principal rules. Open hearings have been proposed |
| POLAND | x | | x | | x | The committee | Only details | |
| RWANDA | x | x | | | x | The committee | N.a. | |
| SPAIN<br>Senate | | | x | | x | The committee | No | |
| Congress of deputies | | | x | | x | The committee | N.a. | |
| SUDAN | | x | | | x | Chairman of the committee | Place of meeting outside the Parliament only after consultation with the Speaker | |
| SWEDEN<br>hearings | | x | | | x | The committee | Yes | |
| deliberations | | x | | | | | | |

| | No provision | Principal rule: closed | Principal rule: public | Exception through: provision | Exception through: separate decision | Decision-maker | Decisionmaker's means of influencing the organisation and conduct of mealing in public | Remarks |
|---|---|---|---|---|---|---|---|---|
| UNITED KINGDOM | | | | | | | | |
| House of Lord' evidence | | | x | | x | The committee | Place of meeting outside the Parliament by authorization of the House of Lords only | |
| deliberations | | x | | | | | " | |
| House of Commons, debating committees | | | x | | x[10] | The committee | Proceedings | [10] In practice only in public |
| inquiry committees | | | x | | x[11] | The committee | " | [11] Exception granted only for evidence, not deliberations |
| UNITED STATES OF AMERICA | | | | | | | | |
| House of Representatives | | | x | | x | The committee | Yes | |

# Civil liability of members of parliament for opinions and votes given during their parliamentary duties

## A. Introductory note by Mr. Giovanni Bertolini, Director of the Italian Senate

According to Italian law, the basic principle about civil liability, is article 2043 of the Civil Code. The text of this article is more or less the same as article 1382 of the Code Napoleon: it provides that an individual is responsible for making good any unjustifiable damage he does to another.

Thus, the responsibility only arises if unjustifiable damage is done; unjustifiable damage only occurs if someone has acted contrary to the law.

Article 68, first sub-paragraph of the Constitution governs the civil liability of Members of Parliament for acts committed in the course of their parliamentary duties. This article states that "no Member of Parliament can be sued for the opinions or the votes given in the course of his duties".

According to Italian juridical doctrine, this provision does not amount to immunity but to absolute exclusion of liability. Thus the opinion and votes expressed by Members of Parliament in the course of their duties can never amount to a criminal, administrative or civil offence "precisely because such an offence presupposes the stepping over of some legal boundary; and the exercise of a parliamentary mandate knows no such boundary". These are precisely the words used by the Court of Cassation in ruling number 4 of the 12 March 1983.

Perhaps the distinction between immunity and the absence of liability could be considered theoretical and abstract. On the contrary, it arises from the difference between first and second sub-paragraphs of article 60 of the Constitution. The first has been dealt with. The second provides that no Member of Parliament can be proceeded against for a criminal offence, nor arrested or otherwise deprived of his personal liberty without the authority of the Chamber to which he belongs. Thus immunity from criminal jurisdiction

depends upon the parliamentary mandates; once that mandate has expired, there is no limit on criminal action. But exclusion from any kind of civil liability is absolute and permanent: thus even after someone has ceased to be a Member of Parliament, he cannot be held liable for opinions in the votes he has expressed during the period that he was a Member of Parliament.

Having said this, it is important to take into account the extent to which this provision applies. What precisely are the parliamentary duties which exclude civil liability of Members of Parliament? Four theories can be advanced:

1. exclusion of liability applies only to opinions and votes given in parliament. This view was not contested when the statute made under the authority of King Charles Albert in 1848 was in force; but this statute although analogous to that of the subsequent republican constitution, used a form of words slightly different insofar as it mentioned the opinions and votes expressed *in* the Chambers;

2. that exclusion from liability applies also to acts even if done outside parliament, which are no more than a repetition of parliamentary actions. The obvious example of this is the publication in a magazine of the text of a parliamentary question or speech;

3. that exclusion from liability also covers certain acts carried out beyond the Chambers which have a functional link with the opinions and votes expressed in parliament. For example, an article in a magazine in which the Member of Parliament reports the comments and judgements already expressed in parliamentary proceedings (questions, interpellations, speeches) before developing them and using them as a basis for more extended political debate;

4. finally, the exclusion of liability concerns all the political activities of Members of Parliament, even if they have no direct link with what could be described as parliamentary proceedings. This exemption from liability would apply also in this case, to public declarations, speeches made and votes given in party meetings, or during political gatherings etc.

This latter thesis which could perhaps be described as extremist, has some supporters among university professors but has not been followed by the courts or either House of Parliament. These bodies have rather preferred the view that exclusion from liability covers opinions and votes expressed, even outside parliament, but necessarily linked to parliamentary activity.

The Senate of the Republic has recently decided two cases on this matter.

On 26 April 1986 an official of the Secret Service took legal proceedings against a Senator for remarks he had made at a public meeting, and these remarks were subsequently published in the book. The meeting concerned the illegal activities of a lodge of freemasons in which several senior figures had been involved. Both Chambers had set up a parliamentary commission of inquiry into the same issue and the Senator concerned was Vice Chairman of this committee. The remarks he made at the public meeting repeated arguments that he had put forward in the work of the committee.

After long study of this matter, the Committee on Elections and Parliamentary Immunities in the Senate declared that the opinions expressed by a Member of Parliament should be considered as expressed in the exercise of his parliamentary duties and therefore that he should be exempt from any civil liability. Following this, the plaintiff withdrew his legal action.

In the second case, a Senator published in his party magazine a long interview in which he accused certain magistrates in Rome of having been too familiar with another party and having assigned certain cases (above all the appointment of official receivers, which was fairly lucrative) only to lawyers of the same political faith. The interview was an extension of the substance of the question to the Ministry of Justice, although some fairly personal judgements were added to it. The magistrates claimed damages on grounds of harm to their reputation. Once again, the Committee on Elections and Parliamentary Immunities decided that the Senator had expressed his opinions in the course of his parliamentary duties and any injury to the plaintives could not give rise to damages. The Committee's report was agreed to by the Senate which stated that the civil action for damages was covered by this declaration that liability was excluded.

Nonetheless, the matter was not closed because a civil court judge to whom the decision of the Senate was remitted by the Minister of Justice, contested it. A judge, from the Appeal Court in Rome, held that it was within the authority of the judiciary to examine the limits of the civil liability of Members of Parliament, because article 68, first sub-paragraph, of the Constitution did not exclude any jurisdiction of the courts. On the other hand, the Senate believed that it was up to the Chambers to interpret the constitutional provisions which guaranteed freedom of action of the Chambers themselves and their Members. Contrary to what had been decided by the Senate, the judge raised what is described in our Constitution as a conflict of powers. This was a controversy that had to be decided by the Constitu-

tional Court; this matter was raised in January 1988 and has not hitherto been decided by the court.

This conflict between the legislative and the judicial authority shows a little known but very complicated aspect of the constitutional provision which exempts Members of Parliament from civil liability for the votes and opinions expressed in the course of their duties. If a Member of Parliament is forewarned of an assassination, a theft or a fraud, the constitutional and the criminal code are very detailed in this respect: criminal proceedings can neither begin not continue and the judge has to apply for authority to the Chamber to which the Member of Parliament belongs. No similar provision covers the case against a Member of Parliament for something done in the course of parliamentary duties. In practice, the two Chambers have always declared the exclusion from civil liability of their Members when a particular case has been drawn to their attention indirectly: thus it is the Members who have informed the President of their Chamber about a case registered against them. It is the absence of a special procedure which has forced the Appeal Court in Rome to judge itself competent to apply the constitutional provision mentioned above, and thus to assert the jurisdiction which Parliament, jealous of its autonomous sovereignty, considers belongs to itself under the constitution.

The essential question is, whether the civil liability of Members of Parliament for the opinions or votes given in the course of their parliamentary duties should be protected or not. In practice, even if such exemption is covered by the Constitution, it could be supposed to be based on an out of date privilege. For example, it provided immunity for an entrepreneur or a manager who uses it as a protection when putting to ministers, questions which denigrate his competitors and then circulating them to the press. All this could well be considered inadmissible.

There are two possible replies to this which depend upon what one thinks of the role of immunities and privileges which the Constitution gives to Members of Parliament. In practice:

1. either one thinks that constitutional privilege is aimed at protecting parliament from any unjustified interference by other organs of the State; in this case only immunity and exemption from criminal liability are justified;
2. or one thinks that constitutional privilege is aimed at protecting parliament against any outside pressure from whatever source, including in a serious case, the recovery of civil damages: and thus the exemption from civil liability is justified. For sure, there is a price to pay in terms of judicial rationality for such a wide defence, which could nonetheless lead to a

serious breach of or injustice to the rights of some other citizen (the rights of honour, reputation, integrity and freedom of private enterprise).

Perhaps it should be recognised that there is an irreconcilable contradiction in the law which can never be resolved.

## B. Topical discussion

### Extracts from the minutes el the Sofia meeting in September 1988

The PRESIDENT (Mr. Lussier) said that unfortunately Mr. Bertolini was unable to attend the session, but he was grateful to him for the introductory note which had been circulated. He would introduce the topical discussion himself. He said that Mr. Bertolini's introductory note set out the issues very clearly on the distinction between civil and criminal liability and between immunity and complete absence of liability.

Mr. DE CESARE (Italy) said the whole concept of immunity was a special institution in Italy. It dated back to the time of the monarchy, but had survived it. Proceedings in criminal cases could only be taken against Members of Parliament if their immunity was lifted. Attempts had been made to define the limits within which a waive of such immunity would be allowed. An informal code now covered this.

Mr. MAHRAN (Arab Republic of Egypt) spoke as follows:

"The provision of guarantees of parliamentary independence constitutes one of the necessary consequences of the application of the principle of separation of powers, since the parliament cannot perform its functions ideally, unless its independence and that of its Members is ensured, so as not be influenced by temptation, intimidation or threat by other authorities.

Thus in order to protect the Member's freedom, and secure parliamentary independence, the Egyptian Constitution provides a set of guarantees, primarily the absence of liability, namely, Members of Parliament are not to be blamed for the opinions and thoughts they express in the Assembly's sittings or committee meetings.

In accordance with the above mentioned stipulation, the Egyptian Constitution provided for Members of Parliament, freedom of thought and opinion and therefore they are excluded from liability for whatever views or ideas they express in favour of public interest, while exercising

their constitutional competences in the Assembly sittings or committee meetings. This is known as the principle of 'parliamentary exemption' covering speeches made, debates conducted and decisions taken with no civil liability. Exemption from such liabilities extended to the post-membership period like the case with the 'parliamentary immunity' being connected with their parliamentary term. In brief, absence of liability is absolute and permanent.

Absence of liability is not extended to actions taken or opinions given by the Member of Parliament to the press or outside the Assembly, even if they are closely linked to his exercise of parliamentary functions. Moreover, it is not extended to political activities with Members of Parliament in the course of their meetings or party catherings. If democracy, as encompassing freedom of thought, opinion and criticism, based on objective dialogue, there must be a distinction between presentation of thought and expression of opinion on one hand, and levelling of charges or offences involving contempt on the other hand."

Mr. KHAIR (Jordan) said that it was well known that there was a difference between civil liability and penal liability. In the Jordanian Constitution and in the Standing Orders of the Parliament, a Member of Parliament enjoyed parliamentary immunity which prevented the taking of any action against any opinion expressed within the premises of Parliament. However, and MP could not do the same thing outside the parliamentary premises, as such action was not covered by parliamentary immunity as provided in Articles 86 and 87 of the Constitution, which read as follows:

*Article 86 (i)*

No Senator or Deputy may be detained or deprived during the currency of the sessions of the National Assembly, unless the House to which he belongs decides by an absolute majority that there is sufficient reasons for his detention or trial, or unless he was arrested 'flagrante delicto'. In the event of arrest in this manner the House to which he belongs should be notified immediately.

*Article 86 (ii)*

If a Member is detained for any reason while the National Assembly is not sitting, the Prime Minister shall notify the Senate or the Chamber of Deputies when it reassembles of the proceedings which were taken against him, coupled with the necessary explanation.

*Article 87*

Every Senator or Deputy shall have complete freedom of speech and expression of opinion within the limits of the internal regulations of the Senate or Chamber of Deputies, as the case may be. They shall not be answerable in respect of any vote which he had cast or opinion expressed or speech made by him during the meetings of the house."

So, pursuant of Article 86, if a Member of Parliement committed an action that made him subject to civil liability, he would be liable. If he committed an action that made him subject to penal liability, he would be liable penally, but plenal action might not be taken against him, except after the lifting of parliamentary immunity.

Also a difference should be drawn between the pure parliamentary work as specified in Article 87 and the non-parliamentary work even if carried out by the MPs to themselves as specified in Article 86. Examples of pure parliamentary work were speeches and opinions given by MPs in the exercise of their jobs within the parliamentary premises. The non-parliamentary actions are either done by them within the parliamentary premises, like beating, or defamation etc., or outside it like conducting demonstrations, participation in strikes etc. Which any person could do. He asked Mr. de Cesare to elaborate what he meant by "civil liability" and its relationship with parliamentary immunity. Since the Jordanian Constitution did not provide for lifting of parliamentary immunity for civil action. In Jordan, parliamentary immunity was enjoyed by the Member of Parliament during the time the House was in ordinary or extraordinary sessions only and did not apply outside those sessions.

Mr. LAUNDY (Canada) said that "rights and immunities" was a better phrase than parliamentary privilege, but it had never been fully defined and the practice varied greatly between parliaments. In Canada, Mi's were protected from any form of prosecution for what they said in Parliament, but there was no protection against an action for defamation if a Member repeated the same thing outside. On the facts of the two Italian cases cited in the introductory note, there would have been no protection in Canada. Similarly, there was no protection from criminal prosecution if a Member attempted to take refuge on parliamentary premises from criminal proceedings, the Speaker would order the Serjeant at Arms to turn him over to the police. The Member of Parliament's freedom from arrest had only ever applied in civil cases and was no longer relevant, because people were not arrested for civil debt. One case in Canada had involved a French-speaking MP who was given a parking ticket and several warnings to pay it, all of which were in

English only. He refused and was arrested within the parliamentary grounds. The Committee of Privileges held that the police had acted properly. Although Parliament claimed the right to decide its own cases with respect to penal jurisdiction, conflicts had arisen when, in the courts, a defendant had claimed parliamentary privilege. Usually the courts and Parliament tried to avoid conflict.

## *"Conflicting decisions on the extent of privilege"*

There had been conflicting decisions on the extent of privilege. In one case, a minister repeated outside the Chamber but still on the premises, a statement he had made in the Chamber. His remarks touched on proceedings before a court. He was convicted by a court of contempt of court. In another case, the distribution outside parliament of a document containing a speech made in parliament in exactly the same terms was held to be covered by privilege. Some people felt that it was an abuse of privilege for someone to use it to defend themselves on an occasion when otherwise they would only be able to do so by taking legal proceedings. Was a Member of Parliament defending his reputation using privilege for personal or parliamentary reasons? No test cases had yet arisen in relation to the televising of proceedings. Canada had not followed the Australian example of enacting legislation to grant absolute privilege in relation to radio broadcasts of parliamentary proceedings.

Mr. SWEETMAN (United Kingdom) said that the same principles applied in the United Kingdom as in Canada, except that a verbatim report on radio or television of what had been said in the Chamber was covered by privilege, as a result of a recommendation of a joint committee of the House of Commons and House of Lords.

Mr. ANDERSON (USA) said an interesting legal case was still before the courts in America. A legal services corporation had filed suit against a Congressman for action he had taken in Congress. The case was rejected by the courts at first instance, but an action for its reinstatement was currently before the Supreme Court. The case turned on communication between the Congressman and his constituents. If the eventual case was found against the Congressman, it might be necessary for politicians to take out liability (insurance) bonds.

Mr. WHEELER-BOOTH (United Kingdom) said that Members of the House of Lords still claimed the residual privilege of peerage. This had recently been upheld in a case where a Peer was sued for a non-payment of maintenance to his former wife. He successfully claimed privilege of peerage to escape payments. The freedom from arrest for civil cases was no longer relevant because arrest was rarely used in such instances. There had never been freedom from arrest in civil cases. Erskine May dealt with these matters in great detail. Both Houses were inclined to cut down the use of their privileges, because there was a tendency for them to backfire.