Constitutional and Parliamentary Information

ASGP

Censure of individual Ministers

The Constitution of Mongolia

3rd Series No. 165 1st Half-year 1993

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-Parliamentary Union is to promote personal contacts between members of all Parliaments and to unite them in common action to secure and maintain the full participation of their respective States in the firm establishment and development of representative institutions and in the advancement of the work of international peach 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 (October 1993)

Albania, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Cape Verde, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Germany, Greece, Guatemala, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea (Dem. P. R. of), Korea (Rep. of), Kuwait, Laos, Latvia, Lebanon, Liberia, Libya, Lithuania, Luxembourg, Malawi, Malaysia, Mali, Malta, Marshall Islands, Mexico, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Rwanda, San Marino, Senegal, Singapore, Slovak Republic, Slovenia, Spain, Sri Lanka, Sudan, Surinam, Sweden, Switzerland, Syrian Arab Republic, Tanzania, Thailand, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia, Zambia, Zimbabwe.

Associated members: Andean Parliament, Latin American Parliament, Parliamentary Assembly of the Council of Europe.

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:* Sir Michael Marshall (United Kingdom).

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: Sir Michael Marshall (United Kingdom)

Members: Mrs. H. Castillo de Lopez-Acosta (Venezuela); D. Cavay6 Yeguie (Cameroon); T. S. Darsoyo (Indonesia); L. Fischer (Germany); A. Fosset (France); V. Gotsev (Bulgaria); M. Jalal Essaid (Morocco); J. Komiyama (Japan); Mrs Naziha Mahzoud (Tunisia); L. McLeay (Australia); S. Paez Verdugo (Chile); G. L. Papp (Hungary).

4. *Secretariat of the Union,* which is the international secretariat of the Organization, the headquarters being located at: Place du Petit-Saconnex, Case Postale 438, 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

3rd Series - No. 16511st Half-year -1993
First Series - Forty-third year

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I. Tributes to former Presidents of the Association

Mr. Moshe Rosetti, President of the Association 1965-1968, died 6th March 1992.

In the early days of the State of Israel, with the establishment of the Provisional State Council, the forerunner of the Knesset, the nation's leaders sought someone who could guide them into the inner secrets of parliamentarianism - a field in which the Jewish People had had no experience for the two thousand years of their dispersion.

The name of Moshe Rosetti, who had been familiar for many years with the British House of Commons where he acted as a representative of the Zionist Organisation, was suggested as a suitable candidate for the position of Secretary of the Provisional State Council.

In those days there was no clear-cut demarcation between the duties of the Government Secretary and those of the State Council Secretary. Moshe Rosetti's rich experience was invaluable in the first hesitant steps of the ire-born State of Israel towards the laying down of rules and regulations for the new parliament. He guided and advised the fledgeling law-makers of Israel and, to this day, the Rules of Procedure of the Knesset bear his imprint.

Moshe Rosetti served as Secretary General of the Knesset from October 1948 till February 1968.

In his position of President of the Association of Secretaries General of Parliaments, Moshe Rosetti was the first of the Knesset's Secretaries General to represent the Knesset in a major international post. He was a member of the Association from 1949, a member of the Executive Committee between the years 1952-1955 and Vice President 1960-1965. He was a rapporteur for reports agreed in 1951, 1955 and 1964.

Moshe Rosetti is survived by his wife, daughter, son-in-law and grandchildren.

Samuel Jacobson

Secretary General of the Knesset

Mr. A. F. Schepel, President of the Association 1960-65, died 30th April 1992.

(Mr. Schepel was a Member of the Association since 1946, a member of the Executive Committee from 1946-48, and Vice-President from 1950-60. He was rapporteur for reports agreed by the Association in 1951 and 1961.)

We deeply regret to have to report the death, on the 30th April, of Mr A. F. Schepel, former Clerk of the Second Chamber of the Netherlands States-General and a former President of our Association. He reached the age of 84, and to the very last kept his interest in parliamentary developments. A space in the brand new Chamber building, ceremoniously opened on the 28th of April, has been named after him, thus linking his name with parliamentary democracy in this country.

In our memory he lives on, not as a shining, or glittering, or splendid, or monumental example of his profession - he was too modest for such grandiose terms - but as a singularly happy blend of professional efficiency and human kindness.

W. Koops	A. Sprey	T. H. E. Kerkhofs
former Clerk of Second Chamber	*Clerk of the First Chamber*	*Clerk of the Second Chamber*

Mr. Francis Humblet, Secretary General emeritus of the Senate of Belgium, President of the Association 1970-73, died 27th June 1992.

It is with great regret that we learn of the death of Francis Humblet, former President of the Association and Secretary General emeritus of the Senate of Belgium.

Francis Humblet became a member of the Association in 1946 and held with honour all the Association's posts: member of the Executive Committee from 1946-1949 and again from 1961-1964, Vice-President from 1966-1970, President from 1970-1973. He was in addition the author of two notable reports, one on parliamentary incompatibilities (published in 1952), the other on bicameral parliaments (published in 1966).

Francis Humblet served in the Belgian Senate for over 40 years, notably under Speakers Gillon, Rolin, Struye, and Harmel. He also served Europe from an early stage, having taken part in the establishment of the Parliamentary Assembly of the Council of Europe and of the European Coal and Steel Community (ECSC), as

well as of the Western European Union, of which he was the Clerk for a number of years.

We can, finally, only repeat the words of the Speaker of the Belgian Senate in saying that "we will keep of him memories of an elite public servant and of a courteous and able man always conscious of the dignity of the institution of parliament". Members of the Association will remember a man of exceptional personality who was a model to all. They express to his widow and daughter their fullest and most sincere condolences.

Herman Nys

Clerk of the Senate

II. The Parliamentary System of Cameroon

Extract from the Minutes of the Yaoundé session in April 1992

Dr. Bernard NZO-NGUTY, Deputy Secretary General (Legislative and Linguistic Affairs) of the National Assembly of Cameroon, spoke as follows:

" I . Introduction

Since 1946, the development process of Cameroon's parliamentary institutions and parliamentary systems have been influenced by our colonial legacies. Subsequently, 6 years after independence, we moved to a 1-party state and we adopted a monolithic parliamentary system, and recently (March 1,1992) returned to a pluralistic parliamentary democracy.

Five important features of this evolutionary process of our political culture are noteworthy:

(i) the struggle for independence and reunification;

(ii) the change from a Federal to a Unitary system of government;

(iii) the change from the United Republic to the Federal Republic of Cameroon;

(iv) the change from a multi-party state to a one-party state, and a return to multi-party democracy; and

(v) the change from a Presidential to a semi-presidential System.

In view of the fact that each phase of this process of change has affected the existence and structure of parliamentary institutions, and the relationship between the Legislative and Executive arms of the Cameroon Government, my presentation of the Parliamentary System of Cameroon will therefore focus mainly on the constitutional basis of the National Assembly, its relationship with the Executive, and the inherent problems of the transition from a monolithic to a pluralistic Parliament.

II. Constitutional basis of the National Assembly

(i) Composition

Cameroon moved from a multi-party state to a one-party state on September 1, 1966. A *declaration* by the former Head of State, late President Ahmadou Ahidjo, in the Federal National Assembly on May 6th, 1972, to create a "Unitary" state, ushered in the Constitution of Cameroon, adopted on May 20th, 1972, by a referendum, and promulgated as Law No. 72/1, of June 2, 1972.

The Constitution *dissolved* the Federal National Assembly composed of 50 members, the East Cameroon Legislative Assembly composed of 100 members, the West Cameroon House of Assembly composed of 37 members, and the West Cameroon House of Chiefs composed of 22 members' and *created* the National Assembly of the United Republic of Cameroon composed of 120 members.

Subsequently, Law No. 83/10 of July 21st, 1983 amended Article 12 of the Constitution and increased the number of seats to 150. In fact, there was no Assembly composed of 150 seats since another law (Law No. 88/3 of March 17th, 1988) further amended the number of seats to 180. The 180 members are elected by *direct universal* suffrage and by secret ballot.

(ii) Legislative Process

Laws are passed by a *simple majority* of Members present, and promulgated by the President of the Republic. He may request a second reading, and, in this case, such laws shall only be passed by a *majority* of the membership of the Assembly. (Arts. 13 and 14 of Constitution.)

Article 15 of the Constitution authorises the National Assembly to meet twice a year, the duration of each session being limited to thirty days. Furthermore, it stipulates that the opening date of each session shall be fixed by the Assembly's Steering Committee (Permanent Bureau) after consultation with the President of the Republic. During *one* of the sessions, the Assembly shall approve the Budget. Extraordinary sessions limited to 15 days to consider a specific subject could be convened at the request of the President of the Republic or *two-thirds* of the Assembly's membership.

The aforementioned provisions are replicated in Article 9(1-4) of the Standing Orders of the National Assembly which is in itself a law, i.e. Law No. 73/1 of

June 8, 1973 as amended by Law No. 89-13 of 28 July 1989. Specifically, the Article of the Standing Orders empowers the Assembly to meet as of *right* in ordinary session on the second Tuesday following the day of the elections.

The constitutional problem posed by the said provision of the Standing Orders is whether an ordinary session for the *validation of electoral candidates* could be considered as one of the ordinary sessions envisaged in Article 15 of the Constitution. This problem became imminent during the recent parliamentary session of the newly elected multi-party National Assembly which took nearly three weeks for the validation process.

(iii) Organisation And Functioning

Pursuant to the provisions of Article 16 of the Constitution, the National Assembly adopts its own rules of organisation and functioning in the form of a law - known in Parliamentary terms as Standing Orders. This document, as earlier mentioned, has been amended twice in 20 years. Remarkably, the Standing Orders were the subject of a major controversy during the last parliamentary session.

(a) The Permanent Bureau of the Assembly

The Permanent Bureau of the National Assembly is the main policy-making organ, and consists of:

- one President
- one Senior Vice-President
- three Vice-Presidents
- seven Secretaries
- two Questors.

The Secretary-General and the two Deputy Secretaries-General are *ex-officio* members.

The President and Senior Vice-President are elected by *uninominal* ballot, and the Vice-Presidents are elected by *list* ballot in the order of their elections. The Secretaries and Questors are elected by *list* ballot for each office. (Art. 12 of S.O.)

Members of the Bureau are elected for one year and are eligible for re-election. The Bureau presides over the proceedings of the Assembly, directs all its activities, and represents the Assembly at all public ceremonies.

(b) Parliamentary Groups (Art. 15 of S.O.)

Members of Parliament may form groups corresponding to their political inclinations. No group shall consist of fewer than 15 members, not including MPs allied to them.

Groups are constituted after communication to the Bureau of the National Assembly of a list of their members, accompanied by a public joint declaration signed by all the members in the form of a programme of political action.

(c) Committees

Each year, after the election of the Bureau, the Assembly sets up 6 general committees each composed of 30 members. Each committee examines bills referred to it.

The six general committees are:

- Committee on Constitutional Laws, etc.
- Committee on Finance, Economic Affairs, etc.
- Foreign Affairs.
- Education, etc.
- Production and Town Planning, etc.
- Resolutions and Petitions.

(d) Ad Hoc Committees (Arts. 16(8) and 84(3) of SO)

Ad Hoc Committees may be set up for specific purposes, and the Committee determines the procedure for the election of its officers.

(e) Tabling of Bills (Art. 26) of Standing Orders

Bills and draft resolutions submitted to the Assembly by the President of the Republic are tabled before the Bureau of the House for transmission to the Chairmen's Conference which refers them to the appropriate general committee.

Private Members' bills and draft resolutions initiated by members of the Assembly are submitted in writing to the President of the Assembly for onward transmission to the Chairmen's Conference, and thereafter to the relevant General Committee.

Government and Private Members' Bills may deal only with matters defined in Article 20 of the Constitution.

The Chairmen's Conference decides upon the admissibility of bills/texts. Where there is any doubt as to the admissibility of a text, the President of the Assembly or the President of the Republic refers the matter to the Supreme Court to give a decision as to its admissibility.

(f) Agenda (Art. 27) of Standing Orders

The Agenda is drawn up by the Chairmen's Conference consisting of:

- the President of the National Assembly
- Members of the Bureau of the Assembly
- Chairmen of the six general Committees
- Chairmen of Groups, and a
- Minister or Secretary of State.

(g) Debates and Voting Procedure (Arts. 31-59) of S.O.

Debates on any bill are held in Committees and in Plenary Sessions. Secret or open voting may be held depending on the subject. Delegation of voting rights in plenary sitting and in committees are permissible under certain conditions.

(h) Discipline (Art. 71) of S.O.

The following disciplinary measures may be taken against members of the National Assembly by the President of the Assembly.

(a) Call to order
(b) Call to order entered in the minutes
(c) Censure entered in the minutes
(d) Censure with temporary exclusion

(iv) Election off Members off Parliament

Article 17 of the Constitution stipulates that the election of Members of Parliament shall be regulated by law. As a result, Law No. 72-LF-6 of 26 June 1972 (as amended by Laws No. 87/16 of 15 July 1987 and No. 88/02 of 17 March 1988) governed the election of Members of Parliament in the monolithic National Assembly.

The return to multiparty policies led to the adoption of Law No. 91/20 of 16 December 1991 which governs the election of Members of Parliament based on a *majority system* and *a. proportional representation system.* For every seat, the law provides for a substantive and an alternate candidate, both of whom go before the electorate at the same time.

However, in all cases of vacancy other than the death of the substantive member, the alternate shall take the seat at the National Assembly.

(v) Parliamentary Immunity and Privileges

Parliamentary immunity, disqualification of candidates or of sitting members, and the allowances and privileges of members are guaranteed in the Constitution and executed by three different laws and numerous Bureau Orders, e.g.

- Ordinance No. 72-12 of August 1973 deals specifically with the problems related to immunity.
- Law No. 85/24 of 11 December 1985 fixes parliamentary allowances payable toMPs.
- Law No. 91/20 of 16 December 1991 also makes provision for the disqualification of candidates for parliamentary election or sitting members.

III. Relations between the legislature **and** executive

(i) Legislative Initiative and Power

The institutional relationship between the legislature and the executive is clearly stipulated in Article 19 of the Constitution. The jurisdiction of the Assembly is defined in Article 20, and it is also clear that legislative initiative and legislative power are *shared* between the President of the Republic and members of the National Assembly. The might of the legislature in initiating financial legislation is limited (Article 27(3)). The notion of "checks and balances" was until recently very blurred.

(ii) Presidential Succession

Several constitutional amendments since 1972 have designated either the President of the National Assembly or the Prime Minister as the interim successor of the Head of State in the event where the latter is permanently unable to execute his duties.

Remarkably, where the post of Prime Minister has been abolished and re-introduced several times since the past twenty years, the post of the President of the National Assembly, and the institution itself, have always enjoyed an eminent position in the Constitution.

The constitutional amendment of April 1991 which re-institutionalised the post of Prime Minister introduced a new element that makes the occupant Head of Government answerable to Parliament. This innovation provides a built-in institutional and political harmony between the presidential and parliamentary majorities which may not necessarily be the same. Articles 7(6) and (7) of the amended Constitution designate both the Prime Minister and the President of the National Assembly as interim successors of the Head of State in case of a temporary of permanent incapacity of the latter to govern.

(iii) Control off Government Action

Article 26 (new) of the Constitution provides that the Prime Minister will submit to the President of the Republic the resignation of his Cabinet in case of a motion of censure or vote of no confidence. The procedure is strictly rationalised in order to avoid possible excesses and abuses prejudicial to the stability of the institutions of the nation.

On the other hand, verbal and written questions are addressed to members of government by MPs - the former obliged by law to respond within specified deadlines. Furthermore, Parliamentary Committees of Enquiry (Law No. 91/029 of 16 December 1991) empowers Parliament to control government action and to oversee the administrative, technical and financial management of public services.

IV. From "monolithisnt" to pluralism

TransitionalProblems

The transition from a monolithic to a pluralistic Assembly has been characterised by a number of problems which affect the functions of Parliament and its relationship with the Executive.

At the level of the Secretariat General, the initial problem to overcome is to establish an atmosphere of confidence between the staff and Members of the Opposition Parties who, naturally, think that *all* members of staff, especially

senior staff, belong to the ruling party, and therefore cannot be *politically neutral* or *professionally objective.* The mentality or work ethics of the staff must also change to be in tune with the political configuration and realities of a pluralistic Assembly.

The political biases and ignorance of the parliamentary procedure enshrined in the Standing Orders influence the behaviour of new Members of Parliament on both sides (Opposition and Government) to be aggressive, confrontational, impatient, and excessively assertive. Their willingness to listen to technical advice from professional staff is less and their margin or chances of making wrong political decisions are high. This pattern of behaviour led to the persistent request of the two Opposition Parties which tabled two Private Members' Bills to amend the Standing Orders of the National Assembly. The outcome of this initiative was not pleasing to both the Opposition and the Government.

V. Conclusion

As Cameroon evolves in its pursuit for "advanced democracy", patience, tolerance, patriotism and a high sense of responsibility is required of all Cameroonians in the process of our political development. Thank you for your attention and I will be delighted to answer questions."

Dr. Bernard T. Nzo-Nguty

Deputy Secretary General,
Legislative and Linguistic Affairs

The PRESIDENT (Cyprus) asked for further clarification on the stages in which a Bill was considered and on the circumstances in which the President would call for a second reading (or passage) of a Bill. Dr. NZO-NGUTY replied that a Bill was sent by the President of the Republic to the President of the National Assembly and the Bureau. The Bureau would disseminate it and put it before the Chairmen's Conference who would assign it to a Committee or to several Committees or, in the case of a major Bill, to a Committee of the whole House. The Committee and/or the Plenary Session could amend the Bill after which, if it was adopted, it passed to the President. If the President was not content with the Bill he could refuse his assent at this stage and send it back to the National Assembly for a second consideration. In such a case it must be passed by an absolute majority.

Dr. ALZUBI (Jordan) asked about the electoral system and the number of members. Dr. NZO-NGUTY replied there were 49 constituencies and that the

party list system was in use with about four members being elected for each constituency. If a party received more than 50% of the votes in one constituency it would get all the seats in that constituency. A proportional formula allocated the seats where no party obtained 50% of the votes. The total number of seats had changed over the years but was currently 180.

Mr. BAKWEGA (Uganda) asked how the alternate members co-ordinated their work with that of their Member, and sought further information on the use of Questions as a means of controlling the Government. Dr. NZO-NGUTY said that the provision for alternates was a new one and had caused problems. First there was the problem that the alternate Member had an incentive to try to replace the main Member. Secondly, the validation process for new Members applied only to the main Member and not to the alternate. Thirdly, the exact status of an alternate was unclear relative to that of the main Member, for example, in respect of privilege. As for Questions, there was both an oral and a written question procedure. The Chairmen's Conference could re-designate a question initially submitted as a written question as an oral question instead. A Minister must attend to reply to oral questions and must reply within a given timescale to written questions.

Mr. BLOH (Liberia) asked how the Secretaries-General were elected. Dr. NZO-NGUTY replied that the Secretaries-General were appointed by order of the Bureau on the proposal of the Head of State. Opposition parties had recently suggested that the Secretaries-General should cease to be ex-officio members of the Bureau and there had been alternative suggestions that Secretaries-General should be elected Members. These proposals were not adopted. Mr. EFOUA MBOZO'O, Secretary General of the National Assembly of Cameroon, added that the Opposition proposals referred to by his colleague were examples of the stresses which had arisen iii the early days of the new National Assembly following the introduction of multi-party elections. In answer to Mr. Bloh's other query about the checks and balances within the system, he explained that the Constitution was basically a semi-presidential one. There was provision for the President to dissolve the National Assembly but other constitutional provisions made the implementation of this rather complex and the position was unclear.

Mr. NYS (Belgium) asked who had the authority to declare a permanent or temporary incapacity in the Presidency. Dr. NZO-NGUTY replied that this function rested with the Supreme Court.

Mr. NGUEMA-MVE (Gabon) noted that in Gabon also there had been transitional problems following changes in the political system. He asked whether the Head of State or the President of the National Assembly or Members could call for a Constitutional Court to examine the constitutionality of a Bill and whether

the change in the political system from a one-party system had led to changes in the role of the Secretary General with respect to his power within the National Assembly. On the first point Dr. NZO-NGUTY replied that a decision on the admissibility of a Bill rested with the Chairmen's Conference at the beginning of its consideration. On the second point he replied that the budget of the National Assembly was controlled by the Secretaries-General. Proposals existed from some quarters for the President of the National Assembly to take on the power more directly or for the Questors to perform the task, though in practice it must be questioned whether, even if such a change took place, much of the real work would not continue to be done by the Secretary General.

Question and Answer Session
on the Parliamentary system of Cameroon following the visit
to the National Assembly buildings

Mr. KLEBES (Council of Europe) asked about the changes which had taken place in the history of Cameroon since independence with respect to federalism and about the continuing debate which was taking place. Dr. NZO-NGUTY, Deputy Secretary-General of the National Assembly of Cameroon replied that the debate was an open and continuing one. There was pressure from a number of opposition groups, including in particular many anglophone groups, for constitutional reform to reflect changes and regional differences in the country. Cameroon had around 200 national languages with high ethnic diversity and the two official national languages of French and English were themselves regionally based. A Constitutional Committee had recently been set up following the Tripartite Conference of the previous year. Mr. BAH, Deputy Secretary-General of the National Assembly of Cameroon, explained that at the time of independence there were three separate governments for Cameroon, those for East Cameroon, for West Cameroon and for the Federal Government itself. This was reformed in 1972 to leave simply the unified national Government. One possibility which had been raised in the Tripartite Commission was to introduce moves towards de-centralisation. Mr. EFOUA MBOZO'O, Secretary General of the National Assembly of Cameroon, indicated that the problem was in part the result of the colonial histoiy of Cameroon, for example in the way in which not just the languages but much of the administrative and legal structure was different in the anglophone area from the francophone area of the country. The federal period since independence was therefore a necessary transitional phase towards the eventual full re-unification of Cameroon. Most Cameroonians were probably against federalism.

Mr. SWEETMAN (United Kingdom) asked where the initiative lay for the introduction of Private Members' Bills, whether there were any restraints on their content, and how many Private Members' Bills actually became law. Dr. NZO-NGUTY replied that any Member could propose a Private Member's Bill by sending it to the Bureau, which would in turn refer it to the Chairmen's Conference for a decision on its admissibility. It would then be proceeded with in the normal way. A Private Member's Bill could not propose expenditure without proposing a corresponding rise in income. Private Members' Bills had not been common in practice although two had been passed recently. Mr. BAH added in respect of the content of Private Members' Bills, that they must of course come within the legislative domain and not within the domain reserved by the Constitution for ministerial regulations.

Mr. IDRISSI KAITOUNI (Morocco) asked whether consideration had been given to the establishment of a national conference for considering such issues as federalism, and noted a number of European models for possible forms of federalism which did not necessarily threaten the principle of the unitary state. Dr. NZO-NGUTY indicated that Cameroon had tried to avoid having a full-scale national conference though it had a form of such a conference in the Tripartite Conference. He recognised that there were successful models of federalism available but that ultimately this was a political question. As the Secretary General had indicated, most Cameroonians were probably opposed to a federal structure and the anglophones were not necessarily challenging national unity but were challenging over-centralism.

Continuation of Question and Answer Session on the Parliamentary system of Cameroon

Mr. WINKELMANN (Germany) asked about MPs' salaries and whether a Civil Servant could become a Member. Dr. NZO-NGUTY replied that Members got a parliamentary expense allowance together with other specific allowances. A Civil Servant who was elected to parliament would be placed on secondment. If his civil service salary- was higher than the main parliamentary allowance he would get the higher salary plus the specific allowances. He could not, however, perform his civil service post and be a Member at the same time.

Mr. HJORTDAL (Denmark) sought further clarification on the President's freedom to refuse assent to a Bill, such as a Government Bill which had been heavily amended, and whether in such a case there were any constitutional

implications. Dr. NZO-NGUTY indicated that of course the Government's position was strongly represented throughout the passage of the Bill but that the President's powers were restricted to sending a Bill back for a second consideration, in which case an absolute majority of the whole House was required for it to be passed. If this majority were achieved the Parliament could insist that the Bill be promulgated but there could certainly be a constitutional crisis in such a situation.

Mr. DAVIES (United Kingdom) noting that the Government Party did not, by itself, have a majority in the House, asked what happened if the Budget were rejected. Dr. NZO-NGUTY noted that, although the Government Party, having 88 seats out of 180, did not quite have an absolute majority, it had an understanding with the smallest party which gave it a more secure position. However, even without this understanding, the Government Party's proportional entitlement on the Finance Committee (to which the Budget was referred) was 15 places out of 30 so it had a strong position anyway. Mr. EFOUA MBOZO'O added that the Constitution provided that where a budget was not adopted then the previous year's Budget would continue in force until the problem was resolved.

Mr. BLOH (Liberia) asked about the role of the Civil Service vis-à-vis the Assembly and whether the Secretary-General or Deputy Secretary-General to the Assembly should come from the Civil Service. He also asked about the election of the President of the Assembly. Mr. EFOUA MBOZO'O said that the parliamentary service was separate from the Government Civil Service. Staff were recruited on the basis of their qualifications or by open competition and had their own career within the National Assembly. However, in practice, until 1988 the National Assembly had Government Civil Servants on secondment. He himself was the first Secretary-General to come directly from the National Assembly. The President of the Assembly was elected by a simple majority vote amongst the Members.

Mr. IDRISSI KAITOUNI (Morocco) asked whether any specific organ was charged with monitoring the constitutionality of laws. Mr. EFOUA MBOZO'O replied that there was no constitutional council as such though the domain of the legislative power was spelt out in the Constitution and the Chairmen's Conference, as had been explained, expressed a view on the admissibility of a Bill. If the Chairmen's Conference declared a Government Bill inadmissible the matter could be referred to the Supreme Court. He knew of no cases where this had actually happened but noted that there had perhaps been cases where certain provisions in Bills could have been so referred. He doubted whether the Supreme Court could on its own initiative consider the constitutionality of a Bill and declare it inadmissible.

Mr. HJORTDAL (Denmark) asked about the provisions relating to the time at which the first meeting of the new parliament should have been held. Mr. EFOUA MBOZO'O replied that although the Constitution was explicit in providing when

the Parliament should return, there had been problems in implementing this because of the provisions relating to the number and duration of ordinary sessions. These problems had been overcome by an interpretation of the provisions which created a new precedent but it was hoped to amend some of the provisions in the future.

Mr. PANNILA (Sri Lanka) asked about the forum in which constitutional reforms were being considered and about federalism. Dr. NZO-NGUTY replied that the Constitutional Committee considering reforms was a non-parliamentary body. Federalism was one of the options being considered but the whole structure of government was being looked at.

Mr. HADJOIANNOU (President) (Cyprus) asked how the Vice-Presidents of the Bureau were elected. Mr. EFOUA MBOZO'O replied that the principal Vice-President was elected by a majority vote while the other three were elected on a list system intended to provide for proportionality. The operation of this had caused problems in practice but they had been overcome.

III. Motions of Censure against an individual Minister and the consequences for the stability of the government

1. Introductory Note by Dr. Silvio Traversa (Deputy Secretary General of the Italian Chamber off Deputies) (May 1990)

On 7th May 1986 the Chamber of Deputies amended its rules in a significant way by adding the Article 115 sub-paragraphs 3 and 4 concerning motions of confidence and censure. The sub-paragraphs extend the application of the constitutional rules on motions of censure to "motions which call for the resignation of a Minister". They also give to the President of the Chamber the task of deciding "at the point when he accepts motions whether by their nature they fall into this category".

The Senate, on the other hand, has not introduced similar provisions in its rules. It has confined itself to endorsing, at a sitting on 24th October 1984, the President's decision concerning a motion of censure referring specifically to one Minister. This decision was based on an opinion from the Rules Committee.

In its opinion the Rules Committee stated:

"1. motions (or other procedures which can lead to a vote in the Assembly) and which call for or seek to obtain the resignation of a responsible Minister are admissible;

2. the provisions of Article 94 of the Constitution and Article 161 of the Rules of the Senate concerning motions of confidence to the government apply to such motions and procedures".

The President of the Senate noted that it had several implications for the procedure, namely:

"(a) motions have to state the grounds on which they are based;

(b) motions have to be supported by at least a tenth of the members of the Senate;

(c) motions would be debated at a specific sitting arranged by the Senate after hearing the view of the government and in any case at least three days after they had been tabled;

(d) motions are put to a roll call vote."

The above-mentioned amendments to the Rules of the Chamber had been questioned both on the grounds of their relevance to the constitutional principles governing relations between Parliament and the Government and from the point of view of their merit. On the first point it should be noted that Article 94 of the Constitution governs only motions of censure against the Government without providing expressly that such censure may be addressed to individual Ministers.

In addition Article 92, sub-paragraph 1 of the Constitution states "the Government of the Republic comprises the President of the Council and Ministers who collectively form the Council of Ministers".

The fact that the Constitution provides for a motion of censure against the Government could be taken to mean in itself that other forms of censure against individual Ministers are not permitted.

On the other hand, the motion of confidence which is a different motion but in some way related to a motion of censure and which was introduced into parliamentary practice from the first Parliament of the current constitution, is not governed by a specific provision in the Constitution.

In one sense the Constitution could be interpreted in a slightly different way because it states (Article 94, sub-paragraph 4) "a vote by one or both Chambers against a Government proposal does not carry with it the obligation for the Government to resign". Nevertheless to justify the introduction of this procedure in parliamentary practice - the first example occurred on the 6th March 1951 in the Chamber of Deputies - it should be noted that the Constitution merely excludes the above-mentioned hypothesis without preventing the Government raising as a matter of confidence any procedure under the rules (an amendment, an article, a draft law in its entirety, an order of the day, a resolution, a motion).

The case for allowing individual censure of Ministers seems to run against the general rules governing the formation of Government because by requiring one Minister to resign it opens the possibility of dismissing individual members of the Government; and in the absence of any specific rules the procedure for dismissal ought to be consistent with the procedure for appointment, and particularly Article 92 of the Constitution sub-paragraph 2: "the President of the Republic appoints the President of the Council of Ministers and on the recommendation of the latter, he appoints Ministers". In this context there is no provision for an intervention by

Parliament where the obligation for a Minister to resign would correspond in substance to his dismissal from office.

Reference should also be made to Article 95 sub-paragraph 2 of the Constitution which provides, in addition to the collective responsibility of Ministers for the acts of Government, for the individual responsibility of ministers "for the acts of their department".

The collective political responsibility of a Minister in making decisions of the Council of Ministers is reflected in the Constitution itself when it provides for a motion of censure against the Government; secondly, the possible individual responsibility of a Minister is contained to a certain extent in the political responsibility of the President of the Council of Ministers who, according to the Constitution, "directs the general policy of the government and is responsible for it. He maintains the consistency of political and administrative orientations and directs and coordinates the activities of ministers". Concerning those responsibilities which are not political in nature, such as criminal liabilities, Article 95, which states in general the collective and individual political responsibility of Ministers, is followed by Article 96 which provides that "the President of the Council of Ministers and Ministers can be impeached, for offences committed while in office, by the Parliament in a joint sitting".

This provision has recently been amended (16th January 1989) without having a significant effect on what has just been said: "the President of the Council of Ministers and Ministers, even if they are no longer in office, are subject to ordinary jurisdiction for offences committed in the exercise of their duties, on condition that the necessary approval has been given by the Senate or the Chamber of Deputies in accordance with the provisions of a constitutional act".

With regard to doubts expressed about the advisability of amending the rules the following should be noted:

1. motions of censure against the government as a whole were not frequently applied in parliamentary history. In practice censure motions have been rare in each of the Chambers (in the Senate the Terracini motion of the 22nd July 1948 and in the Chamber of Deputies the Nenni motion of 13th July 1961, Togliatti of 26th January 1963 and Occhetto of 28th April 1989). All these motions were rejected;
2. a motion of censure which is defeated becomes, contrary to the intentions of those who have proposed it, a positive reinforcement for the Government coalition by confirming the confidence held by the parliamentary majority in the Government;

3. the three cases of censure against individual Ministers which have arisen in the Chamber in recent years have produced the same result. They are the motions against the Minister of National Education, Signora Falcucci (1986), the Minister of Health, Mr. Donat Cattin (1989) and the Minister of the Interior, Mr. Gava (in 1990);
4. the granting to the President of the Chamber, from a procedural point of view, of the power to judge the admissibility of a censure motion becomes, with a view to applying the rules governing such motions, a substantial responsibility of a political nature which is inappropriate for the President of a Chamber who should remain above the political battle as guarantor of the good conduct of the work of the Chamber.

Should the motion of censure against an individual Minister not have, in practice, the same outcome as a motion of censure against the Government, there would ensue a destabilising effect in a political system such as Italy where governments are normally formed by coalition of parties. The acceptance of a motion of individual censure against a Minister, who is a member of one of the parties comprising the Government coalition, can only cause a general Government crisis.

Via such a motion different and broader ends can be achieved from those initially aimed at. This is especially the case when one takes into account the other options for asserting the political responsibility of each Minister which do not entail a legal obligation to resign following a specific vote in Parliament.

In effect Italy's recent constitutional history records several cases of Ministers resigning more or less voluntarily, sometimes at the invitation of the President of the Council of Ministers.

Another device seems to us more in keeping with relations between Parliament and the government as envisaged by the Constitution: it is a motion of disapproval against a single Minister which does not carry the obligation to resign. It is an unfavourable judgement on a Minister's activities in a specific matter which leaves open to him the option to resign having taken into account the views of his party and, above all, of the President of the Council of Ministers (Prime Minister).

The difficulties to which I have referred above do not apply to motions of disapproval whose procedure is different from motions of censure and which are basically identical to other ordinary motions.

2. Topical discussion: Extract from the Minutes off the Punta del Este session (October 1990)

The PRESIDENT recalled that the subject had been proposed by Mr. TRAVERSA at the spring session in Nicosia in April, 1990 and that an introductory note had been circulated to members of the Association in advance of the meeting.

Mr. TRAVERSA drew attention to the principal points in his introductory note and reminded the Association that there were two key questions to be addressed:

(i) whether there was any provision for motions of censure against individual Ministers in other parliaments; and

(ii) whether there were procedures other than a motion of censure to express disapproval or criticism of the activities of a Minister.

The PRESIDENT described the situation in Cyprus. There was no provision in the Constitution for censure motions either against the Government as a whole or against individual Ministers but there were other procedural mechanisms for criticism of the Cabinet or a Minister. Part IV of the Rules of Procedure provided for written Questions to Ministers, which had not been answered, to be automatically listed on the Orders of the Day for a public sitting of the House of Representatives. In addition, motions critical of the Government could be put down on the agenda with the approval of the majority of the House. Naturally, under the strict separation of powers, any direct criticism of a Minister does not automatically lead to his dismissal or resignation.

Mr. OLLE-LAPRUNE (France) drew attention to the originality of the reforms of the procedure described by Mr. TRAVERSA. In France a change in the Constitution would be necessary to introduce the idea of individual responsibility of Ministers which came up against the principle of the collective responsibility of the Cabinet. Apart from the classic procedures for parliamentary scrutiny, an individual Minister could be challenged by a parliamentary refusal to vote expenditure proposed for his department. When a dispute arose there were two ways in which it could be resolved under the current system: either the government as a whole could resign or the Prime Minister would demand the resignation of the individual Minister concerned. Legal liability of individual Ministers under the criminal law was a completely different matter.

Mr. QURESHI (Pakistan) said that in his country there was no procedure for a motion of censure against an individual Minister but there were several ways of expressing disapproval or even forcing a Minister to resign. First the Minister

could lose his right to sit in parliament. A motion to this effect could be submitted to the President of the House and be referred to the Elections Committee. After hearings, at which the Minister would be present, the Committee would decide whether to revoke his right to sit in parliament. Secondly if the Cabinet decided that the challenge to the authority of an individual Minister was so great, he could decide to dismiss him. In this case the Minister would lose his official post but not his seat in parliament. Finally the Prime Minister or the President of each Chamber could be challenged in a motion of no confidence which required the support of a qualified majority. The same procedure applied to the President of the country who would have to resign if such a motion was passed.

Mr. LAUNDY (Canada) said it was important to distinguish between, on the one hand, motions of censure on a Minister in his personal conduct and on the other hand motions of no confidence critical of his policy. In the first case a specific motion was required in precise terms specifying the alleged faults. In the second case a general motion of no confidence in an individual Minister or the government could arise in a number of ways, such as the debate on the speech from the Throne, a specific debate on a motion etc. If the official Opposition tabled a motion of no confidence they would always be able to debate it on the floor of the House and this could lead either to the resignation of the whole Cabinet or of an individual Minister. Normally the fact that the Government had a majority in the Chamber would protect the Government collectively from a motion of no confidence but an individual Minister might well have to face such a motion. There were, in addition, a number of procedures enabling parliament to express its disapproval of the conduct of a particular Minister.

Mr. ASTARLOA (Spain) said that neither the Constitution nor the Standing Orders of the two Chambers in Spain provided for a motion of censure against an individual Minister. Nonetheless since 1980 a practice had grown of developing ways of challenging the individual responsibilities of Ministers even though this was more a political than a constitutional process. The practice of tabling motions of disapproval following the reports of Committees of Enquiry and Scrutiny had been developed into major parliamentary debates such as that on the state of the nation or those introduced by the government on its legislative programme. Now motions of disapproval were arising as a result of interpellations or motions to reject non-legislative proposals. It would be difficult to go beyond these procedures without reforming either the Constitution or the Standing Orders of the Chambers. The motion of censure against an individual Minister had some implications which went beyond relations between government and parliament. In Spain a censure motion was essentially constructive and it did have some effect on the bicameral system because the Senate did not have any procedure for challenging the responsibility of the government.

Mr. FLOMBAUM (Argentina) said that different issues were raised in countries with a presidential system of government. Under the separation of powers a Minister could not be a Member of Parliament. A Minister could be challenged either by a Resolution of one of the two Chambers or by a joint Resolution of both. Such a Resolution could criticise either specific the actions of a Minister or his general conduct, or could call on him to make a report to parliament. Neither Chamber could pass a motion of censure on a Minister because, properly speaking, his political responsibility lay solely to the President of the Republic who appointed him. This matter could arise in the context of various proposals for reform of constitutions.

Mr. KABULU (Zaire) associated himself with Mr. FLOMBAUM's last remark because the constitutional system in his own country was being reformed and a censure motion might be introduced. At present there was a presidential system of government and a Minister could be required to explain himself before the National Assembly but only the Head of State and not parliament could dismiss him.

Mr. NYS (Belgium) said that either Chamber could challenge the individual responsibility of the Minister. In the Senate under Article 33 of the Standing Orders, Members who wished to question the government made a written application to the President of the Chamber. Any motions put down after such a question (interpellation) were motions pure and simple. Such motions had priority over all other questions which was not the case for motions of confidence. The only precedent for challenging the individual responsibility of a Minister had happened soon after the Second World War. It arose in the case of a member of the government who was accused of having been in economic collaboration with the occupying power. The House of Representatives passed a motion against him but this was rejected by the Senate. Nonetheless the effect of the House's motion was to bring down the government which had supported him.

Mr. HOOPLOT (Suriname) said that in his country a Minister could not be a Member of Parliament. Members of Parliament could put questions to Ministers on their activities. These questions were directed either to the President of the Chamber or to the Head of State who was responsible for government activity. The Minister's reply was addressed to parliament and if the latter was not satisfied further questions could be posed where the Minister could be called, perhaps accompanied by the President, to reply to questions at a plenary sitting. After such a sitting a motion of confidence or no confidence could be held. This procedure had not been used in practice.

Mr. IDRISSIKAITOUNI (Morocco) said there was collective responsibility in the monarchical system of Morocco, The Minister's responsibility could be

challenged by parliament refusing to vote the budget for his department, by interpellation or by a specific motion. Such a motion had no legal standing and concerned only an individual Minister. He raised the question about the nature of any challenge to a Minister. In some systems such as that in the United States of America, it was possible to challenge a Minister before he took office in the sense that his appointment to that post had to be approved by the Senate.

Mr. NDIAYE (Senegal) said that in his country there was a presidential system of government and a single chamber parliament. There was no provision for the censure of an individual Minister. Ministers were appointed and dismissed by the President of the Republic. Ministers could not also be Members of Parliament. The only way in which the National Assembly could express its disapproval of a Minister was to vote against the budget of his department. Although this did not oblige the Minister to resign it might well influence the attitude of the President of the Republic.

Mr. SWEETMAN (UK) said there was no difference in the nature of motions critical of Ministers individually and those critical of them collectively. They were fairly rare, particularly as the Government had had a substantial majority in the House of Commons since 1979. In the period 1975 to 1985 only six motions were tabled in the Commons and most were heavily defeated. Motions critical of the policy of individual government departments were often tabled but not debated, unless the official Opposition adopted them. In that case time was usually found for them to be debated. Even if such a motion was passed it would have no direct effect. In the past there was a practice of tabling motions to reduce a Minister's salary by a small sum of money. On one occasion such a motion was passed by default but the Government had then tabled a motion of confidence which they won easily. One other way of expressing discontent with a Minister was for the House to refuse to pass a particular piece of legislation sponsored by him; this had occurred once recently.

Mr. BATETANA (Congo) said that there was no procedure for challenging the political responsibility of a Minister but as an individual a Minister could be liable for any criminal proceedings. The only thing parliament could do would be to lift parliamentary immunity on any Minister who was also a Member of Parliament. The procedure of interpellation was a way of challenging a Minister's policy but did not automatically lead to his resignation which was a matter in the hands of the Head of Government. In future, political and constitutional changes might lead to the introduction of such a procedure.

Mr. FARACHIO (Uruguay) said that Ministers were appointed directly and exclusively by the President of the Republic and no parliamentary vote took place on their appointment. The separation of power meant that any Member of Parlia-

ment who was appointed a Minister resigned his parliamentary mandate and was replaced by a substitute. The Constitution provided that both Houses could pass judgement on Ministers at a joint sitting. Motions could be considered against an individual, several or all Ministers collectively. If a censure motion was passed the Ministers concerned were dismissed. The President could then dissolve the Chambers and call a General Election. Alternatively, a Minister could be summoned to parliament if a third of the Members so demanded (this provision guaranteed the rights of minorities to scrutinise government action). In addition each Chamber could vote a motion to disapprove the actions of a Minister. Although this had no legal consequences it could force a Minister to resign.

Dr. CATALURDA (Uruguay) said that a Constitution provided that parliament would be dissolved if a qualified majority voted a motion critical of the action of a Minister. This provision, which had been introduced in 1966, had been used in 1969 but this was the only occasion in which the President had supported the Minister and called on the Chamber to make a clear decision. Electoral calculations had discouraged parliament from proceeding further in that case.

Mr. GARCIA (Venezuela) said in his country a Member of Parliament could also be a Minister within the Constitution. Nonetheless he had to give up his parliamentary activities and seek the permission of the Chamber to carry out his ministerial duties. The Chamber of Deputies could pass a motion of censure against a Minister if it had a two-thirds majority. The President of the Republic was then obliged to dismiss the Minister concerned. Three days notice of such a motion had to be given to enable a Minister to prepare his defence. In addition Ministers could be questioned and had to appear to put their case. An interpellation could also take place at a joint session of both Chambers.

Mr. YOO (Republic of Korea) said that the Constitution provided two circumstances in which an individual Minister could be challenged. First the Assembly could recommend to the President of the Republic that the Prime Minister or one of his Ministers be dismissed. Secondly, violation of the Constitution or law of the country in the course^qf his official duties could lead to a Minister being charged. The person concerned was then suspended from his duties until a Constitutional Court had decided the case.

Mr. WHEELER-BOOTH (UK) said there was a procedure for motions critical of individual Ministers in the House of Lords but they rarely occurred. The procedure took the form of a motion for a resolution like any other motion considered by the House. In practice, however, debates critical of government policy did take place. In a recent debate specific criticism had been made about the Department of Trade and Industry. The issue was not pushed to a vote. On another occasion a Minister was criticised for promising to bring forward an amendment

to a Bill but it turned out the amendment was beyond the scope of the Bill. The official Opposition put down an amendment critical of the Minister's behaviour and it was agreed to without a vote. Some two weeks later the Minister, in fact, resigned from the Government. Such instances were fairly rare and criticism tended to be directed against the policy of a government department rather than an individual Minister.

Dr. PHIPATANAKUL (Thailand) said that a motion of censure could be directed against an individual Minister or against the whole Cabinet. It had to be signed by at least a fifth of the Members of the Chamber and had to receive an absolute majority to be passed. Each Member of Parliament could put down only one such motion in each parliamentary session.

Mrs. HUBER (Switzerland) said that there was no provision for the individual or collective censure of Ministers in the Swiss system. On the other hand it was parliament which elected the government and could therefore not re-elect one or more individual Ministers at each re-appointment. In practice this provision had not been used since 1959, mainly because a collegiate system of government respected the balance between the different political parties. Nonetheless pressure within one party on one of its members could lead to his resignation. The other ways of controlling the actions of Ministers included not passing a law proposed by a particular Minister, criticisms in the annual report on the government administration, questions in parliament and the scrutiny activities of committees.

In conclusion, Mr. TRAVERSA (Italy) said there seemed to be three different types of systems: first, a system similar to that in Italy (France, Belgium, Spain) of collective responsibility of Ministers. Secondly, systems which provided for real motions of censure against an individual Minister or against Ministers collectively, possibly leading to a dissolution of parliament. Thirdly, presidential systems of government for which parliament could not effectively force a Minister to resign because he was appointed by the Head of State.

3. Report on Motions of Censure against an Individual Minister and the consequences for the stability of the Government, prepared by Dr. Silvio Traversa, Deputy Secretary General of the Italian Chamber of Deputies (adopted at the Stockholm session, September 1992)

Introduction

The Association dealt with the problem of Parliamentary motions of censure against individual Ministers at the Punta de l'Este Conference on 16th October 1990. It was decided that a questionnaire should be drawn up to deal with it. This questionnaire was approved on 3rd May 1991 at the Pyong Yang session and was distributed to all the members of the Association. The report has been drawn up on the basis of the replies received fron the following Parliaments:

- Australia (Senate, House of Representatives)
- Belgium (Senate, House of Representatives)
- Bulgaria
- Cameroon
- Canada (Senate, House of Commons)
- Cape Verde
- Chile (Chamber of Deputies)
- Cyprus
- Denmark
- European Parliament
- France
- Germany (Bundestag, Bundesrat)
- Greece
- Hungary
- India
- Indonesia

- Ireland
- Israel
- Japan
- Kenya
- Republic of Korea
- New Zealand
- Norway
- Pakistan (Senate)
- Papua New Guinea
- Philippines
- Poland
- Rwanda
- Senegal
- Spain (Senate, Congress of Deputies)
- Tunisia
- United States
- United Kingdom (House of Lords and House of Commons)
- Zaire
- Zambia
- Zimbabwe

The many and complex replies received have indicated the type of government in each country in terms of the three-fold division given in the questionnaire relating to: 1) the formation of the government and parliamentary approval; 2) the government's term of office; 3) the status of individual Ministers within the government, with particular reference to typical procedures for leaving office.

In brief, and subject to further nuancing to indicate the specific situation in each country (for which reference is made to the Annex) it can be said that the appointment of the President of the Council of Ministers or the Prime Minister to head the government is made by the Head of State (President of the Republic, or

the sovereign) or by Parliament, or by some wholly specific authority which in some way express the sovereignty of the people (in Indonesia, for example, the People's Consultative Assembly, which is the highest authority of the State).

With regard to relations between Parliament and government the following must be borne in mind: firstly, the classic situation of parliamentary systems in which the government's duration in office and/or its assumption of the full powers of office is subject to a parliamentary vote of confidence (with or without the need for the confidence of the second Chamber, such as a Senate or a non-elected Chamber, where one exists); and secondly where a vote of confidence, or some similar assent is not required, there is always some procedure whereby the elected Assemblies take part in the overall procedure of forming a government, and at all events in permitting it to remain in office (for example, Cameroon, Cape Verde, Indonesia) either through a communication from the Prime Minister regarding the government's programme, which may or may not require parliamentary approval, or through procedures which imply or otherwise the resignation of the government (for example, Papua New Guinea, Hungary, Poland) after Parliament has addressed the matter.

With regard to the second issue dealt with in the questionnaire, namely, the government's term of office and ways of terminating it, the replies indicated that there is a fairly even balance between the countries which lay down a fixed period for the government's term of office (generally coinciding with the length of the legislature in the case of parliamentary governments, or the date of the elections in presidential systems) and the countries in which the government does not have a fixed term, in the sense that it remains in office until it resigns, with the possible variation that certain events may occur (such as a parliamentary vote of no confidence).

The answer to the question about the need to form a completely new government if the President of the Council of Ministers or the Prime Minister or Head of Government ceases to hold office, was generally affirmative, with the proviso that in some countries, indicated in the Annex, a General Election has to be called within a specified period of time thereafter.

As far as the third question was concerned, namely ending the term of office of an individual Minister following a parliamentary vote of no confidence, or due to other events (such as resignations, permanent incapacity, sickness, demise) we would prefer to give an analytical breakdown of the situation in each country, with reference to the annexes, unlike the procedure we have followed for the first two themes examined in brief above.

For this is the essential issue in the questionnaire approved by the Assembly, of which the first two themes constitute the indispensable introduction in order to

understand the position of each Minister depending upon the constitutional provisions of each country.

In reply to question 3.1, which asked whether a Minister's resignation had to be accepted by somebody, the following countries answered in the affirmative: Belgium, Denmark, Norway (the King), Chile, Cyprus, France, Indonesia, Kenya, Republic of Korea, Philippines, Rwanda, Tunisia, Zambia, Zimbabwe (in all of which the resignation is accepted by the President of the Republic); Australia; Greece, Israel, Papua New Guinea, Spain, United Kingdom (by the Prime Minister); and Germany (by the President of the Republic at the proposal of the Federal Chancellor); Indian, Pakistan and Senegal (by the President at the proposal of the Prime Minister); Ireland (by the President on the advice of the Prime Minister); Japan (the voluntary resignation by a Minister must be tendered to the Prime Minister and confirmed by the Emperor); New Zealand (by the Governor-General), and lastly Bulgaria and Poland (by Parliament) and the United States (by the President except that there is no statutory requirement for the resignation to be accepted in order to become effective, so that the resignation becomes effective from the day the President receives it, unless otherwise indicated).

The following countries replied in the negative: Cameroon (the resignation of the government is a collective act), Canada and Hungary.

With regard to question 3.2, the following countries replied that an individual Minister may resign as the result of a parliamentary motion of censure: *Australia* (the procedure for motions of confidence or no confidence in relation to a Minister is laid down by the Standing Orders and is almost identical in both Houses. The adoption of a motion of censure against an individual Minister - as well as his voluntary resignation - does not lead to the resignation of the whole government); *Belgium* (even though there has never been a precedent for the resignation of an individual Minister, it is theoretically possible. There is no such thing as a motion of censure in the strict sense of the term, but after a debate following a question put to the Assembly, a motion of "diffidence" with regard to an individual Minister may be put to the vote. This procedure is written into the Constitution); *Chile* (the procedure provided by the Constitution is impeachment); *Denmark* (where Article 15 of the Constitution provides that no Minister may remain in office after a motion of censure on the part of the Folketing); *Germany* (the instrument adopted by Parliament, and which has become customary, is the motion of "destitution", which is debated by the Bundestag, inviting the Federal Chancellor to propose to the President of the Republic that a Minister leave office. It should be noted that, in practice, none of the eleven motions of destitution tabled so far as ever been given majority support); *Greece* (the constitutional procedure is to table a motion of censure which must be signed by at least one sixth of the Members of Parliament and adopted by an absolute majority of the Members. Normally speaking, it is

debated and voted on 2 days after being tabled, and does not imply the resignation of the whole government); *Ireland* (the Constitution provides for the tabling of a motion of censure against an individual Minister, but although in practice individual motions have been debated, none of them have ever been carried, and so the eventual constitutional consequences are unknown); *Kenya* (a motion of censure); *Republic of Korea* (the procedure adopted by Parliament, according to the Constitution, is to recommend the removal from office of the Minister, which must be tabled by at least one-third of the parliamentarians and supported by the majority: in practice, if it is adopted, the Minister offers his resignation); *New Zealand* (by a vote of non confidence in Parliament, according to constitutional and parliamentary practice, normally leading to the resignation of the Minister); *Norway* (in practice the censure motion takes the form of a resolution which, if adopted by the Storting, obliges the Minister to resign); *Papua New Guinea* (the Constitution provides for the motion of censure with the obligation to resign); *Poland* (Parliament may decree that an individual Minister shall relinquish office. According to the Constitution and the Regulation of the Lower House, the latter may oblige; a Minister to answer questions and to give evidence to any Committees which request it); *Rwanda* (the parliamentary instrument is the motion of censure which must be supported by one-fifth of the deputies and adopted by an absolute majority at the end of a parliamentary question. This is in accordance with the Constitution and laid down in an Act of Parliament relating to parliamentary control over the government. If the motion is adopted, the Minister must resign).

On the other hand the following countries replied that a Minister is not required to resign in response to a parliamentary motion of censure or no confidence: *Bulgaria* (a motion of censure can only involve the entire government, but a Minister can be subjected to the whole range of methods of control and parliamentary criticism provided for under the Constitution and the rules of the Assembly. The head of government can propose to Parliament that the Minister be relieved of his powers); *Cameroon* (only a vote of non confidence in the government exists; MPs may criticise the actions of a Minister when debating Bills or the Budget, without this leading to his resignation); *Canada* (the Senate certainly cannot require a Minister to resign, but if the censure motion against a particular Minister is adopted by the House of Commons, it will not be possible for him, politically speaking, to continue to exercise his functions), France (Parliament cannot adopt a motion of censure against an individual Minister because the government has a collective responsibility towards Parliament. However, individual Ministers may be criticised and Parliament may express reservations about their work, both through parliamentary questions and during legislative debates); *Hungary; India* (the Constitution only provides for the collective responsibility of the Council of Ministers, and therefore the motion of no confidence can only be against the whole government and, if approved by the Lok Sabha, leads to

the resignation of the government. When a motion of censure was proposed in August 1962 against an individual Minister - the Minister of Irrigation and Energy - it was immediately declared inadmissible); *Indonesia* (the governement is not responsible towards Parliament but to the President. Parliamentary control consists of meetings with the government according to the Standing Orders of the Chamber); *Japan* (there is no statutory requirement for a Minister or a government to resign after the adoption of a motion of no confidence), *Pakistan* (Parliament does not adopt a motion of censure against an individual Minister but his work - as well as the collective activity of the government - may be censured in an adjournment motion. In practice, a Minister ceases to hold office when requested by the Prime Minister); *Philippines; Senegal* (Parliament may not censure an individual Minister); *Spain* (the Constitution only provides for a vote of no confidence in the whole government. In practice, however, a motion of censure may be tabled against an individual Minister, or any other parliamentary instrument adopted which might even lead to the resignation of the Minister concerned, but they cannot impose any statutory obligation on them to resign); the *United States* (Members of Congress can accuse a Minister of contempt if he fails to collaborate with Congress, by adopting a resolution tabled by a senior representative of Congress, setting out the charge and requesting that Congress cite him for contempt. The resolution must be debated, voted on and adopted by a simple majority. It does not lead to resignation, but to arrest. This procedure is set out in the Standing Orders of Congress); *Tunisia; Zambia; Zimbabwe* (in practice, Parliament may table a petition requesting the President to order a Minister to resign).

The *United Kingdom*'s reply was the same as those countries which answered negatively in response to question 3.2, because there are no explicit provisions for a motion of censure against an individual Minister in British law or the Standing Orders of either House. However, the Commons has a number of means at its disposal to signify its lack of confidence, or more specifically censure an individual Minister. In view of the typical nature of the British system, we feel that these instruments should be examined bearing in mind two general principles: a) a Minister who is a Member of the House of Commons is subject to the rules governing behaviour in the House like any other Member; b) all the Ministers, being members of the government (and this includes the Prime Minister) have collective responsibility for government policy and in particular for any decisions taken by the Cabinet. Publicly expressed disapproval of government policy by a Minister normally leads to his resignation. The other side of the question is that criticism of government policy does not normally focus on any individual Minister, except when the Minister is questioned about his personal conduct.

In the past thirty years many motions of censure have been tabled against individual Ministers and debated in the Commons. They have censured the

conduct or policy followed by individual Ministers. Between 1976 and 1977, four motions were debated to reduce individual Ministers' pay, but in reality they have mainly been designed to criticise policy rather than conduct. For procedural reasons it is highly unlikely that any such motion could still be tabled today.

In June 1981, on one of the days set aside for Opposition business, a motion was debated criticising the behaviour of a Minister towards the House of Commons. None of these motions were adopted, which is only to be expected in a parliamentary and political system in which the only party in power normally commands the overall majority in the House of Commons. The question has therefore never arisen as to whether a Minister should be obliged to resign if such a motion were to be adopted.

More generally, Ministers must retain the confidence of the House and of the government backbenchers - MPs without official government post who sit in the rear rows of the House - particularly during debates and statements of particular importance. If a Minister senses that he has lost this confidence, it can sometimes lead him to resign.

In the event that the Minister is found out in deceiving the House of Commons, it is felt that he ought to resign. In 1963 a Minister lied to the House in a personal statement. When it became evident, he resigned his ministerial post and left the House, and a Resolution was subsequently adopted condemning the serious contempt shown to the House. A Minister, like any other Member of Parliament, may be reprimanded, or suspended from exercising his functions, or removed from the House. It his reasonable to assume that whenever any such a measure is taken against a Minister, he would be required to resign. Depending upon circumstances, the government could therefore find itself in difficulties.

But since none of these situations has ever been codified in a law or included in the Standing Orders of the House of Commons, the Minister would not be under any obligation to resign, and the Prime Minister would certainly not be required to accept his offer of resignation. In the final analysis it is a political decision to be taken by the Prime Minister, who must decide whether the advantage of accepting the resignation of a Minister who apparently no longer enjoys the confidence of the House of Commons outweighs the damage to the government's reputation or authority.

In the House of Lords it is not the custom to criticise the personal conduct of individual Ministers in the House of Commons in practice, even though it may criticise the policy of individual members of the government in their capacity as heads of government departments. About 21 Ministers belong to the House of Lords, but the House does not have any special procedure for a motion of censure regarding their personal conduct. On 17th July 1990 a motion on the second

reading of a Bill was adopted with a rider criticizing Her Majesty's Government for the lack of respect shown for a commitment entered into by a Minister (who subsequently resigned).

As for the possibility of the voluntary resignation of an individual Minister (3.3) or the resignation of an individual Minister following a parliamentary vote of no confidence (3.4) carrying the obligation or merely the possibility of the whole government's resigning, virtually all the replies received excluded any direct link or consequences between the resignation of an individual Minister and the resignation of the government to which he belongs.

This was the reply of the following countries (even though this does not provide a complete summary): *Bulgaria, Canada, Chile, Denmark, Germany* (where it was mentioned that the resignation of an individual Minister can politically influence the stability of the government), *New Zealand, Norway* (only the resignation of the Prime Minister leads to the resignation of the government as a whole), *Papua New Guinea, Poland, Rwanda* (there is only a very remote possibility of the whole government resigning), *India, Indonesia, Pakistan, Spain, United Kingdom, Zambia, Zimbabwe* (which pointed out that the resignation of individual Ministers has never led to the resignation of the whole government).

On the other hand the following countries replied affirmatively: *Belgium* (where the resignation of a Minister following a vote of no confidence in Parliament requires the resignation of the whole government because the individual responsibility of the Minister is based upon Cabinet responsibility, whereas in the case of voluntary resignation the possibility of the resignation of the whole government also depends on the reasons for the Minister's resignation and the political circumstances) and *Ireland* (which pointed out that motions which explicitly express no confidence in an individual Minister have been discussed in the past but since none have ever been approved it is not known what constitutional implication this might actually have. It is nevertheless felt that in view of the principle of collective responsibility, the withdrawal of Parliamentary confidence in an individual Minister would be deemed tantamount to a lack of confidence in the whole government).

Germany is a case apart, where the resignation of an individual Minister can, in theory, lead to the resignation of the whole government but this has never happened and there is no statutory obligation for it to happen. In *Japan*, the resignation of a Minister requires the whole government to resign if the Minister's resignation puts the Ministers who are members of parliament in a minority (Article 68(1) of the Constitution).

In relation to question 3.5, the first point to be noted is that only three countries explicitly stated that it was a statutory requirement to replace the

outgoing Ministers - *Chile, Greece* (except where there already exists a deputy Minister) and *Spain* (which pointed out that as the Head of the Department, the Minister must be replaced unless the Department itself is abolished and that even though no express provision existed for the possibility of an interim period, this should not be considered unlawful) - whereas most of the other countries felt that it would be normal, although not compulsory, to replace the outgoing Minister and that the President of the Council or some other member of the government would take over his powers in the interim period: *Australia* (the Prime Minister informs the Governor that the outgoing Minister has been replaced. It is also possible to have an interim Minister, but only for short periods), *Belgium* (naturally in full respect for linguistic parity required by the Constitution in terms of the numbers of Ministers), *Bulgaria* (the functions of a Minister who had resigned can be temporarily given to another Minister; but the non-replacement of a Minister cannot lead to the dissolution of the Ministry, because this requires a decision by the National Assembly), *Cameroon, Canada, Cyprus, Denmark,* the *Philippines* (the President may appoint a new Minister or entrust another member of the government with his department for the time being), *France, India, Ireland, Kenya, New Zealand, Norway, Pakistan, Papua New Guinea, Rwanda, Senegal, United Kingdom* (where the Minister is replaced almost immediately, but it is possible for another Minister to take over his specific legi slative or parliamentary powers temporarily), *Zambia* and *Zimbabwe.* Other countries have specific provisions for the temporary exercise of the outgoing Minister's powers: *Germany* (the outgoing Minister remains in office until his successor is appointed), *Hungary* (by the political Secretary of State who cannot replace the Minister in the National Assembly or at the government meetings), *Indonesia* (by the "Coordinating Minister"), *Japan* (section 10 of the Cabinet Act provides that the office is taken over temporarily by the Prime Minister or a Minister designated by him), the *Republic ofKorea* (by the Deputy Minister), *Poland* (by an Under-Secretary), the *United States (by* the First Assistant Secretary or by another member of the Executive to whom the President may entrust the department, with the consent of the Senate, temporarily; both substitutions may not exceed 120 days).

In every country the body and the procedure for replacing an outgoing Minister - question 3.6 - are identical to those used for his appointment.

The answers to question 3.7 on the other means of terminating a Minister's term of office, other than by a parliamentary motion of censure or his voluntary resignation, for whatever reason it may be caused, depend very largely on the fundamental features of each Constitutional system which have already been indicated above. For this reason we would prefer to provide a summary of these possibilities rather than list each answer, and select a few of the ones which present specific features of interest. First of all, there are *natural causes* such as death,

sickness with permanent incapacity (in Poland also old age) which are common to all countries, even though they are often not indicated. Then there are *causes linked to the particular system*, in other words to the expiry of the government's term in office (for those countries in which replied affirmatively to question 2.1) or in some way due to constitutional causes, or because of the formation of a new government (general elections and/or the instalment of a new Head of State), including the possibility of a government reshuffle, or the withdrawal of a Minister's mandate and/or dismissal (as in *Hungary, Pakistan, Papua New Guinea, Philippines, Rwanda, Senegal, United States, Zambia)* by the President at the proposal, or not, of the Prime Minister, or by the Prime Minister himself. This is the system mainly used in the Presidential type systems. (There is one peculiar feature in the case of *Indonesia*, where the President can issue a "declaration of incapacity" of a Minister). Incompatibility can give rise to a number of reasons why an individual Minister leaves office. In *Cameroon*, for example, (if the Minister exercises a professional activity), *Cyprus* (if he is a Member of Parliament, a local government officer, a civil servant, a town councillor or a member of the military), *Poland* (if he takes on new functions). Other causes for leaving office are linked to the Minister's illegal behaviour: in *Belgium* (if charged with a criminal offence), *Germany* (a criminal court may deprive the Minister of his eligibility for or rights office, or holding public positions), the *Republic ofKorea* (if he violates the Constitution or other laws, an impeachment motion can be proposed by at least one-third of the Members of Parliament or adopted by the majority), *Papua New Guinea* (if found guilty of an offence against the "Leadership Code"), *Poland* (with a decision of the State Tribunal), *Spain* (if sentenced to be suspended or prevented from exercising public office), the *United States* (impeachment, arrest, treason, corruption, unbecoming conduct). Lastly, there is one particular reason whereby a Minister may leave office: failure to be elected by Parliament, in *India* (within six months), in *Australia* and *Zimbabwe* (within three months), while in *Kenya* and *New Zealand* the Minister ceases to hold office if he ceases to be a Member of Parliament.

With regard to the instruments available to Parliament, apart from a formal motion of censure against the government as a whole or against an individual Minister, to express some form of censure, criticism or lack of support for the action of the whole government or an individual minister, most replied that such instruments did exist, excepting perhaps *Zaire* and *Zambia*. In addition to the traditional right of inspection and enquiry, which is typical of all traditional parliamentary systems and which is now very common throughout all countries, such as through written or oral questions of various forms, resolutions and motions which may go by different names, there is always the possibility of signifying criticism while debating Bills and particularly the Budget, and of voting against them, setting up Commissions of Enquiry or Watchdog Committees and request-

ing Ministers to give evidence to them, approving motions of censure or reprimand, or criticism. Particularly significant is the situation in the following countries: *Germany* (where a Minister's pay may be suspended when debating the Budget, although this has never occurred), *Rwanda* (where there is a special procedure beginning with the tabling of a question which, if the answer is unsatisfactory, can lead to the Minister's being summoned to give evidence, a Committee of Enquiry can issue a resolution which can be published, and lastly a parliamentary motion which can also lead to the resignation of the government if adopted), the United Kingdom (the Minister may be reprimanded, warned or - in the Commons only - expelled from the House, in the same way as other Members), the *United States* (it is possible for the majority on a Committee or in the House to reject or radically amend a proposal from the President relating to expenditure, and for the House or the Senate to adopt a resolution criticising the President; in the Senate, the majority of a Committee may refuse to accept a Presidential nomination. All of this makes it necessary to seek a compromise, or it opens up a conflict between Congress and the President).

Annex to Report on "Motions of censure against individual Ministers"

Summary of the replies received to the Questionnaire, parts I and II, regarding the procedures for the formation of the government and parliamentary approval, and the duration in office of a government and the reasons for bringing it to an end.

(A) I. The Formation off the Government and Parliamentary approval

(a) Formation of the Government (Questions 1.1-1.2)

From the replies received, the appointment of the President of the Council of Ministers or Prime Minister appears to be governed as follows:

1. Royal appointment

Australia, Canada and *New Zealand* (the Governor-General, as the representative of the Crown, asks the leader of the majority party to form the government enjoying the confidence of Parliament), *Belgium, Denmark, Japan* (designated by

the Diet, of which he must be a Member), *Norway, Papua New Guinea, Spain* (except that here the King must seek the confidence of the Congress of Deputies in the Prime Ministerial candidate with a first absolute majority vote and a second simple majority vote), *Tunisia, United Kingdom.*

In most of these countries the ministers are also appointed by the monarch, except in the case of Japan (where the majority of Ministers must be Members of Parliament), Spain and the United Kingdom, where this is done by the Prime Minister.

2. Appointment by the President of the Republic

Cameroon, Cape Verde, France, Greece (the Prime Minister is normally the leader of the majority party and he must be approved by the Parliament, *India, Ireland, Israel* (the Prime Minister is normally the leader of the majority party and must have the approval of the Speaker), *Republic of Korea, Pakistan* (the Prime Minister must be a member of the National Assembly and enjoy its confidence), *Rwanda, Senegal, Tunisia, Zambia.* In nearly all these countries the President of the Republic also appoints the ministers, normally proposed by the Prime Minister, with the special case in Pakistan that both the Prime Minister and individual ministers must be chosen from among the members of Parliament. In the case of Zambia this only applies to individual ministers. Israel is an exception to this, in that the Prime Minister appoints his ministers, but only after receiving the approval of the President of the Republic).

3. Parliamentary appointment

Germany (at the proposal of the President of the Republic, requiring subsequent ratification), *Bulgaria* (elected by the National Assembly on the proposal of the President of the Republic; usually he will be the leader of the majority party), *Poland* (on a motion of the President of the Republic), *Hungary* (at the proposal of the President of the Republic).

In the three last cases, individual ministers are also appointed by Parliament, at the proposal of the Primer Minister. In the case of *Germany* the ministers are appointed by the President of the Republic at the proposal of the Federal Chancellor.

4. Election by the people

This is typical of presidential Republics where the President of the Republic is also the Head of the Executive, and there is generally no separate office of Prime

Minister or President of the Council: *Chile, Indonesia* (the President is elected by the People's Consultative Assembly, the highest state institution), *Kenya, Philippines, United States* and *Zimbabwe.*

In all these countries, the ministers are appointed by the President, with specific procedures in the case of the Philippines (where it is necessary to be approved by the Appointments Committee), *Kenya* (where they must be members of Parliament) and the *United States* (where the approval of the Senate is required).

(b) Parliamentary confidence (Questions 1.3-1.6)

1. The duration in office of the government, or at least its acquisition of full constitutional powers, is conditional upon the parliamentary vote of confidence in the following countries: *Australia* (both Houses vote separately, but only the vote of confidence of the House of Representatives is indispensable for the government to remain in office); *Belgium* (both Chambers adopt the vote of confidence separately after the Prime Minister has read the government programme); *Bulgaria* (the government is politically accountable to Parliament; it can seek a vote of confidence on its overall policy, a programme, or a particular issue, the decision being taken by an absolute majority of Members present); *Canada* (even though not expressly provided by the Constitution, a vote of confidence may be taken, but the real political responsibility of the Executive towards Parliament only relates to the House of Commons); *Greece* (within 15 days of its formation the government must be given the vote of "investiture" by a majority vote of Parliament which must be carried by not be less than two-fifths of the members); *Hungary* (the government is required to resign when the National Assembly withdraws its confidence from the Prime Minister and appoints another one; the government's political responsibility towards Parliament is exercised through parliamentary questions and the reports which the government is required to submit to Parliament); *India* (the government's responsibilities towards Parliament are laid down in the Consitution); *Israel; Kenya* (the National Assembly must approve a resolution with the support of the majority of its members); *Pakistan* (confidence must be accorded only by the Lower House within 60 days of the formation of the government; at the beginning of the parliamentary session the President convenes a joint session of Parliament and explains the government's programme, after which it is debated in both Houses separately and concludes with the approval of a motion of "thanks" submitted by a minister); *Papua New Guinea* (a motion of no confidence in the government cannot be tabled during the first six months of its term; even though there is no provision for Parliament to act in order to create a

political responsibility towards it on the part of the government, the Constitution provides that the government is the executive arm of Parliament and that it must resign whenever it does not fulfil its duties); *Poland* (when the government submits the previous year's accounts for approval and the vote is taken on the resignation of the government; only the Lower House may pronounce on government responsibility. The Constitution provides that Parliament may intervene at any time in relation to the government); *Spain* (parliamentary confidence only relates to the Prime Minister and his programme, and only concerns Congress; the Constitution nevertheless provides that the government is collectively answerable to Congress where a motion of no confidence may be tabled against the government, signed by one-tenth of the deputies and indicating the new candidate for Prime Minister, which must be approved by an absolute majority of the members); *Zimbabwe* (a parliamentary Committee on the government's programme exists to monitor its work, even though the decisions are not binding on the Executive).

2. The continuation in power of the government, or its assumption of full constitutional powers are *not* subject to a parliamentary vote of confidence in the following countries: *Cameroon* (but the Constitution provides that the communications of the Prime Minister may lead to a vote of no confidence which, if carried, could lead to the resignation of the government); *Cape Verde* (although provision is made for Parliament to approve the government's programme); *Chile* (provision is made for Parliament to table a motion of impeachment); *Cyprus; Denmark; France* (Article 49 of the Constitution provides for the possibility that the Prime Minister shall submit his programme to the National Assembly after being adopted by the Cabinet; by virtue of this same article, the Prime Minister may require the Senate to adopt a statement of general policy, but the government is not responsible for this before the Senate); *Japan;* the *Republic of Korea;* the *Philippines; Germany* (no provision is made for any formal parliamentary intervention laying down the political responsiblity of the Executive towards it; Parliamentary control over the government is mainly exercised by convening the members of the government in plenary session or in committee, parliamentary questions, budgetary control and commissions of enquiry. As far as the Bundesrat is concerned, even though the government does not have any political repsonsibility towards it, it is nevertheless required to attend parliamentary meetings at the request of the Bundesrat and to keep it informed on all government activity); *Indonesia* (Parliament may request the resignation of the Prime Minister if he fails to comply with his mandate); *Ireland* (there are no deadlines, or established times within which the government must submit to a parliamentary vote of confidence. Nevertheless, under the Constitution the government is responsible to the Dáil Eirean); *New Zealand* (but in the debate on the Queen's Speech the Opposition may move an amendment expressing no confidence in the government. The government, whose Ministers must all be Members of Parliament, must have the support of the

majority of the House of Representatives in order to remain in office); *Norway* (the political responsibility of the government towards Parliament only derives from the Constitution); *Rwanda; Senegal* (Parliament may adopt a motion of no confidence which, if approved, leads to the resignation of the government. But in this case, the President of the Republic may dissolve Parliament and call new elections); *Tunisia;* the *United Kindgom* (after the opening of the new Parliament, a general debate is held in both Houses, with a motion on the speech from the Throne in which the new government's legislative programme is laid down. An amendment to this motion has only ever been adopted on one occasion (1924) in the House of Commons, and it led to the resignation of the Prime Minister. The House of Lords has not recently passed a vote of no confidence. The government's political responsibility towards Parliament is laid down by tradition); the *United States* (the draft budget or presidential bills can be amended by Congress but they have no effect on the presidential mandate); *Zambia.*

(A) II. Term of office and resignation of the government

a) A fixed term (Question 2.1)

In the following countries the government's term is fixed: *Canada* (the Constitution provides that the life of Parliament shall be 5 years. In practice, the mandate of the government is linked to the general elections, and the government may leave office early if it loses the elections); *Cape Verde* (5 years, like the Legislature; its term can be brought forward if it resigns voluntarily, or if a motion of no confidence is passed by an absolute majority of the members of Parliament, or by presidential decree. The parliamentary instrument for withdrawing parliamentary confidence is the vote of no confidence); *Chile* (no provision is made for governments to resign before their normal term); *Germany* (until the first meeting of the new Parliament the Federal Chancellor may be removed from office by the President of the Republic at the request of the Bundestag, which then elects a new Federal Chancellor); *Hungary* (4 years, namely at the end of the legislature; the government may resign voluntarily before the end of its term); *India* (the term coincides with the term of the Lok Sabha. The adoption of a motion of no confidence in the government leads to the government's dismissal; the government may also voluntarily resign); *Indonesia* (5 years; even though the President is not responsible towards the House of Representatives it may cause the President: to resign by convening the Consultative Assembly. The President is then replaced by the Vice President); *Israel* (Parliament can withdraw confidence in the government with a vote of no confidence. The government normally resigns at the end of

the legislature); *Kenya* (5 years, but the adoption of a motion of no confidence by Parliament can lead to its resignation. The government may also resign voluntarily); *Pakistan* (5 years; a motion of no confidence in the Prime Minister can lead to the resignation of the government); the *Philippines* (even though the Constitution does not provide for a fixed term, the President, who is also Prime Minister, cannot remain in office for more than 6 years. No parliamentary vote of no confidence exists, nor can the government voluntarily resign. Parliament can only impeach the President in the cases provided by the Constitution); *Spain* (4 years, namely coinciding with the legislature. It may in some cases resign earlier if a motion of no confidence is carried or if a vote of confidence is denied, or as a result of the death or resignation of the Prime Minister); the *United States* (4 years; the Executive may resign before this only in the case of crimes of treason, corruption, etc. The government may also resign voluntarily. Congress, one House or a Committee, may express a vote of no confidence in the President); *Zambia* (5 years. The government may resign voluntarily, but Parliament may not withdraw confidence from the government); *Zimbabwe* (5 years; nevertheless a vote of no confidence carried by at least two-thirds of the members of Parliament can lead to the early resignation of the government).

b) Resignation of the government (Questions 2.2-2.3)

The government remains in office until it resigns, in other words without a fixed term, in the following countries: *Australia* (the government can resign voluntarily but normally remains in office until it is defeated by an Opposition party); *Belgium* (traditionally the government resigns at the end of the legislature. There is no motion of no confidence but if the government is out-voted in Parliament, it resigns); *Bulgaria* (in principle the government resigns at the end of a legislature, but it must resign following the approval by more than half the members of a motion of censure tabled by one fifth of the members or if a motion of confidence is negatived; the government may also resign voluntarily); *Cameroon* (the government resigns after a motion of no confidence is carried with at least two-thirds of the members of Parliament and signed by at least one-third of its members); *Cyprus* (the President of the Republic may change the government at any time; the Parliamentary vote of no confidence does not lead to the resignation of the government which, at all events, may resign voluntarily. The ministers normally resign when a new President of the Republic is elected); *Denmark* (the government resigrts when Parliament withdraws its confidence; the vote of no confidence is used; the government may resign voluntarily. There are no conventions requiring the government to resign when constitutional terms expire); *France* (the government may resign voluntarily but it often resigns at the request of the President of the Republic; the government may also resign if it is denied the

confidence of a simple majority when tabling its programme or declarations of general policy; if a motion of no confidence is tabled by one-tenth of the members of the Assembly and is approved by an absolute majority. In practice, the Prime Minister resigns after general elections and presidential elections); *Greece* (the government remains in office until it resigns voluntarily or as a result of a vote of no confidence, or when a vote of confidence is overturned. By constitutional practice, the government also resigns after the general elections); *Ireland* (according to the Constitution the members of the government remain in office after the dissolution of the Dail Eirean until their successors are appointed. The Prime Minister may resign at any time; but the obligation to resign only arises when the government loses a vote of confidence or a motion on financial matters); *Japan* (if the House of Representatives adopts a motion of no confidence or rejects a vote of confidence, the Cabinet must resign, unless the House of Representatives is dissolved within ten days. It must also resign the first time Parliament is convened following the election of the Members of the House of Representatives, which is every 4 years. The government may resign voluntarily); the *Republic of Korea* (the National Assembly may adopt a recommendation to remove the Prime Minister or a minister from office; this must be tabled by at least one-third of the members and approved by the majority. The government may resign voluntarily; in practice it always resigns when the presidential term expires); *New Zealand* (the government is obliged to resign when it no longer has the support of Parliament; Parliament may also withdraw its confidence in the government by voting against it on a government vote of confidence. The Governor-General may dismiss the government from office, but that presupposes a constitutional crisis); *Norway* (the adoption of a motion of censure containing a statement of no confidence requires the resignation of the government. However, if the motion is not tabled by 9am on the day on which the Storting is due to debate the issue to which it relates, it cannot be included for debate that day if the Speaker or one-fifth of the Members object to it. The government may also voluntarily resign); *Papua New Guinea* (a vote of no confidence may not be carried during the first six months of the Prime Minister's term; it may only be tabled against the Prime Minister, the Council of Ministers or any individual minister, but not against the entire government, even though its adoption leads to the resignation of the government); *Poland* (the government may resign voluntarily. The parliamentary instrument for withdrawing confidence is the "cessation decree". In practice the government resigns after the general ;ind presidential elections); *Rwanda* (the adoption of a Parliamentary vote of no confidence leads to the resignation of the government; the government may always resign voluntarily. Other cases of resignation are the incapacity of the President to exercise his functions or his impeachment); *Senegal* (the government remains in office until the Prime Minister voluntarily submits his government's resignation); *Tunisia* (a motion of no confidence submitted by one-fifth of the

members of Parliament and carried by a two-thirds majority requires the government to resign. The government may not resign voluntarily); the *United Kingdom* (the last motion of no confidence in the government carried by the House of Commons was in 1979; this normally requires the government to resign and parliament is dissolved. The government may resign voluntarily. The Prime Minister resigns when new general elections result in another Party gaining the majority. In the case of the death of the monarch, the Prime Minister remains in office).

c) Relationship between the resignation of the Prime Minister, the powers of the outgoing government and the formation of a new government (Questions2.4-2.6)

With regard to the repercussions on the whole Cabinet of the Prime Minister's leaving office, and the need or otherwise to form a new government, or whether the Prime Minister may replaced, and the continuation in office and with what powers, of the outgoing government, the following replies were received: *Australia* (when the Prime Minister resigns the whole government resigns, but may remain in office to carry out routine business until the new government is appointed); *Belgium* (no fixed rule exists but in the event of ill health on the part of the Prime Minister, he alone is replaced. An outgoing government remains in office only to carry out routine business); *Bulgaria* (the resignation of the President of the Council of Ministers involves the formation of a new Cabinet. The outgoing government continues to exercise its powers until the election of a new Council of Ministers.), *Cameroon* (no clear ruling exists, and the Constitution only provides that the President of the Republic may confirm the Prime Minister in office and ask him to form a new government after he has resigned); *Canada* (any parliamentary procedure leading to the resignation of the government must take place before the House of Commons whose members are elected and not appointed, unlike the Senate. This is why any vote of no confidence against the government adopted by the Senate has no constitutional value); *Cape Verde* (if the Prime Minister resigns a new government is formed. The outgoing government only performs administrative functions meanwhile); *Denmark* (if the government refuses to resign after a parliamentary vote of no confidence, the King orders it to resign by decree; in the event of the demise of the Prime Minister, the government remains in office for routine business only, until a new one is formed); *France* (by tradition the government resigns after elections; the outgoing government looks after routine business until the new government is formed); *Germany* (when the Federal Chancellor resigns the whole government resigns with him, but remains in office until the new government is formed); *Greece* and *Japan* (when a new government is required, the outgoing government remains in office only to deal with ordinary

business in the meantime); *Hungary* (if the Prime Minister leaves office a new government is formed; meanwhile the outgoing government remains in office but may not conclude any international treaties or issue decrees except to deal with exceptional circumstances); *India* (when the Prime Minister resigns the whole government resigns with him; the President may request the outgoing government to remain in office to conduct ordinary business until a new government is formed, or may call a general election); *Indonesia* (if the President resigns, the Vice President takes over and the ministers remain in office); *Ireland* (if the Prime Minister resigns the whole government resigns with him but remains in office until the new government is formed); *Israel* (the whole government resigns with the Prime Minister, but remains in office with full powers until the new government is formed); *Kenya* (if the President leaves office new elections are called within 90 days; the outgoing government remains in office until the new government is formed); the *Republic of Korea* (when the Prime Minister resigns he may be replaced, or a new government formed; the outgoing government remains in office until the new government is formed at the same moment); *New Zealand* (the Prime Minister is replaced and the government is re-shuffled. In the case of resignation, the outgoing government remains in office to conduct routine business until the new government is formed); *Norway* (if the Prime Minister resigns the whole government resigns with him. The outgoing government, among others, initiates the process of formation of the new government. There is no parliamentary procedure for requiring the government no resign; the resignation of the government is only notified to Parliament); *Pakistan* (if the office of Prime Minister is vacant a new government is required; however the outgoing government remains in office at the request of the President); *Papua New Guinea* (when the Prime Minister resigns it is not necessary to form a new government; the Constitution provides for a "deputy" Prime Minister who is a member of the Cabinet. The new Prime Minister is appointed by the President by a decision of Parliament. At the end of the legislature the government remains in office until the new Prime Minister is appointed); the *Philippines* (the new Cabinet is not automatically formed and a new President is not automatically appointed. The Constitution governs the formation of the government. The government may not resign. Only individual ministers may resign); *Poland* (the whole government does not resign with the Prime Minister; the outgoing government remains in office with full powers until the new one is formed); *Rwanda* (the whole government resigns with the Prime Minister, but remains in office until the new government is formed only for ordinary business. Parliament may make the government resign by carrying a vote of no confidence, but the dismissal of the government is the prerogative of the President of the Republic); *Senegal* (when the Prime Minister leaves office the whole government resigns, a new Prime Minister is appointed and may form a new government which is wholly or partially new. The outgoing government remains in office until the

new one is formed, but only to carry out ordinary business); *Spain* (if the Prime Minister leaves office a completely new government has to be formed; the outgoing government remains in office until the new one succeeds it); the *United Kingdom* (there is greater continuity in the composition of the Cabinet if the incoming Prime Minister belongs to the same political party as his predecessor; when a government resigns a new Prime Minister is appointed and asked to form a new government immediately); the *United States* (if the President leaves office, his place is taken in the following order, by the Vice President, the Speaker of the House of Representatives or the Speaker of the Senate; a new government need not be formed. However, the replacements are made very rapidly); *Zambia* (if the President leaves office he is replaced by the General Secretary of the Party for three months until new elections are held while the outgoing government remains in office); *Zimbabwe* (if the President, who is also the Head of State, leaves office, new presidential elections are held within three months. After a parliamentary vote of no confidence, the President may remain in office and dissolve both Parliament or the government.

IV* Relations with former Members off Parliament

1. Introductory Note by Mr Doudou Ndiaye (Secretary General of the National Assembly of Senegal) (February 1990)

At the end of the legislative term (which is five years in Senegal) Members of Parliament who are not re-elected return to their former occupation (government official or other public servant) or turn to other activities. It is the tradition of parliamentary democracies that there is a complete break (in legal, economic and social terms) with Parliament itself. In Senegal this principle is modified to a certain extent. In practice former Members of Parliament have for some years got together in an association of which there were (at 31st December 1989) about 150 members.

A bureau of twelve members forms an Executive Committee.

There are two reasons for the creation of such an association: first, political and secondly, sociological.

(a) *Political*

Having a single Party from 1963 to 1978 created friendships which have been continued after the term of office is finished and have given rise to reunions.

(b) *Sociological*

Until recently the background of Deputies, by profession or category, was as follows:

Liberal professions	10%
Government and other public servants	60%
Other	30%

After leaving Parliament, Government officials and public servants are looked after by the public authorities with regard to salaries, social security, pensions, etc. But other former Members of Parliament can encounter enormous difficulties in their new position.

For this reason natural solidarity among colleagues brought into play forms of mutual assistance. This gave rise to the creation of an Association.

Now it is obvious that in view of its financial responsibilities and the growth in the needs of former members that this Association has to seek some public subsidy to balance its accounts.

Naturally the Association has applied for assistance from the national Parliament.

Relations between the Senegalese Parliament and the Association of former Members

These relations are linked to the concern Parliament has for the Association and the contribution the latter makes to matters of national significance.

The object of the Association is to defend the practical and moral interests of its members.

These already benefit, as former Members, from the following advantages:

(1) Parliamentary pensions linked to current salary.

(2) Widows pensions.

The pension files are kept by the Assembly and a payment is made by a branch of UAP in Dakar.

The needs of the Association

More than once the Association has sought a meeting with the President of the National Assembly to discuss its complaints in the name of the solidarity which it wishes to sustain.

The Association wished to have use of premises in the parliamentary building in order to hold meetings with parliamentary staff (secretaries, ushers etc.).

The Association asks for Parliament to pays for the costs of sending out notices to all members of the Association (such as convocation for meeting, invitations to family events etc.).

It has also put forward the principle that there should be full medical cover for former politicians for the costs of consultations, hospitalisation, treatment etc.

It has also proposed the creation of an independent reserve fund for current and former Members of Parliament. This would cover:

(a) illness - costs of consultation, medical and surgical needs etc.

(b) maternity, costs of consultation, confinement, post natal care etc.

(c) invalidity - resulting from parliamentary duties.

(d) death - the dependents would receive a sum equal to one year's parliamentary salary.

The National Assembly was asked to make a contribution equivalent to double the subscriptions to such a fund.

Current Members of Parliament pay attention to such requests because they themselves will, in due course, become former Members but they are very cautious about the different status and the size of the expenditure which could arise in addition to the current cost to the National Assembly.

Therefore these proposals are still being studied. Nonetheless Parliament gives a not insignificant amount of help in examining case by case the difficult situation of certain former Members, particularly those without professional qualifications who have lost their parliamentary mandate.

On the other hand former Members who have been Members of Parliament have a duty, however informally, to bring their experience and knowledge to bear on the affairs of the nation.

These very briefly are the issues I want to raise in relations between Parliament and the Association of former Members of Parliament in Senegal and I would be interested to hear what the practice is in other countries.

2. Topical Discussions Extract from tthe Minutes of tlie Punta del Este session (October 1990)

The PRESIDENT thanked Mr. NDIAYE for the introductory note which he had circulated and invited him to introduce the topical discussion.

Mr. NDIAYE said that Members of Parliament in Senegal were elected for a five-year term. They came from a variety of professional backgrounds: officials, liberal professions, self-supporting farmers etc. Whereas officials and people in liberal professions could always return to their jobs after ceasing to be a Member of Parliament, the others did have problems. Former Members returned to the National Assembly seeking financial support. An association of former Members had been created and the authorities were seeing what assistance, if any, could be provided.

Mr. BATETANA (Congo) said that in his country Members of Parliament received no salary but were paid expenses during the session. There was no pension scheme and problems arose if Members had no other means of support. Occasion-

ally former Members did come back to parliament seeking financial assistance. He would be interested to know what the practice was in other parliaments.

Mr. NYS (Belgium) said that in Belgium there was an association of former Deputies and Senators. Article 2 of its rules said that the Association should promote the interests of Deputies and Senators who had the right to be honorary Members of Parliament or who had the right to a parliamentary pension. The secretariat of the Association was financed by the Senate and with one Senate official and an office in the building.

Mr. SWEETMAN (UK) said there was little experience in the UK of dealings with former Members of Parliament. Until fifteen years ago some former Members had found themselves in a difficult financial position but now pensions were paid. More recently it had been agreed that Members who retired or lost their seats would receive a re-settlement grant. There was no association of former Members and such a body was not likely to be popular with existing Members. Sitting Members were generally reluctant to grant extra facilities to ex-Members for fear that advantage would be taken of them.

Mr. TITTEWALLA (Sri Lanka) said there was a pension scheme for former MPs who had served at least fifteen years. There was no association of former Members. Ex gratia payments were now paid to the families of Members and former Members killed during the terrorist attacks.

Mr. LAUNDY (Canada) said there was a pension scheme for those who had served a minimum of six years and this was more generous than the public service pension. An association of former Members had been set up in 1984 and there was no hostility to it from sitting MPs. The House of Commons provided good premises and secretarial support but no direct financial assistance. In Canada there was a high turnover of Members after election and it was generally reckoned to be a precarious profession (with the assiduity of individuals not being a major factor in whether they were re-elected). Removal expenses had always been paid to Members who lost their seats and a new scheme had been introduced to help transition to new careers. Up to 7,500 Canadian dollars could be paid for counselling, planning, and re-training to enable them to adapt to non-parliamentary life. The payment could only be paid once to any individual Member. He believed that in the United States there was an association of former members of Congress founded in 1981 which was well-funded by major philanthropic institutions and took part in many activities.

Mr. DE SOUZA BARRIGA (Portugal) said that there was a scheme of retirement pension for former Members but no association.

Mr. WHEELER-BOOTH (UK) said that most members of the House of Lords were members for life. The exception was Bishops who retired at the age of seventy. A recent change had allowed them access to certain facilities in the building.

Mr. FLOMBAUM (Argentina) said that the position of former Members was currently under discussion in his country. They could retire if over the age of forty on a salary comparable to those of a sitting member if they had a reasonable length of service. There was an association financed by former Members and they had access to the restaurant and certain parliamentary services but no privileged status.

Dr. PHIPATANAKUL (Thailand) said that any Member who had served more than four years was entitled to a pension and previous public service work would be counted in the calculation of that pension.

Mr. YOO (Korea) said that there was an association of former Members and it received a fairly small subsidy from the parliament.

Mr. CHARPIN (France) said that there were pensions schemes for former Members. Former Members had free access to the Senate and a special area in the public gallery. Separate associations had recently been founded for Senators and Deputies and a small office had been made available for the association in the Senate. Former Senators were not expected to have any particular role in bringing their experience to bear on national affairs. The reason for the facilities they were given was to maintain friendly relations.

Mr. ORTIZ (Uruguay) said that Members received a pension equivalent: to 85% of salary on retirement but no other privileges. There was no association of former Members.

Mr. HADJIOANNOU (Cyprus) said that there was no association of former Members in Cyprus. Retiring Members were entitled to a pension if they had served two years and the pension was payable from the age of sixty. Someone who lost his seat or otherwise retired at any age received a lump sum. A former Speaker of the House of Representatives was entitled to an official car and a secretary on retirement.

Dr. ALZUBI (Jordan) said that no facilities were granted to former Members and there was no association but pensions were paid.

3. Report en Relations with former Members off Parliament, prepared by Mr Doudou Ndiaye, Secretary General of the National Assembly of Senegal (adopted at the Stockholm session, September 1992)

I. INTRODUCTION

The subject of relations between Chambers and Associations of former members has given rise to much interest.

Responses have been received from the following parliaments:

Australia	(Senate)
Belgium	(Senate; House of Representatives)
Cameroon	(National Assembly)
Canada	(Senate; House of Commons)
Cape Verde	(People's National Assembly)
Chile	
Cyprus	(House of Representatives)
Denmark	(Folketinget)
Finland	
France	(Senate; National Assembly)
Gabon	(National Assembly)
Germany (Federal Rep.)	(Bundesrat; Bundestag)
Greece	(Chamber of Deputies)
Hungary	
India	
Indonesia	(House of Representatives)
Israel	
Italy	
Japan	(House of Representatives; House of Councillors)
Kenya	
Korea, Rep. of	(National Assembly)
New Zealand	
Norway	
Pakistan	
Papua New Guinea	
Philippines	
Poland	
Rwanda	(National Development Council)
Spain	(Congress of Deputies; Senate)
Tunisia	(Chamber of Deputies)
United Kingdom	(House of Lords; House of Commons)
United States of America	(Congress)
Zaire	
Zambia	
Zimbabwe	

From examination of the experiences of those parliaments which have replied the following points can be noted:

Some of the parliaments were established a long time ago. Dates have been quoted from 1473-1789 etc.

Some are unicameral, some are bicameral. Many of the northern countries are bicameral. The Senegal Parliament is unicameral, comprising 120 Deputies from two political parties.

Membership of parliaments varies from 70 in Rwanda to 1,186 in the United Kingdom House of Lords.

II. RELATIONS BETWEEN PARLIAMENT AND FORMER MEMBERS

In most parliaments former members receive a parliamentary pension except in those countries where members exercise their functions without salary (Cape Verde) or where members have a mandate for life (United Kingdom House of Lords). In Japan Members of Parliament do not receive a parliamentary pension but the parliament provides a monthly allowance to members who are still alive and an increased allowance to former members who are over 70 years of age.

In Spain there is no parliamentary pension though the benefits of the general regime apply in favour of former members.

Conditions for receipt of a pension vary between parliaments. For some it is necessary to have reached the age of 65 (this is often the case in western countries, for example Sweden). In others it: is necessary to have completed one term of office or two terms. In other countries a former member can begin to benefit from the pension regime from the age of 55 (particularly in African countries). In Senegal all former members have the right:

- to a life pension after reaching 55.
- a part pension after reaching 50.

In almost all the parliaments cited above widows and children can benefit from the pension. In Senegal a widow of a former Deputy has a right to the pension on condition she has reached the age of 45 or has at least two children from the marriage with the former Deputy who are less than 18 years old at the time of his death. This pension is suspended on the 18th birthday or on the death of the last child, and resumes when the widow has reached the age of 45.

In most countries where an association of former members exists the parliament makes its buildings and offices available to them. This is particularly useful in developed countries. In certain countries, such as Italy, the Parliament via its two chambers makes a financial contribution. In other countries former members can

use the parliamentary buildings with the authorisation of the Secretary General (Indonesia).

In respect of medical care there is an almost total absence of provision for former members except in countries where a minimum medical care is guaranteed. This is particularly valuable in countries where a medical infrastructure exists, sometimes within the parliament itself. In Cyprus, for example, a Member of Parliament who has held his seat for at least 12 months has the right to free medical care, while in Italy former members are catered for on payment of a subscription.

The vast majority of Assemblies do not confer honours. Some parliaments, such as Canada, Israel and South Korea have the power to confer honours on former members. In all other countries this power rests with the Executive although the Assembly can make proposals (Belgium). In Senegal Members of Parliament cannot receive decorations during their mandate.

In many parliaments former members obtain no other particular benefits. However, certain former members benefit from a reduction in transport costs (Italy) or can gain access to parliamentary restaurant facilities at subsidised prices (Belgium). Other examples are the right to 1,000 telephone calls a year (Israel), free use of the postal system for six months after their term of office (United States of America), free railway tickets (Denmark). In Belgium the advantages attaching to the honorary position include an official identity pass, a special pass for vehicles giving access to the parliamentary car park, a special passport, subscription to certain publications and an unlimited number of public transport warrants. In other parliaments the advantages for former members are left to the discretion of the government (Papua New Guinea).

III. ASSOCIATIONS OF FORMER MEMBERS

An association of former members exists in 16 countries. Those in Gabon and Cyprus have only just been set up. The others are of relatively recent creation (1968 being the date of establishment of the first such association). The membership of associations varies between 115 members and 1,150 members.

In many countries, including United Kingdom, Rwanda, Norway, and Hungary, no such association exists. The same is the case in the European Parliament and the Parliamentary Assembly of the Council of Europe, which do however have a system of honorary membership.

In almost all the countries where an association exists the main objectives are the defence of the material and moral interests of former members, and the organisation of politico-cultural events and excursions (such as the symposium on

toxicomania, in France). However, in some countries the association has as an objective contributing towards the reconstruction and development of parliamentary institutions, solidarity and social action campaigns, and the provision of moral, legal and material assistance to the poor (Greece).

In all parliaments the principal activities of the association are those contributing to the achievement of its stated objectives (Annual General Meetings, Executive Meetings, politico-cultural events).

No parliament solicits the advice of its former members on questions of national interest. However nothing prevents members of the government and of the parliament from seeking, on an individual basis, the opinion of former members (Papua New Guinea). In some parliaments the former members are free to give their opinions on national importance.

In other countries (Germany) unofficial contact is maintained with current members, and former members can participate in meetings of their former parliamentary groups during sessions. Former German members of the European Parliament also maintain close links with the association of former members of the parliament proper.

IV. EXTERNAL RELATIONS OF ASSOCIATIONS OF FORMER MEMBERS

Many associations of former members maintain friendly relations with each other, particularly amongst European countries (Italian former members maintain relations with those of Belgium, France, Turkey and Germany). Bilateral contacts can be established, and a sub-regional organisation exists as part of nordic regional co-operation which brings together Iceland, Sweden, Denmark and Finland.

These relations principally concern exchanges of information, organisation of seminars and conferences and cultural events related to subjects of international interest. In almost all cases these relations have no legal basis and are of an unofficial nature.

No replies were received to the question seeking information on whether such associations took part in campaigns related to human rights of Members of Parliament in other countries. However the association of former members in Greece concerns itself particularly with all questions related to the democratic rights of the citizens and participates actively in movements for the protection of the rights and of the freedom of imprisoned Members of Parliament. It should also be noted that in Australia former members may take part in the parliamentary representation for Amnesty International.

V. Defection of Members from their Party

1. Introductory Note by Shri C. K. Jain (Secretary General of the Lok Sabha, India) (April 1992)

Defection, in its etymological sense, connotes abandonment of loyalty, duty or principle or of one's leader or cause. In parliamentary political life, the term has come to mean change or allegiance by a member of a legislature. The traditional term for the same has, however, been "floor crossing" which had its origins in the British House of Commons where a legislator was supposed to have changed his party allegiance when be crossed the floor and moved from the Government to the Opposition side or *vice versa.*

Though there is perhaps nothing unusual about political defections and there have been instances of some of the most eminent public men and Parliamentarians defecting from their parties, what is significant in the Indian context is the magnitude, range and character which the phenomenon acquired, thereby necessitating a suitable legislative measure to curb it. Efforts were made in this regard which culminated in the passing of comprehensive legislation in the form of the Constitution (Fifty-second Amendment) Act, 1985 to outlaw political defections.

The Act, which has since come to be popularly known as the Anti-defection Law, added a new schedule (Tenth Schedule) to the Constitution setting out certain provisions as to disqualification on grounds of defection. It is for the purpose of giving effect to the provisions of this Act that the "Rules concerning defection of members" were framed. Hence, it would be pertinent to trade the antecedents of the Anti-Defection Act and discuss its provisions in order to have a correct appreciation of the "Rules" framed to make it effective.

Constitution (Fifty-second) Amendment Act

Since the Fourth General Elections held in 1967, it was observed that floor crossings, in which personal gains and benefits played an important role, had become the order of the day. An era of coalition governments, whose formation was very often an adjustment of convenience, began in several states since this period. Being constituted of heterogeneous elements - political parties coming together to share power often having no ideological similarity - the State Governments fell frequently. The fall was usually brought about due to the change of

party affiliations by members who could not be accommodated as Ministers and the like or otherwise lucratively recompensed. The magnitude this phenomenon acquired can be visualised from the fact that within a short period of less than five years, beginning in 1967, nearly 50 per cent of the legislators had changed their party affiliations.

Concerned over the *malaise* of political defections in national life, the Parliament took cognisance of the problem as early as the 1960s. The Lok Sabha adopted a non-official resolution on 8 December, 1967 urging the appointment of a high level committee, in pursuance of which a Committee of Constitutional experts and representatives of political parties was set up under the Chairmanship of the then Home Minister, Shri S. B. Chava, to consider the problem of legislators defecting, in all its aspects and to make recommendations in that regard. In order to give effect to the recommendations of the Committee a Constitution Amendment Bill was introduced in Lok Sabha in May 1973. This legislative measure, as well as another Bill on the subject introduced in the next Lok Sabha in August 1978, could not be considered owing to one reason or the other.

Subsequently, it was largely due to the initiative taken by the then Prime Minister, Late Shri Rajiv Gandhi, that the Constitution (Fifty-second) Amendment Act was introduced in the Lok Sabha on 24 January 1985 to outlaw political defections.

The statement of Objects and Reasons appended to the Bill, which was passed by Lok Sabha and Rajya Sabha on 30 and 31 January 1985 respectively, and became an Act after receiving the assent of the President on 15 February 1985, stated:

> "The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. The Bill is meant for out-lawing defection and fulfilling the above assurance."

Apart from adding a new schedule (Tenth Schedule), to the Constitution, the Constitution (Fifty-second) Amendment Act amended articles 101, 102, 190 and 191 of the Constitution dealing with vacation of seats and disqualification from membership of Parliament and State Legislatures.

Provisions of the Anti-Defection Act

Under the Tenth Schedule which was added after the Constitution (Fifty-second Amendment) Act, 1985, a member of Parliament or a State-Legislature incurs disqualification:

i) if he voluntarily gives up his membership of such political party, or

ii) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention, or

iii) if an elected Member of a House who has been elected as such otherwise than as a candidate set up by any political party, joins any political party after such election; or

iv) if a nominated Member of a House joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 19.

The other provisions of law are as follows:

- A nominated Member has been given certain latitude under the law. If he belonged to a political party before nomination, he shall be deemed to be so even after his nomination; if he was not a member of a party, he may exercise his option within six months of his nomination.
- In case of an independent candidate, however, no such provision is laid down as in the case of a nominated Member. He would be disqualified if he joined any political party after his election.
- The law makes it clear that splits and mergers are not defection. Where a Member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party, he does not incur disqualification. A Member of a House is also not disqualified where his original political party merges with another political party and claims that he, and any other member of his original political party, have become members of such other political party or, as the case may be, of a new political party formed by such merger to which not less than two-thirds of the members of the legislature party concerned have agreed.
- A person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States, the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State is not disqualified, if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he

belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin such political party or become a member of another political party; or if he, having given up, by reason of his election to such office, his membership of the political party to which he belonged immediately before such election rejoins such political party after he ceases to hold such office.

- All questions as to disqualification on ground of defection in respect of the Members of the House shall be referred to the Presiding Officer of the House, whose decision shall be final. However, if such dispute relates to disqualification of the Presiding Officer himself, it shall be referred to such Member of the House as the House may elect in this behalf and his decision shall be final.
- All proceedings in relation of any question as to disqualification of a Member of a House under this schedule are deemed to be proceedings in Parliament with in the meaning of article 122 or, as the case may be, proceedings in the legislature of a State within the meaning of article 212. The Act also specified that no court shall have any jurisdction in respect of any matter connected with the disqualification of a Member of the House under the Act.
- Paragraph 8 of the Tenth Schedule empowers the Chairman or the Speaker of a House to make rules for giving effect to the provisions of the schedule. The rules are to be laid before the House and are subject to modifications/ disapproval by the House.

Anti-Defection Rules

In exercise of the powers conferred by paragraph 8 of the Tenth Schedule, the Speaker of Lok Sabha and the Chairman of Rajya Sabha framed the Disqualification on Ground of Defection Rules, 1985. The rules were tabled in the two Houses of Parliament on 16 December 1985 and came into force with affect from 18 March 1986. These rules are briefly discussed below.

i) Information to be furnished by leader of a Legislative Party

Under the Disqualification on Ground of Defection Rules, 1985, the leader of each legislature party should, within thirty days of its formation or within such further period as the Speaker may for sufficient cause allow, furnish the following information to him, namely:

(a) the names of members of such legislature party together with other particulars and the names and designations of the members of such party who have been

authorised by it for communicating with the chair for purposes of these rules; and;

(b) a copy of the rules and regulations of the political party concerned.

Where a legislature party consists of only one member, such member also has to furnish a copy of the rules and regulations within thirty days from the date on which he has taken his seat in the House or within such further period as the Speaker may for sufficient cause allow.

Whenever any change takes place in the information furnished by the leader of the legislature party or by a member, he should, as soon as may be thereafter, and in any case within thirty days from the date on which such change has taken place or within such further period as the Speaker may for sufficient cause allow, furnish in writing information to the Speaker with respect to such change.

Where a member belonging to any political party votes or abstains from voting in the House contrary to any direction issued by such political party without obtaining prior permission of such political party, such member, should, as soon as may be thereafter and in any case within thirty days from the date of such voting or abstention, inform the Speaker whether such voting or abstention has or has not been condoned by such political party. A member may be regarded as having abstained from voting only when he, being entitled to vote, voluntarily refrained from voting.

ii) Information etc. to be furnished by members

Every member who has taken his seat in the House should furnish to the Secretary General within thirty days from such date or within such further period as the Speaker may for sufficient cause allow, a statement of particulars and declaration as to his party affiliation.

Hi) Register of information as to members

The Secretary General should maintain a register based on the information furnished in relation to the members.

iv) References to be by petitions

No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule can be made except by a petition in relation to such member made in writing to the Speaker by any other member. Before making any petition in relation to any member, the petitioner has to satisfy

himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule.

Every petition should contain a concise statement of material and the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such persons and the gist of such information as furnished by each such person. The petition should be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure 1908 (5 of 1908) for the verification of pleadings.

v) Procedure

On receipt of a petition, the Speaker should consider whether the petition complies with the requirements of the rule. If the petition does not comply with the requirements of the rule, the Speaker should dismiss the petition and intimate the petitioner accordingly. If the petition is in order, the Speaker should cause copies of the petition to be forwarded to the member in relation to whom the petition has been made and also to the Leader of the Legislature Party which he belongs to. Such member should, within seven days of the receipt of such copies, or within such further period as the Speaker may for sufficient cause allow, forward his comments in writing thereon to the Speaker.

After considering the comments, if any, in relation to the petition, the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee of Privileges for making a preliminary inquiry and submitting a report to him. The Speaker should, as soon as may be after referring a petition to the Committee of Privileges, intimate the petitioner accordingly and make an announcement with respect to such reference in the House or, if the House is not then in session, cause the information as to the reference to be published in the Bulletin.

The Speaker has to proceed to determine the question as soon as may be, after receipt of the report from the Committee. The procedure which should be followed by the Speaker for determining any question and the procedure which should be followed by the Committee for purpose of making a preliminary inquiry should be, so far as may be, the same as the procedure applicable for the determination by the Committee of any question as to breach of privilege of the House by a member, and neither the Speaker nor the Committee should come to any finding that a member has become subject to disqualification under the Tenth

Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person.

vi) Decision on petitions

At the conclusion of the consideration of the petition, the Speaker may by order in writing dismiss the petition, or declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule. Every such decision should be reported to the House forthwith and if the House is not in session, immediately after it reassembles. This decision should be published in the Bulletin and notified in the Official Gazette. The Election Commission is also informed.

Constitutionality of the Anti-Defection Law

Though the impact of the Anti-Defection Act has been found to be encouraging in checking defections since it came into effect, implementing it has not been a smooth affair. In fact, right from the beginning the Act has been questioned on several grounds *viz.* that it is violative of the basic structure of the Constitution, that it is beyond the competence of Parliament, and that it infringed the rights and freedom of the legislators.

One major point of criticism has been the vesting in the Presiding Officer, the final power to adjudicate on cases relating to disqualification. Following the decisions given by some Speakers/Chairmen under the Act, which gave rise to unforeseen controversies, several High Courts were approached for judicial interference in this regard. Due to the Constitutional and political importance of the matters, it was decided to transfer all the cases to the Supreme Court.

A Constitution Bench of the Supreme Court heard the arguments of the petitioners challenging the decisions of the Speakers of Manipur, Goa, Nagaland and Punjab Assemblies disqualifying members of the Legislative Assemblies and that of the Speaker, Lok Sabha disqualifying members of Parliament. A common question of law involved in all the cases was whether the Speaker could be the final authority to decide the question of disqualification of a member. It was invariably pointed out in each petition that paragraph 7 of the Tenth Schedule which bars the jurisdiction of the High Courts and Supreme Court against the orders of the Speaker disqualifying a member under the Anti-Defection Law was violative of the basic feature of the Constitution as it sought to take away the court's right of judicial review. Thus, one of the main questions to be decided was whether judicial review was a basic feature of the Constitution and if so whether any Constitution amendment that ousted judicial review was not unconstitutional.

While upholding the validity of the Law the Constitution Bench declared as unconstitutional paragraph 7 of the Act which bars the jurisdiction of courts in respect of any matter connected with disqualification of a member of a legislature. The Court maintained that the decisions of Presiding Officers of the Legislatures were "amenable to judicial review".

The Presiding Officers of Legislation Bodies in India met in New Delhi on 11 February 1992 under the Chairmanship of Speaker, Lok Sabha, Shri Shivraj V. Patil to discuss the matters pertaining to the Anti-Defection Law in the light particularly of the Supreme Court judgement. They were of the unanimous view that the dignity of the Legislature and the Judiciary should be maintained, the power to decide the cases under the Anti-defection Law should continue to be with them, the Anti-defection Law should be amended to remove the ambiguities, and there should be an appeal against the decision given by the Presiding Officers.

There was a general agreement that the decision given by the Supreme Court should be respected and at the same time the authority of the Presiding Officers to conduct the business of the Legislatures should remain intact and they should not be made answerable to the Court of Law for what they do while conducting the business in the House. They were of the view that until the Law was amended, tine decision of the Courts even if they are not acceptable should be respected. At the same time, they thought that the law should be amended and if necessary ratified by requisite number of Legislatures and that an authority should be identified or created which could review the decisions given by the residing Officers. The authority could be the Governor or the President or a body of Speakers or a body of other persons.

2. Topical discussion: Extract from the Minutes of the Yaoundè session (April 1992)

Mr. BATRA (India) introduced the paper submitted by Mr. JAIN on the rules in India relating to the defection of Members from their Party. These rules had been introduced following problems for many years arising from the number of Members who changed party after an election, normally to join the government party. Following earlier initiatives, the Anti-Defection Law was finally introduced by Rajiv Gandhi's Government as the 52nd Amendment comprising the 10th Schedule to the Constitution.

The Anti-Defection Law specified in principle that defection from a party would lead to disqualification of a Member from his seat. In particular any Member elected on the ticket of a particular party would be disqualified if he

voluntarily relinquished membership or voted against the requirements of party discipline. An independent would be precluded from joining another party except in the first six months after an election. Provision was made for a split in the party so that if at least one-third of the Members defected then it would be defined as a split and not a defection. A Presiding Officer could relinquish his party membership for his term of office. The law specified that the rules were to be adjudicated by the Presiding Officer or Speaker and that if a question arose the decision of the Speaker would be final and thus not subject to the review by the Courts, on the grounds that it was a proceeding of the House. The Speaker would notify a Member who was subject to a complaint and give the Member an opportunity to present his case. The Speaker could adjudicate the case himself or refer it to a Privileges Committee for an opinion. Party leaders and individual Members were required to indicate their party allegiance following each election.

Despite the provisions relating to the exclusion of the Courts from these proceedings, cases were referred to the Courts and were finally considered by the Supreme Court. The Supreme Court upheld the validity of the law except for the provision excluding the Courts from any power of review. The Supreme Court decided that the Speaker's decision was not a proceeding in Parliament. Presiding Officers in India met to consider the implications of this decision and agreed that it must be abided with, though some had taken the view that a further law should be introduced to reverse the decision of the Court.

The law raised some important issues of principle. Disqualifying a Member in these circumstances amounted to declaring a vacancy in a seat where a Member had been duly elected. Loyalty to party was clearly important in a democratic system, but the question was whether a person elected is elected as an individual or as an upholder of the manifesto submitted by the party. A particular question was that of how a Member who was the subject of a complaint should be given sufficient rights to defend his position.

Mr. HADJIOANNOU (President) (Cyprus) said that there were no laws on this matter in Cyprus. There were a number of defections but all such Members had become independents.

Mr. DAVIES (United Kingdom) suggested that this was a controversial issue, though he recognised that his own House raised different questions since it was unelected and in India there was a very large number of smaller parties. He noted that the text submitted by Mr. Jain referred to "the evil of political defections" and that this ran clearly contrary to the proposition that it was a strength of the parliamentary system to allow defections by Members. The Anti-Defection Law appeared to strengthen the role of the party as against the individual Member, even where the Member might be wishing to defend the interests of his constituents.

However it did appear that the Supreme Court was stretching its powers vis-à-vis those of the Parliament in claiming control over these matters.

Mr. HJORTDAL (Denmark) said that this issue did not arise in Denmark where, although there were a number of parties, they were not recognised in the Constitution. Members of Parliament were elected as individuals and a Member was completely free to breach party discipline.

Mr. FARACHIO (Uruguay) agreed with earlier contributors that there were dangers in such a law as that presented in the paper from India. It was important for the law to protect the functioning of a political party but it was for each party to protect party discipline. It was a moral question for each Member.

Mr. GORAYA (Pakistan) noted that the speakers from the United Kingdom and Denmark were representing well-established systems, and that in other areas the systems were newer and the problems different. He wished to know what action would be taken against a Member who, while he did not vote against the party, nevertheless spoke against the party policies. He also wished to know who was able to refer a complaint to the Speaker.

Mr. SATYAL (Nepal) sought clarification on the phrase which had been used by Mr. Batra of "unprincipled defection", on the position of independent Members, on the details of the rules relating to defection by one-third of the party, and on the role of the party leader in respect to expulsions from a party.

Mr. KLEBES (Council of Europe) noted that in an international assembly the problem was obviously rather different. Political groups were recognised but members were free to choose which group they wished to join and were free to change group whenever they wished.

Mr. PANNILA (Sri Lanka) said that an Anti-Defection Law had been introduced in his country in 1977. The basic provision was that if a Member was expelled from his party he lost his seat if he had not appealed to the Supreme Court within one month, and that the Supreme Court should decide a case within two months. In a recent case some Members had been expelled from their party and their expulsion was confirmed by the Supreme Court. Sri Lanka had a party list system for elections and replacement of a disqualified Member would be by the next person on the list. He observed that some considered that the system was a bad one while others considered that it assured political stability.

Mr. BATRA (India) replying to the debate clarified that while political parties were referred to in the election laws, they were not recognised in the Constitution as such. In response to the questions raised by Mr. Goraya and Mr. Satyal, he said that a Member who spoke against a party's policies could be expelled from that party and he would then be classified as an independent. He could not then join

another party, because of the Anti-Defection Law. Any Member had the power to file a petition to the Speaker. The question raised by Mr. Satyal on the use of the word "unprincipled" was an interesting one. Clearly a Member might change his ideology, or that of the party might change. Nevertheless whether a defection was or was not unprincipled could be assessed in general from the facts and while a defection may not be unprincipled it clearly looked that way if a Member overnight changed party in order to take office as a Minister. He confirmed that if even one Member less than one-third of a party split away from the party, they would all be classified as independents and not as a split.