III. Relations between Chambers in Bicameral Parliaments

1. Introductory Note by the House of Commons of Canada, June 1991

In any bicameral parliament the two Houses share in the making of legislation, and by virtue both of being constituent parts of the same entity and of this shared function have a common bond or link. The strength or weakness of this link is initially forged by the law regulating the composition, powers and functions of each Chamber, but is tempered by the traditions, practices, the prevailing political, social and economic climate and, indeed, even the personalities which comprise the two Chambers.

Given all of these variables and all of the possible mutations and combinations of bicameral parliaments in general, no single source could presume to deal comprehensively with the whole subject of relations between the Houses in bicameral parliaments. Instead, the aim of the present notes is to attempt to describe some of the prominent features of relations between the two Houses of the Canadian Parliament with a view to providing a focus for discussion.

The Canadian Context

The Constitution of Canada provided in clear terms: "There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons." The Senate, which was originally designed to protect the various regional, provincial and minority interests in our federal state and to afford a sober second look at legislation, is an appointed body with membership based on equal regional representation. Normally the Senate is composed of 104 seats which are allotted as follows: 24 each in Ontario, Quebec, the western provinces (6 each for Manitoba, Saskatchewan, Alberta and British Columbia) and the Maritimes (10 each in Nova Scotia and New Brunswick and 4 in Prince Edward Island); six in Newfoundland and one each in the Yukon and Northwest Territories. There is provision in the Constitution for the number of Senate seats to be increased to 112 in certain circumstances and in September 1990 this provision was invoked for the first time. Formerly, Senators were appointed for life; however, now, they must retire at age 75.

With 295 members, the elected House of Commons, whose representation is based on population, is almost three times as large as the upper House.

The strength of numbers, the popular mandate and the fact that the Government is responsible to the House of Commons are all factors which might lead a casual observer to label the lower House the preponderant Chamber. However, the parliamentary dialectic is not much concerned with the relative strength or weakness of the Chamber as with participation of its constituent parts in the working out of its purpose. The working out of the parliamentary purpose provides numerous instances of interaction and this interaction is perhaps best illustrated in the legislative process.

The Legislative Process

These two Chambers so different in composition are nonetheless endowed, in principle at least, with identical legislative powers except that bills for appropriating any part of the public revenue or for imposing any tax must originate in the House of Commons. In fact, most public bills, particularly Government bills, are introduced in the House of Commons not only because they have financial implications bul also because the Cabinet Ministers responsible for government legislation are usually Members of the elected House and choose to launch their legislative proposals in person in their own Chamber. Senators may be appointed to the Cabinet and hold portfolios but, with the exception of the Leader of the Government in the Senate, this is not often done. There is also provision for Cabinet Ministers to appear before the Senate to explain and defend their legislative initiatives, but this provision, too, is infrequently resorted to.

Private bills on the other hand are most commonly, almost exclusively, introduced in the Senate. This is because the fees required to be paid by promoters of private bills by the Rules of the Senate are much less than those exacted by the House of Commons.

The procedural rules of the two Chambers require public and private bills to go through a number of stages before they become law. An identical text must be agreed upon by both Houses. Typically the completion of the process, whether by total acceptance of the proposed text of by amendment in one House, is transmitted to the other House by means of a Message. Messages, which are the principal devices used to formally communicate between the Houses, take on an interesting aspect in the case of contentious legislation. Here, the process of securing agreement between the two Houses can be of indeterminate duration. It is a distinguishing feature of the Canadian parliamentary system that there is no parliamentary,

procedural or constitutional mechanism to terminate an impasse and to compel either House to pass legislation with which it strongly disagrees. Although the possibility of resolving conflicts by means of a Conference is provided for in the written rules, this has not been used in the Canadian context since 1947 and indeed is considered by many observers to be archaic.

When the two Houses have completed their consideration of a bill and have agreed to an identical text, the bill will be given Royal Assent, the act whereby the Crown (Queen's representative) concurs with the two Houses in passing a bill and thereby converts it into an Act of Parliament. The ceremony of Royal Assent provides the final occasion on which the two Houses formally interact concerning the passage of legislation. In a practice unique to Canada among Commonwealth Parliaments, the three constituent parts of Parliament (Crown, Senate, House of Commons) join to witness this ceremony on all occasions.

Joint Committee

Another occasion for less formal but more intense interaction is presented by the participation of Members of both Houses on Joint Committees. These committees may be appointed under the written rules of each House (Standing Joint) or they may be created by special resolutions of the two Houses (Special Joint). The Standing Joint Committee on the Scrutiny of Regulations, for example, has a statutory mandate to review and scrutinize statutory instruments and has a reputation for distinguished, independent action in this respect.

The motion to establish a Special Joint Committee may be initiated by either House and once adopted is transmitted by Message to the other Chamber seeking its concurrence. Such committees, which are a favoured vehicle for constitutional matters, are a unique form of joint endeavour.

Joint Resolutions

In a similar manner, the adoption of joint resolutions also allows the two Houses to express a common view. By the'adoption of such resolutions, the two Chambers can and have signified their co-operation and solidarity in reaction to major international events, conflicts or wars, constitutional matters, matters touching upon the monarchy and trade agreements. In these cases, the motion is initiated in one House and upon adoption is transmitted to the other Chamber by Message with a request that the other Chamber join with the initiating Chamber in expressing its opinion.

The impetus for some joint resolutions is clearly statutory. Some statutes provide for regulations to be subject to affirmative or negative resolutions of Parliament; others provide that some statutory provisions may be either continued or discontinued or allowed or disallowed by means of joint resolutions of both Houses. Finally, some statutes stipulate that certain committees of both Houses should undertake specific reviews and these require joint resolutions for their implementation.

The Senate and House of Commons play a special role in the appointment and removal of certain Officers of Parliament. The appointment of the Official Languages Commissioner, for example, is solely by resolution of both Houses. The appointment of the Information Commissioner and of the Privacy Commissioner are made by the Governor General only after approval of a resolution of both Houses. The appointment of the Auditor General and the Chief Commissioner of the Human Rights Commission are made by the Governor General and the appointment of the Chief Electoral Officer is made by motion of the House of Commons alone, yet all six of the Officers may be removed for cause by address of the Senate and the House of Commons.

Ceremonial and Other Events

If the two Chambers express their joint will through the passage of legislation and their solidarity through joint resolutions, they just as surely demonstrate the cohesive nature of our Parliamentary entity by their physical participation in certain ceremonies. Just as all three elements unite for Royal Assent, so too do they so the Opening of Parliament or the Opening of a Session to hear the Speech from the Throne. On these ocasions the Members of the House of Commons repair to the Senate Chamber on receipt of a message from the Governor General to hear the Government's agenda for the forthcoming session as announced in the Throne Speech delivered by the Governor General. On occasion, a similar ceremony takes place at prorogation, although in recent times it has been more usual to prorogue by proclamation.

Other events, too, call for the physical attendance of Members of both Houses, notably, addresses by foreign heads of state and other distinguished visitors. Although the term "joint session" is loosely applied to such gatherings, they are in effect not joint sittings in any formal sense.

These gatherings in the cause of ceremony or diplomacy serve to underscore in a dramatic way the continuing connection between our two Chambers.

Shared Services

Although in the past, a number of joint committees existed to oversee the provision of certain administrative services (printing, Library of Parliament and Parliamentary Restaurant), modern administrative procedures and structures have superseded these bodies and in some cases obviated the need for their existence. Nevertheless, direction and control of the Library of Parliament continues to be vested by statute in both the Speaker of the Senate and the Speaker of the House of Commons who are to be assisted by a joint committee. It is a matter of some controversy that provision for the appointment of this and other joint committees was removed from the Standing Orders of the House of Commons in recent amendments but remains in the Senate Rules.

The area of shared services is somewhat circumscribed extending over only three functions. The distribution of Parliamentary documents to both Houses is handled by a single service and two Directorates (Parliamentary Exchanges and Protocol and Parliamentary Associations) oversee interparliamentary exchanges and provide administrative support for both Members of the House of Commons and Senators in their role as delegates or participants in international meetings and conferences.

There is not as much sharing of administrative and operational services between the two Houses as one might expect to find between two legislative bodies occupying the same precincts. While this is partially explained by the fact that various services such as accommodation and translation and simultaneous interpretation are provided to both Houses by other Government entities, it is also indubitably a reflection of the fiercely independent nature of each of the two. Both have parallel but distinct statutory mechanisms for dealing with internal financial and administrative matters.

Impact of Prevailing Political Situation

It would be foolhardy to attempt to survey the instance of institutional co-operation between the Houses and to ignore the less tangible but more potent forces at work in the dynamic. That said, the task of formulating or categorizing or ordering in any efficient way the myriad influences affecting the relations is not an easy one, precisely because, while freely acknowledged by realists, these forces are often of an intangible and amorphous nature.

To state, for example that Messages are the principal devices of communication between the Houses is to distort reality in an age where almost before they are

spoken, words uttered in one Chamber are subsumed into the public domain by electronic media. It would be likewise unbalanced to address the interaction between members of both Houses without recognizing the role that party representation and party affiliations andparty discipline play in our particular circumstances.

The overriding factors, however, colour any consideration of the relationship between the two Houses. These are the fact of lifetime (at least until age 75), partisan appointments to the Senate and the fact that the Executive Branch is responsible to the House of Commons and must maintain the confidence of that House but not necessarily that of the second Chamber.

Almost since Confederation, two parties have dominated the Canadian political system, and each in turn when it formed the Government has zealously guarded its power to make appointments to the Senate. A governing party is expected to (and usually does) fill any Senate vacancies which occur during its mandate with loyal party adherents, thus creating a basis of support on which to draw in the second Chamber. This practice and the operation of the electoral process in the lower House may, and has, led to the situation where the two Chambers have opposing majorities. In such times, tensions run high between the Houses. Then, the role played by party loyalties among Senators, by Independent Members of both Houses, and by tactical mastery of discrepant procedural rules becomes of utmost importance. In such circumstances, also, it can happen that the most effective opposition emanates from the non-elected House. Conversely, minority Governments can be effectively supported by a strong party majority in the Senate. When the Government of the day has a majority in both Houses, tensions subside somewhat and the opportunity for co-operation is enhanced and the need for party discipline is considerably lessened.

Conclusion

The formal, institutionalised links between the two Chambers of our bicameral parliament are steeped in time-honoured tradition and symbolism and for that reason may be perceived by the casual observer as staid, rigid and anachronistic. The reality is, however, that the relations are really quite dynamic. The two Chambers have achieved, through time, an accommodation which permits each to remain independent, to be faithful to its mandate and yet to continue to adapt to an ever-changing political climate, as well as to current parliamentary realities.

This flexibility will undoubtedly be tested severely in the coming months as our country moves progressively closer to Constitutional reform and to the examination of its institutions that that process entails.

2. Topical Discussion: Extract from the Minutes of the Santiago session, October 1991

Before calling Mr. LAUNDY (Canada) to introduce the topical discussion on the relations between Houses in bicameral Parliaments, the PRESIDENT drew the attention of members to a letter he had received from the Secretary General of the Parliament of Iceland in which it was stated that the Althingi, after operating as a bicameral Parliament since 1875, had decided to abolish one of the Chambers and was now unicameral.

Mr. LAUNDY (Canada) then spoke to the paper which had been circulated on relations between Houses in bicameral Parliaments. He described the position in Canada where the Constitution, which was based on the British North America Act of 1867, reflected its nineteenth century origins in having a bicameral Parliament in which the Upper House, the Senate, was appointed while the Lower House, the House of Commons, was elected. The Senate normally had 104 Members and was originally envisaged to be a Chamber which represented the regions (rather than the provinces). In practice it was a House to which the Prime Minister of the day could appoint persons of his own persuasion.

The Senate's powers were equal to those of the House of Commons, except in respect of financial matters. The vast majority of Bills, in practice, commenced in the House of Commons and most Ministers were from the House of Commons. Ministers who were in the Senate could appear before the House of Commons but this was, in practice, very rare. Nearly all Private Bills were introduced in the Senate. Both Houses could amend Bills but there was no formal constitutional provision for resolving an impasse between them. (Although a procedure existed for a conference between the two Houses this had not been used since 1947.) There was no provision for formal joint sittings of the two Houses though the two Houses did meet together for ceremonial occasions such as addresses from visiting dignitaries. Joint Committees existed, the most important of which was the Joint Committee on Delegated Legislation, and Joint Resolutions could also be adopted; these were agreed following the passage of messages between the two Houses. Certain appointments were by Resolution of both Houses, such as the Commissioner for Official Languages, while others were by Resolution of the House of Commons only. Some appointments, although in the hands of the Government, could be removed by Joint Resolution of both Houses. A certain number of joint services existed between the two Houses such as the Library and the Post Office.

In practice the House of Commons was the seat of real political power and a defeat of the Government on a vote of confidence in the Senate would not entail its

downfall. The Senate was not, however, without effectiveness and a recent occurrence had brought this sharply into focus. The Senate had decided to reject a new tax, proposed by the House of Commons, considering that in doing so it was reflecting the unpopularity of the tax in the country. The impasse that was created by this was only resolved by the discovery of an obscure constitutional provision which enabled the Government to appoint eight new Senators which gave it a majority in that House to pass the legislation.

The PRESIDENT thanked Mr. Laundy for his presentation, and sought clarification on three points. First, the speaker had indicated that the Senate was originally designed to protect regional interests and he wondered what the current position was. Secondly, he sought clarification on what would happen in the event of an impasse between the two Houses; and thirdly, he asked whether the Royal Assent to a Bill could, in fact, be refused.

Mr. LAUNDY, in reply to the first point, indicated that the Senate had never been very effective at protecting regional interests and that the original arithmetical balance between the different regions of the country had anyway been disturbed by the admission of new provinces and territories. The population balance between the different regions had also changed and this had led to demands from the western provinces for a different structure of representation in the Senate. On the second point Mr. LAUNDY could only repeat that there was no ultimate way of resolving an impasse. The recent case had only been resolved by the granting of a majority to the Government in the Upper Chamber. Without that provision it is likely that the Bill would have had to be dropped. On the third point it was possible to say that a Royal Assent could not be refused in practice. Even in the United Kingdom, on which this element of the Constitution was based, Royal Assent had not been refused since 1707.

Mr. OLLE-LAPRUNE (France) described the mechanism for "Commissions mixtes paritaires" (equal joint committees) in France. These lay at the heart of the French bicameral system and were used to resolve conflicts between the Assemble Nationale and the Senate on a bill. Such a Committee would be set up specifically for each bill which was passing between both Houses and was would be composed of seven members of each Chamber. Their task was to come to an agreement on the provisions of the parts of a Bill which remained under discussion. They could end either in success or in an agreement to disagree, according to the case. However this procedure was largely out of the hands of parliament since such committees could only be set up at the initiative of the Government. The procedure was thus completely different from that of Canada.

Mr. LAUNDY said that the Joint Committee procedure was not used to resolve impasses on Bills and that the conference procedure had fallen into disuse. Joint Committees, in practice, were used for non-legislative major issues.

Mr. GREEN (Canada) stated that the recent case of the conflict between the Senate and the House of Commons had led to changes in Senate procedure. For example, greater use was made of allocation of time motions, of time limits on speeches and of Committees. The Senate had on occasion rejected Government Bills, the most recent case being in 1985 (though this was a rather particular instance in which a Bill had come up from the House of Commons proposing salaries for House of Commons Committee Chairmen but not for Senate Chairmen). On joint services the Senate had recently been subject to a comprehensive audit which had suggested the amalgamation of some of its services, such as security and restaurant services with those of the House of Commons. It was likely that a similar audit might produce similar recommendations in the House of Commons in the near future.

Mr. CHARPIN (France) sought further information on the system of Private Bills to which Mr. Laundy had referred. Mr. LAUNDY replied that these Bills derived from British procedure and were Bills promoted by private organisations, such as where a Corporation sought to enshrine its Charter in legislation. Provision was made during the passing of such Bills for charging of fees and hearing of Counsel and of objections.

Sir Clifford BOULTON (United Kingdom) reported that the constitutional position in the United Kingdom was in many ways similar to that in Canada, with one elected and one unelected Chamber. In the United Kingdom, however, there was a mechanism provided for avoiding an impasse between the two Houses on matters of legislation. This was the Parliament Act procedure whereby if the House of Commons presented a Bill to the House of Lords twice within a certain period in identical terms it could be presented for Royal Assent without the agreement of the House of Lords. The procedure had been used during the current year. This was the first time the Act had been put into operation since 1949 and he had had to discuss a number of points about its implementation with his colleague Mr. Wheeler-Booth during the course of the year. On administrative matters the two Houses had fairly good relationships and a number of Joint Committees. He understood that this was not always the case in other countries and considered that the subject was a matter of sufficient interest to warrant the Association taking the subject further through means of a Questionnaire.

Mr. SAUVANT (Switzerland) spoke as follows (translation)

"Switzerland also has a bicameral system. The two Chambers are of absolutely equal status although they derive from a different electoral system. Proportional representation is used in the National Council (200 members) and the majority system for the Council of States (46 members).

The allocation of bills to the two Houses is decided by the Presidents. A co-ordination conference, comprising the Bureaux of the two Chambers and the Presidents of political groups fixes the order of business for parliamentary sessions. Procedure governing the relations between the two Chambers is governed by law. The points of difference arising from debates on bills are passed between the two Chambers. Once points of difference have been eliminated the Bills have to be adopted by a final vote in each Chamber. Provision exists for the establishment of a conciliation conference if divergences cannot be eliminated but this procedure has only been used twice in one hundred and twenty-seven years. The President of each Chamber handles relationships with the other Chamber, with the consent of other members of the Bureau.

On administrative matters both Houses were under the direction of himself, as Secretary General of the Federal Assembly, and they both sat in the same building"

Mr. WINKELMANN (Germany) spoke as follows:

"The situation in Germany is comparable only in part with the described situation in Canada.

We have the Bundestag, which is currently composed of 662 Members who have been elected for four years. In addition, there is the Bundesrat, which represents the 16 Länder, or federal states, of the Federal Republic of Germany. The Bundesrat is made up of 68 members of the governments of the Länder, who are appointed by these governments.

The Federal Government is primarily responsible to the Bundestag. Only the Bundestag is involved in the formation of the government: it alone elects the Federal Chancellor, the head of the Federal Government, and can also vote him out of office again. Moreover, only the Bundestag exercises the other typical forms of parliamentary control of government, such as the right to ask questions, to summon members of the government to parliamentary sittings or to set up committees of investigation.

As regards legislation, the Bundesrat has a stronger position than described before but it does not enjoy the same rights as the Bundestag. The Bundesrat may introduce bills, as may the Federal Government.

A bill already adopted by the Bundestag requires the consent of the Bundesrat only where this is explicitly provided for in the constitution. In practice this applies to 50 per cent of bills. In all other cases the Bundesrat may only lodge an objection, which can be overridden by the Bundestag. If conflicts of this kind begin to develop, a compromise is sought in advance by a joint body. This body is composed of 16 Members of the Bundestag and an equal number of members of

the Bundesrat. Its meetings are not open to the public and it mostly succeed!! in finding a compromise acceptable to both sides.

Conflicts between the Bundestag and the Bundesrat may arise because the Länder consider that insufficient account is taken of their interests. Conflicts are often of party-political origin. If the party which forms the opposition in the Bundestag has a majority in the Bundesrat, this may have an effect on the confrontation between the government and the opposition in the Bundestag.

Apart from that, there is very little official co-operation or co-operation in matters of protocol. A new Federal President is sworn in before both the Bundestag and the Bundesrat. And for the first time just now a joint committee lias been set up to consider possible amendments to our constitution. On the other hand the Bundestag and the Bundesrat have separate budgets, separate administration and their own staffs. They do not even have a common name."

Mr. AMELLER (France) gave details of the French system, describing the system of joint committees which could agree a text for a Bill where particular provisions were in dispute between the two chambers, following which the text was put to the two chambers. He drew attention, however, to differences in the positions of the two Houses under the 1958 Constitution, in that the Government could decide that the National Assembly should have the last word in matters of disagreement on legislation and that only the National Assembly had the power to adopt a motion of censure requiring the Government to resign. On the other hand the National Assembly could be dissolved by the Executive whereas the Senate could not.

Mr. FARACHIO (Uruguay) agreed that this subject was one of great interest to Secretaries General and it would be of interest to have a Questionnaire on the point. This could include the issues of what methods existed to enable both Chambers to act together, for example in the area of computerisation, and of the differences between the two Chambers arising from the different elective basis for them.

Mr. LAUNDY (Canada), in concluding the debate, noted that it appeared to be the general wish of the Association to move to a Questionnaire on the subject, taking account of the various points made during the debate.

The PRESIDENT thanked Mr. Laundy for his contributions and confirmed that the Association wished to proceed to a draft Questionnaire for consideration at its next session.

ANNEX

Mr MARRA (Italy) submitted the following speech in writing: "In 1982, at the initiative of the Presidents of the two chambers, Signora N Jotti and Senator Fanfani, the Committees on Laws of the Chamber of Deputies and of the Senate set up a special committee to study institutional issues. This led to the establishment, at the beginning of the IXth Legislature, of a parliamentary Committee on institutional reform (12 October 1983).

This Committee, chaired by Mr Bozzi, examined the role, structure and functions of the two chambers in detail. It put forward, at the end of its studies, a series of proposals which in due course became the reference point for further debate.

A majority of the Committee came out in favour of the maintenance of the bicameral option chosen by the drafters of the Constitution, but with significant modifications designed to introduce distinctions between the two chambers both in respect of their composition and their functions, with a view to preventing delays, and excess and unnecessary work in parliamentary procedure. The proposals involved moving from "perfect bicameralism" to "differential bicameralism" which, while preserving equal status for the two chambers and a common base of direct popular suffrage, would give them different functions.

A draft of a reform was drawn up, providing for a legislative domain reserved for bicameral consideration and a domain reserved to the Chamber of Deputies alone (comprising competence in the field of the general law), as well as a strengthening of the function of control over the executive belonging exclusively to the Senate and the involvement of both chambers in the overall direction of policy.

This draft gave rise to a number of criticisms right from the beginning:

- the impossibility of distinguishing legislative power from powers of overall political direction and control;

- the exclusion of the Senate, except in matters relating to the budget and taxes, from the management of the economy;

- the reduction in the role of the Senate, in that an exclusive legislative competence was given to the Chamber of Deputies which left the Senate only a consultative role, something which threatened the principle of an equal status for all members of parliament.

These criticisms led to changes in the attitude of the Senate during the Xth Legislature. In respect of consideration of draft legislation, it supported the path of reforming legislative procedure and the participation of both chambers in the process.

It felt that this was closer to the intentions of the drafters of the Constitution, who envisaged an equal status for both chambers in the passing of laws, but left for separate consideration the proposals for reducing the number of members of parliament and the - very delicate - issue of the electoral laws for the two chambers.

The draft which derived from the proposals so formulated was essentially very simple: the number of senators for life was fixed at eight, the legislative domain which was to belong to both chambers was clearly spelt out, and a procedure was set out by which, in other domains, the chamber which did not have the initial competence could demand that the proposal be given a second consideration.

The proposal thus put forward for ruling out any functional distinction between the two chambers, and for equal-status bicameralism - albeit one which provided for procedural reforms designed to simplify the legislative process for less important legislation - gave rise to a number of criticisms which affected the debate taking place in the Committee on Laws in the Chamber of Deputies.

The text put forward by this Committee as the basis for discussion differed from that of the Senate in respect of relations between the State and the Regions in matters of legislation. In effect, the drafts for articles 70,72 and 72A of the Constitution give the State exclusive legislative competence in a limited number of listed domains, leaving the rest to the competence of the Regions. The State can nevertheless, by an organic law, indicate the general principles which must be followed in these matters. The draft would reserve to the Chamber of Deputies the right of first consideration of legislation within the domain of the State, while the Senate would have first right of consideration in respect of legislation relating to the powers of the Regions (following which the Senate would become the "Senate of the Regions").

According to the Senate text, apart from legislation on certain matters of importance, the mechanism by which a chamber can transform a piece of legislation requiring consideration by one chamber only into one requiring bicameral consideration is maintained. It is set in train by a decision of a majority of the chamber or of the government.

However, it can be seen that the Committee's text - although its aim is only to create a distinction in function between the two branches of parliament - could give rise to a distinction in substance where there is a strong and cohesive

majority; in practice, given that the exclusively bicameral domain is limited to constitutional matters which are already governed by other articles of the Constitution, the Chamber of Deputies can, by using the mechanism of a request for a second consideration of a bill, involve itself in any major proposal, leaving to the Senate only the matter of management of relations with the Regions. It would also have the consequence of limiting second considerations to only the most difficult bills, for which the majority considered a second consideration, or a deeper examination, or some amendment, to be necessary.

And thus the proposed change of name for the other chamber, which would no longer be called the Senate but the Senate of the Regions, points towards the underlying direction of the proposal.

Consequently, the current debate in the Italian parliament on the reform of bicameralism is far from over."

Mr. MAHRAN (Egypt) submitted the following speech in writing: "Parliamentary life in Egypt has known over different periods of history both unicameral and bicameral parliaments as required by each period. In the era of Khedive Ismail, Egypt had an unicameral legislature which was called the Deputies Consultative House. Under the regular law of 1883 Egypt had a bicameral legislature which consisted of the Laws Consultative House and the General Assembly. Under the constitutions of 1923 and 1930, we had two assemblies: the Senate and the House of Representatives. But after the 1952 revolution, the unicameral system was adopted following the promulgation of 1956 constitution. The first assembly was formed in 1957 under the name of the National Assembly and was altered afterwards to The People's Assembly.

In the year 1980, however, the Constitution was amended and under this amendment, an advisory council was introduced under the name of Shoura Council. This council is not a full representative assembly since it is merely a consultative council that submits advice on issues referred to it. Firstly, it expresses opinion on: (1) Motions submitted for the amendment of one or more of the articles of the Constitution; (2) The bills referred to explicitly in the Constitution or those bills which regulate public powers or their relations, the constituents of the society or freedoms, rights or public duties; (3) The draft plan for social and economic development; (4) Treaties of reconciliation and alliance and all treaties that entail alteration of the state territories or bear on sovereignty rights; (5) Bills referred to it by the President of the Republic; (6) The matters related to the State's general policy or its policy with regard to Arab and foreign affairs. The Shoura Council conveys its opinions on the above issues to the President of the Republic and to the People's Assembly (Article 195 of the Constitution and Article 2 of the Rules of Procedure of Shoura Council).

Secondly, the Council studies and proposes the means that may safeguard the principles of July 23, 1952 revolution and May 15, 1971 revolution; consolidate national unity and social peace; protect the alliance of the people's working forces and its socialist gains, society constituencies, its values, rights, liberties and public duties and deepen the democratic socialist system and widen its fields.

The Council shall convey its conclusions, recommendations and proposals to the President of the Republic, to the People's Assembly and to the Council of Ministers (Article 194 of the Constitution and article 2 of the Rules of Procedure of the Shoura Council). The President of the Shoura Council refers to the Council committees the issues referred to him by the Speaker of the People's Assembly (pursuant to items 1 and 2, first paragraph of Article 195 of the Constitution and Article 113 of the Rules of Procedure of Shoura Council) and bear on proposals for amending the Constitution as well as bills complementing the Constitution. Also the Shoura Council and the People's Assembly may hold a joint meeting upon the invitation of the President of the Republic pursuant to Article 202 of the Constitution. Such a joint meeting shall be chaired by the Speaker of the People's Assembly.

These competences as indicated in Articles 194 and 195 of the Constitution and Article 2 of the Rules of Procedure of the Shoura Council show the consultative nature of those competences. The People's Assembly alone has the power of legislation and adopts the general policy of the State, the general plan for economic and social development and the State's general budget. It also exercises control over the performance of the executive power in the way indicated in the Constitution (Article 86)".

3. Report prepared by Mrs Mary Anne Griffith, Deputy Clerk of the House of Commons of Canada (adopted at the New Delhi session, April 1993)

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Introduction

At the 1992 Spring Session of the ASGP in Yaoundé, Cameroon, a Questionnaire on "Relations Between the Chambers in Bicameral Parliaments" was approved. At the 1992 Autumn Session in Stockholm, Sweden, a First Draft was presented for comment and discussion. This Second Draft incorporates the comments about and corrections made to the initial draft, as well as the responses of several countries which arrived after the First Draft had been completed.

The following countries or bodies responded to the Questionnaire by noting that their systems are unicameral:

Cameroon
Council of Europe
Greece
Guyana
Indonesia
Zimbabwe
Korea
Liberia
New Zealand
Norway*
Zambia

* Strictly speaking, Norway has a unicameral system. However, it does have several bicameral features.

Countries with bicameral legislatures which responded to this Questionnaire are as follows:

Australia
Belgium
Canada
Czechoslovakia**
France
Germany
Ireland
Italy
Japan
Jordan
Philippines
Poland
Spain
Switzerland
Thailand
United Kingdom
United States of America

** The material received from Czechoslovakia predates January 1, 1993, and the division of the country.

With one exception, each country mentioned in the following compilation has a bicameral parliamentary system. Norway, although unicameral, has submitted a response to this Questionnaire because for certain proceedings, the legislature divides into two bodies which function independently of one another. Comments about the Norwegian system will therefore be found mainly, though not exclusively, in the section entitled "The Legislative Process".

As the focus of this Questionnaire is on the relations between the Houses in bicameral parliaments, most of the comments are confined to the responses submitted by the 17 bicameral legislatures listed above.*** The comments made in this report are very general, given the fact that principles upon which the different systems are based and the different procedures within each do not lend themselves to easy comparison. Indeed, for certain questions the responses were so complex and varied that the information submitted by the legislatures has been provided here in a more raw form, with little comparison or analysis made. Furthermore, different interpretations of certain questions and the terminology within the questions (e.g. the question about "quorum") made it difficult, if not impossible, to compare responses across the legislatures.

*** In certain cases, the numbers mentioned may not total 17 because not all legislatures which responded to the Questionnaire provided responses to every question.

Composition of the Parliaments

While most of the countries which responded to the Questionnaire can be classified as either federal or unitary states, certain others do not as easily fall into one of these categories. Australia, Canada, Czechoslovakia, Germany, Switzerland and the United States of America are all federal states. Belgium was unitary in origin, but is in the process of becoming a federal state. France, Ireland, Japan, the Philippines, Poland, Thailand and the United Kingdom are unitary states. Italy and Spain do not fall strictly into either category, but may be classified instead as "regional states". The Spanish constitution, which is made in reference to the Italian constitution, defines a regional state as follows:

> Article 2: *The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible motherland of all Spaniards; it recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and solidarity between them all.*
>
> Article 143.1: *In the exercise of the right to self-government recognized in Section 2 of the Constitution, bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status may obtain self-government and form Self-governing Communities (Communidades Autonomas) in conformity with the provisions contained in this Part and in the respective Statutes.*

With the exception of the Parliament of the United Kingdom, 15 of the 17 bicameral legislatures responded that their Parliaments were established by their respective Constitutions. The British Houses have existed for hundreds of years, their current form being the result of the historic process rather than of any specific written statute. Thirteen of the 17 bicameral legislatures had their Houses established at the same time and the Houses have remained in operation, except perhaps in times of war, since their inception. Three legislatures (specifically, those of France, Poland and the United Kingdom) have had times during their history when the legislatures as a whole, or one of the two Houses, have ceased to function. There was no specific response to this question from Jordan.

Parliament's origins in the United Kingdom can be traced back to the King's Councils of the 11th Century. By the end of the 14th Century, there were two Houses of Parliament, and by the 16th Century, the Upper Chamber came to be known as the House of Lords. Today's House of Commons and House of Lords can both be traced back to the Middle Ages, but it is important to recognize that before the late 17th Century there were periods of several years between one Parliament and the next. Furthermore, the House of Lords ceased to exist altogether between 1649 and 1660, it having been (unconstitutionally) declared by the House of Commons to be abolished. In Poland, both Houses were created in 1493, but were disbanded in 1795 when Poland was divided. When Poland was again established in 1919, the Parliament was recreated with only one House, the Sejm. The Senate was again established by the Constitution of March 1921 (the first elections were held in 1922), but was abolished in 1946 by the Communists. In 1989, following the round table accord reached between the Communist authorities and the opposition, the Senate was again established. France's *Assemblée Nationale* was created in 1791 and its Senate's origins can be traced to the *Conseil des Anciens* of 1795. Except for the period during the Second Republic between 1848 and 1851, France has had a bicameral legislature.

In the responses to the Questionnaire, patterns emerged when one examined the reasons for the establishment of two Houses. The Lower Houses were generally viewed to be representative of the will of the people, whereas Upper Houses had many roles, the most common of those being to represent equally in the federal legislature the provinces, regions, states or territories, regardless of their size, wealth or population. As can be extrapolated from the information in CHART A (See Appendices), the Upper Houses are seen to provide a balance between the national interest and the regional or more local interests, and to act as a counterweight to the other House in which certain groups or areas, by virtue of size or population, may be very powerful. Six countries mentioned the role that the Upper Chamber plays in improving the quality of legislation by giving a second opinion on initiatives and by bringing the expertise of highly qualified individuals to the

study of legislative proposals. Belgium added to this list the role that the Upper Chamber plays as moderator between the King and the Lower House, and France noted the role of the Senate in providing representation for French citizens outside of France. Thailand noted -specifically that the House of Representatives was established to perform legislative functions, to control the administration of the Executive and to give approval to important issues under the Constitution, while the Senate has the duty to consider bills which have passed through the House of Representatives.

Legislatures were also asked whether their Houses played any judicial roles. Five legislatures (Australia, Canada, Ireland, Spain and Thailand) responded in the negative, but Thailand did add that under the Constitution certain members of the Constitution Tribunal are appointed by each House and that the President of the National Assembly is ex-officio the President of the Constitution Tribunal. Switzerland stated that the legislature has no judicial role but can play a role in the granting of pardons. Germany (both Houses) and Italy noted that their legislatures could initiate impeachment proceedings against the President, and Belgium noted that such proceedings could also be brought against Ministers and Secretaries of State. In each of these cases, however, the final decision is to be made by a Constitutional or High Court. Japan specified that the judicial power is, except as provided for in the Constitution of Japan, vested in the courts. The exceptions specified in the Constitution provide that (a) each House judges disputes related to the qualification of its Members and (b) that the Diet shall set up an impeachment court from among the Members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted. In the case of France, a High Court, comprised of equal numbers of Members of the *Assemblee* and the Senate, can try the President (for high treason) and Ministers of the Government (for acts committed in the exercise of their functions as Ministers). The United States noted that neither House has a direct judicial role, except in- cases of impeachment, in which its House of Representatives can act, in effect, to indict the case, and its Senate to try the case. Similarly, in Norway the Odelsting (3/4 of the Members of the Storting) can act to prosecute cases of impeachment of officials and the members of the Lagting (1/4 of the Members of the Storting, chosen at the beginning of a Parliament) sit with judges of the Supreme Court as the court to judge the case. Poland responded that its Parliament takes part in certain phases of the justice process:

> The Parliament of the Republic of Poland, that is the Sejm and the Senate, performs no judiciary function in the sense that the Houses, either separately or jointly, exercise no powers in the area of the administration of justice. These functions, under the Constitution, are reserved in Poland for the courts

or, in special cases, for quasi-court institutions such as the Tribunal of State which is an institution well- rooted in Polish constitutional tradition. The Parliament of Poland is, in a sense, a part of the broadly defined administration of justice, as it takes part in certain phases of the justice process, strictly proscribed by the Constitution, which in their final, stage can lead to a trial in court or in the earlier mentioned quasi-court institution of the Tribunal of State.

Interface with courts in the broadly defined process of justice administration includes consent of the Houses of Parliament for waiving the parliamentary immunity of a Deputy or Senator, to permit the institution and conduct of judicial procedure. In effect this is an in-house parliamentary procedure, but in a specific field significantly affecting the capacity to act on the part of courts in Poland.

For the description of another quasi-judicial function performed by the Polish Parliament, please see Note One in the Appendices.

The Philippines responded that although the judicial power ultimately rests in the Supreme Court, its Congress exercises non-legislative functions that are judicial in nature. Specifically, the Congress has the sole power to initiate and try impeachment, cases against the President of the Philippines, the Vice-President, Members of the Supreme Court, Members of Constitutional Commissions and the Ombudsman. In both Houses in the Philippines there also exists am Electoral Tribunal which serves as the sole judge of all contests relating to the election, returns and qualifications of their respective Members. Each tribunal is composed of nine Members, three of whom are Justices of the Supreme Couit, and six of whom are Members of the Senate or the House of Representatives, as the case may be. Likewise in Germany, the Bundestag (Lower House) is responsible for the scrutiny of elections. Complaints may be lodged with the Constitutional Court. The United Kingdom explained that its House of Lords acts as the Supreme Court for the country, hearing civil and criminal appeals from England, Wales and Northern Ireland, and civil appeals from Scotland. This judicial function is exercised through 11 Lords of Appeal, who can be afforced if required by the Lord Chancellor, retired Lords of Appeal and other Lords with the requisite judicial experience. Most of their work is done in committees, but the judgements have to be pronounced in the Chamber and are recorded as proceedings of the House. This is done at a special judicial sitting held weekly prior to the House meeting for its parliamentary business. No response was given from Czechoslovakia or Jordan.

Quorum

Requirements for quorum vary greatly from House to House and legislature to legislature. Quorum is required to conduct all business in some legislatures; it is required only under certain circumstances in others; and special quorums are required to deal with certain matters in yet others. Furthermore, it was noted by at least three countries that there are specific procedures to be followed in order to draw the attention of the House to a lack of quorum. The following is a summary, by country, of the responses submitted regarding the question on quorum:

Australia	House of Representatives - Quorum is outlined in the *House ofRepresentatives (Quorum) Act, 1988:* at least one-fifth of the total number of the Members of the House must be present to conduct business. Quorum is currently 30, including the Chair occupant. Senate - Quorum is provided for in the *Senate (Quorum) Act, 1991*: at least one-quarter of the total number of Senators is necessary for the conduct of business. Quorum is currently 19, including the Chair occupant. Bills to amend the Constitution must be enacted by an absolute majority of each House.
Belgium	Quorum is a majority of Members of House or Senate, and higher quorum (2/3) or "special" quorum is required for certain matters (e.g. constitutional amendments, approval of nomination of a Monarch's successor if it is the end of a dynasty; approval given to the Monarch to be Head of State of another country).
Canada	Quorum in the House of Commons is 20, including the Chair occupant, and 15 in the Senate, also including the Chair occupant. In the House of Commons, quorum must be present in order for a sitting to begin, and a quorum count can only be taken if a Member draws the attention of the Chair to a possible lack of quorum. If quorum exists, the House continues with the business before it; if no quorum exists, the bells are rung until Chair wishes to conduct a count, but for no longer than fifteen minutes. If no quorum is then present, House is adjourned until next sitting day. During a division, the sum of the votes taken, plus the Speaker and the Members present at the time who did not

	vote must total twenty; if not, the Speaker's attention is drawn to the lack of quorum and the question remains undecided. Quorum is not needed for the House to receive a message from the Governor General for its attendance in the Senate for Royal Assent. Upon returning from the Senate after the Royal Assent ceremony, the Speaker of the House takes the Chair and continues to conduct business until attention is drawn to lack of quorum.
Czechoslovakia	In both Houses, a majority of Members must be present for quorum.
France	Quorum is the presence, within the precincts, of a majority of the Members of the *Assemblée,* calculated on the number of seats provided, but the *Assemblée* is always established to deliberate and to set its agenda and votes are always valid, regardless of the number present, except if the leader of a political group personally demands the verification of quorum. If there is a lack of quorum, the vote is held over until next sitting (not sooner than one hour later), and the vote is then valid regardless of number present. Quorum in the Senate, by the rules, for votes to be valid (except for matters of fixing the Order of the Day) is the presence in the precinct of an absolute majority of those in the Senate. Quorum can only be verified upon written request from 30 Senators whose presence is noted by voice vote. If the vote cannot occur because of a lack of quorum, the same procedure is followed as in the *Assemble.*
Germany	Quorum is required only for resolutions, but not for other activities like debate. In the Bundestag (Lower House), more than half the Members must be present in the Chamber for a quorum; the presence or lack of quorum is ascertained only if, before the beginning of a vote, a parliamentary group or five per cent of the Members express doubt about the presence of quorum. In the Bundesrat (Upper House), resolutions can only be adopted by a majority of votes (35), therefore a sufficient number of the Laender must be represented by at least one Member of their respective governments for this number to be reached.
Ireland	Quorum is 20 members in the Dail Eireann (Lower House) and 12 in the Seanad Eireann (Upper House).

Italy	To exercise legislative functions, the presence of half the members plus one is required. All decisions require the support of a majority of those present to pass. Other quorums of different numbers are required by the Constitution and by the rules for the carrying out of other functions.
Japan	According to the provisions of Article 56 of the Constitution, business cannot be transacted in either House unless one-third or more of the total membership is present.
Philippines	Under the Constitution, a majority of each House constitutes a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner, and under such penalties as the House may provide.
Poland	Decisions are taken by majority of votes. For a bill to be passed, fifty per cent of the Members must be in attendance. This requirement is the same for both Houses. Quorum is something different from simply the numbers required to conduct a vote.
Spain	Under the Constitution, the Houses must meet in statutory manner with a majority of Members present in order to pass resolutions. (Note: quorum is required only to pass resolutions, but not to meet or deliberate.)
Switzerland	Sections 87 and 88 of the Constitution provide for a quorum for debate and the taking of decisions. Section 87 states that a Council can only deliberate as long as those members present form an absolute majority of the total number of its members. Section 88 states that in the National Council and the Council of States an absolute majority of those voting must support an item for it to pass.
Thailand	The quorum of each House is at least half of its total membership except in the case of interpellation, wherein the Senate or the House of Representatives can determine its own quorum according to the Rules of Procedure of each House.
United Kingdom	Quorum in House of Commons is 40 Members, but the absence of a quorum does not entail the end of a sitting. If

	fewer than 40 vote in a division, the business under consideration is postponed and the House moves on to the next item of business. Quorum in the House of Lords is 3, but the rules state that if fewer than 30 Lords have voted on a bill or subordinate legislation (but not on a general or procedural matter), the question is declared undecided and postponed to a subsequent sitting.
United States	Required quorum is a simple majority in both Houses.

The Legislative Process

Just as the bicameral legislatures differ with regard to the total number of Members, the basis on which the Members are chosen and requirements for quorum, so too do they differ in the processes by which proposals are enacted inlo laws. Because the descriptions of the legislative process which were submitted were so exhaustive, the description below will focus only on certain elements which highlight the relationship between the Chambers in a bicameral legislature. Specifically, this section will respond to the questions of whether each House has the same powers to initiate and pass legislation, whether there exist in the various legislatures mechanisms to overcome deadlocks between the Houses with respect to legislation and other matters, and finally, whether one House has the power to override the actions of the other or to compel the other to act.

Powers of the Houses

Belgium, Czechoslovakia, Italy, Japan, Poland, Spain and Switzerland all responded that both Chambers in their legislatures are endowed with the authority to initiate all types of legislation. However, Japan noted that while both Houses could initiate all types of legislation, budgets are presented to the Diet as a whole by the Cabinet in a different form from laws. Six legislatures, namely Australia, Canada, France, Ireland, the Philippines, and the United Kingdom all responded that budget laws and/or legislation appropriating funds or imposing taxes (i.e. items which may be designated "financial" or "money" bills) must originate in the Lower Houses. In a similar fashion, the American Congress responded that all "Revenue bills" must begin in the Lower House. Ireland also added that the Upper House, the Seanad Eireann, may only make recommendations (rather than amendments) in relation to money bills and that the Lower House, the Dail Eireann may

accept or reject any or all of these recommendations. Germany and Poland noted that budget laws may only be introduced by the Government and Spain added that some bills can only be initiated by a budget (for example, a budget bill). In Thailand, only the House of Representatives can initiate legislation, and in Jordan only the House of Deputies can do so.

Other distinctions were also made. The French legislature noted that its Constitution spells out those items on which legislators can act; those not listed in the Constitution being of a regulatory nature and therefore the responsibility of the Executive. The Irish Parliament explained that under the Constitution bills which propose the amendment of the Constitution must be initiated in the Dail Eireann, while the Standing Orders respecting private bills require that private bills be initiated in the Seanad Eireann (Upper House). The German Parliament noted that bills to ratify international treaties are in principle introduced only by the Federal Government, but may in exceptional circumstances be introduced by Members of the Bundestag (Lower House). Similarly, the Philippines stated that under the Constitution "All existing treaties or international agreements which have been ratified shall not be renewed or extended without the concurrence of at least two-thirds of all the Members of the Senate." Poland explained that all the bills which are introduced by the Government or the President of the Republic are passed first by the Sejm. Finally, the Parliament of the United Kingdom made an additional distinction, noting that legislative initiatives of a politically controversial nature usually begin in the House of Commons, while bills to consolidate existing laws and bills on complex legal and technical matters usually begin in the House of Lords.

The roles each Chamber plays in the legislative process also differ from country to country. Belgium, Czechoslovakia, Italy, Switzerland, Thailand and the United States responded to the Questionnaire by noting that both Chambers participate equally in the making of laws. Australia and Canada replied that both Chambers of their legislatures must pass a bill in exactly the same form before it can become law. France also stated that both Chambers usually must pass a bill for it to have the force of law, but added that in certain circumstances a bill may become law without the final approval of the Senate. It was also stated that in some countries both Chambers have the power to examine, pass, suspend and even veto legislation, but it can occur that the Lower House can override the decision of the Upper House on certain items of legislation; that a piece of legislation may be deemed to have been approved by the second Chamber after a certain period of time; or that a bill will become law with the final adoption of the initiating Chamber after it has shuttled between the Houses a number of times. Australia, France, Germany, Ireland, Japan, Poland and Spain and the United Kingdom all fall into this category. In addition to its House of Representatives having the right

of second passage of a bill by a majority of at least two-thirds of the Members present, Japan also added that laws made in an Emergency Session of the House of Councillors are an exception to the general rule that both Houses must pass a bill in order for it to become law. In Germany, it also is the case that only some pieces of legislation (about 50 per cent of all initiatives) must receive the approval of the Upper House, the Bundesrat, in order to become law.

Although unicameral in nature, the Norwegian Parliament, the Storting, divides into two sections, the Lagting (1/4 of the Members nominated at the beginning of a Parliament) and the Odelsting (the remaining 3/4 of the Members), in order to pass legislation. The procedure followed between the two bodies in Norway is described in Article 76 of its Constitution as follows:

> *Every bill shall first be proposed in the Odelsting, either by one of its own Members, or by the Government through a Member of the Council of State.*
>
> *If the Bill is passed, it is sent to the Lagting, which either approves or rejects it, and in the latter case returns it with appended comments. These are taken into consideration by the Odelsting, which either shelves the Bill or again sends it to the Lagting, with or without alteration.*
>
> *When a Bill from the Odelsting has twice been presented to the Lagting and has been returned a second time as rejected, the Storting shall meet in plenary session, and the Bill is then decided by a majority of two thirds of its votes.*
>
> *Between each such deliberation there shall be an interval of at least three days.*

Mechanisms to Overcome Deadlocks

The Questionnaire also asked whether or not there was any mechanism in place to overcome deadlocks between the Chambers on legislation, joint resolutions, etc., and in the affirmative, which Chamber was responsible for initiating the process. It is important to recognize that in many countries, these mechanisms are only employed in rare and extreme cases.

Several of the Houses have at their disposal more than one mechanism to break a deadlock between the Houses, and in some cases, two or more of the mechanisms may be combined in the process of breaking a deadlock. For other legislatures, while no formal mechanism exists, other procedures or informal discussions may be used to resolve deadlocks. CHART B (See Appendices) summarizes the results of the responses to this question.

The Power of One Chamber to Override or Compel Action in the Other Chamber

When asked whether one Chamber could compel the other to act on legislative matters, nine legislatures responded in the negative. Some of the remaining Chambers noted that the word "compel" may not in itself be the most appropriate for the situation, in that the Chambers are not necessarily forcing each other to act, but rather are acting in response to each other. For example, in Germany the Bundesrat (Upper House) may lodge an objection to certain legislative items, but only within the time limits specified in the Constitution; otherwise the bill becomes law. In this sense, the Bundesrat could be said to be "compelled" to act in response to the Bundestag (Lower House), but is not explicitly compelled. In Poland, it can be said that the Sejm compels the Senate to act in that under the Constitution the Senate is duty bound to pronounce itself on a bill within a month. Failure to pronounce itself, therefore, to act, means that the Senate has no reservations about the initiative and it passes. In Australia, Constitution (Alteration) bills need only to be passed by one House. If either House fails to pass (or rejects) a Constitution Alteration Bill, and the initiating House after three months passes the bill again, the referendum can proceed if the Government so wishes. In Thailand, if the Senate votes to reject a bill, the bill is returned to the House of Representatives and, if the members of the House of Representatives confirm the bill with a vote of more than half of the entire membership, the bill passes as having approval of the National Assembly. In the United Kingdom, the House of Commons, through the provisions of the Parliament Acts of 1911 and 1949, has ultimate legislative authority. The House of Lords can only delay House of Commons legislation for a year (it can, however, only delay money bills for one month), and if at the end of that time the Commons again passes a bill which the House of Lords has rejected, the Lords are entitled to reject it again. If they do, it may be sent for Royal Assent without their agreement. In a similar fashion, in Ireland the consideration of legislation by the Seanad Eireann (Upper House) is subject to certain time limits which are set out in the Constitution. (The length of time permitted for the consideration of the legislation depends on the nature of the legislation in question.) The action taken by the Dail Eireann (Lower House) regarding the legislation will then depend on whether the Seanad Eireann has dealt with the legislation within the required time. Finally, with respect to the referral of bills to the government or the adjournment of proceedings, the situation in Switzerland is somewhat special. Section 12, paragraph 2 of the Law regarding the relations between Councils provides that when a Council refers a bill to the federal Council or adjourns its proceedings for a period of more than a year, the other Council may vote on the referral or the adjournment. If the other Council does not approve of the decision, the decision nonetheless takes effect, provided that the originating Council confirms it.

Interaction between the Houses

In this section of the Questionnaire, countries were asked about the status and roles of the Members of the Executive within the legislature as a whole and in relation to the individual Houses, about the means by which the Houses communicate, and about activities which are undertaken together by the Houses.

Status of the Executive

As can be seen in CHART C (See Appendices), the status of Members of the Executive in each of the countries can be divided into one of three categories: in one of the 17 respondent countries, Members of the Executive could only belong to one of two Chambers; in five of the 17 countries, Members of the Executive could not belong to either of the Houses; and in ten of the 17 countries, Members of the Executive could belong to either House. (There was no response from Jordan.) These numbers shifted, however, when, also in Question 16, countries were asked whether the Executive could attend both Houses. In 13 of the 17 countries, Members of the Executive are able to attend both Houses, be it on their own initiative or because their attendance is requested by a House; in two of the legislatures, Members of the Executive could only attend the House to which they belong; and in one legislature, Executive Members are not allowed to attend either House in any official capacity.

Responsibility of the Executive to the Houses also differs greatly across the countries. Legislatures were asked in Question 17 if Members of the Executive were responsible to either or both Houses in the consideration of legislation, in terms of motions of censure against Ministers, and in areas of responsibility under the Criminal Law. Since the procedures of each of the legislatures are so different, it was not possible to simply classify the Chambers into those to which the Executive is responsible and those to which it is not. As such, the responses the legislatures provided to Question 17 are listed below.

Australia	Generally speaking, Ministers are answerable to the House of which they are a Member for the actions relating to their ministerial responsibilities, but are not directly answerable to House of which they are not a Member. However, each Minister is represented in other Chamber by a Minister who is a Member of that Chamber, and this enables a question on any matter of Government responsibility to be asked of a Minister in either House by any Member. A want of confi-

dence vote by the Senate in a Minister in the Senate does not lead to a resignation. Only confidence votes in the House of Representatives are regarded as requiring resignation, and such a vote has never been carried.

Belgium

Ministerial responsibility before both Houses is a fundamental principle of Belgian public law and Ministers are responsible to both Houses, whether or not they belong to them.

Both Houses possess several tools to exercise control over the Government (e.g. speeches, written and oral questions, etc.). The House can refuse to adopt a government bill or budget, can adopt a resolution addressed to the government or can establish a committee to examine matters related to the administration of government.

The Constitution states that for legal matters, the House (but not the Senate) has the right to begin proceedings against Ministers and bring them before the Supreme Court of Appeal which alone can judge the case. If it is for a Minister who is a Senator, the Senate's authorization must be sought. Once no longer a Minister, an individual can be tried for an act committed while a Minister but which was beyond function of Minister.

The Constitution of 1830 gave legislators the role to put into law all matters of this regard: responsibilities, procedures etc., but the law was never adopted.

Canada

Ministers appear before committees of both Houses to defend legislation. Ministers as a collectivity are responsible for the policies of the Government. (If the Government loses the confidence of the majority of the House on a vote of confidence or major initiative, the Government may request that the Governor General dissolve Parliament and call an election. The Government could also resign and the Governor General could call on the Leader of Opposition to form a Government.)

The Senate's delay or defeat of a piece of legislation may force a Government to request a dissolution and election, but the Senate, as an appointed body, does not have the same power as the House to defeat a Government.

To force the resignation of a Minister by an explicit vote of censure, a motion to this effect must be put before the

	House. This, however, is a political tradition, and even if censured, nothing compels a Minister to resign. If a resignation is tendered, it is the Prime Minister who decides whether or not to accept it. The Senate could also pass a censure motion, but, as in the House, a resignation would not necessarily follow. Members of Cabinet have traditionally resigned if charged or found guilty of criminal wrongdoing. Certain actions (e.g. receiving prohibited compensation, treason, etc.) automatically bring about a vacancy in the seat. The courts, not the Houses, decide the cases. If an individual is found guilty and the laws or rules do not specify that a seat becomes vacant, the House to which the Member belongs may take action to expel or suspend the Member.
Czechoslovakia	Members of the Executive are answerable to both Houses.
France	Daily control of the Executive is exercised by both Houses through the questioning of Ministers (written questions, oral questions with or without debate, questions to the Government, etc.). The Government can only be defeated by the *Assemblér Nationale* in one of three manners: a) when the Government chooses to place its responsibility on its program or a declaration of general policy; b) when the Government places it:; responsibility on a bill or proposal for a law; c) if the *Assemblee´* adopts, on its own initiative, a motion of censure. The Government can also ask the Senate to approve its general policy statement. Individually, the responsibility of the President of the Republic and of the Ministers, in the exercise of their functions, is brought into play before the High Court of Justice made up of 24 Members: 12 elected by the *Assemblée* and 12 by the Senate. Putting a Minister before the Court can only arise after a. resolution is signed by at least one-tenth of the Senators or the Members and is adopted in the same terms by each House by an absolute majority of its Members.
Germany	The Federal Government is primarily responsible to the Bundestag (Lower House). Only the Bundestag, which alone elects the Federal Chancellor as the Head of the

	Federal Government and can overthrow him, is involved in forming the Government. The Bundestag also exercises other typical forms of parliamentary scrutiny: summoning members of the Government to parliamentary sittings; setting up committees of investigation; and deliberating motions of censure, which are not legally binding, against individual Ministers. The Federal Government must keep the Bundesrat (Upper House) informed the about conduct of its business, and answer specific questions on legislation and the adminstration of the Federation. Parliamentary scrutiny of the Government may include the legislative activities of the Government, but only the Courts can hold members of the Federal Government accountable for any criminal offence.
Ireland	Article 28.1.1 of the Constitution provides that the Government shall be responsible to the Dail Eireann (Lower House). The Government is also stated to be collectively responsible for the Departments of State administered by the Members of the Government. There is no reference in the Constitution to responsibility to the Seanad Eireann (Upper House).
Italy	Ministers are called to account for their political responsibilities in many ways and with the use of many tools at the disposal of each Member. They are called to account for their penal responsibilities to the Committee of Inquiry and to the body which deals with parliamentary immunity.
Japan	The Constitution of Japan stipulates cabinet government and therefore a majority of Ministers of State must be chosen from among the Members of the Diet. If the House of Representatives passes a non-confidence resolution, the Cabinet must resign en masse, unless the House of Representatives is resolved within ten days. If a Cabinet resigns en masse, Ministers who are not Members of the Diet will also have to resign. The Cabinet, in the exercise of executive power, is collectively responsible to the Diet. All laws and cabinet orders have to be signed by the competent Minister of State and countersigned by the Prime inister.

	There is no resolution of censure against individual Ministers which has legal effect, although it has happened that the adoption of a resolution of non-confidence against a Minister of State has led to the resignation of that Minister. The Ministers of State, during their tenure of office, are not subject to legal action without the consent of the Prime Minister.
Philippines	Members of the Executive are answerable to both Houses only with respect to inquiries and investigations regarding their departments. These are to be conducted through the following modes: committee meetings; budget hearings; and Question Hour, where a Department Head may be requested by either House to appear before and be heard by such House on any matter pertaining to his or her department.
Poland	Members of Executive are answerable to the Sejm because, under the Constitution, "the Sejm exercises control over the operations of the other organ of State authority...", and are answerable whether or not the Executive Member is also a Member of the Senate or Sejm. This does not extend to criminal responsibility.
Spain	Under the Constitution: the Government is jointly answerable to the Congress for its conduct of political business; the Houses and committees may, through their respective Speakers, request any kind of information and help they may need from the Government and Government departments and from any authorities of the State and Self-governing Communities; the Houses and their committees can summon Members of the Government; Members of the Government are entitled to attend meetings of the Houses and their committees and to be heard in them; and Members of the Government may also request that officials from their departments be allowed to report to the Houses and their committees. The Government and each of its Members are subject to interpellations and questions put to them in the Houses (Standing Orders shall set aside a minimum weekly time for this type of debate); any interpellation may give rise to a motion in which the House states its position.

	Votes of Confidence: The Prime Minister, after deliberations by the Council of Ministers, may ask Congress for a vote of confidence in favour of his programme or in favour of a general policy statement. Confidence shall be deemed to have been obtained when a simple majority of the Members of Congress vote in favour. Motions of Censure: Congress may challenge Government policy by passing a motion of censure by a majority of its Members; the motion must be proposed by at least one-tenth of the Members of the House and include a candidate for the office of Prime Minister; the motion of censure may not be voted upon until five days after it has been submitted. During the first two days of this period, alternative motions may be submitted; if the motion of censure is not passed by Congress, its signatories may not submit another one during the same session.
Switzerland	The Government makes an annual report to Parliament which is subject to discussion in both Houses. Political responsibility is not a factor in the Swiss system, but penal responsibility is. There are special procedures for dealing with the latter.
Thailand	Members of the Executive are answerable to both Houses, even though they might not be Members of both Houses. They are answerable for any questions regarding their duties, but they have a prerogative not to answer the questions involving security or the interest of the public.
United Kingdom	Ministers are only answerable to the House of which they are a Member, although Select Committees of either House may hear from Ministers from either House. Ministers are answerable for legislation and answer questions and motions.
United States	N/A

(Note: For further information on the questions of responsibility of the Executive, please see the report sponsored by Mr. Traversa (Italy), entitled *Motions of Censure Against Individual Ministers and the Consequences for the Stability of the Government,* Constitutional and Parliamentary Information, No. 165.)

Means of Communication Between the Houses

Although there appeared to be some confusion about the meaning of this question, its aim was simply to discover how the two Houses relay messages to each other. While many countries noted that the Chambers of their legislatures communicate in less formal ways through party caucuses, whips, parliamentary groups and delegations, conferences between political parties, collaboration between Committees on Procedure and Privileges of each House and in joint committees (Ireland), meetings between the authorities of the Houses or the chairmen of certain committees of both Houses, and contacts at the staff and administrative levels, most also mentioned more formal ways in which the Houses communicate. Czechoslovakia noted that the two Houses share common committees, a common Presidium and attend a common plenary session. Poland responded that the Houses meet in joint sessions of the Sejm and Senate Praesidia and joint sessions of the two Chambers' standing committees. Belgium, Germany, Ireland, Italy, Poland, Spain and Switzerland responded that their Houses may communicate through letters and discussions and working sessions between their Speakers, Presidents and/or Secretaries General. Thailand added in a similar manner that the Houses communicate through the Speaker of the House of Representatives and the President of the Senate through the Secretary General of the National Assembly who is responsible to the administration of the National Assembly. Canada and Australia noted that free conferences may be used to communicate between the Houses, although the use of this mechanism is rare. The most common form of communication between the Houses was the use of formal messages. Australia, Belgium, Canada, France, the Philippines, Spain, Switzerland, the United Kingdom and the United States all use this mechanism. Canada elaborated that messages may be used to transmit information between the Houses about items such as joint efforts, changes to joint committees, items of disagreement between the Houses, and the passage of legislative items. Similarly, Ireland stated that messages are sent in respect of all decisions which impinge on the other House (e.g. the passage of bills, the appointment of joint committees, joint sessions, etc.). The Parliament of the United Kingdom explained that messages are used to send bills from one House to the other, and are carried from one House to the other by one of the Clerks of the House which sends the message. Finally, Japan explained that the Houses communicate formally by means of sending and sending back measures and notification of measures or matters, adding that some of these measures or matters are formally required to be discussed by the presiding officers of the two Houses.

Collaboration Between the Houses

In addition to attempting to find out how the two Houses in bicameral legislatures communicate with each other, Question 19 also sought to find out in what ways the two Houses collaborate, and specifically whether or not the two Houses work together in joint committees. The Question also asked by what mechanism joint committees are established in the various legislatures, and how the committees deal with the situation in joint committee when the two Houses have different rules of procedure. CHART D (See Appendices) details the findings of this question. Briefly, 14 countries responded that they have some sort of joint committees, even if these may only be established in exceptional circumstances, and that the committees may be established by statute, by the rules of the Houses or upon agreement of the two Houses. The Philippines noted that the two Houses can undertake common hearings and investigations, but that such investigations are usually carried out through joint meetings of the respective committees of each Chamber. Poland explained that joint committees are not usually established, but added that there is currently in place a Constitutional Committee of the National Assembly which has been appointed on the strength of the laws governing the passage of a new Constitution. In response to the question about which rules prevail in the event of differing rules, in three cases, the rules of one of the two Houses will prevail; in four cases, the members of the committee will themselves adopt their own rules or decide which rules to follow; in two cases the rules governing joint committees are found in law, in the Constitution or in rules written specifically to govern the proceedings of joint committees; and in one case, some committees of the legislature will use the rules of one of the Houses, and other committees will adopt their own rules. No specific response was provided to this question in five cases.

Legislatures were also asked if any appointments of Officers of the legislatures were made by joint resolution and whether or not these appointments could equally be rescinded. Australia, France, Italy, Poland and Switzerland noted that no appointments of Officers were made by joint resolution. Belgium, the Philippines and the United States all noted specifically that the Officers of each House were either elected or appointed by their respective Houses, and could be similarly removed. As listed below, the remaining countries offered specific explanations about some of their Officers and Officials:

Canada	Certain appointments require the passage of joint resolutions: the Official Languages Commissioner is appointed on resolution of both Houses; the Information Commissioner and the Privacy Commissioner are appointed by the Gover-

	nor General on the approval of a resolution by both Houses; the Auditor General and the Chief Commissioner of the Human Rights Commission are both appointed by the Governor General; and the Chief Electoral Officer is appointed by a House of Commons motion. All six can be removed for cause by address of the Senate and House of Commons.
Czechoslovakia	All Officers are elected. Common officers, such as the Chairman of the Federal Assembly, are elected by both Houses in a plenary session.
Germany	he President and Vice-President of the Federal Audit Office are elected for a twelve-year term by the Bundestag (Lower House) and Bundesrat (Upper House). They cannot be voted out of office.
Ireland	The Staff of the Houses of the Oireachtas Act, 1959 defines an Officer of the Houses of the Oireachtas as: (a) the Clerk or Clerk-Assistant of the Dail Eireann or the Seanad Eireann; (b) the Superintendent, Houses of the Oireachtas (National Parliament), or (c) the Captain of the Guard, Houses of the Oireachtas. The Officers detailed at (a) are appointed by the Taoiseach (Prime Minister) on the joint recommendation of the Chairman of the House in question and the Minister for Finance. In the event of a failure to agree on the part of the Chairman and the Minister, the Taoiseach may nominate a person for appointment and, with the concurrence of the House in question, may appoint that person to that office. Removal from office would be a matter for the Government, acting upon the recommendation of the Chairman of the House in question. The Officers detailed at (b) and (c) are appointed by the Taoiseach after consultation with the Chairman of the Dail Eireann and the Chairman of Seanad Eireann. Removal from office would be a matter for the Government, again after consultation with the Chairmen of both Houses.
Japan	There are many public officers appointed by a resolution of the Diet or with the agreement or approval of both Houses. Those who hold these public offices are not removed on

resolution of one or both Houses. There are, however, particular provisions concerning the Prime Minister and the Chief Librarian of the National Diet Library:

The Prime Minister: The procedure is provided for in Article 67 of the Constitution. (See also section on the Status of the Executive.)

The Chief Librarian of the National Diet Library: According to Article 4 of the National Diet Library Law, the Chief Librarian of the National Diet Library shall be appointed by the presiding officers of the Houses with the approval of the Houses on their consultation with the Committees on Rules and Administration of the Houses, and he may be dismissed by joint action of the presiding officers of both Houses.

Officers of Parliament, except the Chief Librarian, belong to one House or the other. According to the Diet Law, the Presiding Officer, the Deputy Presiding Officer, the Temporary Presiding Officer, the Chairmen of Standing Committees and the Secretary General are defined as the Officers of each House (Art. 16). The Presiding Officer and Deputy Presiding Officer are elected in each House (Diet Law, Art. 6 and 23); a temporary presiding officer must also be elected when both the Presiding Officer and Deputy Presiding Officer are unable to attend to their duties (Diet Law, Art. 22). The Chairman of each Standing Committee is elected in each House from among the members of the Committee (Diet Law, Art. 25). The Secretary General is elected in each House from among those other than Members of the Diet (Diet Law, Art. 27(1)). Secretaries and other personnel are appointed and dismissed by the Secretary General, with the consent of the presiding officer and the approval of the Committee on Rules and Administration (Diet Law, Art. 27(2)).

Each Legislative Bureau has one Commissioner General, secretaries and other necessary staff. The Commissioner General is appointed and dismissed by the Presiding Officer with the approval of the House, and the secretaries and other necessary staff are appointed and dismissed by the Commissioner General, with the consent of the presiding officer and the approval of the Committee on Rules and Administration (Diet Law, Art. 131).

An Officer may resign with the permission of the House. While the Diet is not in session, however, permission for

	resignation may be given by the Presiding Officer (Diet Law, Art. 30). In case of special necessity, a House may dismiss the Chairman of a Standing Committee from his post by resolution of that House (Diet Law, Art. 30-11). Other appointments include: Government Delegates: The Cabinet may, with the approval of the Presiding Officers of both Houses, appoint Government Delegates (Diet Law, Art. 69). Commissioner: A Commissioner shall be appointed by the Cabinet with the consent of both Houses of the Diet (Board of Audit Law, Art. 4) Commissioner of the Authority: Commissioners of the Authorities shall be appointed by the Cabinet with the consent of both Houses of the Diet (National Public Service Law, Art. 5(1)). Members of Councils are established under the Executive Branch.
Spain	The Constitution and Standing Orders provide for personnel of the Cortes Generales; some resolutions concerning administrative matters (especially matters concerning Civil Servants) must be adopted by the joint meeting of the Bureaux of both Houses.
Thailand	The passage of joint resolutions is required for the appointments of individuals to the following positions: 1. The Committee and Chairman of the Commission of Counter Corruption; 2. The Auditor General of the Office of Auditor General; 3. The Secretary General of the Office of the Juridical Council.
United Kingdom	No Officers of Parliament are appointed by joint resolution. Most Officers are Officers of one House only, although there are some exceptions, such as the Examiner of Petitions for Private Bills, the Supervisor of Parliamentary Broadcasting, the Director of Works, and the Shorthand Writer to the Houses of Parliament. The latter three appointments are made by the Clerks of the Houses and not by the Houses themselves.

Question 21 asked whether or not there were any events for which the attendance of both Houses was required. CHART E (See Appendices) lists all of the events for which the various legislatures noted that the attendance of Members of both Houses was required. It should be mentioned, however, that while the two Houses of a legislature may meet, the meetings on some occasions may be relatively informal joint sittings, whereas on other occasions, the two Houses may be formally convened to act as one assembly.

Sessions and Dissolutions of the Houses

Questions 8 and 22 sought to find out how the two Houses were linked in terms of their daily sittings, their sessional periods and the dissolution of the Houses. Specifically, legislatures were asked whether or not the sessions of both Houses take place at the same time, and what the relative duration and, if fixed, dates of the sessions are. An examination of the responses to this question made a general comparison difficult. Hence, below are listed the responses of each of the countries:

Australia	Generally sessions take place at the same time, but in recent years the Senate has sat for additional days, especially near the end of a sitting period. The Constitution requires Parliament to meet no later than 30 days after the return of the writs of election, and states that it shall meet once a year. Sitting periods are not fixed: usually two distinct periods, the autumn period (February to June) and the budget period (August to December). Both Chambers currently sit on a two-weeks-on, two-weeks-off pattern during the sittings.
Belgium	Sessions of the two Houses usually take place at the same time. A session usually begins on the second Tuesday in October and the work continues until the end of June or the beginning of July the following year; the Houses must meet at least 40 days a year. A session is ended by Royal Decree a few days before the opening of the following session. Under the Constitution, Senate meetings held when the House is not in session are not validly constituted.
Canada	Sessions of the two Houses take place at the same time. Each session starts with a Speech from the Throne and ends by prorogation or dissolution. As it is a Parliament which is

	summoned, prorogued or dissolved, the sessions coincide. Prorogation brings to a halt all House and committee activity and neither House has the power to meet until it is again called with a Speech from the Throne. Common practice is to adjourn for long periods of time within session, thus allowing work to continue in committees during the adjournment, and then to prorogue and specify the date of the Speech from the Throne on the same day. Within a session, the Houses may sit on different days.
Czechoslovakia	Sessions of the Houses may be held at the same time, but they may be convened only during sessions of the whole Federal Assembly.
France	Sessions of the two Houses take place at the same time. Two sessions are held per year beginning on October 2 and on April 2. Other sessions may be convened by the President at the request of the Prime Minister or of a majority of the Members of the *Assemblée*, on a specific order. If the session is held at the request of the Members, it is ended when Parliament has disposed of the business for which it was convened, or at the latest 12 days after the first meeting. Only the Prime Minister can request another special session before the end of the month following the decree of closure. Special sessions are provided for in certain circumstances.
Germany	Sessions of the two Houses sometimes take place at the same time, but there are no rules governing this. The Bundestag (Lower House) meets on average for 22 weeks per year, with two and sometimes three weeks of sittings being followed by one or two weeks without sittings. There are also Easter, summer and Christmas recesses. The Bundesrat (Upper House) usually meets every third Friday, and there are no Christmas, Easter or summer meetings. On average it meets 12 times a year.
Ireland	Sessions of each House take place roughly at the same time; however the Seanad Eireann (Upper House) conventionally sits up to a week after the Dail Eireann (Lower House) rises for recess and returns a week later than the Dail after a recess. While the dates of the sessions are not fixed, the typical durations are: the end of January to one week before Easter Sunday; two weeks after Easter Sunday to mid-July; and mid-October to one week before Christmas.

Italy	Sessions of the Houses take place at the same time. The Constitution states that the Houses meet the first non-holiday day of February and October. Each House can be convened in a special session by its President, the President of the Republic or by one-third of its Members. When one meets in special session, the other is also legally convened. The work of the Houses is organized in trimesters.
Japan	Sessions of the Houses take place at the same time. As a rule, an ordinary session of the Diet has to be convoked once per year in January (Constitution, Art. 52, Diet Law, Art. 2), and the term is 150 days (Diet Law, Art. 10). The term of an extraordinary session or of a special session is determined by both Houses in their respective resolutions (Diet Law, Art. 11). The term of a session may be extended.
Philippines	Article VI, Section 15, of the Constitution provides that the Congress shall convene every year on the fourth Monday of July for its regular session and shall continue to be in session until thirty days before the opening of the next regular session, excluding Saturdays, Sundays and legal holidays. The President may call a special session any time. Both Houses of Congress follow a legislative calendar, indicating the session days as well as the adjournment, which is embodied in a concurrent resolution which must be approved by both Houses. The duration of the session days will depend on both Houses and is not fixed from year to year, except that neither House during the sessions of the Congress shall, without the consent of the other, adjourn for more than three session days nor to any other place than that in which the two Houses shall be sitting. ' Each House may determine the rules of its proceedings: the daily sessions of each House shall thus be determined by its own rules subject to the aforestated provisions of the Constitution.
Poland	There is no rule binding the two Houses to meet at the same time; often they do meet concurrently, but not in observance of any fixed rule. The Senate meets for a day or two every two or three weeks; the House holds three or four day sessions every two weeks.

Spain	Sessions of the two Houses take place at the same time. The Houses meet annually for two ordinary sessions: September to December and February to June. During these sessions in both Houses, the Congress normally meets three weeks every month from Tuesday to Thursday. The Senate normally meets two times every month, from Tuesday to Thursday.
Switzerland	Sessions of the two Councils generally take place at the same time (four times a year for three weeks). Each Council has to sit on the opening day and on the last day of a session. In the interim, each can sit as necessary, but at least once a week. Since 01.02.92, both Councils can decide independently to hold special sessions, which may be held in addition to the regular sessions.
Thailand	Sessions of each House take place at the same time. Usually, the House of Representatives meets every Thursday from 9:30 a.m. and the Senate every Friday from 9:30 a.m. Both Houses have two ordinary sessions each year and each of these ordinary sessions is ninety days in length.
United Kingdom	Sessions of the two Houses begin at the same time (with the State Opening) and are prorogued and dissolved simultaneously. Daily sittings usually being at 2:30 p.m., but there are times during a session when only one House sits. The session normally begins in early November and continues until late October the following year.
United States	The two Houses do not necessarily meet at the same times, but often do (there are for example, certain customary and statutory recess periods). Neither House can adjourn, however, for more than three days without the consent of the other. Since World War II, the duration of sessions has normally been all or most of a calendar year.

The goal of the question regarding dissolution of the Houses was to discover whether or not the two Houses in a legislature are both dissolved at the same time prior to an election. The responses were such that each of the countries fell into one of eight categories. In Canada, Czechoslovakia, Poland and the United Kingdom the Houses are effectively dissolved at the same time. However, in the case of Canada and the United Kingdom, the Members of the Upper Chambers are appointed for long periods of time and therefore these Chambers do not change their membership when a general election is held for the Lower House. Belgium,

Italy and Spain noted that both of their Houses are usually dissolved at the same time, but could technically be dissolved at different times. For example, Section 88 of the Italian Constitution provides that the President of the Republic, after consulting the Presidents of the Houses, may dissolve one or both of the Houses. In Ireland, the dissolution of the Dail Eireann (Lower House) is a matter for the President acting on the advice of the Taoiseach. The Constitution provides that the President may, in his absolute discretion, refuse to dissolve the Dail Eireann on the advice of a Taoiseach who has ceased to retain the support of the majority in the Dail. However, to date the President has not used this discretionary power. The Constitution of Ireland also provides that a general election for the Seanad Eireann (Upper House) shall take place not later than 90 days after a dissolution of the Dail Eireann. In Germany and Japan, only one of the Houses (the Bundestag (Lower House) in Germany and the House of Representatives in Japan) can be dissolved, although in Japan when the House of Representatives is dissolved, the House of Councillors is closed at the same time. In the Philippines, unlike in parliamentary systems where a Prime Minister can request that the Houses be dissolved, the Constitution does not provide for any manner by which the Congress can be dissolved. In France and the United States, when the mandate of one House ends and it is therefore effectively dissolved, only part of the other is dissolved with it because only a percentage of the Members of the other House stand for election at that time. In Australia, the same is often true; however, it is not required that House and half periodical Senate elections be held together. There have been periodical elections for the Senate alone in 1953, 1964, 1967 and 1970. There have been elections for the House of Representatives alone in 1929,1954,1963,1966,1969, and 1972. Elections for the House of Representatives have been held prematurely in order to coincide with periodical elections for the Senate in 1955, 1977 and 1984. A double dissolution of the Houses is also possible, in instances where there is a deadlock between the Houses. Thailand stated that the Houses are not dissolved at the same time. Finally, Switzerland responded that the Councils cannot be dissolved, except in one case specified in Section 120 of the Swiss Constitution:

1. *If one section of the Federal Assembly decides a total revision of the Federal Constitution and the other does not consent or if fifty thousand Swiss citizens entitled to vote demand the total revision of the Federal Constitution, the question whether such a revision should take place or not must be submitted in both cases to the vote of the Swiss people.*
2. *If in either of these cases the majority of the Swiss citizens casting a vote give a positive answer, both Councils shall be elected anew in order to undertake the revision.*

Administration of the Houses

Finally, the Questionnaire attempted to find out how services are shared and administered within bicameral legislatures. Legislatures were asked whether or not there is a distinct administrative structure in each House which provides services to its Members; which services, if any, are shared between the Houses; and how the costs of the shared services are divided between the Houses.

In response to the first question, Belgium, Canada, Germany, Italy, Jordan, the Philippines, Poland and the United States all noted that each House has a distinct administrative structure to provide services to its Members. Czechoslovakia, Ireland, Switzerland and Thailand stated that in their countries one common administrative structure serves both Houses. Japan noted that a Secretariat and a Legislative Bureau are established in each House and that each Standing Committee of each House may have a Professional Advisor and researchers. France explained that separate administrative structures exist for each of the Houses to deal with items over which each House is autonomous, and Spain noted that there are separate administrative structures for each House, but that they are attended by common civil servants. Australia is a little different, in that the Federal Parliament is serviced by five departments: the Department of the House of Representatives, the Department of the Senate, the Department of the Parliamentary Reporting Staff, the Department of the Parliamentary Library and the Joint House Department. Lastly, the United Kingdom explained that each House has its own administrative structure which covers Clerks, the official reports, the library and other facilities, like refreshments.

Replies to the questions about services shared between the two Houses revealed that shared services are either: jointly administered and jointly paid for; administered by one House but available to the other, either free of charge, on a percentage basis or on *a pro rata* basis; or independently administered but available to both Houses. Details about the services shared between the Houses in each country can be found in CHART F in the Appendices.

APPENDICES

Note One - Description of a quasi-judicial function of the Polish Parliament

Chart A - Representation in Bicameral Parliaments
Chart B - Mechanisms to Overcome Deadlocks Between the Houses
Chart C - Status of the Executive
Chart D - Collaboration Between the Houses
Chart E - Events for which the Attendance of both Houses is Required
Chart F - Items and Services Shared Between the Houses

Note one

In addition to the quasi-judicial functions of the Polish Parliament listed in the document, the Parliament also performs another such function:

A special committee of the Sejm or a group of Deputies can apply to the Marshal (Speaker) of the Sejm with a preliminary motion to exact constitutional responsibility from a specific person holding one of the highest posts in the State, with the reservation that should the matter concern the President of the Republic, the Marshal may rule that the preliminary examination of a motion to indict the President in the Tribunal of State is to be made by the joint Houses meeting in the form of National Assembly (NA). A preliminary motion to indict the President may be filed by one-quarter of the NA members, in other words by at least 140 Deputies and Senators, or the same number of only Deputies.

The preliminary motion is forwarded by the Marshal of the Sejm to the Standing Sejm Committee for Constitutional Responsibility which conducts an investigation in accordance with all the rules of criminal procedure, having all the rights and obligations which in regular investigative procedure accrue to a prosecutor. The Committee presents the final report on its findings along with a motion to indict a specific person, or a motion to discontinue the proceedings. Such a report is presented by the Committee to joint Houses acting as NA, should the matter concern the President, or to the Sejm when the matter concerns other persons holding one of the highest posts in the State, including the Prime Minister and Government Ministers. On this basis a NA Resolution has to be adopted concerning the indictment of the President, or a Sejm Resolution concerning the indictment of other persons. The alternative can be Resolutions (of the NA or the Sejm, respectively) to discontinue proceedings. A Resolution to indict serves as the basis for suspending persons concerned from the performance of their duties

and serves as formal indictment of the said persons in the Tribunal of State. The said Tribunal reviews the question of constitutional responsibility always within the limits defined in such Resolutions, with the reservation that should the deed representing wilful breach of the Constitution or of a law, and hence giving rise to constitutional responsibility, also be an offense in the meaning of the Criminal Code, and the NA (when the case concerns the President) or the Sejm (in all other cases) decides that the case should be tried jointly, then the Tribunal of State acts additionally in the capacity of a criminal court. In such cases next to sanctions due to constitutional responsibility, the Tribunal also rules the sanctions stipulated in the Criminal Code. Along with adoption of a Resolution concerning indictment, the NA or Sejm, respectively, select (from among their members) two prosecutors of whom at least one should have the qualifications required of a judge in the Republic of Poland.

Such a procedure, initiated and conducted largely within the Parliament, i.e. in joint Houses or separately in the Sejm, is applicable in Poland to:

1. the President of the Republic of Poland
2. Members of the Council of Ministers, i.e. the Prime Minister, the Deputy Prime Minister, Ministers, chairpersons of commissions and committees equivalent to highest level state administration agencies;
3. the President of the Supreme Chamber of Control;
4. the President of the National Bank of Poland;
5. Heads of Central Offices.

It should be added that under the amendment to the Law on the State Tribunal, signed by the President, the group of posts whose holders are liable to such a procedure has been extended to cover the people entrusted by the Prime Minister with heading a Ministry or Central Office and to the Supreme Commander of the Armed Forces of the Republic of Poland.

CHART A - REPRESENTATION

Country	Name of Lower Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term
AUSTRALIA	House of Representatives	148	Elected	System of preferential voting; single Member constituency; voting is compulsory for all citizens over 18 years of age.	Three years, unless House is dissolved earlier.
BELGIUM	House of Representatives	212	Elected	Elected directly by public.	Four years, unless House is dissolved earlier.

IN BICAMERAL PARLIAMENTS

Name of Upper Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Tcnn	Increase or L/Wvl wuoV* 111 Tr V/l Seats
Senate	76>	Elected	Elected on a proportional representation basis; 12 senators from each state and two from each territory.	Six years for State Senators; half of the Senators elected at each Senate election, usually held concurrently with general election for House; three years for Territory Senators; double dissolution can cause all seats to become vacant.	Constitution states Parliament can make laws to increase or decrease the number of seats in the House, and the number should be, as nearly as practicable, twice the number of Senators. Each original state is entitled to at least five seats in the House of Representatives.
Senate	184	Elected	106 elected directly by public; 52 Members chosen by provincial councils, 26 Members co-opted and one Member by right.		Constitutional amendment required to change the number of seats in both Houses.

Country	Name of Lower Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term
CANADA	House of Commons	295	Elected	Single Member plurality system; representation by population.	Maximum of five years from date of return of the writs at a general election (except in time of national emergency or crisis).
CZECHO-SLOVAKIA	House of People	150	Elected	75 elected from the Slovak Republic and 75 from the Czech Republic.	Four years

Name of Upper Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term	Increase or Decrease in # of Seats
Senate	104	Appointed	Appointed by Governor General on the advice of the Prime Minister; appointments made on basis of region: 24 to Maritime provinces, 24 to Québec, 24 to Ontario, 24 to Western provinces, six to Newfoundland and one to each of the two Territories.	Appointed to age 75 (prior to 1965, appointments were for life).	Legislation outlining electoral boundaries usually amended after each decennial census to change the number of seats in the House of Commons. A constitutional amendment would be required to change the number of seats in the Senate (four or eight additional Senators could also be added under certain circumstances, but this has occurred only once, in 1990).
House of Nations	150	Elected	Proportional according to population in each Republic.	Four years	Number of seats in the House of People cannot be decreased.

Country	Name of Lower Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term
FRANCE	Assembled nationale / National Assembly	577	Elected	Each Member represents the nation as a whole, rather than only his own constit-uency.	Five years, unless House is dissolved earlier.
GERMANY	Bundestag	656 (+ any added by overhang mandate due to the system of personalized proportional representation)	Elected	Elected in general, equal, direct, free and secret elections; half the Members are elected in 328 constituencies, the other half via Land lists drawn up by the political parties.	Four years

Name of Upper Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term	Increase or UCCI CadG 111 It \Jl Seats
Senate	321	Elected	Each Senator represents nation as a whole, not a particular area or constituency, but each is elected by a local body.	Nine years; one third of Senators elected every three years; Senate cannot be dissolved.	Amendment to Organic Law required to change the number of seats in both Houses.
Bundesrat	68 (+approx. 130 substitute Members)	Appointed	Appointed by Land Governments; number of votes and Members allotted to each Land depends on population of Land;each Land may also appoint all of its Government Members as substitute Members; (NOTE: Governments of Laender from whom Members of the Bundesrat are chosen are themselves legitimized by the democratic process).	Members can be appointed and recalled at any time by the Land Government.	Amendment to Federal Electoral Law required to change the number of seats in the Bundestag. The number of seats in the Bundesrat varies depending on the population of the Laender.

Country	Name of Lower Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term
IRELAND	House of Representatives (Dail Eireann)	166	Elected, with the exception that the Constitution and the Electoral Act, 1963, provide that the outgoing Ceann Comhairle (Speaker) is deemed automatically to be elected at the ensuing general election after a dissolution.	Elected by secret ballot on the system of proportional representation and by means of the single transferable vote. Members represent constituencies as established by law.	Each Member serves for the duration of a Dail* unless he or she dies, resigns or is disqualified under the terms of the Constitution or the law. * The duration of an individual Dail is limited to seven years by Article 16.5 of the Constitution, but it is also provided that a shorter period may be fixed by law. The Electoral Act, 1963, sets the maximum duration of a Dail at five years.

Name of Upper Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term	Increase or Change in Number of Seats
Seanad Eireann (Senate)	49 Elected; 11 Nominated	Elected and Nominated	Three are elected by the National University of Ireland; three by the University of Dublin; and 43, known as Panel Members, are elected from five panels of candidates formed in the manner provided for by law, containing respectively the names of persons having knowledge and practical experience of certain interests and services. The system of election is proportional representation by the means of the single transferable vote. Voting is by secret postal ballot. The 11 nominated Members are nominated, with their prior consent, by the Taoiseach (Prime Minister).	A Member, unless he or she previously dies, resigns or becomes disqualified, continues to hold office from the date of his or her election or nomination until the day before the polling day of the general election held next after his or her election or nomination. The Constitution provides that a general election for the Seanad shall take place not later than 90 days after a dissolution of the Dail Eireann.	The number to be elected to the Dail is fixed by law, but Article 16.2.2 of the Constitution imposes upper and lower limits on the number of seats in the Dail. The Constitution requires that the Oireachtas (the National Parliament) revise constituencies at least once every twelve years. These changes are effected by legislation. Changes to the number of seats in the Seanad must be made by means of a constitutional or legislative amendment.

Country	Name of Lower Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term
ITALY	Chamber of Deputies (Camara dei Deputati)	630	Elected	Elected by general public; candidates must be 25 years of age and must meet require-ments of electoral law.	Five years
JAPAN	House of Representatives	512	Elected	Elected from 130 electoral districts, each sending from three to five members (except Amami special district which sends only one). According to the Law, the metropolis and prefectures that have multiple seats are divided into two to seven electoral districts, or a prefecture itself may constitute an electoral district.	Term is set at four years, but may be terminated before Ihe full tenn is up if the House of Representatives is dissolved.

Name of Upper Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term	Increase or Decrease in # of Seats
Senate	315	Elected	Senators must be 40 years of age and must meet the requirements of electoral law; only Members appointed are those appointed for life by the President of the Republic. The number of Senators appointed by the President of the Republic cannot exceed five.	Five years	Number of Senate seats may surpass 315 if the President of the Republic appoints senators for life; all former Presidents are also senators for life.
House of Councillors	252	Elected	Under a proportional representation system, 100 are elected from a single nation-wide constituency, while the remaining 152 are elected directly from the 47 electoral districts (each sending from two to eight members) which are formed on a metropolitan or prefectural basis.	A Member is elected for six years, and an election for half the members takes place every three years.	Membership of both Houses is provided for under the Public Offices Election Law, and therefore membership of either House can only be increased or decreased by means of an amendment to this law.

Country	Name of Lower Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term
JORDAN	House of Deputies (Majlis al Nuwaab)	80	Elected		Four years
PHILIPPINES	House of Representatives	Not more than 250, unless fixed by law	Elected	Some shall be elected from legislative districts apportioned among provinces, cities and metropolitan Manila in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio; and some who, as may be provided by law, shall be elected through a party list system of registered national, regional and sectoral parties or organizations.	Three years; in no case can a Member be elected for more than three consecutive terms.

Name of Upper Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term	Increase or Decrease in # of Seats
Senate (Majlis al-Aayan)	**40**	Appointed	Appointed by the King, on the advice of the Prime Minister, from those who maybe considered "notables". The number of members in the Senate should not exceed one-half of the membership of the House of Deputies.	Four years	
Senate	24	Elected	Elected at large	Six years; in no case can a Senator serve more than two consecutive terms.	Legislative districts for the House are reapportioned by Congress within three years following the return of each census; reapportion-ment is based on standards which include the number of inhabitants and a uniform and progressive ratio. Number of seats in the Senate cannot be increased or decreased without a constitutional amendment.

Country	Name of Lower Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term
POLAND	Sejm	460	Elected	Proportional representation in constituencies covering the country's 49 provinces with the exception of the heavily populated Warsaw and Katowice provinces, each of which is divided into several constituencies.	Four years
SPAIN	Congress	Minimum: 300 Maximum: 400 Currently: 350	Elected	Elected on proportional representation basis; total number of Members determined by law, but each constituency is allotted a minimum initial representation and the remainder are distributed in proportion to the population; the electoral constituency is the province, but the cities of Ceuta and Melilla are each represented by one Member.	Term ends four years after the date of election, or on the date the Congress is dissolved.

Name of Upper Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term	Increase or Decrease in # of Seats
Senate	100	Elected	Each province has 2 Senate seats, but the provinces of Warsaw and Katowice each return three Senators on the basis of a relative majority, first-past-the-post electoral system.	Four years	Under the Constitution, the number of seats in either House cannot be increased.
Senate	255, but number is variable because it depends on the population of the Self-Governing Communities.	Elected and Appointed	Provinces, islands and groups of islands, and cities each elect a certain number of Senators; in addition, each Self-Governing Community shall appoint one Senator, and a further Senator for each one million inhabitants in their respective territories (these appointments are incumbent upon the Legislative Assembly of the Self-Governing Community's highest corporate body as provided for by the Statute of Devolution).	Term ends four years after date of election, or on the date the Senate is dissolved.	

Country	Name of Lower Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term
SWITZER-LAND	National Council	200	Elected	Elected on a proportional representation basis; those elected represent the Swiss people.	Four years
THAILAND	House of Representatives	360	Elected	Elected in a general election.	Four years
UNITED KINGDOM	House of Commons	651	Elected	Members elected by universal suffrage to represent a geographical constituency; election is by a simple majority of the votes cast.	Elected for duration of a Parliament, which cannot exceed five years (except in time of crisis such as a war).

Name of Upper Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	~~Term~~	Increase or Decrease in # of Seats
Council of States	46	Elected	Elections governed by Cantonal laws and, with the exception of the Canton du Jura, are decided on majority basis.	Four years; those elected represent the people of the Cantons.	Constitutional amendment required to change the number of seats in both Houses.
Senate	270	Appointed	Appointed for a fixed term of six years by His Majesty the King.	Six years	No such mechanism exists.
House of Lords	Currently: 1196	Appointed	Members are either hereditary or life peers. In succeeding to a title, a hereditary peer sits for the rest of his or her life, with the proviso that the minimum age for taking a seat in the House of Lords is 21. A peer may, however, disclaim a title for life or seek a "Leave of Absence" for a particular Parliament; Life Peers are appointed by Letters Patent from the Crown, which acts on the advice of the Prime Minister, and serve for life.	Lords are appointed for life, although certain individuals, like those appointed Lords of Appeal in Ordinary, retire at age 75 (but retain their seat for life) and some senior clergy appointed to the Lords retire at age 70.	Number of seats in the Commons can be increased or decreased by legislation; such legislation is usually passed to implement recommendations of the Boundary Commission which examines the geographical extent of constituencies. The number of seats in the Lords fluctuates depending on appointments, deaths and the number of hereditary peers who take their seats.

Country	Name of Lower Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term
UNITED STATES OF AMERICA	House of Representatives	435 (+5 non-voting delegates who represent special territories and districts)	Elected	Members represent congressional districts of roughly equal population.	Two years

Name of Upper Chamber	Number of Members	Elected or Appointed	Basis/ Instrument	Term	Increase or Decrease in # of Seats
Senate	100	Elected	Two Senators elected to each state, regardless of the size of the state.	Six years; one-third is elected every two years.	Legislative amendment required to change the number of seats in the House. An addition of states would be required to change the number of seats in the Senate.

CHART B - MECHANISMS TO OVERCOME DEADLOCKS BETWEEN THE HOUSES

Type of Mechanism	For Legislative Initiatives	For Other Items (including joint resolutions, the appointment of Officers and establishment of Joint Committees)
No mechanism exists	Belgium[1] Italy Poland[2]	
Provisions exist to give the House of Representatives superiority over the House of Councillors		Japan[3]
Consultations between Members, Leaders, etc. on an informal basis	Canada, United Kingdom	Ireland
Additional Members may be appointed to the Upper House	Canada (only used once, in 1990)	

1 Recently, however, A) joint committees and working groups have been established to deal with legislative and constitutional reforms; and B) informal meetings between the committee of one House studying a bill and its counterpart in the other Chamber have been organized to try to smooth out areas of disageement with respect to the bill, in order to minimize the number of times the bill will be sent between the two Houses.

2 No mechanism currently exists, but during the previous Parliament attempts were made to establish a Mediation Committee to handle legislative deadlocks.

3 These provisions exist concerning the appointment of the Prime Minister, the taking of a decision on the Budget, the ratification of treaties (Constitution), the setting of a term of a session (Diet Law) and the approval of the appointment of Commissions (Board of Audit Law).

Type of Mechanism	For Legislative Initiatives	For Other Items (including joint resolutions, the appointment of Officers and establishment of Joint Committees)
Members selected from each House meet in joint committees or in conferences established for this purpose	Australia (HouseofRepresentativescan initiate process, but item must be in House's possession) Canada (House in possession of the item usually initiates the process) France (Process initiated by Government) Germany (Depending on the bill in question, Bundestag, Bundesrat or Federal Government may initiate the process) Japan Jordan Switzerland Thailand United States (Process can be initiated by either House, but can only be initiated by the House in possession of the official papers)	Belgium Canada Czechoslovakia Spain United States (for joint resolutions and joint committees only)

Type of Mechanism	For Legislative Initiatives	For Other Items (including joint resolutions, the appointment of Officers and establishment of Joint Committees)
After a lapse in time, the taking of several votes on the item by one or both Houses and/ or a (re)confirmation of a decision by the Lower House, the decision of the Lower House may override that of the Upper House	Germany[4] Ireland Japan[5] Norway Spain Thailand United Kingdom	Spain
Item must be adopted by an absolute majority of both Houses in order to break the impasse	Jordan	
For deadlocks over bills initiated by the House of Representatives, both Houses may be dissolved and an election called so that the public, in effect, decides the matter. If the deadlock continues in the new Parliament, a joint sitting of the Houses may be convened. There is no provision for resolving a disagreement over bills initiated in the Senate.	Australia	

4 Unless the Constitution explicitly requires the consent of the Bundesrat on a given bill.

5 Only the House of Representatives can trigger this mechanism.

CHART C - STATUS OF THE EXECUTIVE

Country	Can Members of the Executive attend both Houses?	Can Members of the Executive be Members of both Houses?
AUSTRALIA	Ministers participate in the proceedings of the House to which they belong, but cannot participate in the proceedings of the other House. However, Ministers belonging to the House of Representatives do occasionally appear before committees of the Senate.	A Minister cannot hold office for more than three (3) months unless he or she becomes a Member of either the Senate or the House of Representatives.
BELGIUM	Ministers can enter each House and be heard if they so request, but can only participate in votes of House to which they belong.	Members of the Executive can be Members of either House.
CANADA	Ministers of Lower House can attend the Senate and its committees, if so requested, to explain their policies and initiatives; only participate in votes of House to which they belong.	Ministers can be Members of either House but are usually selected from the Lower House; not a requirement that a Minister be a Member or Senator, but by custom, the individual is either chosen from the ranks of the Houses or seeks election to the House.
CZECHOSLOVAKIA	Members of the Executive can attend both Houses.	Yes; but membership in one of the Houses is not obligatory.
FRANCE	Ministers can enter each House and request to be heard.	Ministers can be candidates in elections, but if elected they must choose to be either a Minister or Member. Similarly, Ministers may be chosen from either House, but in this case must forfeit their seat to assume their ministerial functions.
GERMANY	Ministers can attend the sittings of both Houses.	Ministers can only be Members of the Bundestag.

Country	Can Members of the Executive attend both Houses?	Can Members of the Executive be Members of both Houses?
IRELAND	Every Member of the Government has the right to attend and be heard in each House of the Oireachtas (the National Parliament).	Members of the Government must be Members of either the Dail Eireann or the Seanad Eireann, but not more than two may be Members of the Seanad. The Taoiseach (the Prime Minister), the Tanaiste (the Deputy Prime Minister) and the Ministerfor Finance must be from the Dail Eireann.
ITALY	Ministers have the right, and in some cases, the obligation to attend the Houses even if they are not Members. Ministers must be heard if they so request	
JAPAN	The Prime Minister and other Ministers of State may, at any time, appear in either House for the purpose of speaking on bills, regardless of whether or not they are Members of the House. Under the Constitution, they must appear when their presence is required in order to give answers or explanations.	Under the terms of the Constitution, the Prime Minister must be designated from among the Members of the Diet and a majority of Ministers of State must be chosen from among the Members of the Diet.
PHILIPPINES	Section 22 of the Constitution states that Heads of Departments can, upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their Departments.	Members of the Executive cannot be Members of either House.
POLAND	Members of the Executive can attend both Houses.	Members of the Executive can be Members of either House.
SPAIN	Members of the Executive can attend both Houses.	Members of the Executive can be Members of either House, but not simultaneously.

Country	Can Members of the Executive attend both Houses?	Can Members of the Executive be Members of both Houses?
SWITZERLAND	Members of the Executive can attend both Houses.	Members of the Executive are elected by Parliament, but those who were Members cease to be Members when elected to the Executive. Contrary to the 19th Century practice, Members of the Executive can no longer be candidates in the parliamentary elections.
THAILAND	Members of the Executive can attend both Houses.	Members of the Executive can be Members of either House.
UNITED KINGDOM	Ministers can only attend the House to which they belong, but Ministers of either House may attend Select Committee meetings of both Houses.	Ministers can be Members of either House.
UNITED STATES OF AMERICA	Members of the Executive cannot attend either House, except as visitors.	Members of the Executive cannot be Members of either House.

CHART D - COLLABORATION BETWEEN THE HOUSES

Country	Are Joint Committees Established?	Mechanism by which Joint Committees are Established	Rules Which Prevail in Joint Committees	Other Forms of Collaboration Between the Houses
AUSTRALIA	Yes	By statute or by resolution passed by both Houses.	Senate practice prevails.	- Passage of a resolution by one House which then, by message, seeks a similar action by the other House (e.g. agreement to authorize the Presiding Officer to permit the disclosure of evidence of a Joint Committee). - Concurrence in a number of services provided by either the Joint Parliamentary Departments or the staff employed by the Senate and/or House and funded on a 50%/50% basis.
BELGIUM	Yes	May be established to examine specific problems and are established usually as the result of negotiations at the levels of parliamentary groups and Presidents of the two Houses. Currently, there exist joint committees to deal with administrative matters like the restaurant, security and the buildings		

Country	Are Joint Committees Established?	Mechanism by which Joint Committees are Established	Rules Which Prevail in Joint Committees	Other Forms of Collaboration Between the Houses
CANADA	Yes	Created by agreement between the Houses through the adoption of joint resolutions, or created under the rules of each of the Houses.	No provision in either House specifying which rules are to prevail; however, because committees are considered to be "masters of their own proceedings", it is commonly accepted that the committees will themselves decide which rules to follow.	- Passage of joint resolutions - Participation in parliamentary associations and friendship groups
CZECHO-SLOVAKIA	Yes			- Common presidium - Common plenary session - Both Houses are located in the same buildings.
FRANCE	Yes	Mandates and functioning of the two bodies listed in the "Other" column are fixed by law, and clarified by internal rules developed by each delegation		.-Houses can meet in Congress at the request of the President of the Republic to adopt a Constitutional bill already voted on by both Houses. - De'le'gation parlementaire pour les problèmes d£mographiques - L'Officeparlementaired'evaluation des choix scientifiques et technologiques

Country	Are Joint Committees Established?	Mechanism by which Joint Committees are Established	Rules Which Prevail in Joint Committees	Other Forms of Collaboration Between the Houses
GERMANY	Yes	Joint Committees, other than those listed in the "Other" column, are established only in exceptional circumstances; established on basis of identical resolutions of both Houses. Currently, there are two such committees charged with reviewing the consequences of German unity: the Joint Commission on the Constitution and the Commission on Federalism.	Rules of Procedure of the Bundestag apply to the committees reviewing the consequences of German unity; the Joint Committee and the Mediation Committee have their own rules of procedure.	- Under the Constitution, there are two joint bodies: an emergency parliament operating in a state of defence(the so-called Joint Committee), and Mediation Committee (which deals with disagreements between the Houses concerning legislation).
IRELAND	Yes	There are currently seven such committees.The initiating House passes a Resolution stating it is expedient to appoint a Joint Committee consisting of a specified number of members of the Dail and Seanad and stating the terms of reference and powers of such a committee. On passage of the resolution, a Message is sent to the other House requesting its concurrence. On receipt of the Message, the other House may pass a resolution of concurrence, reject the proposal or propose amendments thereto. A Message conveying the decision is then sent to the initiating House. When the	There is no formal rule on this point. The Standing Orders of each House provide that the procedural rules applicable in each House shall apply to Committees of the Whole House and to Select and Special Committees. In view of the fact that a joint Committee is a marriage of two Select Committees appointed by each House, and that the procedure of each House varies in detail, the relevant Standing Orders would appear to be irreconcilable. However, it is a longstanding convention that the interpretation of a Committee's terms of reference is a matter for the Committee itself	- Collaboration between the Committees on Procedure and Privileges of each House. In the past, this has been by the establishment of a joint Sub-committee of the two Committees.

Country	Are Joint Committees Established?	Mechanism by which Joint Committees are Established	Rules Which Prevail in Joint Committees	Other Forms of Collaboration Between the Houses
		other House concurs, the initiating House makes an order appointing a Select Committee of the initiating House to consist of a specified number of members of that House and which, when joined with a Select Committee to be appointed by the other House, will form the Joint Committee, and setting out the terms of reference and powers of the Committee in accordance with the provisions of the Resolutions as passed by both Houses. A second Message is then sent to the other House enclosing the text of the Order. On receipt of the Message, the other House makes an Order appointing a Select Committee of that House in terms similar to the Order made in the initiating House. This Order states that a Select Committee be appointed by the initiating House and specifies the number of members to be drawn from the other House and the terms of reference of the Committee. The Committee of Selection of each House meets and appoints the members of its House to serve on the Joint Committee.	and thus any conflict would be resolved by a decision of the Committee.	

Country	Are Joint Committees Established?	Mechanism by which Joint Committees are Established	Rules Which Prevail in Joint Committees	Other Forms of Collaboration Between the Houses
ITALY	Yes		Rules which govern practice in Joint Committees are rules of the House to which the Chairman belongs.	- Rules provide for Houses to undertake joint parliamentary inquiries, to conduct joint research and studies and to collaborate on the passage of legislation. - Houses can undertake joint preliminary examinations of financial and economic documents. - Joint Committee meetings to hear messages from the Government. - Presidents of Houses may reach agreements on working programs for the Houses.
JAPAN	Yes	The Conference Committee of Both Houses is established by the Constitution and in the Diet Law and Joint Meetings of Both Houses are noted in the Diet Law.	Rules of the Conference Committee of both Houses are provided for under Chapter 10 of the Diet Law, and Rules of the Conference Committee and those of the Joint Meeting of Standing Committees of both Houses are provided for under the Rules of Joint Meetings of Standing Committees.	

Country	Are Joint Committees Established?	Mechanism by which Joint Committees are Established	Rules Which Prevail in Joint Committees	Other Forms of Collaboration Between the Houses
PHILIPPINES	Respective committees of each Chamber may meet to conduct joint hearings or investigations on matters brought to the attention of both Houses at the same time.	Joint meetings may be set up by informal agreements between the committees concerned.	Committee itself determines procedure should the rules of the two Houses differ.	- Dates of sessions and the date of final adjournment are embodied in a concurrent resolution approved by both Houses. — Measures which may be taken up before final adjournment may more or less be determined such that the two Houses may consult each other informally, as to which measures pass, before the final adjournment.
POLAND	No, with one exception. See "Other" column.			- A joint Constitutional Committee of the National Assembly (both Houses sitting together) has been appointed on the strength of the laws governing the passage of a new Constitution.

Country	Are Joint Committees Established?	Mechanism by which Joint Committees are Established	Rules Which Prevail in Joint Committees	Other Forms of Collaboration Between the Houses
SPAIN	Yes. Joint fact-finding committees can be appointed to deal with any matter of public interest.		In all matters relating to the Cortes Generales or requiring joint sessions or the setting up of mixed bodies of Congress and the Senate, Rules of Procedure in Section 72 of the Constitution are applicable, without prejudice to the present Standing Orders, which shall apply in all respects not contemplated therein or requiring separate consideration or voting by Congress.	- Houses meet in joint session to exercise the non-legislative powers conferred on the Cortes Generales. - Each House elects its respective Speaker, but joint assemblies are presided over by the Speaker of the Congress. The rules governing the proceedings are those of the Cortes Generales, passed by the overall majority of both Houses.
SWITZERLAND	Yes	Offices of the Councils appoint the Committees, and the Committees themselves can create Sub-Committees to examine certain questions.		- Common delegations within international organizations.
THAILAND	Yes	Collaboration between the two Houses is determined by the Constitution. If certain matters need collaboration, then the Speaker of the House and the President of the Senate will collaborate with each other to establish a joint committee or a joint sitting of the Houses, as the case may require. Joint Committees, composed of an		— Joint sittings for specific events.

Country	Are Joint Committees Established?	Mechanism by which Joint Committees are Established	Rules Which Prevail in Joint Committees	Other Forms of Collaboration Between the Houses
		equal numberof representatives from both Chambers (members or non-members) are usually established when a House bill amended by the Senate is returned to the House.		
UNITED KINGDOM	Yes. Joint Committees can be established and appointed each session to consider Consolidation Bills, Ecclesiastical Measures and Statutory Instruments.	If either House wishes a Joint Committee to be set up, it passes a resolution to that effect and sends a message to the other House seeking agreement. If the second House agrees, it sends a message to the first House, which then appoints a committee and sends a message to the second House asking it to appoint its own committee. The second House does so and sends a message back to the first House to inform it this has beer. done. The first House then sends a message to propose the time and date of the meeting.	Procedure of the House of Lords prevails.	
UNITED STATES	Yes	Joint Committees are normally established by Statute.	The rules in Joint Committees are the rules adopted by the Committees themselves.	

CHART E - EVENTS FOR WHICH THE ATTENDANCE OF BOTH CHAMBERS IS REQUIRED

Event	Country/Countries
To elect judges to a Federal Tribunal and to elect the Chancellor of Confederation	Switzerland
To elect one-third of the judges of the Constitutional Court and to elect one-third of the members of the *Conseil Supirieur de la Magistrature*	Italy
To examine the question of, or to hear or to lay charges against the President (e.g. in the case of treason)	Italy, Poland
To recognize a President's inability to remain in office for health reasons	Poland
To count presidential electoral ballots	United States
Houses meet during the canvassing of the votes of every election for the President and Vice-President and the proclamation of winners thereof	Philippines
To witness the swearing in or taking of the Oath of Office of a President	Germany, Italy, Poland, Thailand
To confirm the validity of the election of a new President	Poland
To elect a President	Czechoslovakia, Italy
To elect Members of the Government	Switzerland
To ratify a constitutional matter or amend the Constitution	France, Thailand
Opening or Dissolution of a Parliament	Australia, Canada, Japan, Spain, United Kingdom
Opening or Prorogation of a Session of Parliament	Canada, Japan, Philippines, Thailand, United Kingdom
For the approval of a special Prorogation of a Session	Thailand
To adopt and/or draft the rules of the common Assembly	Spain, Thailand
To consider proposed law(s) which has (have) been the subject of simultaneous (double) dissolution of the two Houses.	Australia

Event	Country/Countries
To choose a Senator to fill a casual vacancy in the Australian Capital Territory. (This procedure will fall into disuse when the power to choose the Senator is transferred to the Legislative Assembly of the Australian Capital Territory.)	Australia
To reconsider a bill after it has been rejected by the Monarch	Thailand
Matters dealing with the Monarch (e.g. taking of the oath, choosing or confirming a successor should the dynasty line end, amending laws regarding successors, in the case of the death of a Monarch, etc.)	Belgium, Spain, Thailand
To vote support for the Government	Czechoslovakia
To deal with petitions for pardon	Switzerland
To commemorate or celebrate certain events	Belgium, Poland, United Kingdom, United States
For general debate	Thailand
Addresses by foreign Heads of State or visitors	Australia, Belgium, Canada, Ireland, Poland[1], United States
For meetings of the Conference Committee of Both Houses and for Joint Meetings of the Standing Committees of Both Houses	Japan
For the joint deliberation of bills introduced by the Federal Government in a state of defence	Germany
Royal Assent Ceremony	Canada
To hear addresses from the Government on matters of importance	Ireland, Switzerland, Thailand
To ratify a treaty	Thailand
To hear the declaration of the existence of a state of war or to approve the declaration of war	Philippines, Thailand
The revocation of the proclamation of Martial Law or the suspension of the Privilege of the Writ of *Habeas Corpus;* or extension of the proclamation or suspension thereof	Philippines

[1] The Houses may meet together for addresses by foreign Heads of State, but it is not obligatory.

CHART F - SERVICES SHARED BY OR PROVIDED TO BOTH HOUSES

Services Shared by or Provided to both Houses	Country / Countries
Department of Parliamentary Reporting Staff	Australia'
Department of Joint Houses	Australia[1]
Department of the Parliamentary Library	Australia'
Parliamentary Library / Library of Congress	Belgium[2], Canada[3], Japan", Poland[5], United States[6]
Restaurants / Catering Services	Belgium', Canada[8], Philippines[9]
Hotel	Poland[10]
Security Services	Belgium", Poland[5], United Kingdom'[2], United States[6]
Documentation Facilities (Subject and Speakers' Indexes; state of deliberations on bills)	Germany"
Documentation of European Community Materials	Germany[14]
Printing and/or Document Distribution Services	Belgium[7], Canada[8]
Reporting Staff for Committees	United Kingdom'[2]
Joint Committees	Spain'[5]
Support for the Joint Sessions of Congress and the canvassing of the votes for President and Vice President	Philippines[16]
(International) Delegations and Administrative support for them	Belgium", Canada[18], Japan", Philippines[20], Spain[15], United Kingdom[2,]
Building Works/Services	Belgium[7], United Kingdom[12], United States[6]
Curator of Works of`Art	United Kingdom[12]
Architect of the Capitol	United States[6]
General Accounting Office	United States[6]
General Budgeting Office	United States[6]

Services Shared by or Provided to both Houses	Country / Countries
Office of Technology Assessment	United States[6]
Civil Service Matters (i.e. Personnel)	Spain"
(Supervisor of) Broadcasting	United Kingdom[12]
Education Officer	United Kingdom[12]
Computer Centre	Germany[22]
Medical Services	Belgium[7], Japan", United Kingdom[12]
Technical Services (e.g. telephone branch exchange, telephone installations, maintenance of electrical installations, etc.)	Germany[22], Poland[5]
Secretariat of the Joint Committee	Germany[23]
Secretariat of the Joint Commission on the Constitution	Germany[23]
Secretariat of the Mediation Committee	Germany[14]
Secretariat of the Commission on Federalism	Germany[14]
Staff Exchange with the U.S. Congress	Germany[22]
Delégationparlementairepourlesproblèmes de"mographiques	France[24]
VOfficeparlementaire devaluation des choix scientifiquesettechnologiques	France[25]

' The joint services provided to both Houses by the Department are included in the Department's budget. The funds are allocated in an Appropriation Bill which is passed during the budget sittings at the beginning of a financial year.

[2] The House of Representatives appoints and pays the staff, and the House and Senate each pay for half the acquisitions.

[3] The Library of Parliament receives annual appropriations from Parliament when the yearly estimates for "Parliament" are approved. Services provided by the Library are shared by the House of Commons and Senate, but the costs are borne solely out of the budget of the Library.

[4] Costs of the National Diet Library are individually appropriated in the budget.

[s] Service is financed by the Chancellery of the Sejm and administered by the Sejm, but provided to both Houses.

[6] All costs of services in the United States Congress are laid out in law (the *Legislative Branch Appropriation Act).*

[7] Cost of service(s) are divided equally between the Houses of Representatives and the Senate.

* The Parliamentary Restaurant and document distribution service receive allocations from both the House of Commons and the Senate.

[9] Service functions in the area of personnel, security and catering are shared when the two Houses convene in joint sessions. The costs of shared services are dependent on the agreement existing between the two Houses per activity.

[10] Senators' hotel bills are paid by (he Chancellery of the Senate, but the hotel is administered by the Sejm.

[1ı] Security staff is paid by the Senate, but equipped by the House of Representatives.

[12] Generally, the House of Lords pays 22 per cent of the cost of joint services. However, the cost of building works and police forces is divided 60:40 between the Commons and the Lords respectively.

" The service is administered jointly by the Bundestag and the Bundesrat.

[14] The service is administered by the Bundesrat but available to both Houses.

[13] There is a budget of the Cortes Generales which is used to pay for services used by both Houses. This budget is separate from those of the individual Houses.

[16] For these functions, shared services (catering, security and personnel) are provided to both Houses. The costs of shared services are dependent on the agreement existing between the two Houses per activity.

" If both Houses participate in international delegations, the costs are shared. If not, the House participating in the delegation assumes the costs.

[18] Activities of Parliamentary Associations are funded through membership fees and through grants approved by the House of Commons Board of Internal Economy and the Senate Standing Committee on Internal Economy, Budgets and Administration, and then, with the approval of the Estimates, ultimately by Parliament. Funding is shared between the House of Commons (70%) and the Senate (30%). Friendship groups are funded only by membership fees, and receive no official allocation from Parliament.

[19] The costs of shared or joint services are usually allocated to each House in proportion to the number of Members of each House.

[10] On IPU and AlPO-related activities (especially Conferences), the Secretariat of both Houses, particularly each House's Inter-Parliamentary Relations Division, collaborate in meeting the needs of the Philippines Inter-Parliamentary Group in line with the preparation of materials, bookings, briefings, etc. The annual contribution of the Philippines Inter-Parliementary Group to the budget of the IPU is equally borne by both Houses.

[21] International delegations are drawn from both Houses, but in the case of the CPA and IPU, the delegations are serviced by offices outside the administrative structures of either House. The Delegation Secretary to the delegations to the European Parliamentary Assemblies is provided by the House of Commons Clerks Department.

[22] The Bundestag shares the costs of these services on a *pro rala* basis with the Bundesrat. These services are administered by the Bundestag, but available to both Houses.

[25] The service is administered by the Bundestag, but available to both Houses.

[24] The service is shared between the Houses, but no cost information was provided.

[25] *L'Office parlementaire d'évaluation des choix scienliftques el technologiqites* is given a special allocation which is supplemented equally by the budgets of both Houses.

NOTE: The Houses in the legislatures of Czechoslovakia, Ireland, Switzerland and Thailand are serviced by common administrative bodies and therefore have not been included in this Chart. However, a couple of notes should be added. In the case of Ireland, all the costs associated with the services provided for each House are contained in one budget, and while each House does not have its own distinct budget, certain costs within the overall budget are easily distinguishable (e.g. costs of sending delegations abroad other than through the IPU). In Thailand, legislation is currently under study which would, if adopted, provide for separate administrative structures for each House.

The Houses of the Jordanian Parliament each have their own administrative structure, but no specific details were provided.

No responses were provided to Questions 23-25 by Italy.

IV. National Conferences in Africa

A. Introductory Note by Mr Pierre Nguema-Mve, Secretary General of the National Assembly of Gabon, July 1992

"The emerging world is already half submerged under the remains of the world which is decaying, and, in the face of the enormous confusion which human affairs give rise to, who can say which old institutions and customs will survive and which will disappear"[1]. This thought from Alexis de Tocqueville illustrates the prevailing situation on the African continent.

After several decades of one-party regimes, many African states are now undergoing profound political change.

This evolution stems from a number of different events, in particular:

- the economic and social crisis exacerbated by structural adjustment measures lying at the root of social movements which are sometimes violent:
- the upheavals in the East European countries stemming from the aspirations of peoples for their liberty and democracy, of which the symbol was the fall of the Berlin wall;
- the freeing of Mr. Nelson Mandela, the symbol of the struggle for liberty and against oppression;
- the speech of the President of the French Republic, Mr. Francois Mitterand, on the occasion of the 16th Conference of Heads of State of France and Africa at La Baule in June 1990, tying the provision of aid to movement.towards democracy.

To control these movements of peoples struggling for liberty and democracy and to diminish the effects of the economic and social crisis, many African countries, notably the francophone ones, have had recourse to a National Conference.

But the first question which must be asked is 'what is a National Conference?'; the second is 'what has been the role of the National Conference in the political evolution of African countries?'

[1] Tocqueville, quoted by Edmund Jouve in *Les Relations Internationales du Tiers-Monde;* Editions Belger Levrault 1976.

To reply to these two issues let us consider them in two parts. The first part considers the National Conference and the second their role in political reform in African states.

1. The National Conference

National Conferences are a new phenomenon, a new technique stemming from the desire to gather together around the same table the different strands of the nation to discuss together the future of the country.

Such a Conference has no equivalent in the history of democracy, although certain analogies can be drawn with some events in the past[2].

It is thus with just cause that a French Journalist has written that "the African National Conference, where representatives of different opinions and different power groups debate together the future of governmental institutions, has only some of the features of the first American Congress leading to the unilateral declaration of independence or to the first States General as it became the French National Assembly".

To understand the current phenomenon in respect of its methods of decision and action, let us look successively at the object of the National Conference, its competence, and the different forces present.

1.1 The aims of the National Conference

The National Conference is considered in Africa as an event of major historical significance. It is generally convened under a regulatory decree which fixes at the same time the aims of the Conference.

In Gabon the National Conference held from the 23rd March to the 19th April 1990 had as its object "to propose appropriate directions for leading the Nation towards true and multi-party democracy".

In Benin, which organised the first National Conference held from 19th to 28th February 1990, the Conference was convened following a decision taken jointly by the special session of the Central Committee of the Popular Revolutionary Party of Benin, by the Standing Committee of the Revolutionary National Assembly and by the National Executive Council[3]

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[2] *Marchés Tropicaux*, 21 June 1991, p. 1519.

[3] *Basic documents on the National Conference ofActive Forces*, edited by the Office National d'Edition de Presse, de Publicity et d'lmprimerie.

In conformity with the declaration of the aims and competences of the Conference, the object of the meetings was to identify the correct measures to solve the current crisis by peaceful means and to establish democracy and respect for human rights and fundamental freedoms.

In Congo, as declared by its President on 18th March 1991, the National Conference was to constitute a laboratory where new guidelines for family, social, political and professional life could be worked out.

Conferences thus have multiple ambitions and objectives.

National Conferences which have taken place in other African States have had roughly similar ends in view, i.e. those of creating the conditions for national reconciliation.

With this last objective in mind, many Governments have had to take steps towards guaranteeing the security of the participants in the Conference.

Thus in Gabon an order relating to the immunities of the representatives of associations admitted to take part in the National Conference was signed by the Head of State so as to allow them to express themselves in complete freedom and without concern.

Similar measures have been taken in other countries from the time of commencement of the National Conference.

1.2 The Competences of the National Conference

In general the competences of the National Conferences are to be found in the regulatory decree or Act under which they are convened.

In most countries where National Conferences have taken place they have often been proclaimed to be sovereign, often against the wish of government, in the manner of the States General in 1789 in France.

Thus the Togo Conference adopted on the 16th July 1991 a "Constitutional Law" proclaiming sovereignty, the executive character of its decisions and the immunity of its participants. The Government, which considered that the Conference had exceeded its powers given to it by the agreement of 12th June 1991, suspended its participation.

In Congo the decisions of the National Conference were mandatory, of immediate effect and published in the Official Journal under the signature of the President of the Conference.

Gabon remains the only country where the National Conference has not been sovereign; the decree convoking the Conference provides that the propositions agreed by the Conference are to be submitted to the President of the Republic for inclusion in the laws and regulations of the Republic. Furthermore, many participants in the Conference considered that the meetings could not set themselves up as a governing body in the State or substitute itself for any existing institution of the State.

In general decisions are taken by consensus except where individual measures require a vote or a simple majority.

The decisions of a National Conference involve all the participants in the Conference and are open to opposition by third parties. They cannot be amended or annulled except by the Conference.

1.3 Participants in the National Conference

Conferences in general consist of hundreds of delegates coming together from the most diverse of sources, namely:

- peasants, government and private sector officials, representatives of parties and similar political associations, socio-professional representatives, and representatives of different confessional groups.

However, only those delegates which have been previously registered with the secretariat of the Conference can take part in the Conference.

The National Conference in Niger comprised 1200 representatives of different active forces in the nation, in Benin there were 500, in Congo 1100 and in Mali 1800.

In Gabon the gatherings saw the participation of 115 socio-professional or religious associations and numerous observers, of which 75 had the character of political associations."

These Associations had not been legalised. However an order was established allowing them to take part in the work of the Conference. By another order the duration of their legal existence was extended until 31st December 1990 in a gesture of goodwill and in the expectation of their legalisation by a new law on political parties.

[4] Report from the Committee on the proceedings, January 1991, page 3.

The direct re-transmission of debates by television and radio have allowed the whole of the population in each state to share in the day-to-day activities and concerns of the delegates to the Conference.

2. The Role of National Conferences in political reform in African countries

The National Conferences which have brought an end to the authoritarian regimes in Africa have played an essential role in putting in place new political institutions, albeit numerous obstacles towards the transition to democracy still exist.

2.I The putting in place off new democratic institutions

The National Conference constitutes a form of peaceful revolution of a type which is specifically African and which has been able to harness, in the countries where it has been organised, the will for democratic renewal apparent in the aims of the meetings and in the proposed reform programmes.

To appreciate this will it is sufficient to look at the different basic texts and measures adopted by the National Conference.

Thus in Gabon a national charter of freedoms has been elaborated and agreed by the National Conference.

This text, which makes reference to international agreements relating to human rights, affirms the absolute right of the people of Gabon to a multi-party system and to democracy.

The Constitution adopted in 1991, by unanimity by a new multi-party Assembly, represents an important democratic advance since it re-establishes the conditions for a state based on the rule of law and multi-party democracy.

In respect of individual rights and public freedoms, these are henceforth incorporated in the document so as to ensure better protection for them.

The new Constitution of Gabon, founded on the principle of separation of powers, establishes a new balance of power, notably between the President of the Republic and the Prime Minister (the Head of Government). The latter henceforth has strengthened powers.

He is responsible to the National Assembly, which invests him with his functions.

In respect of the legislative power, the legislative elections which took place in September and October 1990 led to a parliament of 120 Deputies, containing 8 political groups of which 54 represented the Opposition.

The new National Assembly possesses increased powers, notably in respect of control over the actions of government.

Thus two motions of censure were tabled by the Opposition and were successively defeated by the majority, on the 28th November 1991 and the 6th July 1992.

In the judicial sphere a Constitutional Court has recently been put in place. It has the particular responsibility for adjudicating on:

- the constitutionality of laws and of government orders which might affect fundamental rights or individuals and the public;
- the regularity of the conduct of elections, and likewise of referendums, for which it is responsible for proclamation of the results.

The Constitution provides that "legal persons may, following a trial before an ordinary Court, bring about a ruling of unconstitutionality against a law or an Act which contravenes their fundamental rights".

The Constitution also creates a "Conseil National de la Communication" with responsibility principally for:

- protecting the expression of democracy and the liberty of the press throughout the country;
- access of citizens to free communications;
- ensuring equal treatment for all parties and political associations.

Following adoption of a law relating to political parties, a new electoral code has just been agreed ensuring political pluralism in Gabon. It comprises a number of measures designed to guarantee the visible fairness of elections.

The same priority of establishing the rule of law has equally guided the political leaders of many other states which have organised a National Conference.

In Congo the referendum on the new draft Constitution has given the country a semi-presidential regime guaranteeing the rights and fundamental freedoms of individuals, freedom of the press and of conscience, as well as "the right and duty for all citizens to resist by civil disobedience, in the absence of other possible recourse, anyone seeking to overthrow the constitutional regime or to take power by a coup d'6tat or to exercise power in a tyrannical manner."

In Mali the National Conference has led, after a constitutional referendum, to the birth of the Third Republic with a political system based on the French model.[5]

In Togo the President of the Republic accepted the conclusions of the National Conference which took away from the President the main part of his powers. The same is the case for the President of Nigeria whose role has become largely symbolic. .

In Benin, the National Conference responsible for developing a new Constitution suspended the 1977 Constitution and ended the Marxist-Leninist regime. It has put in place new institutions for a transitional period.

This country appears today as a model for democracy in Africa.

2.2 Obstacles in the establishment off the democratic process

The issues discussed above show evidence that numerous reforms designed to establish States subject to the rule of law have been put in place thanks to National Conferences, despite numerous obstacles both from within and without; these were discussed in 1991 in the Colloquy at Dakar on Democracy and Development in Africa.[6]

Amongst the internal obstacles discussed there are notably:

- the absence of a democratic culture amongst citizens and governments;
- the tribal character of social structures;
- the absence of alternative power centres;
- the individualisation of power.

Amongst the external obstacles there are:

- the inadaptability of democratic models to African realities;
- the high level of external debt;
- the inadequacy of aid available for the strengthening of democracy.

[5] *Marché Tropicaivc,* 2nd August 1991.

[6] *The Report on the Colloquy held at Dakar* (Senegal) on 25th and 26th March 1991 on Democracy and Development in Africa, page 75.

It should be recognised that the African countries which have organised a National Conference have had varying success in the putting in place of political reform.

In fact some governments, through a wish for stability or a fear of losing power, have put the brakes on political reform.

Thus for example in Togo the democratic reform has been hindered by certain powerful interests which wish to give forceful expression to their own demands.

Conclusion

National Conferences have allowed important advances to take place by peaceful methods towards a new political order dominated by consensus in a situation of general crisis.

Wherever they have taken place they have had a role in the study, the pushing forward and re-launching of the activities of the country.

But the National Conference cannot be the only route leading to democracy.

As Mr. Kombo, President of the High Council of the Republic of Congo, declared at the 87th Inter-Parliamentary Conference "National Conferences are not a necessity but where people demand them they become incontestable."

Thus a number of African States have chosen other interesting initiatives, but also with varying fortunes.

2. Topical Discussion: Extract from the Minutes of the Stockholm session, September 1992

The PRESIDENT noted that this subject had been submitted by Mr. Nguema-Mve (Gabon) at the Yaoundé session.

Mr. NGUEMA-MVE noted, in introducing his subject, the recent major political changes which had taken place in Africa. These changes gave effect to the aspiration of the people for democracy and freedom. These were in Africa a consequence of developments in Eastern Europe, following the symbolic events of the fall of the Berlin Wall and the fall of President Ceaucescu in Romania. One must remember also the release of Nelson Mandela which had been closely noted in Africa. The influence of President Mitterand's speech at La Baule in June 1991,

in which he linked development aid to moves towards democratisation, should not be ignored either although it must be remembered that neither Benin nor Gabon had waited for this historic summit before organising their national conferences. It was in order to control the reform movements of 1989 and 1990 that African regimes, in particular francophone Africa, had organised national conferences on a formula which had no real precedents and which had become major elements in the recent evolution seen on the continent.

The rapporteur then rehearsed to the main points of his introductory note.

Mr. KOULICHEV (Bulgaria) noted the analogies between the moves towards democracy in the former socialist countries of Eastern Europe. He noted that the round tables organised in 1989 and 1990 in Poland, Czechoslovakia, Hungary and Bulgaria allowed a dialogue to take place between the different political forces which were ready to move towards democracy. These round table discussions had eased the peaceful path towards democracy and had led to the establishment of real parliaments, real democratic elections, new constitutions and new democratic legislation. They had also accelerated the path of all these countries towards democracy.

Mr. HONTEBEYRIE (France) thanked the rapporteur for the quality of his introductory note and for his introductory speech and sought further information on the conditions under which the persons who took part in the national conferences were selected. He also wondered whether there were experiences with national conferences in the anglophone countries.

Mr. NDIAYE (Senegal) drew attention to the fact that his country had never had a national conference and that there had already been several parties there in the 1940s and 50's. This had been the case even for a little while after independence before the shift towards a single party in practice. Political parties had been registered once again in 1978. Three parties were currently represented in the National Assembly. Periods of difficulty had existed as in all countries which had experimented with democracy. Round table discussions had been organised which had not led to good results. Despite the insistence of one of the opposition parties there had been no national conference. The political parties had begun negotiations and had found some common ground, namely the entry into Government of two opposition political parties, with two opposition parties represented in Parliament. Mr. NDIAYE also raised the question of the legal basis of the national conference since one could foresee situations in which such a conference would assume the effective power and paralyse the operation of the State, insofar as they are established as a result of violence. Their legitimacy can, therefore, be questioned. On occasion national conferences had been seen to nominate a Prime Minister. They must however be looked at in the context of the great frustrations felt by the people.

Mr. NGUEME-MVE underlined that participation in the national conference was linked to belonging to a political party or an association in Gabon. Participation was not possible on an individual basis. Members of associations must indicate the structure of the body that they represented. Individuals could only be observers at the national conference, without right of speech.

There had been no national conference in the anglophone African countries. Chronologically, national conferences had taken place in Gabon and in Benin before the French-African Summit at La Baule in 1991. The francophone countries had been more sensitive to international developments than the anglophone countries. The comparison between countries which had a national conference and those which had not showed that the conference was one of the means of bringing together the active forces of the country and re-establishing a national harmony. It was certainly not the classic approach but it was a method which allowed a solution to a crisis to be presented. In Gabon the student demands and riots had been in part the origin of the holding of the national conference. The country was now in a healthier situation and the democratic process seemed irreversible. The Constitution of Gabon had been adopted unanimously by the Members of the Assembly. Two censure motions had subsequently been voted against the Government and these events were of historic significance. The breaking of the previous balance, followed by dialogue, had permitted a sort of consensus to be found.

V. Electoral systems and Parliament: the case of Jordan

Introductory note by Dr Saleh Alzu'bii, Secretary General of the Parliament of Jordan, January 1993

1. Historical background

A. The Political System in Jordan

The system of government in Jordan adopts indirect (Parliamentary) democracy in that Article (1) of the Constitution provides that the system of government is a parliamentary constitutional monarchy. The system also adopts the modern evolution of Parliamentary democracy as it provides for social rights and freedoms in addition to political freedoms (Articles 5 to 23), at the top of which come the right to free compulsory education; right to work for all; determination of wages and work hours; vacations; social insurance in cases of dismissal, sickness, disability and work emergencies.

All the facets of the parliamentary system are evident in the Jordanian political system; namely:

FIRST: Dualism of the executive authority, as this authority consists of:

The King: He is the supreme head of the Executive Authority; he is not responsible to any party but he does not actually exercise the executive authority; however, he practises it through the Cabinet which is responsible to the Parliament. The King does not exercise his constitutional competences alone, as along with him the resolutions of the Executive Authority should be co-signed by both the Prime Minister and the relevant Minister.

The Cabinet: The Council of Ministers is regarded as an independent unit that meets jointly. It exercises the actual executive authority; establishes the general policy of the country; administers the affairs of the State; and coordinates amongst its various bodies. The Cabinet is responsible to the elected House of Representa-

tives, which possesses the power to call it to account and to topple it. However the Government, in turn, has the right to dissolve the House of Representatives and to refer to the masses of the voters.

SECOND: Equality between the executive authority and the legislative authority:

The Executive Authority occupies a standing equal to the legislative Authority. It is not annexed to it, but it derives its authority from the Constitution. It administers the affairs of the State to achieve the requirements of both the country and people during the exercise of its competences, for so long as it enjoys the confidence of the House of Representatives. This equality stems from the position of the King as Head of the Executive Authority independent from the House of Representatives, and whose influence balances the influence of that House. The independence of the King is enhanced by his not being politically responsible to the House of Representatives, as that House does not possess the power to dismiss him or to depose him as long as he enjoys full civil competence.

THIRD: Co-operation and shared control between the two authorities:

The separation between the Executive and Legislative Authorities is not complete or absolute. The relation between them is characterised by co-operation, balance and exchanged control.

Aspects of Co-operation

1. The admissibility of combining the post of minister and the membership of the House of Parliament.
2. The right of the Ministers to attend the sessions of the House of Parliament and its various committees and to participate in debates.
3. The right of the Cabinet to propose bills to the House of Parliament inclusive of the Budget Law, in addition to the right of the Members of the House of Parliament to propose bills.
4. The right of the House of Parliament to express an opinion on any issue requested by the Executive Authority. The reply to the Speech from the Throne is considered as a chance to express the House's opinion on various Executive matters.
5. The right of the Members of the House to express their desires as regards certain matters (motions) in spite of the fact that the Cabinet does not have to implement Such motions; however their declaration is regarded as a clarification of public opinion in order for it to exercise its pressure to implement those thereof which are reasonable.

Aspects of Exchanged Control

1. The right of the House of Parliament to address questions and interpellations to the Cabinet and Ministers; however it is noticeable that the House does not possess the right to parliamentary investigation in its full concept.
2. The right of the House of Representatives to pass a vote of confidence in the Government. Should the House withhold confidence, the Government should resign.
3. The right of the King to object to bills approved by the House.
4. The right of the Executive Authority to call the House of Parliament to convene; to adjourn its sessions and to prorogue them within the limits specified by the Constitution.
5. The right of the Executive Authority to dissolve the House of Representatives collectively before the end of its term, compared to the right of the House of Representatives to call the Cabinet to account politically and to topple it, which results in balance between the two Authorities. This right is not regarded as an infringement of the democratic principle; but it gives deep roots to the sovereignty of the people, as it necessitates the reference to voters of any dispute between the two Authorities, through the election of a new House of Representatives which may not be dissolved for the same reason.

B. Thus the ruling bodies in Jordan are represented as follows:

FIRST: The executive authority

The King: The Executive Authority consists of the King and the Council of Ministers as Article 26 of the Constitution provides that the Executive Authority is vested in the King who shall exercise it through Ministers as per the provisions of the Constitution.

The King is the Head of the State (Article 30) and is regarded as the arbitrator between the Authorities and the means of communication between them.

The King enjoys important competences in internal, external, political, legislative and judicial affairs: he is the Supreme Commander of the Armed Forces (Article 32); he issues orders for the holding of elections to the House of Representatives (Article 34/1); he convenes the House, inaugurates it and prorogues it (Article 34/2); he dissolves the House of Representatives (Article 34/3); he

appoints the President and Members of the Senate and accepts their resignation (Article 36): he concludes peace and ratifies treaties and agreements (Article 33); he approves the recognition of states; he appoints ambassadors at the recommendation of the Council of Ministers; he ratifies the bills adopted by the House of Parliament and also the provisional bills approved by the Council of Ministers and issues them (Articles 31, 93, 94); he endorses death sentences after receiving the opinion of the Council of Ministers (Article 39); and he has the right to special pardon and to remit any sentence (Article 38).

The Council of Ministers

The Council of Ministers consists of the Prime Minister and the Ministers (Article 41); a Minister may be entrusted with more than one ministry (Article 46); the Prime Minister and the-Minister may be members of the Houses of Parliament or non-parliamentary persons. A Minister who is not a member of the House in Parliament is not entitled to vote in either Chamber, as voting in each Chamber is restricted to the Minister who is a member thereof (Article 52).

The Council of Ministers controls all the internal and external affairs of the State (Article 45/1). It constitutionally undertakes the actual executive authority; establishes the general policy of the country with the approval of the King; and co-ordinates the functions of the various bodies of the States. The Council of Ministers is a self-existent unit that meets collectively and jointly and has its own constitutional organisation (Article 48). The Council of Ministers is responsible before the elected House of Representatives (Article 51). It has to obtain the vote of confidence of the House of Representatives within one month of its formation if the House of Parliament is in session (Article 54).

The responsibility of the Council of Ministers before the House of Representatives is as follows: *Individual Responsibility* that relates to each Minister individually as a result of a mistake or serious default in the discharge of functions of his Ministry; or *Collective Responsibility* involving all the Cabinet, based on the extent of the convenience of its public policy to the interests of the country in the opinion of the House of Representatives, or because of the accountability of the Prime Minister as he symbolizes the whole Cabinet (Article 53/2).

The Council of Ministers has the right to propose bills and to refer them to the House of Parliament (Article 91) inclusive of the General Budget Bill (Article 112). It also has the right - with the approval of the King - to issue urgent bills in the form of provisional bills which have the power of ordinary bills when the House of Representatives is not in session or is dissolved (Article 94), and to issue executive regulations based on the Constitution which relate to the administrative

divisions and the formation of Government departments, the method of their administration and the affairs of their servants (Article 120). It also declares a State of Emergency in the non-ordinary circumstances of war and calamities (Article 125).

SECOND: The legislative assembly

The Legislative Authority is vested in the House of Parliament and the King (Article 25). The legislative role of the King is restricted to the ratification of the bills passed by the House of Parliament (Article 93/1). The House of Parliament is bicameral consisting of the Senate and the House of Representatives (Articles 25 and 62).

The Senate is formed by appointment by the King (Article 36). However, it is a condition that the Senators should be from amongst the dignitaries of the country who enjoy the confidence of the people in the light of their services to the nation and the country, from amongst the following categories (Article 64):- Prime Ministers and Ministers, present and former Ambassadors, Ministers Plenipotentiary; Speakers of the House of Representatives; Presidents of the Court of Cassation and the Civil and Sharia Courts of Appeal; retired military officers of the rank of Lieutenant General and above; former MPs who were elected at least twice. It is a condition for a member of the Senate to have reached 40 years of age (Article 64). He is appointed for a term of four years and may be re-appointed (Article 65/1). The function of the Senate is closely related to that of the House of Representatives; therefore it convenes simultaneously with the House of Representatives and its sessions are suspended when the House of Representatives is dissolved (Article 66). The maximum number of the Senators is one hah[0] of that of the House of Representatives (Article 63).

The House of Representatives is formed by election. The Elections Law specifies the number of Representatives (Article 67). The presently applicable Elections Law No. 22 for 1986 and the amendments thereto specify the number as 80 Representatives. The House - at the beginning of every ordinary session - elects a Speaker thereof from amongst its members, for a term of one year. He may be re-elected (Article 69). The House exercises a judicial competence represented in two cases:

A. The consideration of petitions presented to determine the validity of the election of its Members, in that it has power to invalidate membership by a two-thirds majority of all its Members (Article 71).

B. To address charges to the Ministers to try them before the Supreme Council, which has the competence to try them (Article 56).

The Executive Authority has the right to dissolve the House of Representatives (Article 34/3 and 4); however it does not possess - in ordinary circumstances - the power to suspend parliamentary life. Therefore the Government should hold elections for a new House to convene within four months from the date of the dissolution of the old House; otherwise the old House shall resume its full constitutional responsibility and shall remain in office until the election of a new House (Article 73).

THIRD: The Judicial Authority

The Judicial Authority is vested in the courts in their various types and degrees, and they pass judgements in the name of the King (Article 27). Judges are appointed and dismissed by a Royal Decree (Article 98). Thus we see that the King is not part of the Judicial Authority; however he is a partner in the Executive and Legislative Authorities in the discharge of their functions.

The Judicial Authority enjoys full independence from the Executive and Legislative Authorities. Judges are independent and they are subject to no authority - in their judicial functions - except that of the law (Article 97). Courts are open to all and are immune from interference in their affairs (Article 101).

II. The electoral system in Jordan

a) *Principles*

The Elections Law gives birth to the Legislative Authority (The House of Representatives). The legal system in Jordan is known to be constitutional, democratic and Parliamentary. Based on that, and in order for the system to avail the conditions for establishment of the democratic state, it must be based on the following principles:

FIRST: The principle of "The People Are the Source of Powers": Elections are just a vehicle to achieve this principle.

The principle of "The Separation between Authorities": this means the distribution of power to prevent absolutism and to prevent the domination by any of the three authorities of the other two.

The principle of "The Sovereignty of Law": which creates the obligation of rulers and the ruled being on the same footing with respect to the rule of law and prevents intrigue in the exercise of the rule.

All of these principles are established by the constitution of Jordan (Article 24).

SECOND: The essence of democracy in the modern state is based on the fact that the state is the state of all the people. For the sake of achieving this, human society found vehicles for realising democracy through the right of popular referendum and the drafting of constitutions, as peoples bestowed on constitutions the characteristic of eminence and sacredness in view of the principles and provisions they contain. Peoples imposed the principles of sovereignty of law, the separation between authorities, parliamentary representation, the right of secret ballot, general suffrage, the right of thinking and expression, the right of meeting and publication and the right to form societies and political parties, for the sake of toppling absolutism and to give deep roots to democracy.

THIRD: The requirements of democracy in a modern state necessitate that a state be the state of all the people. This imposes the recognition of the right of opposition. The establishment of this right means rooting the rule of equality deeply among all the people and the preservation of the unity of society which is necessitated for the best interests of people and society, not to mention the giving of preponderance to majority opinion. The establishment of the principle of the right of the majority to rule, and the right of the minority to opposition enables the State to be democratic, and not to be a state of an individual or a group or a class or a minority.

b) *The electoral system*

Based on these advanced concepts and principles all of which are contained in the Jordanian Constitution which forms the cornerstone of the legal system in Jordan, the electoral system in Jordan enjoys the following characteristics:

1. Direct Secret Ballot (Article 67): The presently applicable Elections Law No. 22 for 1986 and its amendments adopts the method of election through lists and relative majority. The Kingdom is divided into constituencies and the number of MPs therein ranges from 2 to 9. Thus a voter may select a list of candidates and not just one candidate. A successful candidate is the one who obtains the largest number of votes in one round regardless of the percentage of the voters.

2. Electoral constitueacies in Jordan are divided as follows:

Governorate	*No.ofConstituencies*	*No. ofMPs*
Amman (Capital)	**6**	21
Irbid	5	19
Balqa		8
Kirak		9
Maan		5
Zerka		6
Mafrak		3
Tafileh		3
Badia/Bedouins		6
	TOTAL	80

3. The electoral system in Jordan adopts the open list. The Kingdom is divided into a number of constituencies which are relatively few and unequal in population. Each of the said constituencies has more than one MP. A voter can select from the list of candidates in a given constituency a number of candidates, the maximum of which is the number of parliamentary seats allocated for the said constituency. He is not obliged by a static list either to accept it all or to reject it all.

4. The Jordanian electoral system adopts the principle of relative majority in that a candidate is considered successful if he obtains the largest number of votes - the relative votes (i.e. more than the second) - and not the requirement of absolute majority, i.e. the majority of those who have the right to vote in that region. Thus the election process in Jordan is of one round.

5. The electoral system in Jordan adopts the principle of the representation of religious, ethnic and social minorities, in case public suffrage does not lead to the representation of such minorities in parliamentary life. There are seats allocated for Christians, Circassians, and Bedouins:

   Circassians 3 seats
   Christians 9 seats
   Bedouins 6 seats

   However this might be altered in the future once elections are held on the basis of party lists.-

6. Party and Political Plurality after the House of Representatives passed law No. 32 for 1992 - "The Political Parties Law".

The idea of the formation of political parties and blocs in the majority of the Middle East countries - inclusive of Jordan - dates back to the early days of this century. Parties came to life with the birth of the state and the evolution of the systems of government in the countries of the region. As a result of the political situations then prevailing, the aspirations of people to freedom, and the completion of political independence and democratic norms, various parties with a spectrum of ideologies and methods were established, some of which were influenced by political ideologies that followed the Second World War and some others as a reaction to the local and international policies that were then prevailing in the region. The majority of these parties started their activities secretly among people and inside the military establishment which at the end led to conflict with the government establishment and eventually the dissolution of such parties and blocs.

In certain countries of the region, parties and militants reached power through coups d'etat where the militants let parties take part in ruling. But quickly they were fed up with the practices and programs of such parties regardless of the ideological and political implications of their programs. So they terminated these parties or froze them which transformed them into frameworks with no essential role in political life in the various countries. This is still the case in most of the Middle East countries since the fifties and the sixties until this day; i.e. there are parties on the political street as a de facto situation but they are not permitted to function; or there are parties permitted to operate but they are ineffective in practice.

This complex political situation created a political dilemma: the situation led a large number of parties and persons to secret (underground) work in fear of the ruling authority and in order for them to develop a special, though limited, mechanism for their participation in public life and to satisfy their political ambitions. As for the majority of the population with no party affiliations, they resorted in their turn to conventional social formula like sectarianism, tribalism, vocationalism etc. of social symbols to express their political aspirations and ambitions.

On the Jordanian scene - and as a result of Jordan's circumstances in particular and the conditions that prevailed in the region in general - there has been a wide spectrum of parties ranging from the extreme right to the extreme left since the establishment of the State. In spite of the fact that the majority of these parties and blocs have not been politically recognised by the ruling authority, such parties were and still are existent on the scene and exercise their activities in one way or another in public life:

- Of the religious parties: The Moslem Brotherhood Group; Islamic Liberation Party; Daawa Party; Islamic Jihad Movement: and a number of Sofi religious movements.
- Of the pan-nationalist parties: The Arab Socialist Baath Party; The Arab Pan-Nationalists Movement.
- There also was The Communist Party, and The Social Syrian Pan-Nationalist Party.

The political movement has recently been activated particularly after the passing of the Political Parties Law last year as the number of political parties and blocs that expressed their desire to exercise political party work reached approximately 24 such parties. Of the most prominent of these parties are:

- Moslem Brotherhood
- Popular Unity Party
- Jordanian Progressive Party
- Jordanian Ahd Party
- Jordanian Democratic Popular Unity Party
- Jordanian Democratic People's Party
- Arab Rennaissance Party
- Unity Democratic Bloc Party
- Jordanian Democratic National Party
- Constitutional Arab Front Party
- Jordanian Revolutionary People's Party
- Socialist. Arab Baath Party
- Socialist Arab Baath Party/Unified Organisation
- Jordanian Baath Party
- Democratic Progressive Pan-Nationalists Party
- Socialist Pan-Nationalist Party
- Arab Pan-Nationalists Party
- Nasserite Unionists Party
- Revolutionary People's Party

In view of the organisational and financial difficulties facing these parties, particularly after the passing of the Political Parties Law and the conditions contained therein for the formation of parties, the party map in Jordan may witness the absence of many of these movements or organisations. Most probably they will be amalgamated with each other in *the form of fronts with ideological harmonization.* This is what has been largely clear with the date for elections this year getting closer.

- The religious parties and movements have started to express themselves in what is now called "The Islamic Action Front".
- The Pan-National and Nasserite Parties head to form what is called "The Pan-National Action Front". It includes eleven parties.

Thus the party map in Jordan may include four political orientations, namely:

- The Religious Orientation: Totalitarianism
- The Pan-Nationalist Orientation: Pan-Arab nationalist parties
- The Nationalist Orientation: Traditional Nationalist parties
- The Universal Orientation: communist and leftist parties

III. The elections law and its effect on the House debates

The Elections Law mainly bears upon the Legislative Authority, i.e. The House of Representatives. As the legal system in Jordan is constitutional, monarchical and parliamentary, the essence of the Elections Law - the extent of its representation of the democratic course in government, the extent of its reflection of the aspirations of citizens, and the manner in which it is implemented - do, to a large extent, influence the formation of the House of Parliament and its political and legislative trends and the priorities on which MPs compete to specify.

The Constitution provides for a set of facts and general rules that organize the system of government in the Hashemite Kingdom of Jordan. The Executive: Authority has enhanced the rules of the Constitution through the drafting of a general national charter the objective of which is to establish deep roots for the principles of public national action; to define its methods; and to establish general rules for the exercise of political plurality for its being the other corner of

democracy based on the same constitutional facts, national and political heritage, and the facts prevailing in the Jordanian society compared to the other societies.

Amongst the foremost of such facts is that Jordanians - men and women - are equal before the law with no discrimination between them in rights and duties even if they differ in race, language or religion. They exercise their constitutional rights and obligate themselves with the supreme interests of the country and work ethics in a manner that would secure the unification of the capabilities of Jordanian society and to utilize its materialistic and spiritual abilities in order to achieve its national objectives in unity, advancement and building of the future.

The Constitution also provides for the deepening of the democratic course based on political plurality. Such political and intellectual plurality is the most ideal vehicle for deeply rooting democracy and realizing the participation by the Jordanian people in the administration of the affairs of the State, which is the guarantee of national unity and the building of the balanced urban society.

With the passing of the Political Parties Law in Jordan, doors of democracy have become wide open for citizens to form parties. Parties in their turn are considered important tools for the exercise of democracy through which entry takes place into the era of dialogue among all ideas to attain - through the shortest and most beneficial ways - the service of the country and nation. As the Parliament is the forum where policies and legislation are drafted for the service of the country and citizen, there is an integral relationship between the Elections Laws and its objectives and the political and party orientation which are debated in the House of Representatives.

The establishment of parties in Jordan and the exercise of their activities publicly and officially will - at the beginning - lead to an imbalance in the social and intellectual formula in Jordan both horizontally and vertically, as people will necessarily be distributed in different parties struggling for interests and ideologies. A large percentage of people will remain neutral. This situation will lead these parties - in some or most instances - to adopt a political behaviour, to promote extremist ideas, inconsistent with the trends of the rule. However, with the elapse of time and the ripening of the experience, the outlook for the establishment of political life on party basis is less dangerous - as regards the absorption of the general national programme - than the resort to the old tribal, ethnic and categorical formulae. The affiliation of an M.P. to his party means an exchange of viewpoints on a party basis that encompasses its terms of reference and cadres.

The presence of parties will have its impact - in principle - on the elections process and its results and on the construction of parliamentary democracy. Parties are the vital vehicle for people's control because such parties will have their papers

and mass media. Such papers and publications are the means of communication with the masses. This activity will be reflected in the House of Representatives and its functioning and on the parliamentary blocs therein.

However, in the light of certain restrictions existing in Jordanian society which still - to a large extent - resembles Arab and other societies in Third World countries, it is expected that the presence of parties will not lead - at the beginning - to a change in the electoral framework in Jordan: i.e. the division of constituencies and the redrawing of the electoral map as per a new concept. Any change in the electoral system in Jordan will result in giving more weight to the organized groups and the "old underground" parties which came into the open (all of which do not constitute more than 5% of the population) and in the depriving of the vast majority of the people from getting their right to representation. *Based on this, some advocate the individualistic constituency* (i.e. that the country be divided into a number of constituencies each of which has one political seat or that voters be equal in the selection of the number of MPs, i.e. each citizen to elect one MP, or each citizen to elect more than one MP for all so that the Kingdom becomes one electoral constituency).

This is very logical after party life has become deep-rooted and the standard of political work has become sophisticated enough to surpass the previous conventional political frameworks of tribalism, categoricalism, sectarianism and regionalism.

Parliamentary elections in Jordan were held in 1989 on the basis of the provisional Elections Law for 1986, under the shadow of circumstances in which parties were legally banned from open political activity. Now democracy has become the course of the State and the Party Law a tangible fact. It has become logical to question the extent of harmonisation between the conditions of political plurality and the present Elections Law, and whether the said Law does reflect the political conditions now prevailing in the country.

In fact there is no one specific method for most idealistic parliamentary elections nor for the division of electoral constituencies for all countries that would entail the most accurate representation of popular will and express all the segments of society. In the countries with democratic systems there are two main methods: the first adopts the small electoral constituency where the right to elect is for one candidate, as is the case in the United Kingdom; on the other hand there are systems that adopt the broad electoral constituency where the right to elect is exercised on the basis of the party or independent list along with the adoption of relative representation of the elected lists as is the case in some European countries.

Notwithstanding that the resumption of parliamentary life and the passing of the Elections Law in Jordan are important national gains, however the Elections Law still needs more review to highlight the interrelation between the democratic

course of the State and the principle of party plurality and the overall objectives of society. This in its turn necessitates that the Elections Law be capable of facilitating the merger and amalgamation of parties into the political activity of the State and the transformation of such parties into national institutions capable of shouldering the political, social and cultural burdens Jordan is going through.

Emanating from this, the Elections Law should:

First: Secure the largest extent of effectiveness in the representation of all social segments. This necessarily entails not a mere relative representation but to broaden the electoral constituency to move into an environment which is healthier and more representative of public national interest than the narrow tribal and localised interests.

Second: Change the size of electoral constituency to alleviate the violence of conflicts so that competition will be on the basis of preference of ideas and programmes and not between individuals only. As political plurality has become a corner stone in the Jordanian political system, the broadening of the electoral constituency will give the party institution a more effective role in political life, which in its turn will be positively reflected in the electoral behaviour of the citizen and will ultimately influence the shape and essence of the party and the parliamentary map and the performance thereof.

In summary, the presently applicable Elections Law or that law to be drafted by the Government will have a great impact on the results of the elections, and eventually on the political and ideological structure of the House of Representatives. The Elections law in Jordan cannot ignore in one step the prevailing political interests and factors. Therefore it may be safely and generally said that the Jordanian Parliaments - through the applicable Elections Law - represent the demographical structure and the social trends and interests in one way or the other. They reflect the image of Jordanian society to a large extent and perhaps so for numerous years to come.

2. Topical Discussion: Extract from the Minutes off the New Delhi session, April 1993

Dr. ALZU'BI indicated that he had been interested in raising this discussion on the basis of the paper that he had submitted because of the importance of examining the link between the procedures and constitutional practices of parliament on the one hand and the real political background on the other. Jordan was in the process of major political change which highlighted this relationship. The Paper he had submitted drew attention to the historical background of the Jordanian system and the way the system worked based on the separation of powers between the Executive headed by the King, the Legislature and the Judiciary.

The electoral system involved a single round of direct elections with a secret ballot based upon eight multi-member constituencies arranged on a population basis. The successful candidates were those receiving the highest relative numbers of votes up to the number for which there were places to be filled. The system went back to 1928 since which time the Majlis (Parliament) had from time to time been suspended. Political parties, which until recently had to be unofficial, now numbered about seventeen and were growing all the time, though it might well be that in practice most would fail or would merge into three principal groupings representing the religious group, the Pan-Arab or nationalist parties, and the Communist group. Further changes in the electoral law were under consideration, including the possible introduction of one man one vote to replace the system of each elector having as many votes as there were places to fill in that constituency. The constituencies could also be re-constructed.

Mr. SAWICKI (Poland) indicated that some of the same features were present in the Polish system. Poland had over 130 registered parties though most were not important. Different electoral laws in the two Houses, under which the Lower House was elected on a proportional basis and the Senate was elected by relative majority, had produced different results in this respect. The Lower House had thirty parties represented (leading to fifteen party groups) and the Senate had eighteen parties (ten party groups). For example, the former Communists had gained a twelve per cent representation in the Lower House with only a four per cent representation in the Senate.

Mr. HADJIOANNOU (Cyprus), Mr. HAYTER (United Kingdom) and Mi'. NDIAYE (President) (Senegal) asked for further clarification of the voting system itself in respect of multi-member seats. Mr. HADJIOANNOU noted that in Cyprus the ballot paper had columns for each party and under the proportional system in operation a voter was not free to select from different columns.

Dr. ALZU'BI replied that there was no such restriction in Jordan with electors being free to pick their selections from different parties. However the exact presentation of the ballot paper had not yet been fixed and the principle of multi-member constituencies was anyway under consideration. The number of candidates put up by one party in one constituency could be fewer than the number of places to be filled.

Mr. TRAVERSA (Italy) asked about the consideration being given to changing the size of constituencies. He noted that while in Italy there was some pressure for a change from a proportional system towards a more majority based system, in France there was the possibility of considering a reverse change. Dr. ALZU'BI indicated that currently population was the only factor in determining the number of seats which would be filled from each constituency. This meant that in Amman, which was one constituency, twenty candidates were elected whereas in a country province there might be only two or three. This meant that the voter in the country province could influence the election of far fewer Members than a similar elector in Amman. Consideration was being given to equalising this state of affairs.

Mr. HAYTER (United Kingdom) asked about the reasons for the ending of the ban on parties and about the relationship between the parties and the Palestine Liberation Organisation. Dr. ALZU'BI explained that not all the religious or national parties were banned but that against the background of middle-eastern politics in the 1940's and 50's any revolutionary parties had been banned. As the country had matured it had been possible to lift the ban. As for the PLO, it should be recognised that the Palestine issue had a major impact on Jordanian politics but not the PLO as such.

Mr. HAYTER (United Kingdom) and Mr. NDIAYE (President) (Senegal) asked about the system for guaranteeing seats for the three minority groups indicated in Dr. Alzu'bi's Paper. Dr. ALZU'BI indicated that the number of reserved seats for these groups was in fact being questioned as they were anyway below the proportions of the sectors concerned in the population as a whole. The principle was however in conflict with the idea of an equal system of representation for all, and it was unclear how it would relate to the party process.

It was *agreed* that in the light of the study which had been undertaken by the IPU itself on electoral systems across the different member countries there was no need to proceed to a questionnaire and further study of this subject in the Association, but that the Paper and debate would be published in the Association's Journal.

ANNEX

Mr. MAHRAN (Egypt) submitted the following speech in writing:

Democracy means the rule of the people which implies that the popular will reigns supreme. While it is practically impossible for the people to take all matters of government into their own hands, as is the case with direct democracy, the alternative has become representative democracy where the people elect representatives who rule in their name. As such, Parliaments are the embodiment of representative democracy and elections are the means by which Members of Parliament are chosen. It is logical therefore that election systems affect the way in which Parliament is composed and hence the way it functions.

The effect of election systems on true representation

True representation means that the Parliament should be a real reflection of all political trends that enjoy some support in the society. An election system that allows such a representation is characterised by fairness and justice. In this respect, the system of proportional representation is more just than the majority election system as the former makes sure that all influential trends that prevail in society are represented. In the proportional representation system, the number of votes is translated into a number of seats in the Parliament.

The majority system, on the other hand, does not guarantee a fair representation inside the Parliament since the party that gets a larger number of votes in a certain constituency gets all the seats of that constituency, thus depriving the minority from any representation inside the Parliament. Moreover, the majority system might lead to paradoxical results, on the national level, that are not consistent with its underlying principle of a dominating majority where in some instances the minority got more seats in Parliament than the majority. This was the case in the British elections in 1974 and 1929. Another distortion of the principle of true representation is found in the cube law which exaggerates further the size of the majority and dwarfs further the size of the minority.

It should be noted here that while the proportional representation system guarantees that each party gets the number of seats corresponding with the votes it receives, in most cases this system stipulates a percentage threshold for a party to be able to enter the Parliament. This is done to ensure stability and prevent the creation of a mosaic and chaotic Parliament. This was adopted by the Egyptian

legislative when it decided to apply the party list system along with proportional representation and stipulated that a party should get no less than 8% of the votes, nationwide, to be represented in Parliament.

The impact of the election system on the freedom of Members of Parliament

Because the Parliament represents the will of the people as expressed by the Representatives, it is imperative that an MP enjoys the absolute freedom to express his views. This is recognised by the Egyptian Constitution where Article 98 states that "Members of Parliament are not censured for whatever views they hold or express or for whatever actions they take during the exercise of their duty in Parliament".

Leaving this theoretical aspect aside, in practice the elections system does have an impact on the freedom of Members. The system of individual elections is associated with loose or expression parties. Such Parties allow their Members, while being Representatives in Parliament, to think independently and to take stands according to their convictions. An MP as such enjoys some sort of independence vis-à-vis his party and his voting in Parliament is not necessarily a reflection of the party's policy or choice as much as it is a reflection of his own individual choice. Groups of such parties in Parliament are loose and less disciplined and hardly reflect the party's line of policy. The group is not dealt with as a monolithic entity in voting.

The predominance of the individual here over the party is due to the election system where the personality of the candidate is more crucial than the ideology of the party. The candidate's support and his close contacts with the voters, as the constituency in such a system is very small thus allowing intensive personal contacts.

While the system of individual elections ensures freedom of expression, it makes the Member largely a captive of his own constituency. He might thus give priority to the interests of his constituency at the expense of the national interest.

Elections that depend on the party-list, on the other hand, are associated with monolithic parties. Such parties are tightly organised and have tremendous power over their Representatives in Parliament. Representatives in such cases must abide by the instructions of their parties, and an MP votes only according to his party's ideology and convictions even if his own are different on a particular issue. Members who deviate from the party's line are subject to censure and might even be expelled from the party. This hegemony exercised by the party over its members is due to this type of election because it is the party that draws up the list

and picks out the nominees. Furthermore constituencies in such elections are very big which makes the candidate dependent on his party's machine for campaigning and securing the support and votes he needs to enter the Parliament. In turn, he owes allegiance to the party and sticks to the party's line in Parliament.

It is true that the party-list system is associated with monolithic parties, since this system allows the party to have more power over its members. Nevertheless, there are countries with very strong, well established and organised parties that adopt the individual elections system. This means that it is not the party-list system that creates the monolithic party, rather it is the party that opts for this type of election.

The impact of the election system on the Traditional Functions of Parliament

While Parliament is the main legislature and its job of rule-making is its principal function, it has been noted lately that its role concerning legislation has diminished. The election system has had a considerable effect in this respect. As the democratic trend became triumphant, the concept of restricted suffrage gave way to the concept of universal suffrage. The latter concept is based on closing the gap between the community as a social entity and the community as a political entity. In other words, every member of the community is eligible for voting regardless of his or her wealth, gender or colour. Also, everyone has become eligible to run for elections, as what is required of an MP is to have a minimum level of education (being literate) to enable him to carry out his parliamentary work. Meanwhile, the legislative process has become technically complex and in some instances needs highly specialised knowledge that is not available to many of the Members. This has been enhanced by the expansion of the role of the state which further increased the size and complexity of the issues that come under deliberation in the Parliament. This has entailed an increase in the role of the executive power in the legislative area at the expense of the role of Parliament.

The impact of party politics on the working of Parliament

It might appear that there is no relationship between parties and the functioning of Parliament. In practice, however, the working of Parliament has been greatly influenced by the establishment of parties and their role in elections. According to parliamentary traditions, the position of the Prime Minister is held by the leader of the winning party who in turn chooses the rest of the members of the cabinet from his own party, where the party obtained an absolute majority, or from other parties in the case of a coalition government.

This has made membership of Parliament nothing but an expression of a desire for a ministerial position. This has had its effect on the working of Parliament where in most cases Parliamentary sittings seem like "a political show" or even "a political circus" between the supporters of the government and its adversaries. In the meantime, most major decisions are taken outside the halls of Parliament, inside closed party meetings.

Moreover, the multiplication of parties and splinter groups breaks up, even atomises, public opinion and prevents the formation of a cohesive, homogeneous majority. In most cases, this produces political instability thus restraining the ability of parliament to make major decisions.

In conclusion, election systems are not created and do not function in a vacuum. Rather they reflect the reality of the society in which they operate as well as the political and ideological trend adopted by the State. The effect of the election system is in turn reflected in the way the Parliament functions. Each country adopts the election system that it considers suitable since the latter is an outcome of the social and political institutions. Election systems develop and change as these institutions change to ensure that the Parliament exercises its function properly, being an honest and true representative of the people."

VI. Subsidiarity and European Parliaments

1. Introductory Note by Mr Guillaunte Wagener, Secretary General of the Chamber off Deputies off Luxembourg, March 1993

The principle of subsidiarity

Among the objectives set out by the European Council meetings at Birmingham and Edinburgh in October and December 1992 were to build a Europe which was closer to the citizen and to ensure that the workings of the European Community responded more closely to the requirements of democracy, transparency and subsidiarity.

The disquiet shown by numerous citizens about the manner in which the community of Europe has been established is evidence that, as a community of democracies, European integration cannot proceed without the support of its citizens.

Amongst the various means for restoring confidence, use of the principle of subsidiarity, both as a rule for action and as a principle of regulation, has been given a prominent role. The challenge has been thrown to the Community institutions, to the governments and to the national parliaments, of establishing subsidiarity as a "living" principle, without changing the existing balance between institutions or weakening the existing body of Community practice and achievement, and of involving national parliaments more closely in European affairs without slowing down the decision taking process.

This "common sense principle" - to use the description of Mr Jacques Delors, President of the European Commission - which consists of only doing at the Community level what can be done better at that level, with everything else being done at the closest level possible to the citizen, rests on the idea that the norm is national competence, with Community competence being the exception.

Clarification of the ideas of exclusive competence and of shared competence leads us to note the political fact that, in order to avoid drawing up a list of areas belonging to Community competence, the Commission has chosen to establish criteria based them on article 3b of the Treaty, which is worded as follows:

"The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty."

According to the first sub-paragraph it is the Treaty itself which determines the competence of the Community. Although it possesses exclusive competences, the Community must not use them except for the objectives explicitly defined by the Treaty in accordance with the controlling nature of the principle of subsidiarity.

Among the characteristics of the exclusive competence, the Commission distinguishes a functional element, namely the Commission's duty to act under default powers, and a material element, namely the relinquishment by the Member States of the right of unilateral action.

Although the European Community is charged with achieving results, and the principle of subsidiarity may not be invoked as a prior condition for the opportunity for Community action, the breadth of means at the Community's disposal in the exercise of its competence should not lead to overenthusiasm in legislating systematically to cover the whole of the sector under consideration.

Among the areas of exclusive competence are measures to eliminate obstacles to free circulation, the common commercial policy, the general principles of competition policy, the common agricultural policy, conservation of fisheries resources, the main elements of a common transport policy, and, for the future, common monetary policy and currency.

Under the second sub-paragraph of article 3b of the Treaty, the Community does not intervene in areas of shared competence except in completion of action taken by the member states, where the objectives of the action cannot be attained either by the Member States acting separately or by intergovernmental cooperation between them and can be better achieved by action at the Community level.

The assessment in each case is based upon the nature and effects of the action in question; this can involve for example new policies such as transport networks, industrial policy, consumer protection, education, culture, health, etc. In these areas the choice of method of action is of particular importance: if it involves a recommendation, or financial support, or encouragement towards cooperation, for example, then the intervention is limited to those bodies closest to the citizen, such as companies, associations, or unions, and rests on the basis of partnership.

The third sub-paragraph, which enshrines the principle of proportionality, appears to respond to fears of overregulation and of the Community expanding its field of activity.

To avoid the dangers of excessive centralisation and to remedy the democratic deficit, is it sufficient to act at the level of legislative intervention or is it necessary to intervene at the institutional level?

1. Immediate progress could be achieved by limiting legislative intervention and a return to the use of the directive as an outline of a law. While most current Community directives are as detailed as Community regulations, thus working against national parliaments in giving them no room for manoeuvre in implementing them, future directives need constitute only the outline of the national provisions, thus really involving national parliaments in the Community process.
2. The problem of national parliaments becoming more and more simply "chambres d'enregistrement" *(literally,* "Chambers for registration [of legislation]") arises equally in respect of cooperation with national governments, notably through the introduction of pre-legislative consultative procedures giving national government representatives the opportunity to take account of parliamentary opinion in their negotiations at Community level.
3. The effectiveness of the principle of subsidiarity will depend to a large extent on the method of its control. Can this problem be resolved by an inter-institutional agreement, as a guarantor of the self-discipline of the Community institutions, and the control of the Court of Justice?

Is there therefore a case for withdrawing control completely from the elected representatives of the citizens, while the principal objective is to bring citizens as close as possible to decisions taken?

Since the Treaty sets down no specific control procedure, further considered reflection on possible solutions must take place.

2. Topical Discussion: Extract from the Minutes off the New Delhi session, April 1993

Mr. WAGENER spoke as follows *(translation):*

"I shall be speaking on the principle of subsidiarity, taking as an example the European Community and examining the effects on the member states and, as far as possible, on their parliaments. After an introduction (1) I shall discuss the origins of the principle (2) followed by its definition and its effects and criteria (3) clarification of the concepts of "community" "exclusive" "shared" and "national" competences (4) of the two dimensions of the principle - necessity and intensity (5) the situation with respect to legislative initiative (6) and the relations with the national Executives and Legislatures (7) and Conclusion (8).

1. Introduction - the principle off subsidiarity - a rule for action, a means of action, a commonsense principle, a state of mind

Rarely in European Community law has a concept been so discussed and defined as that of subsidiarity. Rarely also has a principle provoked such divergent positions.

Inscribed in the Treaty of Maastricht on European Union on the 7th February 1992, the principle of subsidiarity reflects the will of the contracting parties to pursue the process "of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen". At the same time it sought to give the Union an appropriate means of guaranteeing an effectiveness and transparency to the decision-taking process.

This was to involve, in respect of the areas of competence shared between the Community and its Member States, a more judicious exercise of responsibilities, with the Community institutions only intervening in cases where a course of action, because of its character or its effects, could not be adequately realised by national, regional or local authorities.

Initially the subsidiarity rule passed relatively unnoticed. The difficulties connected with the ratification of the Treaty of Maastricht amongst the Member States of the Community led however to the concept being given a new and

unsuspected dimension. While for some it was related to transparency, the principle for others became a particularly effective instrument for limiting the domain of Community intervention. A strong preference was thus expressed for the maintenance for certain competences at the national level. For yet others the rule reflected the taking into account of Community decision-taking mechanisms in all their diversity but also in all their complexity.

In the aftermath of the Danish Referendum of 2nd June 1992 subsidiarity appeared suddenly as a "miracle remedy" designed to appease the fears of the strongest adversaries of the Maastricht Treaty and possessed of all the virtues to appease the "Euro-sceptics". It seemed to bring closer together the peoples of Europe and their Governments.

2. Origin off the principle

To enhance the power of the citizen, by a balanced distribution of competences between the different levels of power and by the putting in place of appropriate rules and mechanisms to guarantee the optimal exercise of these competences, is not a new objective. The principle was already present in the writings of authors as illustrious as Aristotle, in Greece, and Saint Thomas Aquinus, and was given a new prominence in the social doctrine of the Catholic church in two encyclicals at the beginning and the middle of this century where it featured as a limiting factor in cases of state intervention. It was not mentioned expressly in the European Treaties of Rome and Paris but began to appear in the Community from 1980 thanks to the effects of the judgements of the European Court of Justice and to the aforementioned Treaty of Maastricht. Thus the legislative and regulatory powers of the Community institutions are clearly limited relative to those of the Member States, with the intervention of the latter representing the rule and intervention of the Community as the exception.

3. Definition, effects and criteria

The principle of subsidiarity applied to institutions is based on a simple idea: a state or a federation of states takes powers in the common interest only where individuals, families, businesses, local authorities or regional authorities cannot themselves take the power in isolation. This commonsense principle in my opinion should guarantee that decisions are taken as close as possible to the citizen by means of limiting the actions taken by those higher up the political ladder. The principle, essentially a political one, received its first legal application in relations

between states and their regions, in ways which vary according to their local constitutional traditions. Transposed to the European Community level the principle lays down that functions which are to be Community functions are those which Member States at their different levels of decision taking cannot themselves deal with in a sufficient manner. The transfer of powers must in all cases take place in a way which respects national identity and regional competences. On the other hand Member States must orientate their actions in accordance with the objectives of the Community.

Thus in the Community the principle of subsidiarity is a dynamic concept. Far from stifling Community action subsidiarity allows it to develop its activities if conditions demand it and on the other hand to limit them or to abandon them where it does not appear justified to pursue such courses of action at the Community level.

The application of the principle of subsidiarity for forty years has thus had two facets: the need for Community action and the need for proportionality in the means of giving effect to its objectives. The justification for the necessity of action has always been at the root of the major initiatives of the Commission. The programmes to which it has been applied, in particular the development of common policies set down by the Treaty of Rome and the subsequent establishment of an internal area without frontiers and other policies laid down by the Single European Act have been fully justified in respect of the necessity of European integration. No one has dreamed of contesting that the Community level has been the only one appropriate in terms of effectiveness. The results are there for all to witness. This must also be true of other areas in which obligations to take action, intended by the authors of the community and the Treaty of Rome and the Treaty of Maastricht, have not yet been completely put in hand, such as transport policy or certain aspects of the common commercial policy, not to speak of major parts of the Euratom Treaty.

The intensity of Community action has sometimes been criticised, particularly in its too detailed character in respect of certain regulations relating to sensitive areas such as health and environment which have been considered, rightly or wrongly, to be closely connected to the establishment of a single market. Nevertheless the inclusion of the principle of subsidiarity in the Treaty of Maastricht and the importance accorded to it by member states provides an opportunity for all institutions to keep Community action to essential areas - to do less in order to achieve more. It is also, however, an occasion to stress that the operation of this principle cannot be limited to an exercise in restraint of the European Commission or the constraining of its powers of initiative and thus of modification of the balances set up by the Treaties. The principle of subsidiarity has an inter-institutional dimension and, in particular, it is intimately linked to the question of the

democratic deficit. Let us now clarify the concept of distinguishing between the different competences.

4. Community, Shared, and National competence

It is worth stating first of all that the principle of subsidiarity is a principle regulating the exercise of powers, not one which attributes powers. Attribution of powers derives solely from the provisions made out by the authors of the Treaty. Thus the powers attributed to the Community, unlike those reserved to the member states, do not derive from within themselves. The rule is therefore national competence — the exception is Community competence.

It is thus useless at the constitutional level to draw up a list of competences reserved to the member states. But the absence of such a list poses a political problem insofar as lower level authorities in certain member states and public opinion may conclude that there are no clear limitations on the powers of intervention of the Community, which is accused of being able to meddle in everything. So translating into concrete terms the principle of subsidiarity for the general population poses an initial problem of deciding whether it is better to indicate the principal domains of powers reserved to member states rather than simply to affirm that the general rule is for competence at the national level. A second difficulty is that the authors of the Treaty of European Union, while they set out and sometimes carefully limited the competences of the Community, established a distinction between exclusive Community competence and competence shared with the member states, without including a definition or clear list of contents for each of these blocs of competence. So no clear boundaries have been established between exclusive powers and shared powers. Yet the distinction takes on a major importance since the necessity for action is of a different nature according to the type of competence.

5. The two dimensions of the principle off subsidiarity

To take first of all the criterion of necessity, subsidiarity entails the principle of the Community demonstrating the correct basis for action involving intervention relative to actions which members states are taking or might take to attain the Treaty objects. However the Community is not obliged to prove the necessity for action, except "in those areas which are not within its exclusive competence", that is to say in areas of shared competence. In other words it is a principle stating that

in certain areas the Community alone constitutes the level adequate to take the necessary actions to realise the Treaty objectives. In the absence of a definition in the Treaty of the notion of exclusive competence or the enumeration of the areas which it covers, it is the duty of the institutions, principally the European Commission, to find a common approach to the concept which will avoid continuous conflicts over the boundary between exclusive and shared powers with the attendant risk of a devaluation of the "necessity" part of the principle of subsidiarity. Furthermore the principle of subsidiarity, as a criterion of eligibility for a shared competence for community action, does not have the same status in respect of all the objectives fixed by the Treaty. The degree of restraint it places on the institutions and the instruments placed at their disposal are not the same according to the differing responsibilities assigned to the Community (for example with respect to harmonisation and to internal security).

As for the criterion of intensity, subsidiarity constitutes a guarantee that the means of intervention are not excessive relative to the objective, whether the nature of the power in question is an exclusive one or a shared one. This gives a concrete form to a well known problem, that of proportionality, and translates a political objective into practical effect. If an action is judged necessary to attain treaty objectives it must not be disproportionate: thus the most restrictive method must be treated as a last resort only, with all possible priority being given to administrative measures rather than regulation, to mutual recognition rather than to harmonisation, and to enabling directives rather than detailed regulation.

6. Legislative initiative and legislative intervention

Where legislative intervention proves necessary, the principle of subsidiarity requires that the respective places of community legislation, which must be the overall framework, and national initiatives within this framework must be examined. The process commences with an original instrument being drawn up - typically, under the principle of subsidiarity, a directive which sets down the result which is required to be obtained but leaves to member states the choice of the means for achieving it. This must be distinguished from a regulation which would apply directly in all the member states and to all companies and individuals within states, taking precedence over any national legislation. In practice, it must be recognised that the distinction between the use of a directive and use of regulation has not always been adhered to, sometimes for good reasons (the need for uniform rules) sometimes for bad ones (the desire to avoid national parliamentary procedures). Whatever the reason, the directive is not necessarily a preferred instrument relative to a regulation and when it is used it is often as detailed as a regulation, leaving scarcely any margin of manoeuvre for its implementation.

If the whole exercise of subsidiarity is to produce tangible results it is undoubtedly the case that this must be done by the systematic return to the original concept of the directive, that is to say establishment of a framework of general rules or simple objectives, which the member states themselves alone are responsible for achieving. In the same way a higher role should be given to techniques of minimum common norms and mutual recognition. Recourse to regulations should rest the exception, one which is appropriate where there is an overriding necessity for uniform rules, in particular to guarantee the rights and duties of individuals or companies.

Unfortunately there is no miracle solution for avoiding the crowding of legislation with a surfeit of detail, as is shown by the impotence of most Member States in avoiding an excess of detail of regulation in their own governments. The task remains of seeking a solution, deriving from the constitutional definition of a proper hierarchy of norms. The introduction in the legislative process of a new kind of Act, a framework law, above that of regulation, which would lay down the basic principles and main rules for a particular programme, similar to the idea of a directive, presents several advantages. First in terms of democracy it would reinforce the European Parliament in its natural function of legislator, but would also associate with it respect for the principle of subsidiarity by leaving to national authorities the formulation of individual laws. Thus national parliaments would be given a real role in the Community process in place of being, as is too often the case at present, simple rubber stamping Chambers for the passing of legislation.

On the other hand the enactment of a law by the method of community regulation would be appropriate for those areas which require uniform rules, either for reasons of juridical accuracy or non-discrimination.

It is worth, straight away, making efforts to make better use of existing instruments for restricting Community legislation to the essential minimum and to leave bigger margin for manoeuvre for Members States and the European Commission in respect of the need for uniform rules.

Finally, taking into account the need for greater intelligibility in legislation for citizens more and more directly affected by Community legislation, it is worth paying particular attention to the clarity and conciseness of texts from the earliest stage of drafting. There should besides be a systematic codification of legislation - which should be in the form of publicly accessible data - whenever it has received several amendments. It is not acceptable in a Community subject to the rule of law that individuals are forced, if they are to know their rights, to plough through an undergrowth of community regulation in order to work out for themselves the current laws in force.

7. Relations between the Executive and the Legislature

The Treaty of Maastricht leaves to national parliaments a certain role in respect of general activities of the Union. In fact it provides that "the exchange of information between national Parliaments and the European Parliament should be stepped up.". In this context "the governments of the Member States will ensure, *inter alia* that national Parliaments receive Commission proposals for legislation in good time for information or possible examination". In addition the European Parliament and the national parliaments are invited to meet together so as to create conferences of parliaments or assizes. These would be consulted on major developments in the European Union.

It should be noted that most national parliaments have created committees or groups responsible for following the process of Community decision-taking. In some cases, such as Denmark, this body exercises a role of control in the first instance over the action of government in the European domain. All such steps should contribute to improving the democratic character of the Union and to encouraging the taking of decisions as close as possible to the citizens.

It is implicit that this should not challenge or overturn the inter-institutional balance.

Thus following an amendment to the French Constitution, the *Delégation* of the French National Assembly responsible for European Community matters gives an opinion on draft community Acts insofar as they relate to legislative matters. The opinion does not, however, bind the government and the prerogatives of the executive in respect of international negotiations are being wholly preserved. The *Delegation* acts to oversee and to advise the legislator, not to block or to distort the decision-taking process. Initiatives have been taken also by the German Bundestag to amend its constitution: "the Federal Government shall inform the Bundestag on matters concerning the European Union fully and as soon as possible. The Government shall give the Bundestag the opportunity to come a view before it commits itself to legislative decisions within the Union. The Government shall take account of the position of the Bundestag during the negotiations". Initiatives have been taken equally to create a Committee for European Union affairs to which the Government will communicate, amongst others, draft directives and draft rules before approving them and will found its negotiating position on the views expressed.

Clearly if such arrangements are enforced equally in other countries governments would have no margin of negotiation giving them no capacity to compromise between contradictory local and sectoral interests. This would place within the institutional arrangements of the Community another - or rather twelve other -

participants which would under even the best hypothesis lead to a progressive paralysis of the system. It is essential not to allow an incorrect application of a principle, healthy in itself, of consultation and dissemination of information to lead to the destruction of the process.

Conclusions

The principle of subsidiarity as contained in the Treaty of Maastricht thus conceals a number of ambiguities. Is it a commonsense principle or a constraining rule? Is it a rule which allocates competences or a principle which regulates their exercise? Is it a divisive element or an element of reconciliation?

To these various questions there are not yet answers. As a two- edged sword subsidiarity must be treated with caution. According to how it is applied it can become either a force for integration or for disintegration amongst the European community. Other proposed initiatives in the world for establishing such a Community should perhaps think twice before taking such a route.

If subsidiarity constitutes in the eyes of its users a mechanism for limiting Community initiatives then it risks blocking definitively all movement towards a firmer union amongst the peoples of Europe. The taking of decisions at the Community level would become in effect constantly paralysed by the wishes of one or other Member State which considers a particular course of action to be too intrusive or too intensive. Any further expansion of membership of the Community would further increase the risk over stagnation or regression in the Community since the number of variables to be taken into account in Community decision taking would be greater.

On the other hand if the principle is treated as a rule enabling greater effectiveness and transparency in the decision-taking process it could constitute undoubtedly an integrating factor at the highest level, since it would contribute to reconciling the citizen to the opacity in of the construction of Europe.

While it is undoubtedly too soon to establish which way it will go, the importance of a common interpretation and implementation of the principle of subsidiarity cannot be overstressed. Is not the ultimate objective, after all, the taking of decisions at the level closest to the citizens? In this respect it must be remembered that "the European Union will be closer to its citizens to the extent that its actions correspond more closely and in a more effective way to their expectations". It is all in a process of evolution, with nothing yet decided - and opinions diverge on different matters.

I would like to conclude with a "comforting" word from M. Delors, President of the European Commission. He proposed a prize of 200,000 Luxembourg francs to the person who could succeed in defining the principle of subsidiarity in an intelligible form on one typed page. The prize is still available".

Mr. CLERC (Switzerland) drew attention to the antiquity of the application of the principle of subsidiarity in Switzerland, and the difficulty in its implementation.

Dr. KABEL (Germany) noted the amendment of the basic German law approved at the time of ratification of the Treaty of Maastricht. The amendment allowed an express competence for questions related to the European Union. It underlined the importance of the problem posed for federal states which themselves then joined a federation, in respect of the sharing of competences. He also noted the obligation on the Federal Government to inform Assemblies on matters relating to the European Union, to consult the Bundestag before partaking in decisions on Community proposals and to take account of its opinions and the creation of a Bundestag Committee responsible for following matters relating to the European Union. A similar body existed for the Bundesrat.

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