Constitutional and Parliamentary Information

ASGP

The parliamentary systems off France and Denmark

3rd Series - No. 169 1st Half-year 1995

INTER-PARLIAMENTARY UNION

Aims

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

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

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

Membership of the Union (May 1995)

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

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

Structure

The organs of the Union are:

1. *The Inter-Parliamentary Conference* which meets twice a year.

2. *The Inter-Parliamentary Council,* composed of two members from each affiliated Group. *President:* Mr. A. F. Sorour (Egypt).

3. *The Executive Committee,* composed of twelve members elected by the Conference, as well as of the Council President acting as *ex officio* President. At present, it has the following composition:

President: Mr. A. F. Sorour (Egypt).

Members: Mrs. H. Castillo de Lopez-Acosta (Venezuela); T. S. Darsoyo (Indonesia); M. J. Essaid (Morocco); L. Fischer (Germany); V. Furubjelke (Sweden); G. Haarde (Iceland); W. Hiraizumi (Japan); Mrs. F. K6fi (Tunisia); S. Paez Verdugo (Chile); M. C. Sata (Zambia); M. Szurös (Hungary); Z. Thaler (Slovenia).

4. *Secretariat of the Union,* which is the international secretariat of the Organization, the headquarters being located at: Place du Petit-Saconnex, CP 438, 1211 Geneva, Switzerland.

Secretary general: Mr. Pierre Cornillon.

Official publication

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

Constitutional and Parliamentary Information

Association of Secretaries General of Parliaments

3rd Series - No. 16911st Half-year -1995

Forty -fifth year

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I. The Parliamentary system of France

1. Paper on the Parliamentary system of France, March 1994

Introduction

The contemporary period for French political institutions begins with the revolution of 1789.

Since this date, a large number of draft Constitutions have been drawn up, 18 of which have come into force. France has alternated between monarchies, Empires and Republics.

Leaving to one side the period of the Second World War, the regime has been continuously Republican since 1870 and has seen three principal Constitutions: that of 1875 for the IIIrd Republic, that of 1946 for the IV^{lh} Republic and the current Constitution, that of the V^{lh} Republic, which was promulgated on 4th October 1958.

The Constitution of the Vth Republic is based on the principle of separation of powers and distinguishes clearly between the Executive and the Legislative. The judicial authority is equally recognised as independent but it is the head of State, the head of the Executive, who is the guarantor of this independence.

Before discussing the Legislature, which is the subject of this document, it is worth describing briefly the organisation of the Executive power and the system of political parties.

The Executive in France is of a dual type, comprising the President of the Republic and the Government.

The President of the Republic, in accordance with the Constitution, is elected on the basis of direct universal suffrage for a period of seven years. The Constitution provides no means of challenging his political responsibility.

The role of the President of the Republic in French institutions is fundamental.

In effect the President of the Republic oversees respect for the Constitution and guarantees by his direction the proper functioning of the public powers as well as the continuity of the state. It is he who appoints the Prime Minister and the Members of the Government. Furthermore, he presides over the Council of Ministers and fixes their agenda in agreement with the Prime Minister, signs legislative measures agreed by the Council of Ministers, makes civil and military state appointments, and exercises a number of prerogatives in the diplomatic field and in respect of national defence (he is the head of the Armed Forces) as well as in the judicial field (he has a prerogative of mercy). In times of crisis article 16 of the Constitution allows him to take all measures required to restore the situation. He nominates three out of nine Members of the Constitutional Council, including its President. He can refer laws passed by Parliament to the Constitutional Council, before their promulgation.

As the principle of separation of powers forbids him access to the Parliament, the President of the Republic communicates with parliament by messages which are read. These can give rise to no debate, so as to avoid all risk of political censure.

Finally, the President of the Republic can pronounce the dissolution of the National Assembly after consultation with the Prime Minister and the Presidents of the two Houses. He can also submit to referendum certain Government bills on the proposition of the Government or of the Assemblies.

From the conditions of his election and his powers, the President of the Republic appears as the keystone of the French parliamentary system. It should, however, be noted that with the exception of his powers of appointment of the Prime Minister, of referendum, of dissolution, and of messages, and his powers relative to the Constitutional Council, all the acts of the President of the Republic are countersigned by the Prime Minister and sometimes by a Minister.

The current President of the Republic is Mr François Mitterrand. He was elected in May 1981 for the first time and re-elected in May 1988.

The Government comprises the Prime Minister, the Ministers and, as the need arises, the Secretaries of State. The Prime Minister is appointed by the President of the Republic. The Ministers and the Secretaries of State are appointed by the President of the Republic on the proposition of the Prime Minister.

It is the Government which determines and conducts the policies of the nation. Its actions are directed by the Prime Minister.

In legislative matters, the Prime Minister has a power of initiative for the presentation of Bills. His proposed Bills are submitted to the Council of State for an opinion before being considered by the Council of Minsters.

The Prime Minister and the Government, once appointed by the President of the Republic, do not require confirmation by the National Assembly. They must, nevertheless, possess the confidence of the Assembly since the Assembly can overturn the Government, either by a motion of censure, or by refusing to place its confidence in the Government when the Prime Minister engages the Government's responsibility.

It should be noted that neither the duration of the mandate of the Prime Minister nor, in consequence, that of the Government are fixed. They are a function of the confidence placed in them by the President of the Republic and by the Parliament, and even by public opinion. Ministers or Secretaries of State are dismissed by the President of the Republic on recommendation of the Prime Minister. Ministerial shuffles are fairly frequent.

The current Prime Minister is Edouard Balladur. He was appointed at the end of March 1993.

To appreciate to the full the links between the President of the Republic and the Prime Minister and hence the Government, it should be kept in mind that the President of the Republic has certain powers which are his alone and that it is he who presides over the Council of Ministers, which implies a certain collaboration whose nature varies according to political circumstances.

When the President of the Republic has at his "disposal" a majority in the National Assembly, it is clear that the Government comes from him in that he fixes its general direction and its actions. His role is particularly accentuated in matters of diplomacy and national defence, areas in which the Constitution gives him strong prerogative powers, such that one can speak of a "reserved domain".

By contrast, when the President of the Republic does not have at his "disposal" a majority in the National Assembly - and since March 1993 this is currently the case for the second time, having been the case previously between March 1986 and May 1988 - there is a "co-habitation" since the Prime Minister and the Members of the Government are of a political tendency opposed to that held by the President before his election. From the experiences of 1993 and 1986, it is possible to draw a certain number of conclusions. The Prime Ministers and the Ministers appointed have on each occasion been chosen from amongst the majority in the National Assembly and, in respect of the Prime Minister, from the Party with the largest representation in the National Assembly. The Government conducts its policies in an autonomous manner, with the support of the Assembly from which it is derived, but it nevertheless

takes into account the powers and presence of the President which can lead it to amend its position in certain matters.

In respect of political representation, the Constitution recognises in article 4 that political parties may form and act freely. Their legal status, which for a long time was the same as those of associations, was fixed in 1988 by law. Financing of political parties is subject to a strict regime: private finance is regulated and public finance has been instituted for the most important parties and political groups.

Public assistance to political parties, which has risen to a total of 580 million francs in 1993, is distributed in the following manner. One half is divided between movements which have presented at least fifty candidates at the preceding legislative elections, in proportion to the results obtained. The other half is allocated only to those parties and groups represented within Parliament which have benefited from the first half. It is distributed in proportion to the total number of Members of Parliament who declare themselves to be a Member of, or to be attached to, that Party.

Currently the principal political tendencies are, for the parties of the majority, the RPR, a party which sees itself as the inheritors of Gaullism, and the UDF, a Federation of Non-Gaullist parties of the majority, and for the Opposition parties the Socialist Party, the Communist party, the Ecologists and the National Front.

Such are the broad outlines from which the Parliament arises, whose composition and organisation will be examined before discussing its detailed workings.

Organisation off Parliament

Bicameralism

The French Parliament is bicameral. The two Chambers are the National Assembly on the one hand and the Senate on the other.

From the historical point of view, bicameralism is deeply anchored in the political and Constitutional traditions of France.

In 1969, the voters rejected by referendum a proposed Constitutional revision which envisaged replacing the Senate with a consultative Assembly which would have joined with the current Economic and Social Council[1].

[1] The Economic and Social Council is a purely consultative body composed of representatives of different sectors of society.

Bicameralism allows, by the use of different types of suffrage, the representation in different ways of the French people and the nation, bearing in mind that article 24 of the Constitution lays down that the Senate "shall provide for the representation of all the local authorities in the Republic"[2].

Each House has its own buildings and services. Services in common are unusual. In physical terms the buildings of the two Houses are in different parts of Paris, albeit not far apart: the National Assembly sits in the Palais Bourbon, and the Senate sits in the Palais du Luxembourg.

Composition of the two Houses and terms of office

National Assembly

The National Assembly comprises 577 Deputies. Each Deputy is elected on the basis of direct universal suffrage with uni-nominal majority voting in two rounds from as many constituencies.

The last drawing of electoral boundaries was in 1986. Each constituency represents at least 100,000 inhabitants and 65,000 voters. However, variations from these averages allow for a significant representation for less density populated or smaller areas, notably those in rural areas or in the mountain areas and those overseas.

The National Assembly is usually re-elected in its entirety on the occasion of the legislative elections which take place in the month of March in the fifth year following the previous elections. The last elections took place in March 1993. The preceding elections were in June 1988.

The duration of the term of the Assembly is however cut short if the President of the Republic pronounces its dissolution, after consultation with the Prime Minister and the Presidents of the two parliamentary Houses.

The National Assembly has been dissolved on four occasions since 1958: in 1962,1968, 1981 and 1988. In 1962 it was so that the President could achieve a majority after the collapse of the majority coalition in the Assembly which had

[2] The *collectivités territoriales* are, in France, the regions, for which the deliberative Assembly is the Regional Council presided over by its President, the Departments (of the Metropolitan territory as well as Overseas), whose Assembly is the General Council presided over by its President, and the Communes, of which the Assembly is the Municipal Council presided over by the Mayor. For the overseas territories the administrative organisation is a little different but basically similar. Mayotte and Saint Pierre et Miquelon have local authorities with a special status at the same level as that of a Department.

been in place since 1958; in 1968 this was done in respect of a call to the electors during a social crisis; in 1981 and 1988 it took place so as to enable the parliamentary majority and the presidential majority to coincide, immediately after a presidential election.

All nationals[3] of both sexes aged 18 or over who currently enjoy their civil and political rights may participate in the election of Deputies. Persons under psychiatric care and persons who have received certain criminal convictions do not have the right to vote.

In each constituency, a replacement is elected at the same time as the Deputy.

Senate

321 Senators sit in the Upper Chamber[4]. The Senators are elected by indirect suffrage.

Most of them, 309, are elected from Departments, or from local authorities of the same status, by an electoral college which comprises the mayors, local councillors, and the Deputies elected in the Department.

In 81 Departments and in Overseas Departments and Territories, the voting is by plurinominal majority voting in two rounds; for the 14 largest Departments, represented by at least five Senators, voting is by a proportional system.

The twelve Senators representing French people overseas are elected on a proportional basis by a college comprising elected members of the High Council of French People Settled Abroad.

The term of office of the Senator is nine years and one-third of the Senate is elected every three years, thus giving the institution a certain stability; furthermore the Senate cannot be dissolved.

As for Deputies in the National Assembly, a replacement is elected at the same time as the Senator in those Departments where the voting is by majority voting. In Departments where voting is proportional, the candidates coming on each list immediately behind those which are elected become their replacements.

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[3] It should be noted that European integration has led to the recent granting of the right to vote to nationals of other member countries of the European Union for elections to the European Parliament but not for electing Members of the national parliament.

[4] The number of Senators laid down by law is 322 but this figure still includes the seat for the former territory of the Afars and Issas (Djibouti) which became independent and the abolition of this seat requires the passing of an organic law.

Conditions of Eligibility for Members and Senators

A Senator must be at least 35 years of age and a Deputy must be at least 23, to be elected. In both cases it is of course necessary to be a French citizen, to have complied with the rules relating to National Service and to enjoy one's civil and political rights.

Finally, the holders of certain political offices which are unelected are not eligible to stand in constituencies in which they exercise or have recently exercised their role or their position.

Infringements of the requirements relating to financing of electoral expenditure, which is discussed later, involve an ineligibility of one year.

The Electoral Campaign

In respect of Deputies, French law regulates strictly the conditions under which candidates can conduct their campaign. Electoral meetings are free and public, but access to the different means of publicity (posters, newspapers) and advertising, as well as the time in which they may be used, are regulated.

Furthermore, the legislative requirements of 1988, amended in 1990, on financial transparency in political life have introduced a strict mechanism for financing electoral campaigns for General Elections. Each candidate must list the financial elements of his electoral campaign in a campaign account managed by an agent of his choosing and the level of expenditure must be below a certain maximum (most recently set at 500,000 francs). Any excess over this ceiling involves an ineligibility for one year and, for the person elected, the annulment of the election.

For Senatorial elections, the electoral campaign rules are different and adapted to the system of indirect suffrage. In particular, electoral meetings are not public and there is no poster campaign.

Electoral disputes

Disputes in respect of Senatorial elections and National Assembly elections are not dealt with by the ordinary courts but by the Constitutional Council.

Access to the procedure is very open since any elector in the constituency in which the election has taken place can contest its validity.

In order to avoid disturbance to the functioning of the Assemblies, commencement of a dispute does not involve suspension of the Member: the Member of Parliament whose mandate is contested can continue to exercise his functions normally for so long as the Constitution Council has not annulled his election.

Reasons for annulment are variable: fraud, irregularity, exceeding the ceiling placed on electoral expenses.

Filling of vacant seats

Members and Senators elected by a majority vote are replaced by their substitute in four cases: appointment to the Government, appointment to the Constitutional Council, extension of a temporary post given to him by the Government, and death. For Senators elected on a proportional basis, the person coming on the list immediately after the last elected person is elected.

By contrast, when replacement by the substitute or the next person on the list is not possible, or when the election is annulled by the Constitutional Council, or in the event of expulsion or resignation by the Member of Parliament, a by-election is organised.

Status of Members of Parliament

The status of Members of Parliament is in essence fixed and protected by the Constitution and by organic laws. It is therefore the same for Deputies and Senators.

On the other hand, supplementary matters such as the material assistance made available to Members of Parliament to enable them to exercise their mandate are decided by each House, which accounts for the detailed differences between the two Houses.

Privileges linked to the exercise of the parliamentary mandate

— Parliamentary Immunity

Parliamentary immunity is based on article 26 of the Constitution.

Members of Parliament benefit, first of all, from freedom from being taken to Court, made the subject of inquiry, arrested, imprisoned, or judged for opinions and votes cast in exercise of their mandate.

Additionally, Members of Parliament possess inviolability in that, during parliamentary sessions, they cannot be sued, or arrested in disciplinary or criminal matters, without the authorisation of the Chamber to which they belong. Outside sessions he cannot be arrested without authorisation from the Bureau, except in respect of suits already under way or final convictions.

Furthermore an Assembly can always call for the suspension of a case against one of its Members.

It should, however, be noted that inviolability does not operate in cases where the offender is caught in the act of committing a crime.

- *Parliamentary Salary*

Parliamentary allowances are mentioned in article 25 of the Constitution and its operation is regulated by an Ordinance of organic law of 3rd December 1958. Their purpose is to ensure the financial independence of Deputies and Senators.

Its amount is calculated by reference to the salary given to certain senior public officials. It was 30,404 FFr. gross per month as at 1st October 1993.

The parliamentary salary is supplemented by certain allowances, of which the most important is the service allowance *(indemnité de fonction)* which is equal to a quarter of the parliamentary salary or 7,829 FFr. as at 1st October 1993.

Since 1993 the parliamentary salary has become subject to personal income tax as under the general law with other salaries.

- *Prohibition against restrictions on freedom of action*

Article 27 of the Constitution ensures the independence of the Member of Parliament in the exercise of his mandate. The mandate is of a representative nature and the Constitution lays down that "any binding instruction is ineffective". The rules of the Assemblies reflect this principle in some of their provisions.

The obligations of the Parliamentary mandate

- *Incompatibilities*

A parliamentary mandate is recognised as being incompatible with the exercise of certain public or private functions, so as to preserve the independence of the holder.

The most significant incompatibility is laid down by article 23 of the Constitution which states that a parliamentary mandate is incompatible with being a member of the Government, representing a strict interpretation of the principle of separation of powers. A Member of Parliament appointed to the

Government has 30 days to choose between his ministerial post and his parliamentary mandate. He cannot, however, during this period sit in his Assembly. If he chooses to take up his ministerial post he is replaced by his substitute. He does not resume his seat on ceasing to be a Minister.

Other incompatibilities are more traditional. It is forbidden to be both a Deputy and a Senator, in the same way as it is to hold a non-elective public office and a parliamentary mandate. Public officials who are elected are regarded as being on secondment and resume their previous employment if they lose their parliamentary mandate.

Additionally, certain private roles such as management posts or responsibilities in businesses which enjoy particular advantages from the State, or management roles in the publication of a periodical[5] also involve incompatibilities.

Finally, legislation limits elected Members of Parliament to exercising one only of the following additional mandates: Member of the European Parliament, Regional Councillor, Member of a General Council, Mayor of a large town, Mayor or Deputy Mayor of a major city.

- *Declaration ofAssets*

This obligation is a recent institution, arising from legislative provisions of 1988 on financial transparency in public life, and applies to the President of the Republic, Members of the Government, the principal holders of local elected office and Members of Parliament.

Each Member of Parliament is obliged to declare the various elements of his personal wealth, and their amounts, in the days following his assumption of office. The declaration of assets is made to the Bureau of the Assembly to which he belongs, which ensures its confidentiality and its custody.

This declaration is then compared with a declaration on completion of the mandate by the Bureau of the Assembly, which assesses how it has changed.

Assistance designed to facilitate the exercise of the parliamentary mandate

In this area, although it is managed autonomously by each Assembly, a certain similarity can nevertheless be seen, so that it is not necessary to

[5] This is to avoid the possibility of parliamentary immunity presenting an obstacle to the pursuit of suits against the press.

consider separately the cases of Senators and Deputies. There are differences only in the details.

- *Secretariat*

Each Member of Parliament receives an allowance for a Secretariat, of around 20,000 francs per month, to cover the cost of paying for a personal secretary.

- *Assistants*

Each House permits its Members to recruit two assistants full-time - or several staff equivalent to two full-time staff - to assist him in the exercise of his functions.

The parliamentary assistant is recruited directly by the Member. His pay is handled by the House to which the Member belongs.

One such assistant helps the Members in the exercise of their functions in the constituency while the other is in Paris to help the Member in his legislative tasks.

- *Premises and material assistance*

Each House makes available to its Members an office within the parliamentary buildings.

The telephone requirements of the Member of Parliament are supported by provision of communication facilities from the parliament, and the provision of telephone credits allowing at least partially free communication from his offices in the constituency or other places chosen by him.

Each Deputy or Senator also has available, for his correspondence, use of the House's fax machines and can request that a fax machine, with free usage, is installed in his own premises (usually in the constituency). Each Member of Parliament can also send mail from each House postage free.

There are a number of other services such as access to the photocopiers, freedom to use the photocopying service installed in the parliamentary buildings, and freely available paper, envelopes, stationery and typewriters.

As for information technology (IT), the National Assembly allocates to each of its Members a sum for the acquisition of IT equipment. The sum is calculated to cover a five-year period.

The organisation off each House

The autonomy of each House relative to the other bodies and the other House is laid down in a formal manner by the Decision of 17 November 1958 relating to the operation of Parliament, which drew from the principle of separation of powers and from the parliamentary tradition of sovereignty of each House of Parliament established under the preceding Republics.

Each House agrees its own rules of operation; and it recruits its own staff autonomously way, by means of separate competitions from those of the Government Civil Service, and manages itself under Regulations agreed by its Bureau. In respect of finance, each of the two Houses is autonomous and has its own budget (in 1994 2.4 billion FFr for the National Assembly and 1.38 billion FFr for the Senate).

Each House has its own rules which lay down its organisation and regulate its procedures and works. This is, however, a qualified autonomy, since the Constitution provides that the Rules of Procedure of each House shall be examined by the Constitutional Council so as to ensure their conformity with the Constitution. The first controls on conformity took place in 1959 following the adoption of the Rules of Procedure. Each revision has been examined since then.

Finally, in respect of security and policing, each House is autonomous with the President of each House, in accordance with article 3 of the Ordinance of 1958, being charged with "overseeing the internal and external security of the House".

The Management bodies of each House

The similarity between the two Houses allows their systems to be described jointly with the occasional differences between them being indicated.

The Bureau

In each House the Bureau is the body with the widest powers in respect of organisation and management.

The powers of the Bureau are substantial. They derive from the Constitution, organic law, ordinary statute law and the Rules of each House.

- *Composition*

In the National Assembly, as in the Senate, the Bureau is presided over by the President of the Assembly, six Vice-Presidents, three Questeurs and twelve Secretaries, or 22 people in total.

The President of the National Assembly is elected for the duration of the legislature, while the other members of the Bureau are elected each year.

The Bureau of the Senate, conversely, is elected after each triennial election. In both Houses, the composition of the Bureau is required to reflect the proportionate strengths of the different parliamentary groups.

- *Role*

In the National Assembly as in the Senate "the Bureau has all powers necessary to preside over the deliberations [of the House and to] organise and direct" its services.

In this role it falls to the Bureau, by a general Instruction, to complete and fill out the Rules of Procedure.

In the same way it is the Bureau which agrees the internal rules on the operation of services and the status of staff.

It should be noted that besides its general functions of administration of the House and direction of its operations, it is the Bureau which governs matters relating to control of the status of Members of Parliament: ensuring adherence to the rules regarding incompatibilities, the keeping and analysis of declarations of assets, authorisation of law suits outside sessions.

The President (Speaker)

The President of the Senate who becomes interim President of the Republic in the event of the death, impeachment, or resignation of the President, is from the moment of his election, the second-ranking person in the State, with the strict order of protocol placing him immediately after the President of the Republic and the Prime Minister. The President of the National Assembly is fourth in the order of precedence.

In each House the President is elected by secret ballot by majority voting with three rounds: in the first two rounds of voting an absolute majority of votes cast is required; a relative majority suffices in the third round. He is elected for the duration of the legislature in the National Assembly and for every three years in the Senate.

The functions of the Presidents of each House consist of directing events and debates in the Chamber, ensuring security, representing the House to the outside world, both nationally and in respect of diplomacy and international representation, and representing it legally.

The Presidents of each House have a private office comprising a number of staff chosen freely by the President, in such a way as to allow the team as a whole to follow the political events of the country.

The present President of the Senate is Mr René Monory, Senator from Vienne, and the current President of the National Assembly is Mr Phillipe Séguin, Deputy from the Vosges.

The Vice-Presidents

The main function of the six Vice-Presidents consists, in each House, of standing in for the President, particularly in respect of presiding over plenary sittings in his absence on a rota basis.

The Questeurs

In the National Assembly as in the Senate, the three Questeurs are responsible for administrative and financial questions.

Their role is an illustration of the principle of the administrative and financial autonomy of each House. Their power is exercised "under the overall direction" of the Bureau in the National Assembly. This is also the case in the Senate.

The three Questeurs act collegiately in their meetings of the Questure which take place almost weekly. For more immediate matters, each Questeur holds for one month the role of *"Questeur Délégué"*, for one month in the National Assembly and for three months in the Senate.

The Secretaries

In each House, the Secretaries of the sitting assist the President or the Vice-President in all matters relating to votes.

The official record of each sitting is authenticated by the signature of two Secretaries together with that of the President or the Vice-President who presided.

The constituent parts of the two Houses

The Parliamentary groups

The rules of each House lay down that Members may group together freely on the basis of political affinity.

Groups formed on the basis of individual interests, whether by category of employment or by locality, are forbidden both in the Senate and in the Assembly.

To constitute a group, it is necessary to have a minimum of fifteen Senators, in the Senate, or twenty Deputies, in the National Assembly.

Each group is required to prepare a political declaration signed by all its Members on its political objectives and the means of achieving this policy.

Affiliation to a party group is not compulsory. It is, on the other hand, forbidden to subscribe to more than one parliamentary group.

In the National Assembly, Deputies belonging to units which are too small to constitute a group can affiliate themselves to a group of their choice or remain as independents.

The current composition of the National Assembly is as follows: (7 March 1994)

Name of parliamentary group	Majority/Opposition	Number of Members
RPR	Majority	256
UDF	Majority	214
République et Liberté	Special group involving Members of different political tendencies who would otherwise be independents	23
Socialists	Opposition	58
Communists	Opposition	23

Note: independents: 2 deputies
vacant seats: 1

The absence from parliamentary representation of two political tendencies in France is explained by the voting method: the Ecologists (Greens) and the National Front, which lies to the right of all the other groupings represented in Parliament.

In the Senate, individual Members of Parliament or units that are too small to constitute a group can either sit amongst the Independents or affiliate to or attach themselves administratively to a Group. It should, however, be noted that the Independents, although in the past they have been sufficiently numerous to constitute a group, are currently too few to do this and constitute an administrative grouping.

The current composition of the Senate by political groups is as follows: (at 7 March 1994)

Name of parliamentary group	Majority/Opposition	Number of Members
RPR	Majority	91
Republicans and independents	Majority	48
Union Centriste	Majority	65
European Democratic Group	Majority and Opposition (Mixed group bringing together radicals known as 'valoisiens' and radicals of the left)	24
Socialists	Opposition	69
Communists	Opposition	15
Administrative group of Independent Members	Administrative group comprising senators of various parties	9

Each political group is lead by a President of the Group and a Bureau.

In each House, parliamentary groups are given financial and material assistance, as well as offices. Each group receives a grant for information

technology. The administrative secretariat recruited by the groups are dependent entirely on them.

The Presidents of the groups play an important role. The Rules of procedure of both Houses recognise them formally, with their own powers, particularly in respect of procedure.

Finally, in the Senate as in the Assembly, the place at which each Member sits in the hemi-cycle is dictated by his political group membership, with each group being attributed a particular sector.

Parliamentary Committees

The Committees established by the Constitution or by the rules of each House are of several types.

The permanent Committees number six in each House. They are responsible for examining bills within their terms or reference, unless a special Committee is established.

In the National Assembly, the split between the Committees is as follows:

- Committee on Constitutional law, legislation and the general administration of the Republic (membership equal to Vsth of all Members of the Assembly;
- Committee on Finance and the Economy and Planning (Vsth);
- Committee on Cultural, Family and Social Affairs (Vsths);
- Committee on Production and Trade (2/sths);
- Committee on Foreign Affairs (Vsth);
- Committee for National Defence (Vsth).

In the Senate the split is a little different, as follows:

- Committee on Constitutional Laws, Legislation, Universal Suffrage, Regulations and General Administration (44 members);
- Committee on Finance, Budget and National Accounts (43 members);
- Committee for Cultural Affairs (52 members);
- Committee for Social Affairs (52 members);
- Committee on Economic Affairs and Planning (78 members);
- Committee for Foreign Affairs, Defence and the Armed Forces (52 members).

The permanent Committees are set up in proportion to the parliamentary groups. With some exceptions, for example, the President of the Senate, each

Member of Parliament belongs to one permanent Committee. Membership of more than one permanent Committee at the same time is prohibited.

The permanent Committees appoint a Chairman, who is assisted by a Bureau on which the Opposition is represented. Administratively, permanent Committees have a secretariat comprising staff chosen from amongst the different categories (grades) of parliamentary officials.

For the Finance Committee in each of the two Houses, the existence should be mentioned of a Rapporteur General[6] who also has an administrative secretariat separate from that of the Chairman.

The other parliamentary Committees are the non-permanent Committees.

Special Committees are constituted individually for the examination of a particular proposal. Their rules of composition and operation are similar to those of the permanent Committees. They comprise 57 Members in the National Assembly and 37 Members in the Senate.

Other non-permanent Committees are, on the one hand, Committees of Inquiry which comprise at least 30 Members in the National Assembly and at least 21 Members in the Senate and, on the other hand, so-called *ad hoc* Committees which comprise 15 Members in the National Assembly and 21 in the Senate established to examine requests for the commencement of suits against Members of Parliament or requests for the suspension of such suits.

The Délégations *for the European Communities*

The National Assembly, like the Senate, has had to face an increase in issues relating to the European Community, linked to the growth in the European Community (which has become the European Union).

A law of 1979 established in each of the two Houses a *délégation* for the European Communities.

The *délégations*, whose role and functions were revised in 1990, each comprise 36 members appointed in proportion to the strengths of the various parliamentary groups. They can be consulted by the Government, as well as by the permanent Committees and special Committees, on bills whose objects are covered by European Community activity. They examine draft community legislation whose objectives cover the domain of domestic law.

[6]The Rapporteur General is responsible for preparing a report, in the name of the Committee, on Finance Bills. He is in effect a "permanent Rapporteur."

It should be noted that the functions of the *délégations,* under slightly different conditions in the National Assembly and in the Senate, operate concurrently with the Committees in respect of competence in examining draft community legislation.,

The Conference of Presidents

The Conference of Presidents is a body comprising in each of the two Houses the President (who convenes it and presides over it), the Vice-Presidents, the Presidents of the permanent Committees (and where they exist of the special Committees), the Rapporteur General of the Finance Committee, the President of the *délégation* for the European Communities and the Presidents of the Political groups.

The Government is represented by a Minister, the Secretary of State responsible for relations with Parliament or the Secretary of State responsible for relations with the House.

The principal role of the Conference of Presidents relates to the Orders of the Day.

It takes note, first of all, of the priority Orders of the Day established by the Government before fixing the complementary Orders of the Day to be proposed to the plenary.

The Conference of Presidents exercises also a certain number of powers in respect of organisation of debates, such as, for example, the allocations of speaking time or the organisation of question times.

Furthermore it can consider certain matters relating to the detailed application of the Rules of Procedure.

During sitting times, the Conference of Presidents is convened by the President, in principle, once a week. The Orders of the Day are usually decided for two weeks.

Other structures

It should be noted additionally for the record that other structures exist for research and other work in each House. Some are common to both Assemblies, such as the parliamentary *délégation* for demographic questions and the parliamentary Office for the assessment of scientific and technological choices.

The Services of the two Houses

The services of the National Assembly and the services of the Senate are totally separate.

Their structures are, however, very similar and they may be discussed together.

Each of the two Houses is an example of the dual system for parliamentary services; this arises directly from the distinction between, on the one hand, the functions of the President of the Chamber (Speaker) and on the other hand, those of the college of the three Questeurs.

There are two Secretaries General who are hierarchically independent from each other: the Secretary General of the Presidency - who is also in the Assembly the Secretary-General of the House - and the Secretary General of the Questure.

The services are separated between legislative services and services of the Questure, although there are certain services in common.

In the Senate, the legislative services are directed by the Secretary General of the Presidency (who currently has the title of Secretary General of the Senate) assisted by a Director General. These services comprise the Secretariat General of the Presidency[7], the communication services (relations with the press, relations with the public), the research services, the sittings offices *(service de la séance),* the Committee services and the European affairs office. The two reporting services are also part of the legislative services: the summary report and the full report service.

The administrative services, directed by the Secretary General of the Questure, also assisted by the Director General, comprises the service for the office of the Questeurs and security, the service of the Secretariat General of the Questure (general administrative matters), service of the budget, accounts and pensions, the treasury, the service for material and procurement, the service for architecture, buildings and gardens, and the medical service.

Personnel services, archives, library and foreign documentation, and services for information technology and technological development are common services.

'It is the Secretariat General of the Presidency which is responsible for coordination of relations with international institutions and foreign parliaments, interparliamentary technical cooperation and the management of interparliamentary groups.

In the National Assembly the split between services is a little different and the separation between legislative services and administrative services is arranged on an alternative pattern.

The legislative services directed by the Secretary General of the Assembly and of the Presidency, who is assisted by Director General, comprise, besides the two reporting services (summary report and the full stenographic report), the Secretariat General of the Presidency, the sittings services, the Committee services, the office of the Library, the communication services (press relations, exhibitions organised by the Assembly and printing of parliamentary documents), the archive service, the research and documentation service and the service for foreign documentation, which also covers European affairs.

The services of the Questure, directed by the Secretary General of the Questure, also assisted by Director General, comprise the general administrative affairs service, the buildings service, the protocol and international relations service, the financial affairs service, the personnel service, the service for equipment and catering and the medical service. Questions relating to security are dealt with by the Director General of the Questure.

The service for information technology and future technological development is a common service.

Parliamentary officials who are responsible for the tasks relating to these services, are recruited totally autonomously, through competitions. Their status is fixed in each House by the Bureau but it is largely based on those applicable to State government officials, with however certain adaptations resulting from the specific way of operating in the two Houses.

Currently, the Senate has around 1050 officials and the National Assembly about 1200.

The two Secretaries General of the National Assembly are appointed by the Bureau of the National Assembly and the two Secretaries General of the Senate are appointed by the Bureau of the Senate.

Chart off services in the National Assembly

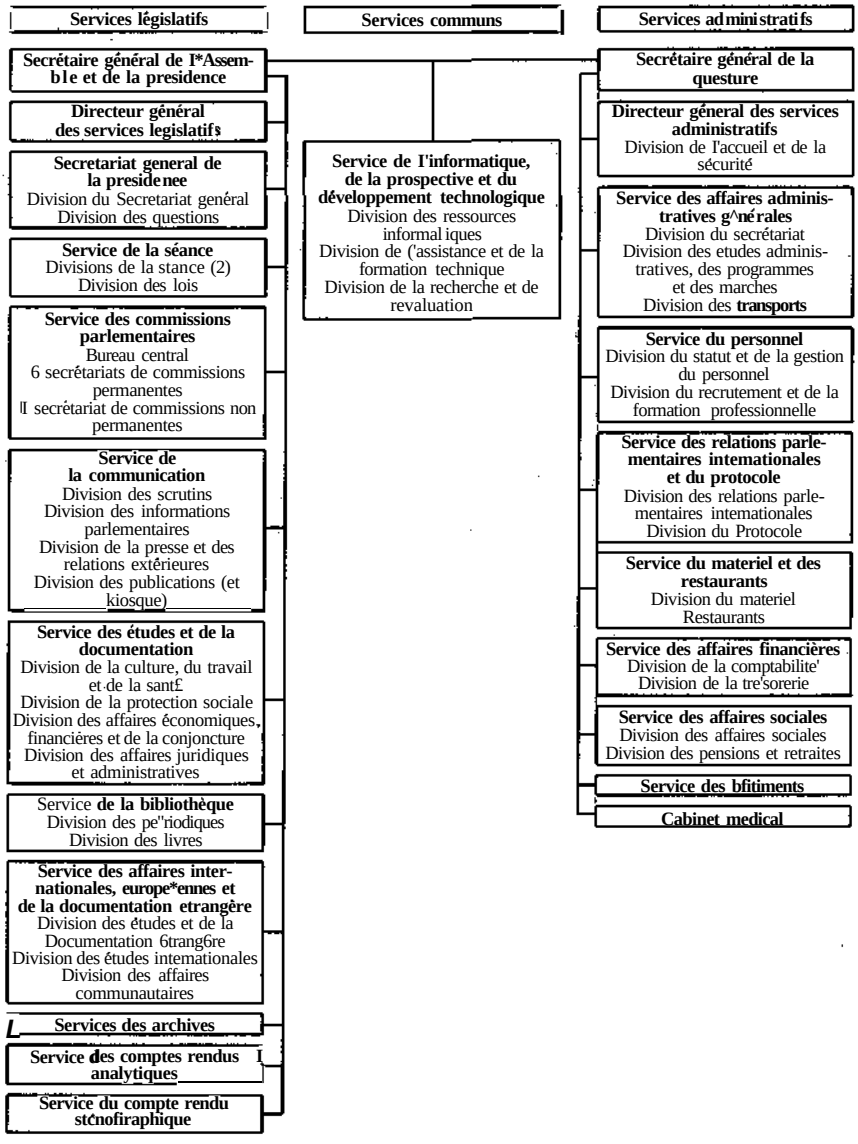
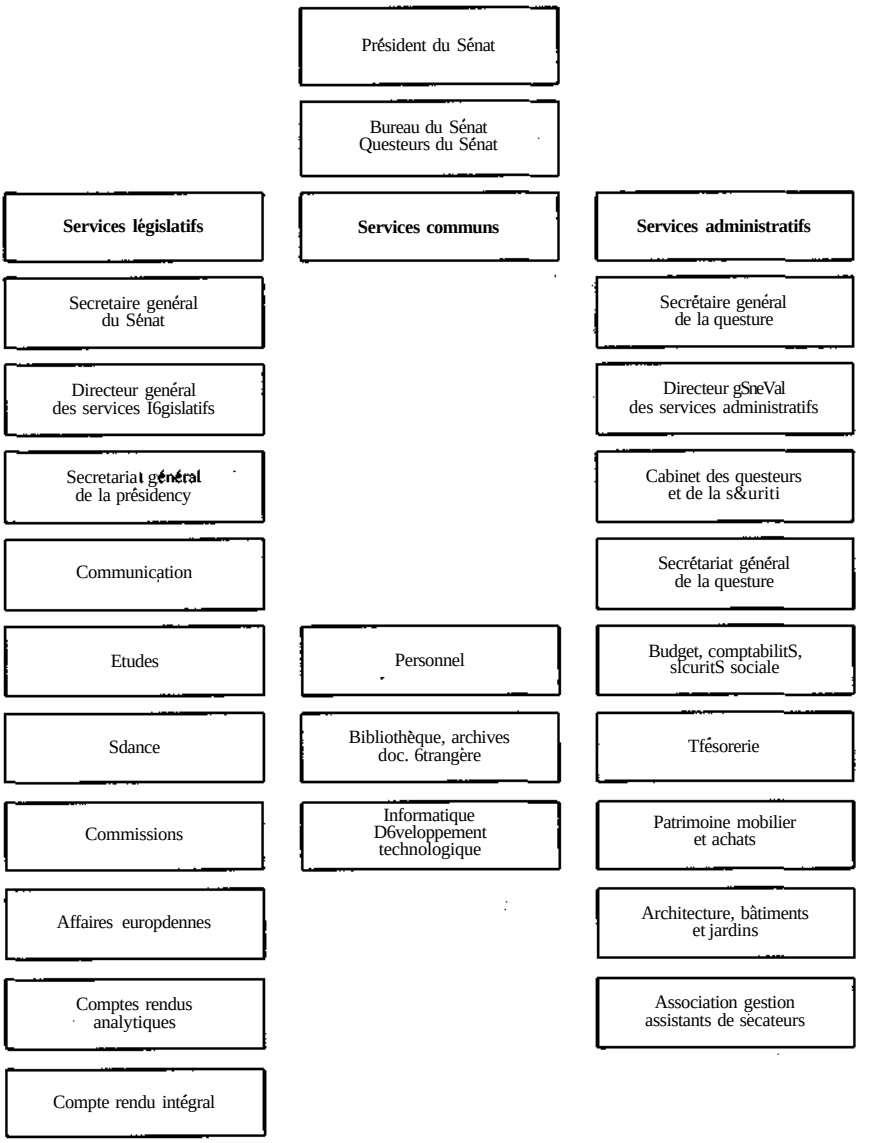


Chart off the Senate Services



The activity ol the two Houses of the French Parliament

General

Sessions

Under the III[rd] Republic there were practically no limits to parliamentary sessions. Under the IV[lh] Republic more restrictive elements were brought in.

The 1958 Constitution, in article 28, fixes the number and length of ordinary sessions to two sessions of about three months each. The Autumn or Budgetary Session lasts from 2nd October to 20th December and the Spring Session from 2nd April to 30th June.

Additionally, the Constitution provides for extraordinary sessions, by their very nature unforeseeable, which are opened and closed by decree of the President of the Republic and are convened on predetermined Orders of the Day either at the request of the Prime Minister or at the request of a majority of Members comprising the National Assembly.

Often ordinary sessions are completed by several days of extraordinary session which allows for a slight softening of the rigidity of the system of dates laid down by the Constitution.

It should be noted that the President of the Republic exercises a control on the Orders of the Day of extraordinary sessions, since he can refuse to include in the Orders of the Day of an extraordinary session a matter requested by the Prime Minister.

Parliament also convenes on two other occasions: on the one hand a session of fifteen days takes place when a new Assembly is elected following a dissolution, if this is not already a period of an ordinary session; the other occasion on which the two Houses meet is when the President of the Republic uses his exceptional powers in times of crisis; finally the two Houses meet specially out of session to hear a message from the President of the Republic. This last procedure has never in fact been used.

When the National Assembly has been dissolved the Senate may sit, but the normal functioning of the legislative procedure is significantly disturbed.

The pattern of work

Parliamentary work is carried out according to a particular pattern, which depends largely but not entirely on the sessions.

It should be noted, first of all, that the autumn session, which is the budget session, is busier than the spring session.

During a session the work of Committees and of the plenary is above all concentrated on Tuesdays, Wednesdays and Thursdays, in both the National Assembly and the Senate. This allows Members of Parliament to return to their constituencies at the end of the week and sometimes to stay there on the Monday.

In the Senate, however, it should be noted that Wednesday is generally devoted to Committee work.

As for the daily timetable, the two Houses may work in the morning, the afternoon and the evening, for both the plenary and the Committees. In respect of the plenary, sitting hours are 9.30am to 1am for a morning sitting, and 3pm to 7.30pm for an afternoon sitting. An evening sitting begins at 9.30pm and finishes usually around 1am in the morning. Exceptionally, it can last much later and can even continue until the morning.

The afternoon sitting is the normal sitting. An evening sitting takes place when work demands it, and in general a morning sitting occurs when the Orders of the Day are particularly lengthy. The morning period generally allows Committees and groups to meet, particularly on Wednesday in the National Assembly.

The Committees may sit out of session.

The volume of Parliamentary work

Since the commencement of the institutions of the V[lh] Republic, the volume of parliamentary work has greatly increased, as in other countries with a longstanding parliamentary tradition.

In respect of the Senate, in 1993, there were 706 sitting hours arising from 214 sittings, and 1072 sitting hours for Committees from 547 meetings.

In 1993 the National Assembly sat for 860 hours, comprising 515 in respect of legislation, 202 for the budget debates, 40 for government statements and motions of censure, 16 for presentations on overall government policy, 73 for questions and 14 for debates on resolutions. For Committees, 288 meetings were held for a total of 469 sitting hours.

The Orders of the Day

Each House of the French Parliament was, formerly, master of its own agenda. This is no longer the case since article 48 of the Constitution provides

that the Orders of the Day for each House reflect the priorities and the order that the Government fixes for discussion of bills proposed by the Government and other bills accepted by it.

There is therefore a distinction between the priority Orders of the Day which are fixed by the Government and the supplementary Orders of the Day fixed by the Houses.

Oral questions have a priority with at least one sitting a week reserved for them in each House. Questions to the Government take place on Wednesday afternoons in the National Assembly and on Thursday afternoons once a month in the Senate.

The supplementary Orders of the Day proposed by the Conference of Presidents is submitted to the Plenary for approval.

The rules regulating the Orders of the Day thus leave relatively little place to parliamentary initiative. In 1993, eight statutes[8] arose from non-Government bills as against 69 from Government bills. In the period 1981 to 1992, 91% of laws adopted were Government bills.

The Legislative Procedure

The legislative procedure of the Vth Republic is directly inspired by the principles of parliamentary rationalism applied in a rigorous manner. The Government, besides its position in respect of the Orders of the Day, has a very strong position throughout the procedure.

In particular, in accordance with article 31 of the Constitution, Members of the Government have access without restriction to the two Houses and shall be heard on request both in Committee and in the plenary.

The principles of the legislative procedure are essentially the same in each House, and they can therefore be considered together. However, when it comes to considering the procedure of "shuttles" between the two Houses, the unequal nature of the bicameral system becomes clear.

As a preliminary point, it must be noted that the Parliament does not have a monopoly in law-making power since article 11 of the Constitution allows the President of the Republic to submit to a referendum, on the proposal of the Prime Minister during parliamentary sessions or on the joint

[8]Nine non-government bills were passed, but one was annulled by the Constitutional Council.

proposal of the two Houses, any Government bill relating to the organisation of public powers, or proposing the ratification of a treaty which, without being contrary to the Constitution, will affect the workings of the Government institutions.

This procedure has been used seven times since 1958, notably to authorise ratification of the treaty of Maastricht in September 1992. With one sole exception, in 1969, the bill has always been approved by the voters.

Right of initiative for bills

The right of initiative for legislation belongs to the Prime Minister and Members of Parliament in general.

The 1958 Constitution, in article 34, limits the legislative domain to certain listed areas, these being of course the most important areas (see article 34 set out at Annex 1).

For matters which are not within the domain of legislation, the Government may make regulations. This autonomous power of regulation is additional to the traditional powers in respect of application of laws which rest with the executive authorities.

Furthermore, in accordance with article 38 of the Constitution, Government can seek from Parliament power to legislate by Ordinance in a certain number of areas, for a limited duration, by tabling an enabling bill.

Non-Government bills are not in order from the financial point of view where their adoption would involve a reduction in public resources or the creation or increase of a charge on the public.

In 1993, 518 non-Government bills were tabled in the National Assembly and 129 in the Senate (compared to 75 and 42 Government bills respectively).

In practical terms, the power of initiative is exercised by the tabling of a bill in the Bureau in one of the two Houses. Non-Government bills are tabled in the Bureau of the House to which their sponsor belongs; Government bills are tabled without distinction by the Prime Minister with the Bureau of one or other of the two Houses, with the exception of Finance bills which are obliged by the Constitution to be tabled in the Bureau of the National Assembly, in accordance with the widespread principle of pre-eminence of directly elected Chambers in financial matters.

Once tabled, the bill is printed and then distributed not only in the House where it is being tabled but also in the other House.

Consideration in Committee

In France, consideration in Committee is a necessary stage of the legislative procedure. Nevertheless, contrary to what happens in other countries, Committees do not have the power to adopt a text of a bill in the name of the Assembly. Consideration, albeit somewhat summary, in plenary sitting is obligatory.

Each tabled bill is sent by the President/Speaker of the House to a Committee.

Unless a special Committee is established it is sent to one of the six permanent Committees.

Establishment of a special Committee is automatic in certain cases and subject to approval by the plenary in other cases.

For bills coming within the terms of reference of several permanent Committees, one or more of them can seek to have the bill referred to it for an opinion in addition to the Committee which is given basic responsibility.

The procedure for consideration of a bill in Committee begins with the appointment of a Rapporteur, either by consensus or by election if there is more than one candidate.

The role of the Rapporteur is to present the bill to the Committee, to propose amendments to its provisions and to prepare a report which will serve to present the bill to all the Members of the Assembly for consideration in plenary sitting, as well as to report on the examination in Committee.

The Committee may devote several sittings to hearings, particularly from Ministers, and to examination of the text.

The written report is generally on the following lines: a general description of the principal elements of the bill; followed by an examination of the provisions article by article, with a presentation of the various amendments proposed and a commentary on those which have been adopted by the Committee; and a conclusion giving the general view of the Committee.

When the report has been agreed, it is printed, published and distributed in sufficient time to allow the plenary to familiarise itself with its contents.

To help him in his work, the Rapporteur is assisted by one or more members of the administrative secretariat of the Committee, who are parliamentary staff.

After the preparation and publication of the report, the Committee meets again to consider any further amendments which have been tabled.

The Committees sit in principle in private, but the rules of the National Assembly allow the Bureau of the Committee, after consultation with its

Members, to give publicity to a hearing, by means of its own choosing, with the agreement of the witness. In the Senate, the rules allow the Committee to decide on publicity by means of its own choosing for all or part of its work.

The work of Committees is recorded in several ways:

- the minutes, which are confidential to the Assembly or to the Senate
- press *communiqués* which in the National Assembly are fairly abbreviated and allow journalists to learn the general contents or sense of the proceedings and the votes after each meeting of the Committee
- press statements in the Senate, which are prepared by the Chairman of the Committee
- the *Bulletin* of Committees of each House, which are published from time to time and list the activities of the Committees.

Examination of bills in public session[9]

— *The principles*

Since parliamentary Committees in France do not have the power to adopt a bill on behalf of their Assembly, approval in public session is obligatory.

First of all, the bill must be inscribed in the Orders of the Day in the manner described above.

Most bills are debated in public session, both in general and in respect of individual articles. But the rules of each House allow for the possibility of the adoption or rejection of a bill without debate. This procedure is used for certain Government bills proposing the ratification of international conventions or treaties, or for bills which are considered to be of only minor importance. Special documents (see Annex 2) outline the items of business to be taken.

The proceedings of each public session are the subject of two official Reports, a summary report which is distributed very shortly after the end of each sitting and is used by the press, and a full report which is prepared from stenographic notes taken during the sitting.

There are technical installations allowing televised recording of debates for use by television channels.

'The rules lay down that the plenary sittings of each House are in public. However, each House may decide to meet in secret committee (article 33 of the constitution). As secret committees are exceptional, the expression "public sitting" is generally used to mean "plenary sitting".

Additionally, the National Assembly broadcasts its proceedings on cable television during the day. Some Committee hearings are also transmitted in this way.

- *The General Debate*

Consideration of a bill in a public session begins with contributions from the Government, the Rapporteur of the Committee primarily responsible and, where applicable, the Rapporteurs for an opinion. The general debate then takes place with first, in practice, speeches from the spokesmen for the political groups and then speeches from other Members expressing more personal observations.

The Conference of Presidents fixes the amount of time available for the general discussion. Each group is given the same minimum time, plus extra speaking time in proportion to the group's strength.

The discussion can, however, be interrupted by the adoption of procedural motions of various kinds.

The three such motions common to both Houses are -

(a) that the matter be declared out of order;

(b) the Previous Question; and

(c) that the matter be referred back to the Committee[10].

A motion that the matter be declared out of order is discussed before the beginning of the general debate and can be tabled to challenge the constitutionality of all or part of the bill under discussion. The Previous Question is designed to interrupt the debate; it also is discussed before the opening of the general debate.

On conclusion of the general debate, a motion to refer the matter back to the Committee can be tabled in respect of all or part of the bill under discussion. If it is adopted, discussion of the bill is interrupted and cannot be resumed until after the presentation of a further report by the Committee.

In the National Assembly speaking time is not limited on motions of procedure, in the Senate, speaking time for moving a procedure motion is limited to 15 minutes.

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[10] The rules of the Senate provide also for a contingent motion *("motion prejudicielle ou incidente"),* which can only be used against bills listed in the priority Orders of the Day, and which make discussion of the bill subject to the fulfilment of some condition.

- *Discussion on individual articles*

If no procedural motions have been adopted, the House passes on conclusion of the general discussion to examination of individual articles, that is to say detailed consideration of the provisions article by article.

Usually the articles of the bill are called in numerical order but the power exists to change the order.

It is during the discussion on individual articles that amendments which have been tabled are examined.

- *The right of amendment*

French Constitutional law gives the right of amendment concurrently to Members of Parliament and to Government and not to the Prime Minister alone. Its exercise by Members of Parliament is limited in two ways.

First, amendments are subject to the same rules of order as non-Government bills: in respect of finance they must not propose either a reduction in public resources or an increase in a public charge. Secondly, their object must be within the legislative domain, since otherwise the Government can oppose its receivability or orderliness.

Nevertheless, the power of amendment is widely used.

In 1993, 7,806 amendments were presented in the Senate, 1,519 of which were adopted and 1331 of which were retained in the final text.

In the National Assembly, 12,187 amendments were tabled, 1,420 of which were adopted.

From the procedural point of view, the Government is not without weapons since it can, on the one hand, after the beginning of the debate, oppose the examination of any amendment which has not already been submitted to the Committee: and on the other hand it can request the House to decide by a single vote on all or part of the bill under discussion together with only those amendments accepted by the government (the so-called block vote).

On completion of consideration of individual articles the text as a whole is put to a vote. It is then adopted or rejected. The vote takes place after explanations of vote, which are limited to five minutes for each speaker.

Votes

The Constitution provides that voting in each Assembly is a personal vote. In cases of impeachment the vote may be delegated.

Moving from the simplest method of vote to the most complicated, distinctions must be drawn between voting by raising of hand, voting by sitting and standing, the ordinary public vote and the public vote at the tribune (rostrum)". Voting by raising of the hand is the normal method. Where there is doubt about the result, recourse is had to vote by sitting and standing.

The ordinary public vote includes drawing up a list of the votes of each Member and publishing it in the Official Journal in an annex to the Official Report.

In the National Assembly, the public vote is carried out by an electronic system which allows for the calculation of the result during the sitting and the drawing up of a list of the votes, including an analysis by political group. In the Senate, the method is more traditional and the Senators hand the Secretaries a coloured voting slip with their name. The colour indicates the sense of the Senator's vote.

In the most formal cases, there is the procedure of public voting at the tribune (rostrum). This is normally the case where the Constitution requires a qualified majority, as for votes on motions of censure in the National Assembly (adoption by the majority of Members of the Assembly).

Further passage of the bill

Once adopted, the bill is submitted to the Government if it is a Government bill or to the President of the other House if it is a non-Government bill. Decisions to reject a bill are notified to the Government for Government bills and to the President of the other House for non-Government bills coming from that House.

Non-government bills rejected by their Chamber of origin are not subject to any notification.

Number of considerations of a bill

When one House adopts a text in the same version in which it had been submitted to it by the other House the text is considered to be definitively adopted by Parliament. It is then transmitted to the Secretariat-General of the Government for promulgation.

In the simplest cases, this definitive adoption happens on the first passage.

"It should be noted that for personal appointments a secret vote is automatic.

If this is not the case, there is a "shuttle" between the two Houses.

At each passage, each House follows the procedure described above. However, the scope of debate of the bill is reduced each time since only the provisions remaining in dispute are considered.

The Constitution does not prevent the shuttle continuing indefinitely, but it does lay down a procedure for conciliation between the two Houses.

Resolution of conflicts between the two Houses

- *The "commission mixte paritaire" (Joint Committee)*

In cases of disagreement, a procedure for resolution of conflicts between the two Houses is provided for by the Constitution.

It is in fact the Prime Minister who takes the initiative, after two successive passages by each of the two Houses or after one sole passage in cases of urgency, by calling a meeting of a Joint Committee composed of seven Deputies and seven Senators. The Committee is given responsibility for preparing a text capable of receiving assent in both Houses.

Furthermore, if the Joint Committee succeeds in preparing a text, the Government may then decide whether or not it wishes to submit it to the two Houses.

Finally, during the consideration of the text prepared by the Joint Committee, only amendments accepted by the Government are in order.

In the most straightforward cases, the Joint Committee arrives at an agreement and the text is voted in identical terms by the both Houses.

On the other hand, if this is not the case, the Government can break the balance between the two Houses in favour of the National Assembly.

- *The pre-eminence of the National Assembly*

When the Joint Committee does not agree on a text, or when its text is not adopted in terms by the two Houses, the Government can - after a further passage in each House - ask the National Assembly to come to a definitive decision either on the text of the Joint Committee or on the last text passed by the Assembly, sometimes as modified by certain amendments of the Senate.

This possibility open to the Government of relying on the National Assembly thus allows it to overcome opposition from the Senate.

Particular features of the French legislative process

- *Engagement of the responsibility of the Government before the National Assembly*

The Constitution allows the Prime Minister to engage the responsibility of the Government before the National Assembly on the vote on a bill.

The bill is then considered adopted, unless a motion of censure is tabled within the following 24 hours and is approved.

This procedure is used either to overcome opposition to a text by a part of the majority group or to cut short a debate which otherwise would take too long because of the number of amendments. It can be used at any time during the debate.

- *Finance bills*

Examination of Finance bills is subject to strict time constraints both by the Constitution and by the Ordinance of 2nd January 1959 relating to the organic law on finance bills.

If one House exceeds the time allotted to it, the bill is withdrawn in favour of the other House, and if the Parliament (that is to say both Houses) does not come to a decision within 70 days the provisions of the bill can be put into force by Government Ordinance. This has never happened in the Vth Republic.

- *Constitutional revision*

The procedure for amending the Constitution is different from the procedure laid down for ordinary laws in certain respects.

The power of initiative rests with the President of the Republic, who can table a draft revision, and with Members of Parliament who can also table proposals for revision.

The text then follows the same procedure as for an ordinary bill but it should be noted that the proposed revision must be approved in the same terms by the two Houses: no House has a right of pre-eminence over the other.

Once a common text is approved two possibilities are open to the President of the Republic: either the convocation of Parliament in Congress at Versailles, if it is a Government proposal, or the holding of a referendum. The latter course is mandatory for non-Government proposals.

The Congress of Parliament meets in one of the wings of the chateau of Versailles. It comprises all the Members and all the Senators. The Bureau of the

Congress is the Bureau of the National Assembly. There are specific rules for the Congress.

The required majority in Congress is three fifths of votes cast.

Six Congresses have taken place since 1958, three of them since June 1992.

Control over the Constitutionality of bills passed

Laws adopted by Parliament can be referred before their promulgation to the Constitutional Council, which examines the regularity of the procedure followed and conformity of the provisions with respect to several criteria: the Constitution; the documents referred to in its preamble (the Declaration of the Rights of Man of 1789 and the preamble to the Constitution 1946 - IVth Republic); and certain fundamental principles of French law.

The Constitutional Council can have the matter referred to it by the President of the Republic, the Prime Minister, the Presidents of either House, or a body of 60 Deputies or 60 Senators. It comes to a decision within one month, or within eight days in cases of urgency.

It comprises nine appointed Members[12]: three, including the President of the Council, are appointed by the President of the Republic, three are appointed by the President of the Senate and three are appointed by the President of the National Assembly.

It should be noted that the Constitutional Council is the arbiter in respect of national elections (Presidential, Legislative or Senatorial) and referendums and adjudicates on the conformity with the Constitution of laws referred to it. It does not constitute the supreme jurisdiction in other areas. This role is exercised by the *Cour de Cassation* for private law and criminal law and by the *Conseil d'état* for administrative law. Nevertheless, in matters of theory the influence of the Constitutional Council is quite clear.

By its decisions, the Constitutional Court can validate or invalidate all or part of a law and is the sole arbiter of whether the provisions which have been struck out are regarded as detachable or not from the remaining provisions.

In respect of bills adopted by referendum, the Constitutional Council declines to exercise a fundamental control of this kind since the bills are regarded as adopted by the people, the sovereign power.

[12] Former Presidents of the Republic are Members of the Constitutional Council as of right. Mr Giscard d'Estaing who is now in this position, has never sat at the Council and is currently a Member of the National Assembly.

Promulgation of laws

Once adopted and, if necessary, confirmed by the Constitutional Council, the law is promulgated by the President of the Republic within 15 days. It is then published in the Official Journal and comes into effect.

However, the President of the Republic can request Parliament to proceed to a further consideration of all or part of the text before its promulgation. This procedure has only been used twice since 1958 and in very particular circumstances (once against a law which had become inapplicable following the striking out of certain of its provisions by the Constitutional Council; and the second time against a law which had become purposeless).

Control of Government

Debating the political responsibility of the Government

In this area, the principle of bicameralism is far from equal since only the National Assembly can overturn the Government. It is the counterpart, in accordance with one of the basic principles of the parliamentary regime, of the right of the head of State to dissolve the National Assembly. The Senate cannot be dissolved and cannot force the resignation of the Government.

The provisions dealing with the political responsibility of the Government are articles 49 and 50 of the Constitution, under which their responsibility can be put in to play in several ways. It should be stressed that the procedures involve the survival of the Government as a whole - not one or other of its Members alone.

In the first place, the Assembly can refuse a vote of confidence in the Prime Minister when he engages the responsibility of the Government on its overall programme or on a declaration of general policy, after having been so authorised by the Council of Ministers. The Government must then resign.

Additionally, a body of at least one tenth of the Members of the National Assembly, or 58 Members currently, can table a motion of censure. This motion of censure is automatically inscribed in the Orders of the Day in the Assembly. If it is approved, the Government is thrown out.

Finally, the Prime Minister may engage the responsibility of the Government before the National Assembly on a bill. If a motion of censure is adopted then the bill is considered as rejected and the Government falls.

Only one motion of censure has been adopted by the National Assembly, in 1962.

As for the Senate, the Constitution lays down only that the Government can ask the Senate to approve a declaration of general policy. If it is refused - which

has never happened - the Government is not required to resign; it merely emerges with weakened political authority.

Questions

Each House provides different types of opportunities for Members to question the Government on subjects of their own choosing.

- As individuals, Members of Parliament may table written questions to which Ministers must reply in writing within one month. If a reply is not forthcoming within this time, the question may be transformed into an oral question without debate.
- Also on an individual basis, Members of Parliament can table oral questions without debate and oral questions with debate. The latter give rise to no vote and cannot be used to engage the responsibility of a Minister or the Government. Oral questions with debate are no longer used except in the Senate.

  One morning a week is devoted in the National Assembly and in the Senate to oral questions.
- With the agreement of the political group to which he belongs, a Member of Parliament can also pose questions to the Government relating to subjects which have a direct concern with current events.

The major part of the Wednesday afternoon sitting each week in the National Assembly is devoted to questions to the Government. In the Senate, the same is true for an afternoon sitting per month. These sittings are broadcast on the public television channel FR3.

The organisation of Questions to the Government is not regulated by any rule of either House. It is based rather on custom developed by the Conference of Presidents. The Conference fixes in particular the length of the sitting and the rules for alternating between speakers in different groups, as well as the distribution of speaking time, which is fixed in proportion to their strength.

Some statistical details show in general terms the number of questions and their significance.

In 1993, in the Senate 5,231 written questions were tabled, 82 oral questions without debate and 24 oral questions with debate were inscribed in the Orders of the Day.

In the National Assembly 9,749 written questions were tabled with 445 questions to the Government being called, and 256 oral questions without debate inscribed on the Orders of the Day.

Control by Parliamentary Committees

— *The permanent Committees*

The permanent Committees control the activity of the Government in several ways.

(i) Special Rapporteurs

Special Rapporteurs of the Finance Committees of each House exercise a control on public expenditure, with each of them being responsible for examining all or part of the resources of each Ministry.

Budgetary Rapporteurs have powers of inquiry which include powers to examine relevant documents and to conduct local investigations. Additionally, each year they send a very full list of questions to each Ministry in advance of the budget debates. They can also obtain assistance from the *Cour des Comptes.*

(ii) Committee Hearings

Committees can request Ministers to attend, with the request being transmitted by their Chairman. Senior officials can equally be heard by the Committees, with the agreement of their Minister, in order solely to give information on technical matters and not on political issues.

Other persons from the world of economics or social affairs or other areas can also be heard, with their agreement, by the permanent Committees.

(Hi) Working visits by the permanent Committees

Working visits for gathering information can be arranged by one or several Committees and allow several Members of Parliament to study, in France or abroad, different aspects of an issue.

Working visits are followed up by written reports.

(iv) Control over the application of laws

Following up the application of laws is part of the task of the different Parliamentary Committees.

It should, however, be mentioned at this point that in the Senate the Chairman of a permanent Committee presents a summary of the application of laws within its sphere of interest twice a year. This summary is then circulated in the Committee Bulletins and in the Senate *Bulletins d'information rapides.* It is also included in a database.

- *Committees of Inquiry*

The task of Committees of Inquiry is to inquire into specific facts relating to the functioning either of a public service or a public enterprise. They are never joint between the two Houses.

Each House can establish a Committee of Inquiry by approving a resolution. The domain of an investigation of a Committees of Inquiry is restricted by the principle of separation of powers since no Committee can be established for events giving rise to Court hearings, however long those hearings carry on for.

Rapporteurs of Committees of Inquiry are invested with large powers of inquiry on the spot, and they expect to gather all the facts relevant to their inquiry, subject only to matters of secrecy involving national defence, foreign affairs, or interior or exterior security of the state.

The mandate of a Committee of Inquiry is limited in time, in that it ceases to exist after tabling its report or after six months.

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ANNEX I

Text of Article 34 of the Constitution

ARTICLE 34

All laws shall be passed by Parliament.

Laws shall establish the regulations concerning:

- civil rights and the fundamental guarantees granted to citizens for the exercise of their public liberties; the obligations imposed by national defense upon the persons and property of citizens;
- nationality, status and legal capacity of persons, marriage contracts, inheritance and gifts;
- determination of crimes and misdemeanors as well as the penalties imposed therefore; criminal procedure; amnesty; the creation of new juridical systems and the status of magistrates;

– the basis, the rate and the methods of collecting taxes of all types; the issuance of currency.

Laws shall likewise determine the regulations concerning:

– the electoral system of the Parliamentary assemblies and the local assemblies;

– the establishment of categories of public institutions;

- the fundamental guarantees granted to civil and military personnel employed by the State;

– the nationalization of enterprises and the transfer of the property of enterprises from the public to the private sector.

Laws shall determine the fundamental principles of:

– the general organization of national defence;

- the free administration of local communities, the extent of their jurisdiction and their resources;

- education;

- property rights, civil and commercial obligations;

- legislation pertaining to employment, unions and social security.

The financial laws shall determine the financial resources and obligations of the State under the conditions and with the reservations to be provided for by an organic law.

Laws pertaining to national planning shall determine the objectives of the economic and social actions of the State.

The provisions of the present article may be developed in detail and amplified by an organic law.

ANNEX II

Specific Documents Relating to the Orders of the Day and Sittings

This Annex, containing examples of French parliamentary documents, is not here reprinted.

2. Extracts from the Minutes off the Paris session, March 1994

Before giving the floor to Mr 0116-Laprune, Secretary General of the Senate, and Mr Hontebeyrie, Secretary General of the National Assembly, the PRESIDENT (Mr Doudou Ndiaye, Senegal) drew attention to the way in which the present French Constitution had served as a model for a number of other countries.

Mr OLLÉ-LAPRUNE noted the rich Constitutional tradition in France, which had led to the establishment of 14 Constitutions since 1789. These Constitutions had been established successively under several types of régime: Monarchy, Republic, Empire. The organisation of Parliament had varied. It had sometimes been a one chamber system, sometimes bicameral. Since the beginning of the III[rd] Republic the Parliament had always been bicameral.

The present Constitution which dated from 1958 marked a clear break, partly resulting from the circumstances of the time in which it was prepared, which saw the return to power of General de Gaulle to sort out the problem of Algeria. It differed from those which had preceded it in respect of its institutional arrangements. France suffered under the III[rd] and under the IV[lh] Republics from a lack of balance between institutions in favour of the Chamber of Deputies, later the National Assembly. Governments were fragile, precarious and unstable. Administrations were frequently overturned. The III[rd] Republic saw more than 100 Governments in 70 years. The IV* Republic had a similar instability.

The chief characteristics of the 1958 Constitution were in essence as follows:

- bicameralism was maintained, but in a more limited form in which the role of the Senate was reduced relative to that of the National Assembly;
- the Executive power was strengthened under the Constitution, from 1958 in favour of the Government and later, from 1962, in favour of the President of the Republic (ie from the time when the President was elected by direct universal suffrage);
- a control of constitutionality over laws was established.

The primacy of the President of the Republic was a new element in French constitutional practice. It was initially linked to the presence and to the personality of President de Gaulle. In 1962 this primacy was strengthened by the election of the President of the Republic by direct universal suffrage, replacing the previous system of electing the President via an electoral college largely comprising Members of Parliament and representatives of local authorities. The

exercise of power by the President of the Republic depended in essence on whether or not the Presidential majority was the same as the parliamentary majority. When the two majorities were not the same the position was described as "cohabitation". The strengthening of the role of the Government under the V^{lh} Republic lay essentially in the powers it held to accelerate the legislative procedure and to avoid endless shuttles between the two Houses from blocking its legislative proposals.

The second Chamber comprised in France 321 Members elected by indirect universal suffrage. The electors were, on the one hand, the Members of Parliament and, on the other, certain elected representatives among the local authorities. The Senate was the chamber for local authorities and the chamber of solidarities. It represented the citizens via the specific institutional and geographical unit of the *Département.* Additionally, the Senate had the particular task of representing overseas French citizens. Overall, it was the chamber which concerned itself with matters relating to the territory.

The Senate was also a chamber of stability. On the one hand, the minimum age to be elected as Senator was 45, a higher threshold than for the position of Deputy in the National Assembly (23). Furthermore the Senators were elected for nine years and the Chamber was not wholly re-elected in one go, but one-third at a time each three years.

The President of the Senate filled any temporary vacancy in the Presidency of the Republic. This situation had come to pass twice: once after the resignation of President de Gaulle in 1969 following the rejection of a Government bill submitted to referendum, the second following the death in office of President Pompidou in 1974.

Relations between the Government and the Parliament under the provisions of the 1958 Constitution had led to a shift in the balance of power in favour of Government and a corresponding limitation on the powers of Parliament. On the one hand, Parliament met only for six months each year in two ordinary sessions of three months, a spring session from 2nd April to 30th June and an autumn session of 2nd October to 20th December. The autumn session was known as the Budget session. These sessions could be extended by extraordinary sessions on the initiative of the Government, or on the initiative of a majority of the National Assembly. The arrangements for sessions applied only to plenary sittings since committees could meet outside the sessions. Consideration was being given in current debate to the possibility of extending the length of sessions to nine months.

A further point was that the legislative domain was limited. Article 34 of the Constitution listed the competence of Parliament, and its work was required

to be limited only to those matters expressly allotted to it. Article 37 on the other hand laid down that any matters not listed as being within the legislative domain shall be decided directly by Government under its regulatory power.

The Orders of the Day for Parliament were to a large extent fixed at the initiative of Government since bills tabled or accepted by it were given precedence. Various other provisions strengthened the Government's role in Parliament. The 1958 Constitution considered such provisions to be necessary since previously the Government did not have a solid and stable majority. Since 1958, majorities had always been stable majorities.

The control over the constitutionality of a law was an innovation for France in the 1958 Constitution. The Constitutional Council had a regulatory function between the different public institutions and exercised the following functions: the judicial authority for elections; the judicial authority for the referendum procedure; and basic control over the constitutionality of laws passed, organic laws, and the rules of order of the parliamentary assemblies.

For organic laws and for the rules of the two Houses, its role was obligatory. For ordinary laws the Council examined only those laws referred to it by any of four authorities - the President of the Republic, the President of the Senate, the President of the National Assembly and the Prime Minister - as well as, since 1974, by 60 Deputies or 60 Senators.

In 1971 the Constitutional Council extended the legal base to which it referred in coming to its decisions. It decided in practice that it was required not only to consider the text to the Constitution itself but also the Declaration of the Rights of Man of 1789 and the preamble of the Constitution of 1946, both these texts being referred to in the preamble to the 1958 Constitution, as well as the principles it identified as the fundamental principles recognised by the laws of the Republic.

These provisions represented its position in respect of constitutionality. But the Constitutional Council also possessed a wider power of control. When only two or three points on a bill were referred to it, it regarded the whole bill as having been referred. Additionally, it had as part of its jurisprudence developed the principle that where it did not annul a provision which it considered to be unsatisfactory it could give precise guidelines on the way in which it was to be applied.

Mr HONTEBEYRIE indicated that the National Assembly comprised 577 Deputies elected for a maximum length of five years. This mandate was cut short in the event of dissolution. This had happened four times since 1958. The Members were elected by universal direct suffrage, with one Member being elected for each constituency on a majority basis with two rounds of voting.

This method of voting was able to produce majorities in the National Assembly. Currently the majority was comprised of two parliamentary groups.

A particular point in the election of Members concerned the regulations relating to the financing of electoral expenses. Expenditure incurred by each candidate in the constituency was limited by a ceiling which was related to the size of the constituency. The expenditure was charged to a single account, the campaign account, held and certified by an agent, which was sent to the National Commission for campaign accounts. If the accounts were sent too late, if they were not correct, or if the expenditure ceiling had been exceeded, the Commission referred the matter to the Constitutional Council. Such infractions led to the Member being declared ineligible for one year.

Furthermore, at the same time as each Member was elected, a replacement was also elected. The replacement took over in the following circumstances: death, appointment to the Government, service on a Government mission or appointment for longer than six months, or appointment to the Constitutional Council.

The status of Members of Parliament in France included several restrictions and several protections. The parliamentary mandate was incompatible with the exercise of certain public functions and certain private functions. The most notable incompatibility was that of membership of the Government. When a Member was appointed to the Government he had 30 days in which to choose between his parliamentary mandate and his ministerial post. After 30 days he was considered to have opted for the ministerial post. During the 30-day period the Member of Parliament could not sit in the Assembly to which he belonged.

A Member of Parliament was protected by a parliamentary immunity comprising, on the one hand, immunity from being taken to court for acts committed in the exercise of his functions and, on the other hand, a need for specific authorisation from the Assembly while it was sitting or from the Bureau out of sitting periods, if he was to be taken to court for actions unrelated to the exercise of his functions.

The Senate and the National Assembly exercised in France the traditional role allocated to Parliament: approving legislation, controlling the actions of Government, and the maintenance of confidence in the Government.

So far as the passage of legislation was concerned bicameralism was not strictly equal in France. The power of initiative in introducing bills rested with the Prime Minister and with Members of Parliament. A distinction was drawn between Government bills and non-Government bills. While the field for initiative was very wide for Members of Parliament there were some strict limitations. On the one hand, the domain susceptible to legislation was strictly

defined, and on the other hand, the Constitution provided that no initiative by a Member of Parliament could lead to an increase in public expenditure or the creation or increase of a public charge.

Bills were tabled with the Bureau in one House or the other and were referred to one of six permanent committees unless a special committee was established. Government bills dealing with finance had to be tabled in the National Assembly.

The committee to which a bill had been referred appointed a rapporteur to examine its provisions. When he had made sufficient progress, the bill was listed in the agenda of the committee and the rapporteur could propose some possible amendments. Discussion in the Committee would usually begin with a hearing with the relevant Minister. It would continue with other hearings, notably with representatives of the socio-economic groups who were interested. There would then be a general discussion and a discussion on individual articles at which amendments could be agreed. Finally the written report was made available. The discussions in Committee were not published.

The rules provided that no consideration could take place in the plenary on a bill except on the basis of a written report. As for the inclusion of the bill in the Orders of the Day, the Conference of Presidents in each House listed the Government's proposals. It could, however, also list a number of other bills in the Orders of the Day - the so-called complementary Orders of the Day.

A representative of the Government sat in each Conference of Presidents. Currently, there were two Ministers responsible for relations with Parliament: one for the National Assembly and one for the Senate. The Government's power of priority in the Orders of the Day meant that most bills passed by Parliament were Government bills. Only 10% were bills submitted by individual members.

Consideration of a text in the plenary was similar to that in committee. In the plenary, public sessions were the rule. Nevertheless, each House could if it wished meet in secret. The general discussion was preceded by a presentation on the bill by the Minister and the rapporteur. Speaking time in the general discussion was fixed by the Conference of Presidents. At the beginning and at the end of the general discussion the various procedural motions designed to halt consideration of the bill could be moved.

The exercise of the right to speak was very closely regulated. Without exception, either the number of speakers was limited or the total speaking time itself was limited. Deputies and Senators therefore used their right of amendment recognised under the Constitution which allowed them to express widely their points of view. Ten thousand amendments were tabled and discussed in the

National Assembly in 1993. Each amendment was put to the vote before the Article to which it related.

The Government had at its disposal a number of procedures to overcome opposition or obstruction in the Assembly which could take the form of an extremely large increase in the number of amendments.

Votes in each House took place in general by raised hands. In certain circumstances there was a public vote, usually used when a political group wishes to indicate its position on important bills.

The Government had various means at its disposal to overcome discontent in the Chamber. On the one hand, it could put an end to discussion and voting on amendments which had not been previously submitted to the committee and, on the other, it could require the House to come to a decision by a single vote on all or part of the text of the bill under discussion. The Government could also engage its responsibility on a vote on the bill before the National Assembly: debate would then immediately be suspended and the Opposition would have 24 hours to table a motion of censure which must be signed by one-tenth of all Deputies.

The system for the shuttle of bills between the two Houses was as follows. In general, the shuttle stopped when the second House adopted a text identical to that adopted in the first House. This outcome was the least frequent. After two passages (or after one passage only if it requested urgency) the Government could accelerate the procedure and require the establishment of a joint committee comprising seven Deputies and seven Senators. This committee examined the proposals which had not been agreed in the same terms by the two Houses. All suggestions could be considered. If there was agreement on the provisions remaining under discussion in the joint committee, and then agreement to the texts proposed by the committee by each House, then the legislative process was complete. On the other hand, if there was no agreement in the joint committee or, if the committee agreed but the two Houses did not, then approve the text in the same terms, the shuttle process resumed. The Government could then require the National Assembly to pronounce in a final reading on the text on which it was in disagreement with the Senate.

Finally, the definitive agreed text could be referred to the Constitutional Council. If the Council declared it to be in conformity with the Constitution, or if it was not referred to the Constitutional Council, the President of the Republic promulgated the law.

As for political control of the Government by Parliament several elements must be considered.

Three types of questions existed in the French parliamentary regime. First, written questions were published in the Official Journal once a week. This procedure was heavily used. Six thousand questions were tabled in the Senate in 1993 and fourteen thousand in the National Assembly. The Government was required to reply to these questions within one month. If necessary, they could call for a supplementary period of one month. If not answered within that time the question could be transformed into an oral question.

Secondly, oral questions were tabled in writing and published in the Official Journal. When they were listed in the Orders of the Day they gave rise to an exchange between the tabler of the question and the Minister. Finally, there was a particular procedure for questions to the Government. One sitting a week in the National Assembly and one sitting a month in the Senate were devoted to questions to the Government. The Members of the Government were all present and Deputies and Senators asked them questions. The terms and the subjects of the questions were not known in advance. The sittings were televised.

Permanent committees in each House exercised a control function. They could hear Ministers, establish working groups or hold joint inquiries with other committees. Their work gave rise to written reports which were circulated.

Committees of Inquiry allowed investigations to take place into particular facts and public services to be monitored. Committees of Inquiry, once established, finished their work within six months. They were not permitted to consider issues which were subject to judicial processes.

Finally, a number of on the spot inquiry procedures existed for rapporteurs of permanent committees.

In respect of European matters the National Assembly and the Senate also exercised political control over Government. This was finely developed in the National Assembly. The task was now filled by the *Délégation* for the European Communities, which was responsible for examining Community proposals referred to the Assembly by the Government. The National Assembly and the Senate could present their observations to the Government and agree resolutions which the Government was required to take into account in its European negotiations. Additionally, the Government could make statements, which were not put to a vote, on a number of relevant subjects. Such statements were sometimes made at the request of Members of Parliament.

The Government's responsibility could be put at stake in the National Assembly through motions of censure. These must be tabled by one-tenth of Members and were voted on within 48 hours of their tabling. The vote on a motion of censure was a solemn proceeding with each Deputy casting his vote at the Tribune. Only those Deputies in favour of the censure motion took part in

the vote. A censure motion had been adopted only once since 1958, in 1962. The Government could also engage its responsibility either on its programme or on a statement of general policy. In such a case the Assembly expressed its view by a censure motion.

Mr MOUFONDA (Congo) sought further details on the passage of bills between the two Houses and the periods within which they must be examined. Mr HONTEBEYRIE replied that the effect of the shuttle between the Houses on the timescale on which texts were examined was difficult to measure. Some bills were included in the Orders of the Day and examined by the two Houses a long time after they were first tabled. Most bills were passed in the course of a single three-month session. The French system with joint committees allowed a bill to pass very quickly. Two months was a reasonable period for the adoption of a bill.

Dr ALZU'BI (Jordan) sought further details on the organisation of the French inter-parliamentary group and on the methods of resolution of conflicts between the two Houses. Mr BECANE (Secretary General of the Questure of the Senate) gave details on the organisation of the French interparliamentary group. This comprised Deputies and Senators and was based on a system of voluntary membership. It currently comprised 90 Members with Mr André Fosset of the Senate as its Chairman. The inter-parliamentary conference for the Paris session was presided over by Mr Monory, the President of the Senate, and Mr Séguin, the President of the National Assembly. Mr HONTEBEYRIE indicated that conflicts between the two Houses on the text of a bill were regulated either through the shuttle process or through the means of a joint committee.

Mr SANTARA (Mali) asked about the methods by which the head of state exercised his right of communication with Parliament. He noted that in Mali the President of the Republic appeared before the Assemblies in two circumstances: first, when he took the oath before Members of the Constitutional Court and secondly, when the President was being impeached. He also wished to know about the reception of heads of state of foreign countries by Presidents of the two Houses of the French Parliament. As for promulgation of laws, he wished to know whether there could be conflict between the Parliament and the President of the Republic. Finally he sought further details on the results of the work of committees of inquiry. Mr OLLÉ-LAPRUNE indicated that the right of communication with the Parliament by the President of the Republic was not frequently exercised. It was exercised either after elections or on serious occasions when the President of the Republic wished to indicate his point of view. Reading of the message had a solemn and rare character. The messages were read by the President of the Assembly itself. As for promulgation of a law, the

President of the Republic was required to promulgate it within 15 days. He could, however, within this time request a further consideration by Parliament. The Parliament was then free to adopt such measures as it wished. Mr HONTEBEYRIE stressed that around a hundred laws were voted annually and that since 1958 the President of the Republic had only requested further consideration of a law in two cases. Parliament could not refuse a further consideration. The two precedents were not significant. In one case it related to a bill which had ceased to have any purpose and in the other it concerned a bill which had become difficult to apply following the annulment of one of its provisions by the Constitutional Council. The presence of a head of State or Government of a foreign country before one or other House was neither expressly authorised by the Constitution nor expressly forbidden. In practice, it had happened twice in 1993, in addition to the precedent of 1919 when President Wilson was heard on the occasion of the adoption of the Treaty of Versailles. The consequences of the work of committees of inquiry were as follows: if the committee did not publish a report within the six-month period, its work remained secret. If it reported within this time the report was distributed unless the House agreed to the contrary. There was no legal means of giving practical effect to the report of a committee of inquiry.

Dr GALAL (Sudan) sought further details on the budget of the two Houses. Mr BISAULT (Secretary General of the Questure of the National Assembly) replied that the Ordinance of 1958 on the administration of the Assemblies laid down that their budget was fixed by a Joint Committee composed of the Questeurs of each of the Houses, that is six Questeurs in total. This Committee was chaired by a *Président de Chambre à la Cour des Comptes* with two other Members of that Court in an advisory capacity. This Committee fixed the amount of expenditure necessary for the functioning of the two Houses. The amount was reported to the Ministry of Finance which included the sum in its Finance Bill. Respect for the principle of financial autonomy of Parliament meant that the amount was not submitted to the Government for approval. Before 1958 each House had debated its own budget publically and transmitted to the Government the amount it sought.

Mr SWEETMAN (United Kingdom) asked whether the French system included a "guillotine" system for reducing the number of amendments to a Government bill. Mr HONTEBEYRIE replied that the right of amendment was exercised very freely in France despite some limitations. A system of "guillotine" under which the Speaker was able to call or not to call amendments did not exist in France. There existed, on the other hand, a procedure of block voting which allowed the Government to require Parliament to come to a decision by a single vote on the text of the bill as amended by the amendments which the

Government accepted. Within this procedure, every amendment tabled was nevertheless debated. The rules of procedure provide that during examination of an amendment the mover of the amendment, the Committee, the Government arid one speaker against the amendment could be heard. The number of amendments which could be heard in an hour was about ten. The block voting procedure did not avoid discussion of amendments, though the Government could always engage its responsibility if there was deadlock. In such a case, discussion or debate on the text was immediately interrupted.

Mr DAVIES (United Kingdom) sought further details on the legislative role of parliamentary committees. Mr OLLÉ-LAPRUNE explained that it would be wrong to talk about a decline of Parliament but of a redrawing of the balance between different institutions in France. The legislative role of committees was limited to consideration of texts and not their adoption. The Constitution gave no decision-taking power to a committee. Chosen alternatives must be ratified in the plenary.

Mr KAITOUNI (Morocco) asked about the election of the President of the Republic by universal direct suffrage and the current situation of *cohabitation.* He stressed the value of a modified bicameralism. He also enquired about the significance of the most recent meeting of the Congress in Versailles to revise the Constitution, which had had as its object the adoption of a text which did not conform to the current Constitution. Mr OLLÉ-LAPRUNE outlined the conditions for approving the Constitution by vote. A draft constitutional revision must be agreed in the same terms by each House. The proposal was then submitted to a referendum. For proposals for revision of the Constitution at the initiative at the Head of State, the latter had the power to summon a meeting of the Parliament in Congress at Versailles. The Congress must agree to the proposed revision of the Constitution by a three-fifths majority. As for 'cohabitation' the rebalancing of institutions under the V^{th} Republic was undeniable. The current political legitimacy of Government stemmed essentially from Parliament. The situation came as a surprise to the French people in 1986 but not in 1993.

Mr RAVAL (Philippines) asked about parliamentary committees, wondering about the degree of flexibility in the French system. The Philippines Senate had 43 permanent committees for 24 members. Mr HONTEBEYRIE outlined the competences and composition of committees. Two committees had about 140 members in the National Assembly and four others had 60 members. The present number of committees was relatively reduced: the difficulty was not in finding a specialist from within the committee, but, for those committees with a wide field to cover such as cultural affairs, in examining the number of bills submitted to a satisfactory level. There had been a proposal to increase the number of committees.

Mr DAVIES (United Kingdom) asked about the responsibilities of the Secretaries General. In respect of the Houses of Commons and of Lords in the United Kingdom, particular powers were laid down for the Clerk in different areas by statute. Mr OLLÉ-LAPRUNE replied that in the Senate, the Secretary General of the Presidency directed the Secretariat General of the Presidency and that of the Chamber, while the Secretary General of the Questure handled administrative and financial questions to the extent that the Assembly had an administrative and financial autonomy. Mr HONTEBEYRIE explained that the system in place in the National Assembly was similar. He questioned the extent to which the system was perfect in that there was a large number of common services such as information technology services.

The PRESIDENT stated that the presentation on the French Parliamentary System was now completed.

Mr HONTEBEYRIE informed Members of the Association that the Bureau of the National Assembly had just opened a museum of the institution of Parliament in the buildings of the Chateau of Versailles where meetings of the Congress of Parliament took place. President Séguin had written to the Presidents of the Assemblies to indicate to them that a room would be opened and devoted to foreign Parliaments and to ask each Parliament to send some item which was characteristic of their history and their activity. He indicated that he would himself have the opportunity to speak to his colleagues, the Secretaries General from abroad, to put this idea into practical effect.

ANNEX: *Question and Answer session in the National Assembly following visits to the Senate and the National Assembly on the morning of Tuesday 22nd March:*

Mr CLERC (Switzerland) asked whether personal voting was guaranteed. Mr HONTEBEYRIE replied that this was a difficult area. While in theory there was only one very precise circumstance in which a Member's vote could be delegated to another, in practice voting was-heavily controlled by the Whips. These practices might be subject to change in the near future.

Mr ORBAN (Belgium) asked whether a Member could correct a mistaken vote. Mr HONTEBEYRIE replied that although the vote cast could not be changed, a Member could clarify an error by explaining his vote.

Mrs HUBER (Switzerland) asked how much time was allowed for an electronic vote. Mr HONTEBEYRIE replied that although five minutes was available according to the rules, in practice votes took only a few moments.

Mr MOUFONDA (Congo) asked how debates were published. Mr HONTEBEYRIE replied that there was a full official report of all the debates.

Dr ALZU'BI (Jordan) asked about speaking time for Members, about whether television coverage was live, and whether all Members of Government had to attend debates or Question time. Mr HONTEBEYRIE, on the first point, replied that speaking time was variable. The longest speeches allowed were up to 20 minutes, while only five minutes were available for debates on the individual articles of bills. On the second point, television coverage could be either live or recorded depending on the circumstances. In respect of attendance by Members of the Government, only the Minister relevant to the debate or the question in hand was required to attend.

II. The Parliamentary system of Denmark

1. Paper on the Parliamentary system of Denmark - the Folketing, September 1994

1. Introduction

1.1 Brief historical survey of the parliamentary system of Denmark

Danish democracy is founded on thoughts the seeds of which were sown in 18th century Europe as a reaction against royal absolutism which was introduced as the form of government in Denmark in 1660.

The transition from absolutism to representative government was on the whole a gradual process. There was no question of a revolution, for although the ruling monarch had almost absolute power, absolutism in Denmark was to a large extent a collegiate form of government; at the end of the 18th century it included the foremost men of the Age of Enlightenment. They carried through a

social and economic revolution that covered agricultural reforms, abolition of feudal restraints and school reforms for the ordinary population.

At the beginning of the 19th century, Denmark was involved in the wars between Germany, Britain and France. Lord Nelson defeated the Danish fleet in the Battle of Copenhagen in 1801, the British bombarded Copenhagen and seized the Danish fleet in 1807, the State went bankrupt and subsequent to the peace negotiations in Vienna in 1814, Denmark had to cede Norway and accept that the most southern part of the Kingdom, the Duchy of Holstein, was integrated in the German federation.

After 1814, the Danish political system was strongly influenced by developments in Europe, and instigated by the liberal uproar in Paris in 1830, the King sponsored a new Constitution which allowed for consultative assemblies of the Estates of the Realm. Liberal forces were speaking in favour of an increasing share in government on the part of the people. And in 1849 the King signed a new democratic Constitution. The Constitutional Act of 1849 was strongly influenced by the Belgian Constitutional Act of 1830 in its structure and mode of thought as well as by the Norwegian Constitutional Act of 1814. These Constitutions can again be said to build on 18th century ideas primarily formulated by Montesquieu and Rousseau. The Danish Constitutional Act of 1849 was extremely liberal and contained i.a. provisions on universal suffrage, freedom of assembly, freedom of conscience and universal military service.

In the years succeeding the first Constitutional Act, reactionary currents instigated by squires and civil servants, supported by the new King, as well as political pressure from foreign countries, led to curtailments in the liberal Constitution. Conservative forces made use of the continued confrontation with the most southern pro-German duchies - which in 1864 let to a military defeat for Denmark and a victory for Prussia and Austria - to make amendments to the Constitution. The election rules applying to the Upper Chamber, the Landsting, were amended in 1866, in a way that gave squires and businessmen a permanent majority. As the King chose his Ministers from the same circles, the popularly elected liberal Folketing was put out of the running, especially in the period from 1884 to 1894 when the Government was issuing the annual Finance Acts without consulting Parliament.

It was only after the year 1900 that the liberal farmers' party, entitled the Liberal Party, came into power. But the Party did not dominate legislation for long due to internal cleavages and a permanent conflict with the Conservative majority of the Landsting. In 1915, an amendment was made to the Constitutional Act which meant that the power of the Landsting was limited, women got the vote, and a more just electoral system, introducing the system of proportional representation, came into use.

During the First World War, from 1914 to 1918, Denmark remained neutral vis-à-vis the fighting parties. And the Government succeeded in keeping Denmark out of the War.

In the interwar period, Denmark like many other European countries experienced a heavy migration from country to town *pari passu* with the growing industrialization. This meant a strengthening of die Social Democratic Party, which took the place of the Liberal Party as the dominant party in the Folketing.

During the Second World War, Denmark again observed neutrality but irrespective of this fact, Nazi Germany occupied Denmark in 1940. The Occupation lasted until May 1945. After the Liberation, the Danish Freedom Council, which was set up by the Resistance Movement, together with the largest political parties from the interwar period formed a coalition Government which was later to be replaced by Social Democratic Governments. The latter have dominated Danish politics up to some time in the 1960s apart from short intervals with Liberal-Conservative Governments. In 1953, one of these Governments passed an amendment to the Constitutional Act which finally settled the everlasting conflict with the reactionary forces of the past by abolishing the Landsting and strengthening the Folketing.

From the end of the 1960s up to 1982, Denmark had alternating Social Democratic and Liberal minority Governments and from 1982 to 1993 conservatively dominated minority Governments. In January 1993, the Social Democratic Party and the three small liberal parties, the Centre Democrats, the Social Liberal Party and the Christian People's Party, formed a coalition Government supported by the least possible majority (90 seats). This Cabinet is led by the Social Democratic Prime Minister, Mr. Poul Nyrup Rasmussen. In 1994, one Member of the Centre Democratic Party seceded from the Party to become an independent. Thus the present Government is a minority Government supported by 89 seats.

1.2 Tripartition of power

Like in most Western democracies, the Danish parliamentary system is founded on a tripartition of power i.e. a division between the legislative, the executive and the judicial powers. In accordance with the Constitutional Act, "Legislative authority shall be vested in the King and the Folketing conjointly. Executive authority shall be vested in the King. Judicial authority shall be vested in the courts of justice". The idea behind the tripartition of the powers is to balance them against one another.

Section 15 in the Constitutional Act, which deals with parliamentary principles, lays down that "A Minister shall not remain in office after the Folketing has approved a vote of no confidence in him".

An important feature of the Danish system is that a Government need not be supported by a majority - as long as it is not outvoted by a majority (negative Cabinet responsibility).

Another important feature of the Danish Parliamentary system is that the Constitutional Act lays down that "The Members of the Folketing shall be elected for a period of four years", although "The King may at any time issue writs for a new election".

The relationship between the Government and the Folketing can briefly be described as follows. The Government and the Folketing exert the legislative power. The Government exerts the executive power through its Ministers, but a Government cannot remain in office if the majority of the Folketing goes against it. In principle, the Folketing has no influence on the executive power but if the executive power acts contrary to the majority of the Folketing, the latter can overthrow the Government by moving a vote of no confidence. On the other hand, the Government can, at any time, dissolve the Folketing and issue writs for an election.

1.3 Parliament building

The Danish Parliament (the Folketing) is domiciled at Christiansborg Palace in central Copenhagen. This positioning on the small island of Slotsholmen - surrounded by narrow canals has been the centre of the Kingdom of Denmark for more than 800 years.

During the Middle Ages, Bishop Absalon erected a castle here which was meant to serve as a protection against pirates from Northern Germany. This castle survived for about 200 years when it was torn down in 1370. The remains of the castle can still be seen in the vaults below the present Palace. In the following centuries, the Danish Kings built and lived at Slotsholmen. Copenhagen had by then become the capital of the Realm.

In 1736, the King began the erection of a grand four-winged baroque Palace. This Palace was only in use for about 50 years because in 1794 it was caught in a heavy fire which devastated most of it. In the years between 1806 and 1828 a new Christiansborg Palace was erected. It was built in the classical style and it was this Palace which became the centre of events when the country went from absolutism to democracy between 1848 and 1849. This Palace also had a short life of about 50 years. It was burnt down in 1884 and more than

twenty years elapsed before it was possible to begin the reconstruction of it. The present - Christiansborg - was built in the years between 1906 and 1918 making use of the same foundation walls which had been used for the two former buildings. In 1918 the Folketing and the Landsting were able to move into the new building. The style is that of the new Baroque and the heaviness and solidity of the construction is meant to underline the importance of the Palace as political centre of the Realm.

Today the main parts of the Palace premises are used by the Folketing. Apart from the Folketing, Christiansborg Palace also houses the Supreme Court, the Prime Minister's Office and the Royal Reception Rooms. This means that in addition to the legislative power, the Palace houses part of the judicial and executive powers. The Folketing also disposes of an impressive warehouse dating back to 1603. A few years ago it ways restored and converted into offices.

2. Danish form of government

2.1 Cabinet responsibility

Since 1901 it has been an unfailing constitutional practice that a Government must step down or call for a general election if it is confronted with a vote of no confidence or finds itself in a minority in the Folketing (Parliament).

In the course of the twentieth century this principle has been developed into a grand and elaborate set of constitutional norms and political practices. It should, however, be noticed that during the 1980s the Conservative minority Governments in several cases accepted finding themselves in a minority even in matters of substantial political importance without resigning or calling for a general election.

When the Constitution was revised in 1953, the principle of cabinet responsibility was directly confirmed and incorporated in Section 15 of the Constitutional Act of Denmark, which states that,

> "A Minister shall not remain in office after the Folketing has approved a vote of no confidence in him.
>
> It the Folketing passes a vote of no confidence in the Prime Minister, he shall ask for the dismissal of the Cabinet unless writs are to be issued for a general election. If a vote of censure has been passed on a Cabinet or it has asked for its dismissal, it shall continue in office until a new Cabinet has been appointed. Ministers who remain in office as afore-

said shall perform only what may be necessary to ensure the uninterrupted conduct of official business."

Thus, briefly and concisely, the principle of cabinet responsibility is set forth in the Constitution and at the same time these are the only written rules that regulate the forming of a Government in Denmark. Below follows a somewhat more detailed description of the process of the forming and resignation of a Government.

2.2 Danish Governments are normally minority Governments

We must go all the way back to the beginning of the twentieth century to find a Cabinet composed of one party backed by a majority in the Folketing. Since before the First World War, Danish Cabinets have had to be made up of several parties in order to secure the necessary majority as they have had to accept the role of minority Governments. After 1945, the successive Cabinets have been mostly minority Governments even though several attempts have been made to create the broad majority Government which has always been held up as an ideal in Danish politics, but which has increasingly acquired all the characteristics of a mirage.

Foreign observers often have difficulty in understanding how Danish politics can function in this way. Above all, it is probably the Cabinet's minority basis that strikes an unfamiliar note. However, the mystery is partly solved the moment one realizes that a minority Government may usually expect to receive the support of one or several other parties in parliamentary votes if the Government's survival is at stake. When to the strength of the Government party or parties is added that of the so-called supporting parties, in many, if not all, situations the Government will be able to secure a narrow majority in which it can base its survival.

A supporting party is a party that is prepared to adopt a position of considerable flexibility to keep the Government in office. The cooperation between the supporting party and the Government may sometimes resemble the cooperation within a coalition Government. At other times the relationship will be less close and situations may well arise where the Government is uncertain of how far it can depend on the supporting party. At times a minority Government will need to function without an actual agreement of firm support. It must then carry out its work in the expectation that some of the parties are ready to negotiate on separate issues and/or to stay neutral.

Whether or not Denmark is ruled by a coalition Government supported by a majority or by a minority Government with or without firm support from other

parties, the Government's strength must be secured on the basis of negotiations where the parties approach each other, yield to each other and make big or small concessions.

2.3 A Cabinet's resignation

A Government may be brought down in many different ways. The nature and development of a Cabinet crisis are conditioned by two factors, the first being how the Opposition in the Folketing acts and the other how the Government itself chooses to behave. Like in a marriage, it takes two to decide whether the situation is to take a dramatic turn and how dramatic it is going to turn out.

The most clear-cut case is the one in which the Government is faced by a direct censure and in which it responds by dissolving the Folketing. Another case might be if the Government chooses to resign without having been defeated in the Folketing. A third case could be when the Government after a defeat in the Folketing chooses to resign. A fourth and more common case could be when the Government triggers off a Cabinet crisis by dissolving the Folketing without having suffered a defeat. For instance, the Prime Minister may wish to precipitate an election in order to profit from some supposedly favourable changes in voters' attitudes.

3. Electoral system, composition of the Folketing, financial matters etc.

3.1 Right to vote and eligibility

The Constitutional Act lays down that "Any Danish subject who is permanently domiciled in the Realm" and who has reached the age of eighteen "shall have the right to vote at Folketing elections". "Any person who is entitled to vote at Folketing elections shall be eligible for membership of the Folketing, unless he has been convicted of an act which in the eyes of the public makes him unworthy to be a Member of the Folketing".

3.2 Electoral system

The Danish electoral system is extremely complex but briefly it builds on the principle of election by proportional representation and is made in a way which allows for the regional affiliation of the candidates (135 seats in the Folketing obtained by election in a multi-member constituency) and also for the mathematical accuracy of a proportional division of seats in relation to votes for

the parties (40 supplementary seats). Thus the Folketing is composed of 175 Members elected in Denmark as well as two Members elected in the Faroe Islands and two in Greenland. The Faroe Islands and Greenland are part of the Kingdom of Denmark but they both have comprehensive home rule arrangements and they have their own Parliaments. The Danish electoral system comprises a threshold rule which i.a. means that parties which obtain less than 2 per cent of the valid votes cast do not have a share in the supplementary seats.

In accordance with the provisions of the Constitutional Act, writs for an election shall be issued every four years. This means that with the present Folketing, the next election will take place in December 1994 at the latest.

3.3 Composition of the Folketing

The present Folketing (179 seats) is composed of eight parties; the Social Democrats (71 seats) (of whom one Member is elected in the Faroe Islands and one in Greenland), the Conservatives (31 seats) (of whom one Member is elected in the Faroe Islands), the Liberals (31 seats) (of whom one Member is elected in Greenland), the Socialist People's Party (15 seats), the Progress Party (12 seats), the Centre Democrats (7 seats), the Social Liberals (7 seats), the Christian People's Party (4 seats), and finally there is one single Member who has decided to remain outside the parties.

One third of the Members of the Folketing are women. During the last 25 years the number of female Members has been increasing. In 1968, only about 10 per cent of the Members of the Folketing were women.

Denmark has a tradition for Ministers also to be Members of the Folketing but when the present Government was formed in 1993 a number of newly elected Ministers, belonging to small Government parties, gave up their seats of their own accord and called in their substitutes.

3.4 Status of Members of Parliament

In order to ensure independence in the carrying out of the tasks of the Members of the Folketing, provisions to this effect are to be found in the Constitutional Act and in the Folketing Election Act respectively. In accordance with the Constitutional Act "No Member of the Folketing shall be prosecuted or imprisoned in any manner whatsoever without the consent of the Folketing, unless he is taken *inflagrante delicto"*. The immunity may, however, be disregarded if the Folketing gives its consent. Since the beginning of the present century, this has happened in all cases in which the Minister for Justice as supreme head of the Prosecution has requested it.

"The Members of the Folketing shall be bound solely by their own consciences and not by any directions given by their electors". In practice, Members do, however, vote in accordance with their respective parties. Moreover, a Member of the Folketing cannot without the consent of the Folketing be held responsible for his statements in the Chamber e.g. by the courts of justice. In practice, such a consent is never given.

Nevertheless, the President of the Folketing can, in accordance with the Standing Orders of the Folketing, call a Member to order, forbid a Member to speak or exclude a Member from committee meetings or debates in the Chamber for up to 14 days. However, the last mentioned sanction is applied very rarely.

3.5 Remuneration and pension

The Members of the Folketing are entitled to receive a remuneration, the size of which, in accordance with the Folketing Election Act, is laid down according to the income brackets which apply to State employment. At the moment, the remuneration amounts to about DKK 342,000 and largely corresponds to the remuneration of a Head of Division in the public administration. In addition to this, a Member of the Folketing receives a non-taxable cost supplement, the size of which is measured according to the siting of the permanent residence of the Member in question. The cost supplement amounts to between DKK 34,000 and DKK 86,000 a year.

Members of the Folketing are entitled to a pension when they have been Members for at least one year. However, a pension will only be paid out after the Member in question has completed his sixtieth year. Also surviving spouses and children are entitled to a pension according to specific rules. If a Member leaves the Folketing subsequent to a general election, he will continue to receive a basic remuneration for a period ranging from 6 to 12 months depending on how long he has been a Member of the Folketing.

When somebody is elected to the Folketing, the latter makes no demand on the person in question to give up his usual job in consequence of the election. However, the President of the Folketing and Ministers must give up all former employment etc.

3.6 Leave and replacement by substitutes

A Member can obtain leave owing to illness, temporary absence on public business abroad or in connection with pregnancy, giving birth or adoption. In such cases, a Member retains his/her remuneration. If it is a question of a private

period of leave, the Member does not receive a remuneration. When a Member has obtained leave and is thus no longer a Member of the Folketing, he/she is replaced by his/her substitute.

3.7 Members' tasks and economic interests

Subsequent to the general election in 1994, a new set of rules will be introduced in which the Standing Orders Committee invites Members of the Folketing to register a number of tasks and economic interests. The aim of the new rules is to make Members' economic interests outside Parliament more easily accessible to the public. The registration is voluntary and it is up to the individual Member to decide whether he wishes to be registered according to the rules. If a Member wishes to have his tasks and economic interests registered, the set of rules must be accepted in its entirety. The information which is registered is information - but not amounts - on board posts, salaried jobs, independent activities, financial assistance, presents, certain paid for travels abroad, real property, company interests and agreements with former or future employers. The information registered will be accessible to the public according to special rules.

3.8 Financial assistance to party groups

The Folketing gives financial assistance to parties represented in the Folketing. A monthly amount of about DKK 76,000 is given to each party group irrespective of the size of the group together with a monthly amount of about DKK 19,000 per seat. In the main, these amounts are used for covering salaries of employees in party secretariats and of Members' secretaries. It is usual for two Members to share one secretary. Furthermore, Members may use the EDP system of the Folketing which comprises data processing, information retrieval on all activities going on in the Folketing, retrieval in internal documents' data bases as well as in external news and other information bases. Members are free to use the telephone, telex and telefax facilities of the Folketing in connection with their political work.

Furthermore, Members travel free of charge in Denmark proper by plane, train, bus, ferry and in some cases by taxi.

3.9 Budget of the Folketing

The Folketing establishes its budget independently of the Government. The budget is forwarded to the Prime Minister and included in the Finance Bill without amendments. The overall budget of the Folketing, not including the

institutions attached to the Folketing, amounts to about DKK 350 million. The accounts of the Folketing are revised by a private auditors', firm.

4. Course of the sessional year and the work in the Chamber

4.1 Course of the sessional year

The sessional year begins on the first Tuesday of October and runs to the first Tuesday of October of the following year. In the course of a year, the Folketing meets on approximately 100 days. There are, however, always non-session weeks in October, February and March, as well as 3 non-session weeks around Christmas and the New Year, and 1-2 non-session weeks around Easter, to which can be added the summer recess which normally starts at the beginning of June and lasts until the opening of the sessional year. In recent years, the Folketing has, however, been called upon to take part in extraordinary sessions in June and August. In recent years sessions in the Chamber have amounted to between 400 and 500 hours a years.

The planning of the work of the Folketing is done partly by elaborating a plan of the year, partly by elaborating plans of the weeks which describe the matters which are to be dealt with in the coming week and in what order. The planning of the meetings in the Folketing is undertaken in close cooperation with the Government.

In session periods, the Folketing meets on Tuesdays, Wednesdays and Thursdays. In the months from December to March and during the month of May, Friday is normally also included as a sitting day. Only in extremely busy periods can Monday be included in the sitting days.

On Tuesdays and Wednesdays, sessions start at 1 p.m., on Thursdays and Fridays at 10.00 a.m. The length of a session varies a lot but normally a session lasts between 4 and 5 hours. Sessions which continue after 8.00 p.m. will normally only occur in December and May.

The planning of the sessions in the Folketing are based upon the following guidelines. The various activities are described in detail below:

Tuesday:

1. Third and second readings of Bills
2. First reading of Bills

3. Possible interpellation debates
4. Possible debates on accounts

Wednesday:

1. Question Time
2. First readings of Bills
3. Possible debates on accounts

Thursday:

1. Third and second readings of Bills
2. First reading of Bills
3. Possible interpellation debates
4. Possible debates on accounts

Friday:

1. Third and second readings of Bills
2. First readings of Bills
3. Possible debates on accounts

On the first sitting day of October, the Prime Minister gives "an account of the general state of the Realm and of the measures proposed by the Government" in accordance with the Constitutional Act. This is the moment when the Government submits its policy and its legislative programme for the coming sessional year. The Prime Minister's account forms the background of the ensuing debate in the Chamber (the opening debate).

4.2 Reading of Bills

In the period up to mid-January, the Government and the Opposition parties submit their Bills. The time-limit for submitting Bills is agreed between the President of the Folketing, party leaders and the Prime Minister. However, deviations from the time-limits do occur.

In accordance with the Constitutional Act, a Bill shall be submitted to three readings in the Folketing before it can be passed and shall be legally binding upon the citizens. The reading shall be finished before the end of the sessional

year at the beginning of October. If this is not the case, the Bill shall become void.

At the first reading, the parties take a principal stand on the Bill in question and normally one knows after the first reading whether the Bill will be passed or not. At the first reading, no amendments can be moved. After the first reading, the Bill will as a main rule be referred to one of the standing committees whose Members will then continue the reading. The committees finish their reading by submitting a report to the Folketing in which the parties' stand on the Bill is entered together with any amendments which may be moved by the Minister as well as by the parties represented on the committee concerned. Thus the committees do not take a decision on the Bills but only make a recommendation to the Folketing.

At the second reading, the amendments moved are debated and a vote is taken on them as well as on the individual Sections of the Bill. As a main rule, the Bill is then passed directly on to the third reading. In about 20 per cent of the cases, the Bill is again referred to a committee for a new reading. This happens between the second and third readings.

At the third reading, any amendments are debated and put to the vote. Then the Bills is debated and a vote is taken on its final passing. Thereby the Folketing has completed its reading. The Bill is via the Prime Minister forwarded to Her Majesty The Queen for the Royal Assent and is also signed by the appropriate Minister before it is published and becomes law.

In recent years, the number of Government Bills has amounted to between 200 and 300 while the number of Bills submitted by the Opposition parties has amounted to about 75 a year on an average. In the sessional year 1993-1994, 226 of the 230 Government Bills were passed. The remaining Bills were either recalled or there was not sufficient time to finish the reading of them in the course of the sessional year. 5 of the 31 Opposition Bills were passed in the sessional year 1993-1994.

4.3 Reading of proposals for parliamentary resolution

The Folketing also reads proposals for parliamentary resolution. A proposal for parliamentary resolution is typically an invitation or an order to the Government to take action within a specific area. It is first and foremost the Opposition which moves such proposals. Proposals for parliamentary resolution moved by the Government typically concern ratification of international treaties. In contrast to Bills, proposals for parliamentary resolution are only read twice in the Chamber, including an intermediary committee reading. The reason

for this is that proposals for parliamentary resolution are addressed to the Government and as such are not directly legally binding upon the citizens. On an annual basis, almost 100 proposals for parliamentary resolution are moved. In the sessional year 1993-1994, all proposals for parliamentary resolution which were moved by the Government were passed (14 in all). Only two of the private Members' proposals for parliamentary resolution were passed.

4.4 Reading of the Finance Bill

The Finance Bill is the State budget. The Constitutional Act lays down that no taxes may be levied or no expenses defrayed before the Finance Bill or a provisional Appropriation Bill has been passed by the Folketing.

This means that the State budget is passed in the form of a Bill which is subjected to the usual three readings in the Folketing. It also means that the Finance Bill constitutes firstly the legal basis for imposing taxes on the citizens, secondly it lays down the State expenditure budget, and thirdly the Finance Bill is the basis of the subsequent presentation of accounts. In accordance with the Constitutional Act, the Finance Bill shall be submitted 4 months before the opening of the financial year at the latest. This means that the Bill shall be submitted on September 1st at the latest and immediately after the submission it is forwarded to the Finance Committee for its reading. Contrary to what is the case in other committees, the bulk of the committee work is done between the second and third readings. And it is customary only to move amendments to the third reading. The Finance Bill for the coming year is put to the final vote in the Chamber on one of the last sitting days of December.

In the course of the financial year, concrete applications for appropriations from the Ministers are submitted to the Finance Committee. In these documents, Ministers ask for permission to implement dispositions which are not included in the Finance Bill.

A supplementary Appropriation Bill is introduced every year, immediately before the end of the financial year. This is because the Bill takes the form of the Folketing's subsequent approval of the dispositions which the Government has implemented, with the approval of the Finance Committee, in the course of the financial year. Moreover, the Supplementary Appropriation Bill includes a registration of the regulation of amounts within the already given appropriations on the one hand and of increases in prices and salaries which have occurred between the time at which the budget was made and the end of the financial year on the other hand. Therefore, the figures of the Finance Bill and of the Supplementary Appropriation Bill together make up an approximate accounting figure.

4.5 Statements

In addition to the reading of Bills and proposals for parliamentary resolution, a number of other activities take place in the Chamber, cf. Section 4.5-4.8. All of these belong under the category of "parliamentary control of Government and administration". See also Section 4.15.

A Minister can make a statement on a public matter to the Folketing. Such statement can be put to a debate but the Folketing cannot make a decision in connection with the debate on the Minister's statement. On an average, there would be 20 statements a year.

4.6 Interpellations

"With the consent of the Folketing, any Member thereof may submit for discussion any matter of public interest and request a statement thereon from the Ministers" in accordance with the Constitutional Act. An interpellation consists of a written question to the Minister, the latter's reply and a debate on the Minister's reply to the interpellation. In the light of the debate, the Folketing can make a decision by passing a proposal for a resolution on the order of business. About 30 interpellation debates are held on an annual basis.

4.7 Proposals for resolutions on the order of business

A proposal for a resolution on the order of business is a justified proposal to pass on to the next matter on the order paper of the Folketing. It is, of course, the motivation which is interesting here. Usually, the motivation includes an order or an invitation to the Government to take action in a specific way with regard to the interpellation in question. In connection with an interpellation debate, several proposals for a resolution on the order of business may be moved. But no amendments can be moved to the individual proposals. When the debate is finished, the proposals for resolutions on the order of business are put to the vote. Normally, the President puts one of the proposals moved or supported by the Government to the vote first. If a proposal for a resolution on the order of business is passed, the others become void, and the interpellation is thus concluded.

In connection with the account rendered by the Prime Minister, at the beginning of the sessional year, on the general state of the Realm and of the measures proposed by the Government, it is normal practice for the Folketing to take a decision by passing a proposal for a resolution on the order of business. In practice, such a decision functions as a control of the Government's parliamentary base.

The interpellation as such is interesting because it is the instrument which the Folketihg can use when moving votes of confidence or no confidence in the Government.

4.8 Questions to Ministers

In accordance with the Standing Orders of the Folketing, Members of the Folketing may put questions to Cabinet Ministers. Questions shall be made in writing and be accompanied by a brief justification. The questioner may ask for a written or an oral reply. If the Member asks for a written reply, the Minister should answer the question in the course of six weekdays. If a desire for an oral reply has been expressed this should be given during Question Time at 1.00 p.m. every Wednesday. The question must be handed in to the Administration the preceeding Friday by 12.00 a.m. at the latest. During Question Time on Wednesday, Ministers and Members speak from their seats.

The questioner may give an oral explanation to his questions and may after the Minister's reply take the floor twice in order to make supplementary comments and put questions to the Minister. Other Members may take the floor once. In addition to this, the President normally calls upon the questioner and co-questioners to speak one more time if they so wish. The device of putting questions to Ministers is used a lot in the Folketing. In recent years, the number of questions has varied between 1200 and 1800 per year, of which questions for oral reply comprise about 10-15 per cent.

4.9 Form of debates

Members and Ministers speak from the rostrum of the Folketing. Rules on the time-limits which apply to the various types of speaking are laid down in the Standing Orders. With a view to observing the time-limits, there is a special clock on the rostrum indicating to the speaker and the President how long the speaker has been speaking.

Members who want to speak indicate this by making a sign to the President usually at the moment when they install themselves at the special spokesmen's table below the rostrum. Usually, the parties appoint a spokesman for the various matters and the spokesmen are given the floor according to the size of their party, the largest first. Then other Members are called upon to speak outside the order of the spokesmen and when Government Bills are being read, the Minister is the last to speak. Moreover, Members can make short statements not exceeding two minutes on the interventions of the preceeding speakers. In most cases, only the *pro tempore* 8 party spokesmen and the Minister in question take part in the debate.

4.10 Form of voting

Normally votes are taken by means of the electronic voting machine, which means that the Members by pressing a button in their desk can indicate that they vote for, against or abstain from voting. The result of the voting is registered on the two large voting boards on either side of the rostrum. An automatic print-out of how the Members have voted is made also indicating which of the Members have not been present during the voting. These print-outs are publicly accessible. If the voting machine does not work, votes are taken by making Members rise from their seats. Votes can also be taken by roll-call. This might be the case, if a vote taken seems otherwise questionable to the President.

4.11 Folketing Hansard

An official record of the debates in the Chamber is printed in the publication entitled "Folketing Proceedings". Speeches are tape-recorded, taken down in writing and revised by staff in the Office of the Folketing Hansard. An hour or so after the speeches have been made, an online unrevised edition can be read in the Information System of the Folketing. About one day later, the text appears in a printed and revised provisional edition to which Members may make amendments, but only when it is a question of slips of the tongue and obvious mistakes. No summary of the proceedings is made in the Folketing. In the year 1993-1994, the proceedings of the Folketing made up about 6,400 printed pages.

4.12 Constitutional amendments

The Constitutional Act cannot be amended by means of the general legislation procedure. The Constitutional Act lays down special procedures, which require a wider support in order for constitutional amendments to be made. A constitutional amendment requires that the Bill moved shall be passed twice in the Folketing in an amended form with a general election in between. It shall also be approved at a referendum by a majority which makes up at least 40 per cent of those entitled to vote. As a consequence of this, it is very difficult to make amendments to the Constitutional Act of Denmark. As mentioned above, the latest constitutional amendment was made in 1953.

4.13 Scrutiny of the relationship between Government Bills and the Constitutional Act

Prior to the submission of Government Bills, the latter are examined by the Ministry of Justice partly with a view to checking technical legal conditions and

partly to checking the relationship to the Constitutional Act. Formally, the President of the Folketing shall ensure that the Bills moved are not in contravention of the Constitutional Act but this is only verified if an objection is raised to a Bill. If the President finds that a disparity exists between a Bill which has been moved and the Constitutional Act, the President shall ask the Chamber (plenum) to reject the Bill.

If a citizen should subsequently be of the opinion that an Act is contrary to his rights according to the Constitutional Act, he can bring an action against the State before a court of justice and claim that the Act in question does not apply to him. Thus in Denmark, there is no special constitutional court of justice. It is for the ordinary courts of justice to decide whether an Act is in accordance with the Constitutional Act. This competence on the part of the court of justice to try the relationship between the Acts and the Constitutional Act is not laid down in the Constitutional Act. It is legal practice which goes back to the beginning of the present century. However, there are no clear examples of Acts which have been disallowed by the courts of justice.

4.14 Referenda

In accordance with the Constitutional Act, there are five situations which require or may cause a *binding* referendum:

1. When at least 60 Members demand that a Bill be submitted to a general election.
2. When sovereignty is ceded (transfer of competences to international authorities) without the support of five sixths of the Members of the Folketing.
3. Certain international treaties concerning which a majority of the Folketing decides to submit the matter to a general election.
4. Change of the voting age.
5. Constitutional amendments.

Since the latest constitutional amendment in 1953, there have been 8 binding referenda in Denmark - the latest on May 18th 1993 in connection with the Edinburgh Agreement and the Maastricht Treaty.

Apart fron the binding referenda, the Folketing can also decide to make *consultative* referenda. This has only occurred once namely in 1986 when a vote was taken on Denmark's accession to the single market of the EC (the Single European Act).

4.15 Parliamentary means of control

In addition to the parliamentary control which is exerted in the Chamber in connection with statements, interpellations and questions to Ministers and also the standing committees of the Folketing, the *Auditors of Public Accounts* undertake i.a. an extensive control of the appropriations related to the public administration.

The *Ombudsman* of the Folketing who is elected by the Folketing exerts control on the part of the Folketing and may criticize authorities belonging under the public administration. The Ombudsman can take on a matter at his own initiative or in the light of complaints on the part of the citizens.

If there is a suspicion of serious mistakes having been made or neglects having been perpetrated by the Central Administration, the Folketing can e.g. demand that the Government set up a *Committee of Enquiry or a Select Committee* to investigate the matter i.a. by calling Ministers and others as witnesses. These bodies have no right to pass judgement and thus cannot make decisions on any kind of punishment or other sanctions against Ministers or civil servants. If a Minister is to be prosecuted for having acted as he did in his capacity as Minister, the matter is brought before the High Court of the Realm (a court of impeachment). In 1993, the Folketing brought a charge against a former Minister for Justice at the High Court of the Realm for having administered in contravention of the Aliens Act. It is very rare that cases are brought before the High Court of the Realm in Denmark. The last time a sentence was passed by the High Court of the Realm was in 1910.

4.16 TV transmissions from the Chamber

The two national TV stations regularly broadcast from the debates in the Chamber - typically in the form of short flashes inserted in the news. Furthermore, there are long broadcasts of big debates. In the Folketing, there is no internal TV broadcasting from the Chamber. As from October 1st 1994, a private TV company has for a trial period of a year been allowed to broadcast the debates in the Chamber.

4.17 Radio transmission from the Chamber

Radio Denmark regularly broadcasts proceedings in the Chamber. Moreover, all offices in the Folketing buildings have a short circuit radio on which one may follow the debates in the Chamber. The same kind of equipment is to be found in the Secretariats of the Ministries, and one may also follow the debates of the Chamber over the telephone net.

5. Committee readings

5.1 Standing committees of the Folketing

The Folketing has 24 standing committees the spheres of competence of which are described in greater detail in the Standing Orders of the Folketing. They are:

1. The Standing Orders Committee
2. The Scrutineers Committee
3. The Labour Market Committee
4. The Housing Committee
5. The Energy Policy Committee
6. The Trade and Industry Committee
7. The European Affairs Committee
8. The Finance Committee
9. The Research Committee
10. The Defence Committee
11. The Naturalization Committee
12. The Ecclesiastical Affairs Committee
13. The Municipal Affairs Committee
14. The Cultural Affairs Committee
15. The Agriculture and Fisheries Committee
16. The Environment and Regional Planning Committee
17. The Economic and Political Affairs Committee
18. The Legal Affairs Committee
19. The Fiscal Affairs Committee
20. The Social Services Committee
21. The Health Committee
22. The Transport Committee
23. The Education Committee
24. The Foreign Affairs Committee

Moreover, the Folketing may appoint ad hoc committees to deal with special cases.

Each committee is composed of 17 Members who are appointed according to proportional representation. In most committees, each of the parties represented have appointed one or two substitutes who may replace committee Members. The substitutes can participate in the meetings of the committee in question in the same way as ordinary Members. However, they cannot take part in the voting of the committee and they are not entitled to make a statement in the reports of the committee.

5.2 Committee work

The main task of the committees is to deal with the Bills and proposals for parliamentary resolution which the Folketing refers to the committee concerned. It is typical for a Bill to be referred to the committee after the first reading. In practice, the committee reading consists in the committee putting clarifying questions to the appropriate Minister. Thus it is the Minister (Ministry) who serves as the main source of information to the committees during the committee work. Only in the European Affairs Committee has a special counsellor been appointed to give the committee reviews of the matters in question.

It is not normal practice for a committee Member to go into detail about the individual provisions of a Bill, and the system of rapporteur does not apply to the Folketing committees either. The Minister's reply to the written questions of the committees is, with a few exceptions, accessible to the public. The Minister may also be called in by the committee in order to give an oral briefing and to discuss a specific question which has been put in writing beforehand (consultation). Furthermore, citizens, institutions, enterprises and others apply to the committee either in writing or by asking for an interview with the committee.

The committee can also deal with matters, within its own sphere of competence, regarding which no Bills have been moved in the Folketing. This is typically done by putting questions to the Minister.

Committee readings take place behind closed doors and the debates are confidential. However, Members may quote what they themselves have said in the committee.

As part of the reading of Bills which have been referred to a committee or to throw light on a special matter of public interest, committees may also institute a hearing during which persons whom the committee ask to do so can give an account of a given subject or express points of view. Such hearings may be public.

5.3 Reports

The committees' consideration of Bills and proposals for parliamentary resolution concludes in the submission of a report. A committee report is a document in which the political parties make an account of their stand on a Bill or on a proposal for parliamentary resolution and eventually state their reasons for deciding to vote for or against the Bill in the Chamber or perhaps to abstain from voting. Moreover, the report may contain amendments moved by the Government or by the political parties represented on the committee. Likewise, the report contains an account of the parties' stand on the amendments moved. The report may also comprise interpretative contributions e.g. information as to the way in which the Minister has informed the committee that he intends to administer a given provision. In addition, the report may also contain reprints of the Minister's reply to selected questions, notes etc.

Thus the committee report is a document which sends a Bill back from the committee for reading in the Chamber and which forms the basis of the continued reading. If the Folketing wishes to have a new committee reading between the second and third readings of a Bill, the Bill is once more entered on the agenda of the committee, and subsequently the committee elaborates a new report (supplementary report), which forms the basis of the third reading of the Bill.

It is up to the committee to decide whether and when a report is to be made. It is normal practice, however, that the majority of the committee will not prevent a report being submitted on a Bill which is expected to be rejected by the Folketing.

The Administration employs a number of academic staff whose main task consists in assisting the committees as secretaries. Normally, one staffer services 2 or 3 committees. The European Affairs Committee and the Finance Committee do, however, have their own secretariats. Apart from the European Affairs Committee and the Standing Orders Committee, minutes are not made of committee meetings.

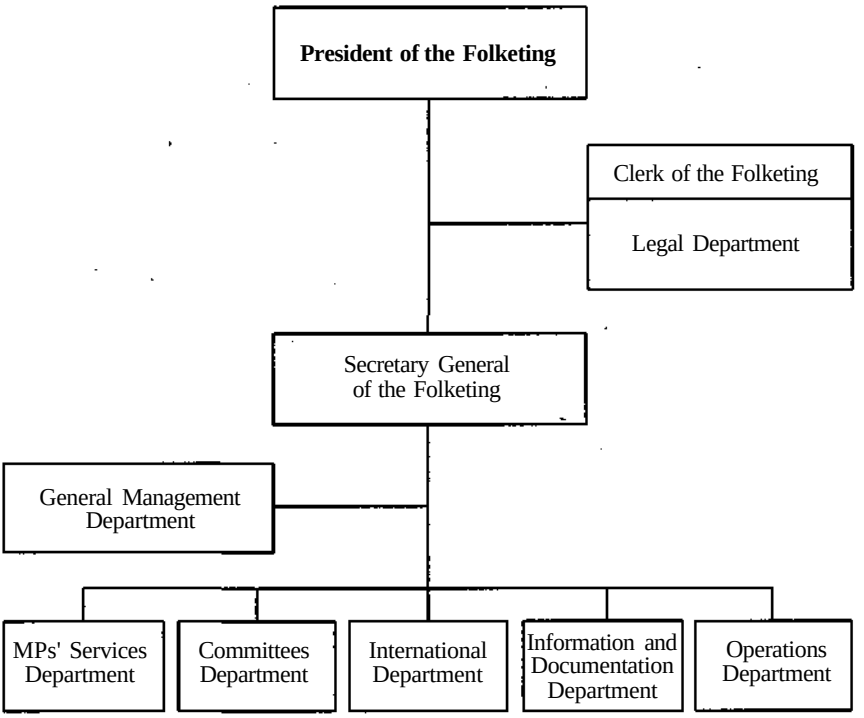
6. Administration of the Folketing

6.1 President and Presidium

The President of the Folketing has the supreme responsibility for the Administration of the Folketing. In his work with laying down the overall framework of the work of the Administration, the President is assisted by

4 Vice-Presidents. The President and the Vice-Presidents make up the Presidium of the Folketing, and they are at the same time the official representatives of the Folketing. Below is a brief survey of the Administration of the Folketing.

Administration of the Folketing



6.2 Secretary General of the Folketing

The Secretary General of the Folketing is responsible for making the entire Administration of the Folketing work according to the guidelines laid down by the Presidium.

6.3 General Management Department

It is the task of the General Management Department to handle a number of across the board tasks in relation to the entire Administration. The Department shall i.a. service the political and administrative management of the Folketing. The General Management Department is responsible for the staff of the Folketing and for its staff policy, for the development of the organization and for planning and co-ordinating administrative functions. Moreover, the General Management Department sees to all tasks related to the budget and accounting of the Folketing, to the financial assistance to the party groups and to the Administration in relation to questions of salary and pensions of Members and employees in the Administration. Finally, the General Management Department sees to the running and development of the EDP systems of the Folketing. The General Management Department employs 29 staff.

6.4 Clerk of the Folketing and Legal Department

The Clerk is supreme adviser to the President in constitutional and parliamentary matters. He is assisted in this task by the Legal Department. The main task of the Department is to provide the professional assistance required by the political management of the Folketing in their planning of the work in the Chamber. It also advises the political management and the Administration in matters concerning the Standing Orders of the Folketing and other constitutional functions of the Folketing. Furthermore, the Legal Department is responsible for the correctness of the legal technique of all matters which are being dealt with in the Chamber. The Legal Department employs 9 staff.

6.5 MPs' Services Department

The MPs' Services Department services the Members of the Folketing and looks after matters of security in the Folketing building. The Department comprises a Travel Agency, a Post Office, a Visitors' Service, a shop selling legal documents, a Restaurant, a Language Service etc. The MPs' Services Department employs 70 staff, of whom 50 are Folketing officers etc.

6.6 Committees Department

The Department services the standing committees of the Folketing. Each of the committees has a permanent secretary, who i.a. assists the committee in its work, in elaborating private Members' Bills and proposals for parliamentary resolution and reports. The Department employs 24 staff.

6.7 International Department

The main task of the Department is to assist in that part of the Folketing's work which is related to international cooperation. Furthermore, the Department comprises the Protocol of the Folketing, the Secretariat of the European Affairs Committee, the servkirig of committees dealing with international matters and the Folketing's delegations to international parliamentary assemblies as well as the EU Information Centre of the Folketing which was set up on April 1st 1994. The Department employs 20 staff.

6.8 Information and Documentation Department

The main tasks of the Department are to produce, revise and impart information on the political work to Members, to the Administration and to the public. The Department is i.a. responsible for drawing up the minutes of the proceedings of the Folketing, for the Library, Archives and Information Service as well as for informing the public. The Department employs 41 staff.

6.9 Operations Department

The Department looks after all technical and practical functions in connection with the running and maintenance of the premises of the Folketing. Furthermore, the Department looks after the planning and managing of reconstructions, refurbishments and decorations in the Folketing building. The Operations Department employs 85 staff, of whom 75 are full time cleaners and workmen

The total number of employees in the Folketing approaches 280, of whom about half are dealing with real administrative tasks.

2. Extracts from the Minutes off the Copenhagen session,: September 1994

Mr HJORTDAL, Secretary (General of the Folketmg, welcomed the Members of the Association and introduced the document which had been prepared on the Danish Parliamentary system. The system was a Constitutional Monarchy based originally on the Constitutional Act of 1849. This act, which pro-

vided for a bicameral Parliament, had been amended on various occasions including an amendment in 1953 which had abolished the Upper House (Landsting) and strengthened the Folketing. The 1953 constitutional changes had also introduced the Ombudsman and a procedure for referendums. The Folketing had a well-developed Committee system with 23 principal Committees, one shadowing each Government ministry. The Committees were a significant part of the parliamentary process and had access to experts to help them consider government proposals. Outside persons and interest groups could give evidence to the Committees.

The Government was traditionally a minority Government with changeable combinations of larger and smaller parties making up the Government and Opposition blocs. The party leader who appeared to command the greatest support would be asked by the Monarch to attempt to form a Government. This process was not always predictable since there were as many as 10 or 11 parties represented in Parliament. Although each Parliament theoretically lasted for four years, in practice elections were more frequent than this. Instability in the Government did not necessarily however lead to any instability or uncertainty in policy.

Each annual session began on the first Tuesday in October but Parliament was free to sit in any day in the year. In general, there were about 100 sitting days each year, for about 4 or 5 hours each day. Behaviour by the Members was fairly restrained, with no shouting. Almost all speaking was done from the rostrum.

Mr TUMANGAN and Mr SABIO (Philippines) asked about the budget procedure. Mr HJORTDAL replied that the financial year ran from January to December and that the Finance Bill, as in other systems, was one of the most important pieces of legislation. It was presented to Parliament by the Minister of Finance and the main committee work on the bill was done between the second and third reading stages. Applications could be made by Ministers during the year for supplementary funding authority.

Mr KAITOUNI (Morocco) asked what advice the Monarch received before asking party leaders to form a Government and what criteria were used to assess each party leader's support. Mr HJORTDAL replied that following discussions between the parties each party leader would report to the Monarch how much support he or she held; the Monarch's role was solely to identify the leader with the most support. The advice given to the Monarch by each party leader would normally be publicised by each party so the Monarch's role was non-political. The minority governments which typically resulted from the process were more stable than might sometimes be expected because they might be able to command a different majority on different issues.

Mr SAWICKI (Poland) asked how the Secretary General was appointed and about responsibility for other staff appointments. Mr HJORTDAL, on the first point, replied that a vacancy was announced and published in the newspapers detailing the job and the qualifications required and the salary. Any person could apply from within or outside the House. The Presidium then considered the nominations and could choose either to interview the candidates or to appoint an outside agency to sift them. The Presidium could then make a recommendation to the Standing Orders Committee. That Committee could turn down the Presidium's recommendation but could not change it. The process was intended to be non-political. He added that the process was currently under way since he would be retiring shortly but that the system had not been used for 28 years. On the question of appointment of staff, he explained that the power of appointment rested with the Secretary General but that if it was in respect of a senior post he would normally discuss it with the Presidium who would give their assent. At a lower level, junior staff would be appointed by the various senior staff.

Mrs RAMA DEVI (India) asked why the Upper Chamber was abolished in 1953. Mr HJORTDAL replied that while the Upper Chamber had had a valuable role in the system in earlier times it had become the case that it had no distinct valuable role to play, particularly where the majority in the two Houses was the same. This was particularly so given the relatively small size of Denmark.

Sir Clifford BOULTON (United Kingdom) asked about the relationship between the post of Secretary General and the post listed in the written document as the Clerk. He noted that the staff of the Clerk was relatively small and wondered in particular what the Clerk's Office contributed to the examination of bills in Committees. Mr HJORTDAL replied that the structure outlined in the written document was relatively new and that under the old structure the Clerk had also been responsible for committee work. Committee work now came under the Secretary General but it was important that the staff in the two areas worked well together.

Mr RAVAL (Philippines) asked for further details about the membership of Committees, noting that the Senate in the Philippines had 41 Committees with 24 Members while the Folketing had 24 Committees with 179 Members. Mr HJORTDAL replied that each Committee had 17 Members, plus substitutes, with places divided amongst the parties according to their party strength. Even the smallest parties usually obtained one or two Committee places. However, for small parties the committee workload could be very high; in one recent case, a small party of seven Members with four Ministerial posts had found that the only way for the committee workload to be sustainable was for the Ministers to

resign their seats (while staying as Ministers) and be replaced by their substitutes.

Mr TRAVERSA (Italy) asked about the circumstances in which Parliament might be dissolved, noting that the Government was not in practice obliged to command a majority. Mr HJORTDAL replied that if a no-confidence vote was passed then either the Prime Minister must ask the Queen to dissolve Parliament for fresh elections or he must resign as Prime Minister, allowing the Queen to call a different leader to form a Government. If a Government lost an important vote in Parliament other than a no-confidence vote, the Prime Minister could decide whether to accept the defeat and carry on or whether to resign.

Mr HADJIOANNOU (Cyprus) asked about the rule in the Danish Standing Orders which stated that after an election a temporary committee of 21 Members was established to examine any challenges to the election, noting that in Cyprus this function was reserved to the high court. Mr HJORTDAL acknowledged that it might appear unusual to give this function to a Committee of the House but it had been a long standing rule which had never given rise to any difficulty. The Committee could call for any material that was required and would consider complaints from the public.

Mr SATYAL (Nepal) asked about the position of parties which supported the Government majority but which were not actually part of the Government. Mr HJORTDAL replied that the system recognised only Government parties and Opposition parties, and that a party which might vote to support a Government but was not in the Government was nevertheless an Opposition party.

Mr SOBANGUE (Central African Republic) asked about the composition of electoral lists. Mr HJORTDAL replied that the electoral law was quite complex but that any party represented in Parliament could present a party list at the elections, while a party not represented in Parliament had to produce a required number of signatures. Candidates must be aged at least 19 and be Danish citizens. Foreigners could vote in municipal elections but not in elections for the Folketing.

Mr BOSTEELS (Belgium) asked about the special provision made for Greenland and the Faroe islands. Mr HJORTDAL replied that these two areas had home rule with their own Parliament and local Government. Two Members from each area sat in the Danish Parliament.

Mr LAUNDY (Canada) asked for further information about the case where Members of a small party who had been appointed to the Government had resigned their seats. Mr HJORTDAL replied that with four Ministers out of seven Members of Parliament the party concerned had found that the amount of

parliamentary work was too great for the remaining three to carry by themselves. The system was fairly straightforward in the use of substitutes in that the next person on the party list was appointed. It remained to be seen whether this approach would become a common one for small parties in the Government.

Mrs PANKAM (Thailand) asked Mr HJORTDAL what he had found to be the most important factors in performing the role of Secretary General. Mr HJORTDAL replied that the key thing was for the Secretary General to be able to act in a way in which he was confident of the support of the Speaker/ President of the Chamber. He had to be neutral in the help he gave to all Members. It was important also that the rights and duties of Members were as clear as possible to all persons so that as few problems as possible arose.

Mr NDIAYE (President) (Senegal) noted that the written document indicated that if the Parliament wished a Committee of Inquiry to be established, it asked the Government to set the committee up, noting that the norm in other systems was for the Parliament to set up a committee itself. Mr HJORTDAL replied that the Parliament did not in practice give up any competence since discussions took place to identify the Chairman of the Committee of Inquiry and it was the Parliament that considered its final report. In extreme cases, the Folketing could bring a charge before the High Court.

Mr NGUEMA-MVE (Gabon) noted that the written document indicated that Members did not have to give up their jobs, something which might seem strange in other systems. Mr HJORTDAL replied that many Members who had retained their outside jobs nevertheless reduced their workload in their other job. Such an approach was possible even for a public servant, who on election could negotiate to reduce his workload. Many Members would retain and maintain contact of some kind with their old employment in case they needed to return to it. A person might, however, find it difficult to be selected as a candidate if he or she indicated that they intended to continue unchanged in their previous employment.

Mr LEE Jong Ryool (Republic of Korea) asked about the rise in the proportion of women Members in the Folketing, noting that the percentage of women Members in the Republic of Korea was very low (less than 2%), and about the impact of women on parliamentary life. Mr HJORTDAL replied that while one-third of the current Folketing roughly were women this was still a lower ratio than in the general labour market. It was fairly typical in Denmark for both members of a partnership to work. The proportion of women holding posts in the next Government might well be higher than one-third. He saw no significant differences in the contribution made to the work of Folketing by men and women.

ANNEX

Question and Answer session on a tour off the Folketing building, Christiansborg Palace, on the morning of Tuesday, 13 September

Mr HJORTDAL, speaking within the Chamber of the Folketing, which was of a hemi-cycle type, indicated that while Government Ministers sat always on the left of the Speaker other Members always stayed in the same places according to party. Members spoke only from the rostrum except during the session on Wednesdays of questions to Ministers. Deputy Speakers could substitute for the Speaker in his absence with the full powers of the Speaker in respect of the Chamber. Time limits were placed on speeches.

Mr Claus DETHLEFSEN of the Folketing described the workings of the electronic voting system, which had been introduced in 1993. The system could deliver a print-out of how Members had voted. There were four buttons on each desk: yes, no, abstain or cancel. If a Member cancelled a vote within the time available for voting he or she could then cast a revised vote.

Mr HONTEBEYRIE, Mr OLLÉ-LAPRUNE (France), Mr TUMANGAN (Philippines) and Mr MOUFONDA (Congo) sought further information on how the results of a vote were published. Mr HJORTDAL replied that the results were public and regularly published, though they were not automatically printed name by name in the Folketing Proceedings. It was technically possible to call for a secret vote but this had never happened.

Mr ALBA (Spain) asked how long was available for Members to cast their vote. Mr HJORTDAL replied that less than ten seconds was allowed for the vote.

Mr HASHEM (Bangladesh) asked whether there was any mechanism to prevent one Member voting at another Member's desk. Mr HJORTDAL replied that this was not allowed. Where however it happened by mistake the result was unaffected because no Member voted twice.

Mr BECANE (France) asked whether a Member could formally be authorised by another Member to vote on his behalf. Mr HJORTDAL replied that this was not allowed.

Mr NDIAYE (President) (Senegal) asked whether Members of the Government voted. Mr HJORTDAL replied that any Member of the Government who was a Member of Parliament could vote.

Mr BRATTESTÅ (Norway) asked whether the electronic system was used for personal elections, that is to say, elections to fill particular posts, and

whether the print-out was automatically made available to the media. Mr DETHLEFSEN confirmed that the system was used for personal elections though it was not needed for elections to Committees because these were usually proportional. There was an automatic print-out of each vote and a system was being introduced for making the information available on a parliamentary network.

Dr GALAL (Sudan) asked whether there was a system for recording Members' attendance. Mr DETHLEFSEN replied that Members did not have to be present and most Members only came into the Chamber when there was to be a vote.

Mr HONTEBEYRIE (France) and Mr AL-RIZAIHAN (Kuwait) asked about the message system for Members. Mr DETHLEFSEN indicated that each Member's office now had a computer terminal and there was an electronic mailing system between the offices. Any message to be delivered to a Member in the Chamber had to be delivered by hand.

Mr DARKWA (Ghana) and Mr SATYAL (Nepal) asked about the advantages of the voting system relative to other systems which might allow more time for a vote to take place and have less scope for human error. Mr DETHLEFSEN replied that in his opinion the system which had been introduced was an extremely flexible system one. If their appeared to be an error, whether human or technical, the Speaker had the right to cancel a vote and to hold it again so long as this took place immediately.

Mr LEE Jong Ryool (Republic of Korea) asked about the cost of running the system. Mr DETHLEFSEN replied that the running cost of the system comprised only a minor part of the cost of the computer department in the Folketing. The installation of the system had cost about ten million Danish Kroner.

III. Parliament and referendums

1. Introductory note by Mr Mohammed Idrissi Kaitouni, Secretary General of the National Assembly of Morocco, October 1991

The question of the relative position of laws as against regulations is frequently debated[1] in connection with the traditional confrontation between the legislative power and the executive power. It is rarer, and raises more subtle issues, to, compare laws with referendums, for the reason that both rely on the same foundation, namely universal suffrage. A referendum is the direct expression of the will of the people, while a law is its indirect expression. But while they draw from the same source, it is worth examining the differences between them in respect of their principal and lesser characteristics.

1. A unique foundation - universal suffrage

An election has become, in effect, a democratic ritual, a grand moment in the political life of a nation. Whether the people govern themselves directly (direct democracy) or by the intermediary of representatives (a representative democracy or a representative regime) it is by voting that they participate in the decision. After having, not without difficulty, overcome the hazards of fortune, of education, of sex and of race[2], it became standard practice for the vote to be open to all in the second half of the nineteenth century, the people thus becoming, via the ballot, the true repository of sovereignty.

To contrast law with referendum is to contrast national sovereignty with popular sovereignty, to contrast a representative regime with direct democracy, to put the parliament and the people face to face with each other, each expressing sovereignty in its own manner. In one case the people are put to one side, while in the other they are given a special position. With laws sovereignty is expressed through two channels, with referendums through one channel only.

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[1] Role of laws and referendums: Colloquy organised by *la faculté de droit et de science pqlitique d'Asie-Marseille*, director Louis Favoreur: Economica, PUAM 1961, Aix-en-Provence.

[2] The types of restrictions which have applied to the suffrage are restrictions of income, capacity, sex, or race.

The constitutional provisions relating to sovereignty in Morocco are similar to those in France and show clearly the twin-faced aspect of sovereignty exercised on one side directly and on the other indirectly.[3]

Laws and referendums together form the institutional arrangement for semi-direct democracy which is today considered to be the panacea for a pure representative regime. Such a régime may be defined as a system in which, while the laws themselves are normally voted by an elected Assembly, the people can participate in their enactment either by taking the initiative in their formulation (popular initiative) or in opposing their promulgation or continuation in force (popular veto). The classic cases remain Switzerland, and the United States at the level of the member states. At the same time it should be noted that the frequency with which with the electorates is consulted in a semi direct democracy is an overuse of universal suffrage. The risk of boredom in respect of public matters is great and one can thus view with disquiet the very high level of non-participation in Switzerland last year in a referendum on so important a matter as the demilitarisation of the Swiss Confederation.

Examination of the implications of universal suffrage (direct or indirect) throws light on the relations which exist between the chosen regime (representative or direct) and the party system. Thus it can be seen that amongst states practising the pure representative system, such as the United Kingdom or the United States of America, bi-party politics are the norm. Does the bi-party management of affairs lead to more straight-forward decision taking, thus rendering recourse to referendum unnecessary?[4] By contrast regimes which provide for referendums, such as France, Spain, Italy[5] do not have a bi-party system and that is why the referendum has appeared to them as a peaceful means of settling a problem which does not necessarily divide the country into two opposing blocks.

[3] Article 3 of the French Constitution of 1985: "National sovereignty belongs to the people who exercise it via their representatives and by referendum". Article 2 of the Morocco Constitution of 1972: "Sovereignty belongs to the nation which exercises it directly by referendum and indirectly via the constitutional institutions."

[4] The United Kingdom has had only one consultative referendum, agreed by the House of Commons, on 5th June 1975 in respect of continuation of membership of the United Kingdom in the European Community. The people decided in favour.

[5] In France Article 11 provides for a referendum in two circumstances: in respect of the constitutional arrangements and in respect of ratification of an international agreement. The Spanish Constitution of 29 December 1978 provides for recourse to a referendum. The Italian Constitution of 1947 under the law of May 1980 provides for recourse to a referendum after consideration of its constitutionality by the Italian Constitutional Court.

Laws and referendums cannot be contrasted without stressing the limits of the suffrage, the foundation of both procedures.

In fact if universal suffrage and its most direct form, that is to say the referendum, is meant to be able to solve all problems (for many the referendum rests the most triumphal expression of the popular will) its conservative character can nevetheless be noted. Indeed a look at the international scene today confirms this. Societies in transition - one thinks at the moment of the massive changes in the communist countries of the east or the changes in African countries - have not had recourse to universal suffrage in its most direct form of a referendum.

The greatest constitutional revisions have taken place in the countries of the east via congresses of deputies[6] and in Africa they have been undertaken by national conventions[7]. Although unpopular, often because improperly elected, it is these parliaments which have overseen the constitutional transition, not the people, who have been enfeebled by years of secrecy and propaganda. Fear of a conservative result has explained the transfer of sovereignty towards Assemblies rather than towards the people, who have been thought not yet ready for political life.

Having said this there are other cases where the public authorities have not hesitated to have recourse to a referendum, in cases where it takes on aspects of a plebescite. In this case motives differ.

2. Different priorities

Although often considered as a step towards semi-direct democracy, the use of a referendum must be undertaken with caution. While its role is legitimate in the constitutional area it is more controversial in the legislative area. Laws and referendums have aims, in respect of their relationships with the political parties and the constitutional structures, which can be opposed to each other.

[6] In the east the abolition of the governing role of the Communist Party, the dogma on which all Marxist and Leninist thought was based, has been undertaken by the Parliaments. (Hungary, February 1989; Czechoslovakia, November 1989; German Democratic Republic, 1st December 1989; Bulgaria, 1 lth December 1989.)

[7] In Africa it is National Conventions which change the nature of the regimes. Parliaments, lacking credibility, are by-passed and universal suffrage or referendums are not trusted. National Conventions, although of imperfect legitimacy, nevertheless provide for transition (see *Jeune Afrique,* 28th August 1991, on the subject of Mali, Niger, Cameroon and Zaire)

A law is a juridical act generally issuing from parliament; a referendum is a popular consultation on a given problem, usually at the initiative of the Executive[8]. One is a politico-juridical act, the other is a strategic act where the aims of governments are more subtly hidden. In the one case the law is the fruit of parliamentary discussions, in the other it is the means for the Executive to take the pulse of the electorate. In effect the plebiscitary character of a referendum makes it lose its initial meaning. It does not take place to enable the citizens to express a position for or against a particular proposition but rather as a means to enable governments and, in particular, those among them who occupy the supreme position, to place its authority before the people. The referendum becomes a question of confidence put to the electorate. For General de Gaulle, who began and ended his term of office with a referendum,[9] the second of these serving to establish whether there continued to exist between himself and the people the mutual confidence which was the foundation of the institutions of the Fifth Republic. Besides, Governments will always choose the precise timing and wording to neutralise their opponents and to legitimate their power.

As for the relationship between referendums and the role of political parties, the contrast between laws and referendums shows up well. While a law is the product of negotiations between different political groups, a referendum is the result of a dialogue between the Executive and the people in which the absence of political groups is a notable feature.[10] In a referendum the parties are not directly involved. By this means the Executive by-passes the normal institutional procedures, that is to say enactment of a law, in order to establish an emotional rapport between itself and the people. The political parties are hidden and it remains to them only to orchestrate an electoral campaign for or against the proposition being submitted to consultation. Thus while a law springs from a representative regime, a referendum is its antithesis. That is why the political classes have always manifested a distrust towards this direct expression of the popular will. Besides, while a law is debated amongst political professionals (members of committees etc.), this is not the case with a referendum which cuts

[8] In the United States (at the state level) and in Switzerland, a referendum is the result of a popular initiative. In these cases it does not have the character of a plebescite but is a true democratic weapon. At the initiative of governments, it becomes an alibi.

[9] "It is thanks to a referendum that he established the fifth Republic and it is thanks to a referendum that he left power in 1969" (A. Passeron and P. Jarreau, *Le Monde* 14th July 1984).

[10] A referendum thus becomes a means by which people who are not involved in any of the organs of the political system, for objective or neutral motives, can participate in the taking of major decisions. In such a case it permits the integration of the citizen in the political life and permits him to renew his contact with public affairs, while laws remain in the domain of the elite.

out the role of professionals to make way for emotive factors. It often gives rise to conservative results.-for two reasons: first, because of the absence of a political culture and knowledge amongst the people (when one does not know why one is voting one opts for the maintenance of the status quo)", and, secondly, the plebescitary character of the consultation which personalises the dialogue and distorts the rules of the game.

There is a final contrast between the position of laws and referendums in respect of their relationship to the Constitution. Even though voted by the representatives of the nation, a law, since 1958 in France and before that in other countries in Europe, is not promulgated except with the endorsement of the Constitutional Council which checks that the proposal is not contrary to the Constitution. Despite initial controversy (should the expression of the will of the people be criticised?) the principle is now accepted: the control of constitutionality, initially uncertain, has now come of age and a new state which does not include it in its liberal panoply does so at its own risk.

If the principle poses no problem in respect of laws, it is otherwise in respect of referendums. These were in effect excluded from the control of constitutionality in France since the decision of the Constitutional Council of 6 November 1962[12], under which the direct expression of the national sovereignty could not be questioned. While in 1962 the Palais de Montpensier [the Constitutional Council] was preoccupied with not wishing to contradict General de Gaulle, their decision was nevertheless an effective judgement. Thus the citizens are protected by the Constitutional Council from periodic changes of majority but they are not sheltered from their occasional misjudgements. That is why in 1984 in a proposed constitutional reform in France, providing for an enlargement of the role of referendums, President Mitterand introduced an innovation under which Article 11 would permit him (if the reform were adopted) to resort to a referendum in respect of matters of liberty but only after the advice of the Constitutional Council. The Council would have become the guardian of freedom and the check on the President of the day in respect of defence of rights and freedoms. The draft did not become law, the Senate seeing therein the beginnings of a challenge to freedoms and rights recognised and guaranteed the Constitution.[13]

"In certain Swiss Cantons women still do not have the vote.

[12] See C. France "Major decisions of the Constitutional Council" 1978 page 279.

"The Senate, the Opposition in the National Assembly and the more eminent academic lawyers were opposed to the revision of Article 11. See Alain Madelin "Liberties in Danger", *Le Monde*, 17 July 1984, and Francois Goguel "There is no right to play with universal suffrage", *Le Monde* 23 July 1984.

A referendum is thus more of a strategic act than a juridical one, running counter to the interests of political parties by consulting the citizens often on vital subjects (for example social questions) and resting free of all juridical control. That is why in representative regimes referendums are considered only with caution. It is an historic cycle which is recommencing. Initially, sole power was exercised by regimes which ruled absolutely. After 1789 the triumph of constitutionalism and the coming of power for the people, and the separation of powers, gave a rationale to parliaments which had taken for themselves the powers of the old regimes. Much later, with the economic crisis of 1929, parliaments no longer came up to people's expectations. These demanded from parliaments, too quickly, solutions to problems which were too technical for them, such as dealing with unemployment, inflation etc. Little by little, the Executive will, because of economic crises and low post-war morale, recover in sophisticated ways rights which had been conceded to emerging parliaments. The referendum will be one of the means for the Executive to retain its prestige. Motions of censure under the French Constitution, Article 49(3), block votes, prerogative powers, executive authority etc., are merely alternative constitutional weapons in the Executive's armoury.

October 1991

2. Topical discussion: extract from the Minutes of the Yaound6 session, April 1992

Mr. IDRISSI KAITOUNI, Rapporteur, began by rehearsing the principal points of the introductory note for the topical discussion which had been circulated to all members before the session.

Mr. HADJIOANNOU (President) (Cyprus) sought clarification on the difference between a referendum and a plebiscite. Mr. IDRISSI KAITOUNI stated that a referendum related to an idea while a plebiscite was a question of confidence towards a particular politician. This distinction was very fine in practice, as illustrated by the case of General de Gaulle in France who had left office following the referendum of 1969 on the regionalisation of France and the suppression of the Senate. This referendum, which the General had made into a personal issue, had been taken by the electorate as a vote of confidence in the President of the Republic following the changes of May 1968.

Mr. CASTIGLIA (Italy) described the status of a referendum in Italy. Three types of referendum were provided for by the Constitution: a referendum for the creation of a new region, a referendum to give approval to a constitutional law which had not obtained a two-thirds majority in each Chamber, and a referendum for the total or partial repeal of a law or decision having the force of law.

It was this last form of referendum which was the most important in Italy. Article 75 of the Constitution stated in detail that:

> "A popular referendum on the total or partial repeal of a law or a decision having the force of law may take place on the request of 500,000 voters or 5 regional councils.
>
> Such a referendum shall not take place in respect of fiscal or budgetary laws, amnesties or remission of sentence, or for laws authorising the ratification of international treaties.
>
> All citizens with the right of election to the Chamber of Deputies have to the right to participate in a referendum.
>
> The proposition submitted to referendum is considered agreed to if the majority of the electorate has taken part in the vote and if the majority of validly expressed votes is obtained".

A certain control by the Courts was exercised over such referendums. The Cour de Cassation considered the correct conduct of the referendum. The Constitutional Court ruled on the admissibility of a question submitted to referendum. This had given rise to a case law which defined its limits. Such a referendum could not take place in respect of laws whose repeal would hinder the proper functioning of the public power. It must also permit the electorate to express its wishes clearly. It would not be admissible if it had an objective other than that which was posed, the Constitutional Court having declared inadmissible a referendum removing parts of the electoral law so as to transform the proportional election system into a uninominal system. It should be noted that such a referendum could be used as a consultation exercise. In December 1990 the repeal of a law on the establishment of nuclear power stations had been regarded as a signal in favour of freezing the construction of nuclear power stations and closing existing ones.

He concluded by remarking that the referendum was at the centre of the major political debate on government institutions in Italy. It was proposed to have recourse to a referendum in respect of the electoral law even though an ordinary law would be sufficient to achieve a reform. In respect of the election of the President of the Republic, which would be transferred from the parlia-

ment to the popular vote, it would be necessary to submit the constitutional proposals to a confirmatory popular referendum.

Mr. HJORTDAL (Denmark) noted the interest in the subject and the wide variety of solutions which had been come to by referendum in different countries. In Denmark the right to demand a referendum was part of the prerogatives open to the minority since one-third of the Parliament could demand a referendum on a non-fiscal law which was of sufficient significance. The referendum was also used in respect of matters of international co-operation and the European Community, with parties preferring to use a referendum even if the required qualified majority in the Folketing was obtainable.

Mr. LAVOIE (Canada) noted the interest in the referendum in respect of the constitutional situation in Canada. There was no current law on the referendum. Following the breakdown of the constitutional negotiations interest in a referendum on modifying the Constitution had become more evident. Given the federal character of Canada, if the Federal Government proposed to submit a question to referendum the law would have to provide for the mechanism by which, in addition to a national majority, it would be necessary to achieve a majority in each of the major regions of the country.

Mr. SAUVANT (Switzerland) described the types of referendum in use in his country, namely the compulsory referendum for total or partial constitutional amendments on the one hand, and the optional referendum on laws which took place at the request of 50,000 citizens or 8 cantons. Referendums were frequently resorted to in Switzerland. It was also used by professional organisations which threatened to precipitate a referendum in respect of laws which were not in accordance with their wishes. The reform of Parliament currently being considered in Switzerland would be submitted to an optional referendum.

Mr. SWEETMAN (United Kingdom) declared that the practice of referendum was not common in his country. There had been a referendum when the party in power wished to consult the people on the question of continued membership of the European Community. The referendum did not have a good press in the United Kingdom because it was not well suited to deciding certain kinds of questions, in which it could give free rein to some of the worse aspects of human character. Such would be the case if, for example, the question of hanging were put to a referendum. So it was important not to ignore the somewhat distrustful attitude towards the referendum in the anglo-saxon mentality.

Mr. FARACHIO (Uruguay) explained that the referendum could not be a substitute for a law which was the expression and result of a parliamentary will which had developed in the course of a process of discussion between the

parties, parties which had obtained the general support of the people. If a referendum, on the other hand, provided for no such discussions and included a plebiscitary element, then it exercised a direct and substantial pressure on the population. It did not respect the political balance and the free expression of the popular will since there was not the same calmness in the popular debate and in the parliamentary discussion, thus preventing the display of the same kinds of agreements as could appear in parliamentary negotiation. Furthermore, a referendum could not substitute for parliament in respect of the control of government activity.

Mr. WINKELMANN (Germany) stated that requests for referendums and plebiscites at the federal level were not possible in Germany. The sole exception concerned the re-organisation of the federal territory in respect of the designation of the member states of the federation or modifying the borders between them. When the German constitution was established no provision was made for a plebiscite because of historical circumstances. Plebiscites had been frequently used by the Nazi dictatorship to give decisions taken by the regime a semblance of legitimacy. Furthermore, many people considered that before 1933, during the Weimar Republic, referendums were demagogic instruments which served only to disrupt the policies worked out by the government and the parliament.

In more recent years however the question had again become the subject of animated discussion. There had been requests for referendums or plebiscites or consultative referendums to allow citizens to participate more directly in important decisions. From the point of view of those who supported plebiscites, citizens' involvement in political life should not be limited to their participation in the elections. Opponents of the introduction of plebiscitary elements into the system drew attention, among other things, to the way in which many questions were too complicated to allow for a simple yes or no response. Plebiscites also made politics more emotional and could be manipulated by the way in which the question was phrased or by certain interest groups. Existing constitutional bodies charged with representing the people could abdicate from their responsibilities by recourse to plebiscites. Finally, since it was likely that a large number of citizens would not take part in the long term in many such public consultations, it was doubtful whether the results would be convincing. It would also be more difficult to change decisions of referendums than to change those taken by the legislature.

The question was currently one of the points in the general debate on amendments to the Constitution. However, it was unlikely that there would be a parliamentary majority in favour of introducing provision for plebiscites in the Constitution in Germany.

Mr. NGUEMA-MVE (Gabon) described the respective roles of national conferences and referendums in Africa for the adoption of new constitutions. In some cases these had been adopted by referendum after the involvement of a national conference (Mali, Benin, Niger). In respect of Gabon it was perhaps primarily for financial reasons that it was not proposed to have a referendum on revision of the Constitution.

Dr. ALZUBI (Jordan) indicated that both laws and referendums were provided for in his country's Constitution. Referendums were however rare: they could give rise to conflicts between the population and the political groups. The more common route was therefore the customary one of negotiation of laws between the King and the Parliament.

Mr. PANNILA (Sri Lanka) stated that in his country major constitutional provision such as the unitary character of a state, the popular vote, the mandate of the President (6 years), or the mandate of the Parliament (5 years), were amended by a two-thirds vote in Parliament with, in additional, approval by referendum. In one case in 1983 a prolongation of the mandate of Parliament was requested and the vote was in favour. Questions of national importance or proposals rejected by Parliament could also be submitted by the President to referendum. Otherwise, legislative modifications were submitted to the Supreme Court, to which even citizens had wide powers of reference, except in cases of urgency. If the Court decided that a proposal conflicted with the Constitution it must obtain the majority of two-thirds of the Parliament. In such a case the Government would prefer to amend the Constitution. There was at the moment a case, subject to referendum, with a likelihood of success.

Mr. NYS (Belgium) recalled that jurists had been divided on the constitutionality of a referendum since the unhappy experience of 1950. This was during the era in Belgium of a major national debate between the supporters of the return of the King to the throne and the opponents of this. A referendum took place which was considered not to be a referendum but a popular advisory consultation. After a favourable result, the Parliament enacted a law ending the prohibition on return to which the King had been subject. He then returned which led to a near-revolutionary situation and he finally decided to abdicate. The episode led to divisions between the Flemish and the Walloons and this precedent explains why the Belgian Parliament has no majority in favour of the organisation of popular consultations.

Mr. HADJIOANNOU (President) (Cyprus) indicated that there was no provision for referendum whether in constitutional or legislative matters in his country. Furthermore, the Constitution had been imposed by the colonial power without giving any opportunity to the people to express their opinion. The

President of the Republic of Cyprus has however frequently declared that any modification of the Constitution should be decided by the people.

Mr. IDRISSI KAITOUNI, after giving consideration to further details on the point by Mr. Nguema-Mve on the role of the referendum and of national conferences in Africa, considered it valuable to widen the discussion. This reflected his belief in the future development of the referendum as a means of popular expression. There was currently a crisis facing parliaments and facing parties in their relationship with the people as was illustrated by the recent Italian General Election and regional and local elections in France, which had taken place just before the Conference, and which had led to an increase in the numbers of parties. The traditional image of the parties as representing popular opinion was changing. Such changes were favourable towards referendums. Furthermore the Rapporteur drew attention to the development of new technologies which permitted the direct consultation of electors and allowed the development of substitutes for parliamentary assemblies. An illustration of this was the way in which American politicians preferred brief interventions on television stations rather than long speeches before parliament. Referendums also introduced into politics a strong emotional element. The Rapporteur also drew attention to the more general problem of the dilution of the sovereignty of parliaments in respect of the devolution of powers towards regional assemblies.

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

Referendums

"Referendum is one of the political rights that is exercised by every Egyptian, male or female, who reaches the age of 18. Some persons are deprived of the right: a person condemned in a felony unless he has been rehabilitated; a person whose property is put under sequestration by a law court judgement; a person sentenced to imprisonment in one of the crimes provided for in the laws of agrarian reform, supply, pricing, smuggling or customs unless the execution of the sentence is stayed or the person has been rehabilitated; a person sentenced to imprisonment in a robbery, swindling, giving an uncovered cheque, bribery, forgery, indecent assault or sacrilege of decency; or a civil servant who was dismissed for immorality.

Cases of holding referendum:

The Egyptian Constitution appoints the cases for holding referendum and defines its conditions as follows:

1. According to the constitution, the People's Assembly nominates the President of the Republic, then the nomination is submitted to referendum. The nomination is made upon the proposal of at least one-third of the Assembly members. The candidate who obtains a two-thirds majority of the Assembly members is submitted to referendum. If he does not obtain the said majority in the Assembly, voting for his nomination is repeated two days after the first vote. If he obtains the absolute majority of the Assembly members, he is submitted to referendum. The candidate shall be considered President of the Republic when he obtains an absolute majority of the votes cast in the referendum. (Article 76 of the Constitution.)
2. In case of discord between the People's Assembly and the President of the Republic about the responsibility of the Prime Minister or about the withdrawal of confidence from the Government as a result of an interpellation. After the Assembly submits its report on the matter to the President of the Republic and its opinion thereon, the President of the Republic may return the report to the Assembly within ten days. If the Assembly ratifies it once again, the President may submit the dispute between the Assembly and the government to referendum. If the result comes in favour of the government, the Assembly shall be considered dissolved; otherwise, the President accepts the resignation of the cabinet. (Article 127 of the Constitution.)
3. The President of the Republic may not dissolve the People's Assembly except in case of necessity and after referendum. The President issues a decision suspending the Assembly sittings and conducting a referendum within thirty days. If the absolute majority of electors vote in favour of dissolution, the President issues the decision of dissolution. Such a decision should include an invitation to the electorate to elect a new Assembly within a period not exceeding sixty days from date of the declaration of referendum results. (Article 136 of the Constitution.)
4. The President of the Republic may refer to the people those important matters that are related to the supreme interests of the nation. (Article 152 of the Constitution.)
5. If the People's Assembly agrees in principle to the amendment of one or more articles of the Constitution, it discusses the articles to the amended two months after the agreement. If the amendment is accepted by a two-thirds majority of the Assembly members, it shall be submitted to referendum. (Article 189 of the Constitution.)

The procedure for holding referendums:

A decision for holding a referendum shall contain the subject of referendum and the date fixed for it (Article 22 of law no. 73 for 1956 on the regulation of the exercise of political rights). The Minister of the Interior fixes the number of general and minor committees where a referendum is to be held; and appoints their headquarters. The referendum process is to go on from 8 o'clock until 5 o'clock p.m. (Article 28 of law no. 73 for 1956). Expression of opinion in the referendum shall be by making a mark on the ballot prepared for that. To guarantee the secrecy of the referendum, ballot papers are prepared in such a way that the matter put for referendum be coupled with a certain colour or symbol in the way defined by a decision from the Minister of the Interior.

An elector may not express his opinion more than one time in the same referendum (Article 30 of law no. 73 for 1956). An elector living in a city or in a village other than that in which his name is registered may express his opinion before the committee in the place where he lives provided that he submits his electoral certificate. (Article 32, law no. 73 for 1956).

A person whose name is registered in election tables and fails, without an excuse, to cast his vote in the referendum shall be punished with a fine not exceeding 100 piastres. A person who enters the election building at the time of referendum without right or enters carrying a weapon of any kind shall be fined £E200. There shall be punished by imprisonment and by a fine of no less than £E200 but not exceeding £E500 for a person who votes in a election or referendum though he knows that his name is registered without right in the election tables; and a person who votes assuming the name of another; and a person who casts vote in the same referendum more than one time.

Laws

The Egyptian Constitution and the Rules of Procedure of the People's Assembly define the procedure to be followed for the submission and consideration of bills in the Assembly as follows:

Each Bill is referred to the competent standing committee for consideration and submitting a report thereupon. Bills submitted by the Assembly members are not referred to standing committees except after being examined by a special committee to determine whether it may be submitted to the Assembly or not. A Bill that is submitted by an Assembly member but rejected by the Assembly may not be submitted again in the same session. The President of the Republic has the right to promulgate and to object to laws. If the President of the Republic objects to a bill agreed to by the Assembly, he returns it to the

Assembly within thirty days from the date of the Assembly communicating it to him. If the Bill is not returned within the said period, it is considered a law and shall be promulgated. If after being returned within the said period, the Assembly approved it by a two-thirds majority, it is considered a law and shall be promulgated (Articles 110,113 of the Constitution).

During consideration of a Bill in the Assembly, each member may propose amending, omitting, adding or dividing the articles or amendments laid before the Assembly. If the Assembly decided to refer the proposed amendment to the competent committee, this committee has to submit its report in the time fixed by the Assembly (Articles 14 and 143 of the Rules of Procedure).

The Assembly discusses bills in one deliberation. However, a second deliberation may be held if a written request to that effect is submitted to the Speaker by the government, the committee rapporteur or chairman, the representative of one of the parties' parliamentary bodies or at least twenty members, prior to the sitting or the date specified for a final vote on the Bill (Articles 147 and 154 of the Rules of Procedure).

Deliberation starts with a discussion of the principles of the Bill in general. If the Assembly does not agree in principle to the Bill, the Bill is considered to be rejected. A Bill may not be put to a final vote before the elapse of at least four days after the end of deliberations (Article 153, Rules of Procedure).

In the event of a Cabinet reshuffle, the Prime Minister may ask the Assembly Speaker to delay consideration of Bills submitted by the government for a period not exceeding 30 days during which the government prepares for its discussion or takes constitutional measures to amend or revoke them.

As for those reports on bills that were laid for consideration before the Assembly in a previous session, their consideration shall be resumed unless the Assembly decides to return them to the committee upon the request of the government.

If there happened, while the Assembly is not in session, something necessitating an accelerated measure that can not suffer delay, the President of the Republic may issue in their respect decrees which have the force of law (Article 147 of the Constitution). Such decrees should be submitted to the Assembly within 15 days from the date of their issue if the Assembly is standing, or at its first meeting where it is dissolved or in recess. If not submitted to the Assembly, they lose with retroactive effect their force of law, and this without having to issue a decision to that effect. If submitted to the Assembly and the Assembly does not ratify them, they lose with retroactive effect their force of law unless the Assembly ratifies their implementation in the previous period or settles their effects in some other way".

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It is the task of the Association to study the law, procedure, practice and working methods of different Parliaments and to propose measures for improving those methods and for securing co-operation between the services of different Parliaments.

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