UNION INTERPARLEMENTAIRE


INTER-PARLIAMENTARY UNION

## Association of Secretaries General of Parliaments

# MINUTES OF THE SPRING SESSION

## ADDIS ABABA

## 6-10 APRIL 2009

**ASSOCIATION OF SECRETARIES GENERAL OF PARLIAMENTS**

**Minutes of the Spring Session 2009**

**Addis Ababa**
**6-10 April 2009**

**LIST OF ATTENDANCE**

| NAME | COUNTRY |
|---|---|
| Mr Ghulam Hassan GRAN | Afghanistan |
| Dr Hafnaoui AMRANI | Algeria |
| Mr Abdelhamid Badis BELKAS | Algeria |
| Mr Pedro Agostinho de NERI | Angola |
| Mr Ian HARRIS | Australia |
| Mr Pranab CHAKRABORTY | Bangladesh |
| Mr Gleb BEDRITSKY | Belarus |
| Mr Robert MYTTENAERE | Belgium |
| Mr Georges BRION | Belgium |
| Mr René KOTO SOUNON | Benin |
| Mr Thebenala THEBENALA | Botswana |
| Mr Ognyan AVRAMOV | Bulgaria |
| Mr OUM Sarith | Cambodia |
| Mr Louis-Claude NYASSA | Cameroon |
| Mr Marc BOSC | Canada |
| Mrs Martine MASIKA KATSUVA | Congo (Dem. Rep. of) |
| Mr Constantin TSHISUAKA KABANDA | Congo (Dem. Rep. of) |
| Mr Petr KYNŠTETR | Czech Republic |
| Mr Mohamed DIAKITE | ECOWAS Parliament |
| Mr Heiki SIBUL | Estonia |
| Mr Dagnachew BEFEKADU | Ethiopia |
| Mr Habtamu NINI ABINO | Ethiopia |
| Mr Seppo TIITINEN | Finland |
| Mr Xavier ROQUES | France |
| Mr Raymond OKINDA | Gabon |
| Mr Félix OWANSANGO DAECKEN | Gabon |
| Mrs Marie-Françoise PUCETTI | Gabon |
| Dr Ulrich SCHÖLER | Germany |
| Mr Emmanuel ANYIMADU | Ghana |
| Shri P.D.T. ACHARY | India |
| Dr V. K. AGNIHOTRI | India |
| Mr Achmad DJUNED | Indonesia |
| Mr Boubacar IDI GADO | Inter-parliamentary Committee of the WAEMU |
| Mr Amjad Abdul Hamid ABDULLMAJEED | Iraq |
| Mr Eyal YINON | Israel |

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|---|---|
| Mr PARK Kye Dong | Korea (Republic of) |
| Mr Allam Ali Jaafer AL-KANDARI | Kuwait |
| Mr Adnan DAHER | Lebanon |
| Ms Lebohang RAMOHLANKA | Lesotho |
| Mr Said MOKADEM | Maghreb Consultative Council |
| Mr Ahmed MOHAMED | Maldives |
| Mr Mohamed TRAORÉ | Mali |
| Mr Abdelhamid KHALILI | Morocco |
| Mr Boubker Lafquih TITOUANI | Morocco |
| Mr Baptista Ismael MACHAIEIE | Mozambique |
| Mr Johannes Jakes JACOBS | Namibia |
| Mrs Jacqueline BIESHEUVEL-VERMEIJDEN | Netherlands |
| Mr Moussa MOUTARI | Niger |
| Mr Benedict EFETURI | Nigeria |
| Mr Oyeniyi S. AJIBOYE | Nigeria |
| Mr Karamat Hussain NIAZI | Pakistan |
| Mr Raja Muhammad AMIN | Pakistan |
| Mrs Marilyn B. BARUA-YAP | Philippines |
| Mr Edwin BELLEN | Philippines |
| Mrs Adelina SÁ CARVALHO | Portugal |
| Mr Vladimir SVINAREV | Russian Federation |
| Mr Sosthène CYITATIRE | Rwanda |
| Dr Mohammed AL GHAMDI | Saudi Arabia |
| Mrs Fatou Banel SOW GUEYE | Senegal |
| Mr Baye Niass CISSÉ | Senegal |
| Mr Matjaž PLEVELJ | Slovenia |
| Mr Mohamed HUSSEIN NUR | Somalia |
| Mr Mohamed Kamal MANSURA | South Africa |
| Mr Manuel ALBA NAVARRO | Spain |
| Mr Dhammika DASANAYAKE | Sri Lanka |
| Mr Ibrahim MOHAMED IBRAHIM | Sudan |
| Mrs Marcia I.S. BURLESON | Suriname |
| Mr Ulf CHRISTOFFERSSON | Sweden |
| Mr Christoph LANZ | Switzerland |
| Mr James WARBURG | Tanzania |
| Mr Pitoon PUMHIRAN | Thailand |
| Mr Sompol VANIGBANDHU | Thailand |
| Mrs Suvimol PHUMISINGHARAJ | Thailand |
| Mr Suchata YOUYOD | Thailand |
| Mr João Rui AMARAL | Timor Leste |
| Mr Paul GAMUSI WABWIRE | Uganda |
| Mr Sergey STRELCHENKO | Union of Belarus and the Russian Federation |
| Mr Michael POWNALL | United Kingdom |

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|---|---|
| Dr José Pedro MONTERO | Uruguay |
| Mrs Doris Katai Katebe MWINGA | Zambia |
| Mr Austin ZVOMA | Zimbabwe |

**SUBSTITUTES**

| NAME | COUNTRY |
|---|---|
| Ms Claressa SURTEES (for Mr Bernard Wright) | Australia |
| Mr Setyanta NUGRAHA (for Mrs Nining Indra Shaleh) | Indonesia |
| Mrs Maria Valeria AGOSTINI (for Mr Antonio Malaschini) | Italy |
| Mr Hiroto KONDO (for Mr Yoshihiro Komazaki) | Japan |
| Ms Cath ANYAN (for Mary Harris) | New Zealand |
| Mr Tango LAMANI (for Mr Michael Coetzee) | South Africa |
| Ms Jacqy SHARPE (for Mr Douglas Millar) | United Kingdom |
| Mr NGUYEN SY DZUNG (for Mr TRAN DINH DAN) | Vietnam |

**ALSO PRESENT**

| NAME | COUNTRY |
|---|---|
| Mr SOTHKUN Chhim (non-member) | Cambodia |
| Mrs Daniela GIACOMELLI (non-member) | Global Centre for ICT in Parliaments |
| Mrs Luisa ACCARRINO (non-member) | Italy |
| Mr James MWANGI (non-member) | Kenya |
| Mr Khotso MANAMOLELA (non-member) | Lesotho |
| Mr Khalid AL MUBARAK (non-member) | Saudi Arabia |
| Mrs Samonrutai AKSORNMAT (non-member) | Thailand |
| Miss Neeranan SUNGTO (non-member) | Thailand |
| Mr Kitti SAEREEPRAYOON (non-member) | Thailand |
| Miss Weeranuch TIANCHAIKUL (non-member) | Thailand |

## APOLOGIES

| | |
|---|---|
| Ms Emma DE PRINS | Belgium |
| Mr Mateo SORINAS | Council of Europe (Parliamentary Assembly of the) |
| Mr Alain DELCAMP | France |
| Mr David JANIASHVILI | Georgia |
| Mr Iakob IOSEBASHVILI | Georgia |
| Mr Nikos STEFANOU | Greece |
| Mrs Nining Indra SHALEH | Indonesia |
| Mr Antonio MALASCHINI | Italy |
| Mr Yoshihiro KOMAZAKI | Japan |
| Mr Makoto ONITSUKA | Japan |
| Mr Mikio OBATA | Japan |
| Mr Masafumi HASHIMOTO | Japan |
| Mr M. G. MALUKE | Lesotho |
| Mrs Valérie VIORA-PUYO | Monaco |
| Mr Geert Jan A. HAMILTON | Netherlands |
| Mary HARRIS | New Zealand |
| Mrs Emma Lirio REYES | Philippines |
| Mr Gheorghe BARBU | Romania |
| Mr Romão PEREIRA DO COUTO | Sao Tomé and Principe |
| Mr Michael COETZEE | South Africa |
| Mr Anders FORSBERG | Sweden |
| Mr Douglas MILLAR | United Kingdom |
| Mr Floris DE GOU | W.E.U. |

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**SEVENTH SITTING – Friday 10 April [am]**

## FIRST SITTING
## Monday 6 April 2009 (Morning)

### Dr Hafnaoui AMRANI, President, in the Chair

***The sitting was opened at 11.00 am***

## 1. Opening of the Session

**Dr Hafnaoui AMRANI, President**, welcomed all those present, particularly new members. He said how honoured he was to chair a meeting of the ASGP for the first time, and that he hoped, thanks to mutual co-operation, that the Association would remain a lively focus for enriching dialogue.

He introduced a new Joint Secretary, Agathe Le Nahénec, replacing Sophie Teulade, and mentioned a number of practical arrangements for the meeting.

## 2. Election to the Executive Committee

**Dr Hafnaoui AMRANI, President**, noted that during the meeting, there would be an election for an ordinary member of the Executive Committee, which would take place on Thursday 9 April at 4 pm. The deadline for the nomination of candidates was at 11 am on the same day. He reminded members that it was customary for experienced and active members of the Association to stand as candidates.

## 3. Orders of the Day

**Dr Hafnaoui AMRANI, President**, described matters on the agenda, thanked those members who were to moderate debates and present communications, and encouraged all members to think of further subjects for communications, questionnaires or topics for a general debate which could be included on the agenda for the next conference in Geneva. Members who had such proposals were invited to approach the Joint Secretaries as soon as possible, so that their suggested topics could be included in the draft agenda to be adopted later.

**Dr Hafnaoui AMRANI, President**, read the proposed Orders of the Day as follows:

**Monday 6 April**

**Morning**

**9.00 am** Meeting of the Executive Committee

**11.00 am** Opening of the session

Orders of the day of the Conference

New members

Welcome and presentation on the parliamentary system of the Federal Democratic Republic of Ethiopia by Mr Dagnachew BEFEKADU, Secretary General of the House of People's Representatives and Mr Habtamu NINI ABINO, Head of the Secretariat of the House of Federation of Ethiopia

**Afternoon**

**3.00 pm** General Debate: Questions to Ministers

Moderator: Mrs Adelina SÁ CARVALHO, Former President of the ASGP, Secretary General of the Assembly of the Republic of Portugal

Communication by Mr PARK Kye Dong, Secretary General of the National Assembly of the Republic of Korea: "Promoting e-Democracy in the Global Era"

**Tuesday 7 April**

**Morning**

**9.00 am** Meeting of the Executive Committee

**10.00 am** General debate: "Measures to limit the impact of Parliament on the Environment"

Moderator: Mr Ulf CHRISTOFFERSSON, Deputy Secretary General of the Swedish Parliament

Communication by Mr P.D.T. ACHARY, Secretary General of the Lok Sabha of India: "Parliamentary privileges: Legislature and judiciary interface – the Indian experience"

**Afternoon**

**3.00 pm** Communication by Mr Xavier ROQUES, Secretary General of the Questure of the National Assembly of France: "The reception of MPs at the beginning of a new term of Parliament at the French National Assembly"

Communication by Dr José Pedro MONTERO, Vice-President of the ASGP, Secretary General of the House of Representatives of Uruguay: "Functions of the Chamber of the House of Representatives of Uruguay during non-working periods"

Communication by Mr Ghulam Hassan GRAN, Secretary General of the House of Representatives of Afghanistan: "Afghanistan: the beginning of democracy – achievements and challenges"

**Wednesday 8 April**

Visit of Parliament and excursion to Bishoftu

**Thursday 9 April**

**Morning**

**9.00 am** Meeting of the Executive Committee

**10.00 am** General debate: Election of the Speaker

Moderator: Mr Marc BOSC, Vice-President of the ASGP, Deputy Clerk of the House of Commons of Canada

Communication by Ms Claressa SURTEES, Deputy Serjeant at Arms of the House of Representatives of the Parliament of Australia: "First speeches in Parliament by new Members of Parliament"

**11.00 am** **Deadline for nominations for the one vacant post on the Executive Committee (ordinary member)**

**Afternoon**

**3.00 pm** Presentation by Mr Martin CHUNGONG on the recent activities of the IPU

General debate: Administrative self-evaluation within Parliaments

Moderator: Dr Hafnaoui AMRANI, President of the ASGP, Secretary General of the Council of the Nation of Algeria

Communication by Dr V. K. AGNIHOTRI, Secretary General of the Rajya Sabha of India: "The ordinance: legislation by the Executive in India"

**4.00 pm** **Election of an ordinary member of the Executive Committee**

**Friday 10 April**

**Morning**

**9.00 am** Meeting of the Executive Committee

**10.00 am** General debate: Observing parliamentary traditions and meeting expectations of Members and electors

Moderators: Mrs Jacqueline BIESHEUVEL-VERMEIJDEN, Secretary General of the House of Representatives of the States General of the Netherlands, and Mr Ian HARRIS, former President of the ASGP, Secretary General of the House of Representatives of the Parliament of Australia

Communication by Mr Vladimir SVINAREV, Secretary General of the Council of Federation of the Federal Assembly of the Russian Federation: "The interaction of the Council of the Federation with the legislative assemblies of the subjects of the Russian Federation in the law-making processes"

**Afternoon**

**3.00 pm** Discussion of supplementary items (to be selected by the Executive Committee at the current Session)

Review of the rules of the Association

Administrative and financial questions

Examination of the draft agenda for the next meeting (Geneva, October 2009)

Presentation by Mr Pitoon PUMHIRAN, Secretary General of the House of Representatives of Thailand, on the organisation of the meeting in Bangkok in March/April 2010

Closure.

The Orders of the Day were *agreed* to.

**Dr Hafnaoui AMRANI, President**, asked those introducing debates and presenting

communications to keep their speeches to less than 10 minutes, and for other contributors to speak for no more than five minutes, in order to allow for lively debate. He added that short breaks would be arranged in the morning and afternoon to allow members to hold informal discussions.

## 4. New Members

**Dr Hafnaoui AMRANI, President**, said that the secretariat had received several requests for membership which had been put before the Executive Committee and agreed to. These were:

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|---|---|
| **Mr Abdelhamid Badis BELKAS** | Secretary General of the National People's Assembly of Algeria<br>(replacing Mr Boubeker ASSOUL) |
| **Mr Gegham GHARIBJANIAN** | Secretary General of the National Assembly of Armenia<br>(replacing Mr Tigran Balayan) |
| **Mr Alan THOMPSON** | Secretary of the Department of Parliamentary Services of Australia<br>(replacing Hilary Penfold) |
| **Mr Djonata DJATTO** | Secretary General of the National Assembly of Chad<br>(This country is joining the ASGP for the first time) |
| **Mr José Óscar Armando PINEDA NAVAS** | Secretary General of the Legislative Assembly of El Salvador<br>(This country is joining the ASGP for the first time) |
| **Mr Sherlock E. ISAACS** | Clerk of the National Assembly of Guyana<br>(replacing Mr F. A. Narain) |
| **Mr Achmad DJUNED** | Deputy Secretary General of the House of Representatives of the Republic of Indonesia<br>(replacing Mrs Nining Indra Saleh who became Secretary General) |
| **Mr Said MOKADEM** | Secretary General of the Maghreb Consultative Council<br>(This Council is joining the ASGP for the first time) |

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|---|---|
| **Mr Johannes JACOBS** | Secretary General of the National Assembly of Namibia<br>(replacing Mr Simon Nama Goabab) |
| **Mr Gheorghe BARBU** | Secretary General of the Chamber of Deputies of Romania<br>(replacing Mr Titu Gheorghiof) |
| **Mr Fepuleai Attila Manutoipule ROPATI** | Clerk of the Legislative Assembly of Samoa<br>(replacing Dr Fetuao Toia ALAMA) |
| **Ms Mojca PRELESNIK** | Secretary General of the National Assembly of the Republic of Slovenia<br>(replacing Mr Lovro Loncar) |
| **Mr Yambadjoï KANSONGUE** | Secretary General of the National Assembly of Togo<br>(replacing Mr Manondoh Kokou Kama) |

The new members were *agreed* to.

## 5. Welcome and Presentation on the parliamentary system of the Federal Democratic Republic of Ethiopia by Mr Dagnachew BEFEKADU, Secretary General of the House of People's Representatives and Mr Habtamu NINI ABINO, Head of the Secretariat of the House of Federation of Ethiopia

**Dr Hafnaoui AMRANI, President,** invited Mr Dagnachew BEFEKADU, Secretary General of the House of People's Representatives and Mr Habtamu NINI ABINO, Head of the Secretariat of the House of Federation of Ethiopia, to the platform to give their presentation.

**Mr Dagnachew BEFEKADU and Mr Habtamu NINI ABINO** gave the following presentation:

"I would like to take this opportunity to express my pleasure that Ethiopia has become the host Country for the 120th Assembly of IPU. I also would like to express my wishes that your stay here would be enjoyable. Before going into the parliamentary system of my country, I would like to say a few words on the overview of Ethiopia and Addis Ababa, where you are to stay for the next few days.

As we all know, Ethiopia is situated in the Horn of Africa bordered by Eritrea in the North, Sudan in the West, Kenya in the South, Somalia in the East and Djibouti in the North East. Its size is about 1.1m. square km with a population of over 73 million, according to the census of 2007. Addis Ababa is the capital city - a seat to many regional and international organizations.

Ethiopia is one of the oldest countries in the world and Africa's third-most populous nation. It has also yielded some of humanity's oldest traces, making the area a primary factor in the origin and developmental history of humanity, with recent studies -"Lucy" is a case in point.

The country is famous for its Olympic specially distance runners, rock-hewn churches and as the origin of the coffee bean. Ethiopia is home for both Christian and Muslim believers since earliest days, where both co-exist in peace and harmony. It's also a home to other believers as well.

It became a member of the League of Nations in 1923, and one of the fifty-one original members of the United Nations (UN).

The headquarters of United Nations Economic Commission for Africa (UNECA) is in Addis Ababa, as is the headquarters of the Africa Union (formally the organization of African Unity), of which Ethiopia was the principal founders.

Addis Ababa, as a capital city all the Ethiopian, ethnic groups are represented in it due to its position as capital of the country. This Ethnic blend gives the city diverse of culture making the capital even more attractive. The major ethnic groups and the smaller ones live side by side in harmony and peace. The city is fully urban containing 22% of all urban dwellers in Ethiopia. Its population is around 3 million out of which the number of women is slightly more.

Climate wise, the city possesses a complex mix of highland climate zones, with temperature differences of up to $10^{o}c$, depending on elevation and prevailing wind patterns. The high elevation moderates temperatures year-round, the city's position near the equator means that temperatures are very constant from month to month.

**Parliamentary system of the FDRE**

As IPU is the international association of Parliaments of sovereign states, Ethiopia has been one of these member countries since 1962. The Union being the focal point for worldwide parliamentary dialogue that works for peace and co-operation among peoples and for the firm establishment of representative democracy, the Ethiopian Parliament, as a member shares the responsibilities of the Union in fostering contacts, co-ordination, and the exchange of experience among parliaments and parliamentarians of all countries; in contributing to the defense and promotion of human rights which is an essential factor of parliamentary democracy and development.

In Ethiopia the historical development of a parliamentary democracy has passed through three different types since its establishment in 1931. These are:

- The Parliament under Emperor Haile Selasise I.
- The National Assembly (Shengo) of the Military regime and
- The Ethiopian Parliament.

The Parliaments during the Emperor and the Military regime had a unitary form of parliament. Therefore, the idea of parliamentary democracy was at its rudimentary stage.

The present Federal Parliament came into being after the force led by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) overthrew the Military regime in May 1991, and set up the Transitional Government.

Then a Constitution that established a parliamentary system of Government came in to full force as of 21st August 1995. It created two Houses, namely, the House of Peoples' Representative and the House of Federation. The Houses have their distinct and common roles to play, as a bicameral form of parliament.

The Peoples elect members of the House of Peoples' Representative, whose seat number are 547, for a term of five years based on universal suffrage and by direct, free and fair elections held by secret ballot as stipulated in the constitution. The House of Federation on the other hand, having 120 seats, elected directly or indirectly by the Regional State Councils. The term of House is similarly five years.

The governance framework of the HoPR is:

- The Assembly
- Business advisory committee
- The Speaker
- Six Party Whips
- Coordinating Committee
- 13 Standing committees
- Secretariat of the House

### *B. The House of Federation*

Ethiopia, a home to more than 80 different nations, nationalities, and peoples; has the federal system that accommodates diversity. So, it has been federated into nine regional states with self-government. Pursuant to Article 62 of the Constitution, the main responsibilities of the House of Federation are: **1)** Constitutional interpretation, **2)** Conflict and dispute settlement and **3)** Determine the division of revenues and subsidies that the Federal Government provide to the states.

#### *The Secretariats of the two Houses*

The increase in the number of opposition parties and their members, especially in this third term, has made the House prepare and implement rules of procedures and members code of conduct, which has brought significant influence on the service delivery. Although various changes have been made on the structural arrangements and working systems, significant improvement could not be brought.

Lately a study has been made in both secretariats using Business Process Reengineering (BPR) and the result has brought significant change on their structures, the number and qualification of the staffs, using IT, and so on. As a result, fundamental changes have been made to enable both secretariats to give quality and timely services that can ultimately enable the Houses to accomplish their purposes."

**The Parliamentary System of the Federal Democratic Republic of Ethiopia**

Presentation at the ASGP meeting
Addis Ababa,
5. – 10. 04.2009

Habtamu Nini,
Secretary General, House of Federation,
Federal Democratic Republic of Ethiopia

## Contents

- Constitutional Principles
- Parliamentary System
- Secretariats of the Houses
- Reform Processes

Habtamu Nini, Secretary General, House of Federation, FDRE

## Constitutional Principles

- The Constitution and the Federal Republic are based on Ethnicity
- Right to self-determination up to secession (constitutional provisions)
- Right to secession for NNP to set up their own regional state and to secession to secede from Ethiopia
- Parliamentary Political System

Habtamu Nini, Secretary General, House of Federation, FDRE

## Parliamentary System

### Bi-cameral parliamentary system

- House of Peoples Representatives
- House of Federation

Habtamu Nini, Secretary General, House of Federation, FDRE

## The Lower House

### House of Peoples' Representatives

- Elected in fair, free and universal elections for a five year term by a First-Past-the-Post System
- Representation of Ethnic minorities guaranteed
- Westminster System
- Mandates and working procedures as in any western parliaments

Habtamu Nini, Secretary General, House of Federation, FDRE

## The Upper House

House of Federation

- almost no legislative powers
- Main Mandates:
  - Constitutional interpretation supported by constitutional inquiry council
  - Promotion of the Constitution
  - Design and decision on the budget transfer formula
  - Conflict resolution

Habtamu Nini, Secretary General, House of Federation, FDRE

## Composition of the HoF

- Represents the Nations, Nationalities and People of Ethiopia
  - each NNP have at least 1 member plus an additional member for each one million of people
  - elected in regional parliaments or directly by the people within regional states

Habtamu Nini, Secretary General, House of Federation, FDRE

## Secretariats

- Originally, both Houses shared one secretariat
- Since 2001 both Houses have their own, distinct secretariats
- Both are headed by a Secretary General

Habtamu Nini, Secretary General, House of Federation, FDRE

## Mandates of the Secretariats

- Secretariats support parliamentary work in an impartial way
- Additional support is given to the speakers to help them to discharge their duties
- Secretariats support decision making processes and implement the decisions the Houses make

Habtamu Nini, Secretary General, House of Federation, FDRE

## Capacity Building and Reform Processes

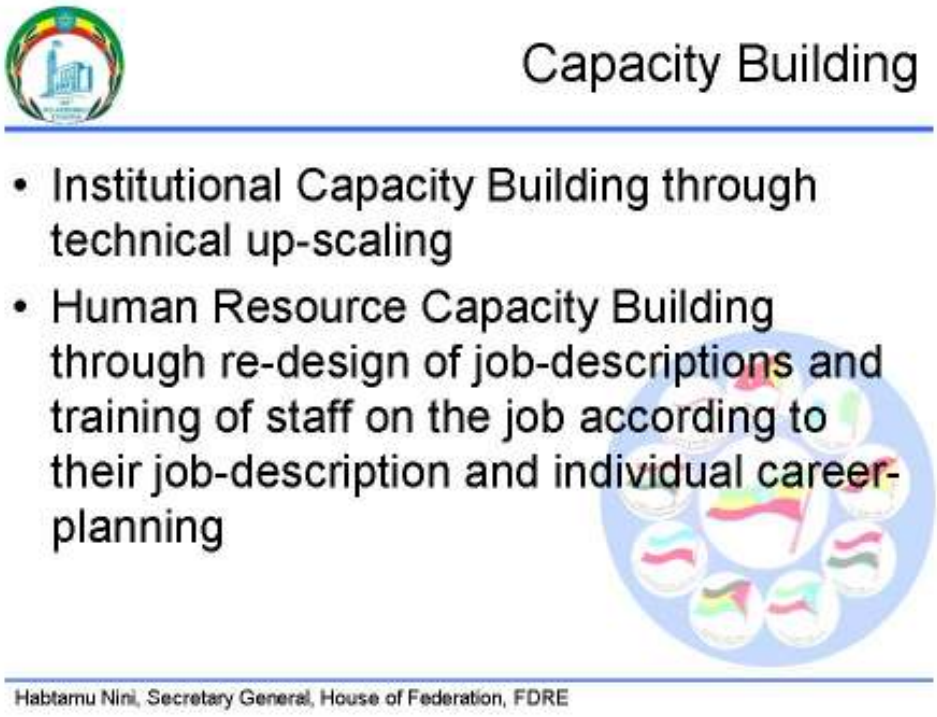
- Both Secretariats underwent and are undergoing reform processes (BPR)
- In this respect both Secretariats have benchmarked the experiences of parliamentary administrations of a variety of other countries
- HoF has achieved the reform and is currently in the implementation stage

Habtamu Nini, Secretary General, House of Federation, FDRE

## Examples for Reform Processes (HoF)

- Working processes have been shortened and re-arranged
- Old department structures have been abolished
- Hierarchies are flattened
- Working processes are being digitalized
- Local Area Networks have been introduced
- E-Parliament functions are being set up

Habtamu Nini, Secretary General, House of Federation, FDRE




**Dr Hafnaoui AMRANI, President**, thanked Mr Habtamu NINI ABINO and Mr Dagnachew BEFEKADU for their presentation and invited members present to put questions to them.

**Mr Xavier ROQUES (France)** asked what kind of parliamentary and constitutional structures existed in each of the nine states of Ethiopia.

**Mr Manuel ALBA NAVARRO (Spain)** asked about the nature of the legislative process, and whether more could be said about the right to secession.

**Mr Moussa MOUTARI (Niger)** asked about the size of the opposition in the two Chambers, and about the representation of minorities.

**Mr Baye Niass CISSÉ (Senegal)** asked about how members of the House of Federation were elected, whether directly or indirectly. He also asked how the right to secession could be exercised.

**Mrs Maria Valeria AGOSTINI (Italy)** asked about the role of the House of Federation in controlling the budget, and about the kind of conflict-resolution role it played.

**Mr Christoph LANZ (Switzerland)** asked for information about the secretariats of the two Chambers.

**Dr Hafnaoui AMRANI, President** asked whether MPs had played a role in the restructuring of the administration or whether it was an entirely internal administrative matter.

**Mr Habtamu NINI ABINO** replied that each of the nine regions had its own constitution, in line with the federal constitution, and its own representative councils. Minority representation referred to the various recognised minorities as described in the Ethiopian constitution. There were seats reserved in the House of Federation even for minorities the population size of which would not normally justify such representation. Election of representatives of nationalities was either direct by members of those nationalities, or indirect, through regional councils, depending on the regional constitution. The right to secession was a guarantee. To secede from the federation, a regional council had to take a majority decision in this direction; this would be followed by a referendum within three years, organised by the federal government. There were then legal and administrative steps that needed to be completed to establish secession, such as a division of assets. The House of Federation had a role in resolving border conflicts between regions.

**Mr Dagnachew BEFEKADU** replied that during the first two terms following the fall of the Communist government, the House of People's Representatives was dominated by the governing parties. Now however, in the third term, more than one third of seats were occupied by opposition parties. Opposition members took part in the Business Advisory Committee and in Standing Committees. The chairperson of the Public Accounts Committee was from an opposition party, and many deputy chairpersons were drawn from the opposition. On the question of staffing, before 2001, all services in both Houses had been delivered from a single secretariat. Before business process engineering, the House of People's Representatives had more than 600 largely non-professional staff. This had been reduced to 410, with more than 80 in the House of Federation. There had been many steps before business process engineering was undertaken. Various Members of Parliament had been involved, including the Speakers of both Houses and the Business Advisory Committee.

**Dr Hafnaoui AMRANI, President**, thanked Mr Dagnachew BEFEKADU and Mr Habtamu NINI ABINO for their presentations as well as all those members who had put questions to them.

*The sitting rose at 12 pm.*

## SECOND SITTING
## Monday 6 April 2009 (Afternoon)

## Dr Hafnaoui AMRANI, President, in the Chair

***The sitting was opened at 2.30 pm***

## 1. General Debate: Questions to Ministers

**Dr Hafnaoui AMRANI, President,** invited Mrs Adelina SÁ CARVALHO, Secretary General of the Assembly of the Republic of Portugal, to open the debate.

**Mrs Adelina SÁ CARVALHO (Portugal)** presented the following contribution:

"**Oral and written questions to the Government**
Questions to the Government are acts of political control in the context of the parliamentary responsibility of the Government. They may be made in writing or orally and relate to acts of the Government or direct or indirect Administration of the State.
In Portugal, Members of Parliament were empowered to make questions to the Government for the first time in 1959, during the dictatorship, in a revision to the Constitution of 1933, although the questions could only be formulated in writing and were not disclosed in any manner.

This distinction, established under a regime which despised the parliament and reduced the prerogatives of its members to a minimum, throws light on the difference between the scope of oral and written questions to the Government, which were often approached and analysed together. It was the Constitution of 1976, approved after the revolution which instituted democracy in Portugal that established the right of the members of parliament to question the Government on its activity, both in plenary meetings for this purpose, as well as in writing. In Portugal this parliamentary right is a constitutional prerogative.

Oral questions, asked during plenary meetings, frequently broadcasted live, place the Government and the opposition in a frontal position highlighting their respective standpoints as regards specific problems. While different members of the Government may be called to participate depending on the subject, there is the involvement of the Prime Minister who is present and assumes the onus of the response. Written questions allow parliamentarians to get information from the answers of the bodies, often indispensible to their parliamentary activity, via the different ministries.

**Oral questions**

A comparative study published by IPU in 2007[1] notes that of 88 parliaments, only 21 do not reserve time for oral questions. Curiously, amongst those reserving time for this purpose, 35 do so once or twice a week and 12 on a daily basis.

In Portugal, until the reform of the Parliament undertaken in 2007, the status of oral questions to the Government was profoundly undervalued, since the questions were delivered to the Government one week in advance and in greater number than those answered. The distribution of time in the debates dedicated to the sessions of questions offered a comfortable situation to the Government which, after answering the questions it chose, closed the debate having the right to the last intervention. The root of the problem lay particularly in the right of the Government[2] to choose the questions, this system lasted, in practice, until 2007.

After the reform, the subject of the debate, which is carried out fortnightly is chosen alternatively by the Government and by the parliamentary groups and communicated 24 hours in advance. Parliamentary groups may ask questions related to the subject under debate, in accordance with the available time.

While before the sessions of questions to the Government attracted minimal attention in the media and were described by members of parliament *as monotonous and uninteresting*, under the new model they gained an indisputably important space in the Portuguese political life.

Right after the first sessions of questions to the Government these questions gained greater resonance and according to the new model started to require clear answers. Evasive answers are very obvious, they are politically weakening.

**Written questions**

As noted in the abovementioned IPU study, written questions are the most widespread parliamentary instrument, although their characteristics vary according to the different parliaments. The written questions to the Government assure the members of parliament a space of autonomy and intervention outside the framework of party discipline and rigid sharing of time, indispensible for their individual affirmation, in particular in the case of members who are part of the larger parliamentary groups. They also allow that issues which are not crosscutting or of major importance, and therefore do not merit to be treated in plenary or committee meetings, are the object of parliamentary control and follow-up.

In Portugal, the Constitution establishes, amongst the powers of members of parliament, the right to question the Government on any of its acts or of the Public Administration and obtain an answer within a reasonable period of time, unless established otherwise by law, in what regards matters of State secrecy. Answers to

[1] *Tools for Parliamentary Oversight – A comparative study of the 88 national parliaments* IPU, 2007

[2] The Rules of Procedure of the Assembly of the Republic of 1985 determined that the Government chose *the questions to which it answered in order of convenience.*

written questions are made in writing, although the same question may be posed simultaneously in an oral form during a session of questions to the Government.
Members of parliament are thus empowered to ask questions on any issues and without quantitative limits. It is not within the Government's power to decide if it should, or not, respond: it is bound to the duty of response which should, in addition, be carried out within a reasonable period of time.

The Rules of Procedure of the Assembly of the Republic, approved in 2007, specified in detail the applicable regime, establishing 30 days as the limit for the reception of the response and as a consequence of its non-response the publicising of the question and the name of its receiver, both in the Official Journal of the Assembly of the Republic, as well as on the parliamentary website.

The alteration of the rules concerning written questions implied a re-thinking of their use by members of parliament, in particular in light of the considerable number of questions and the establishment of the period of time for a response.

**Requests**
Simultaneously to the questions, members of parliament may also request information or the sending of elements from the central and local government and from public companies or companies under the administration of the Government or Town Halls. Therefore, it was important to clearly separate requests from questions, by defining good practices for both and guarantee their respect by the bodies to which they are addressed.

There was also the concern to avoid its banalisation and guarantee its respect (under the current Legislature the Government has already been sent 6272 questions and requests, which amounts to an annual average higher than 2000).

**Guide of Good Practices**
During the last legislative session a working group was created, composed of one member of parliament for each parliamentary group, in order to prepare a guide of good practices.

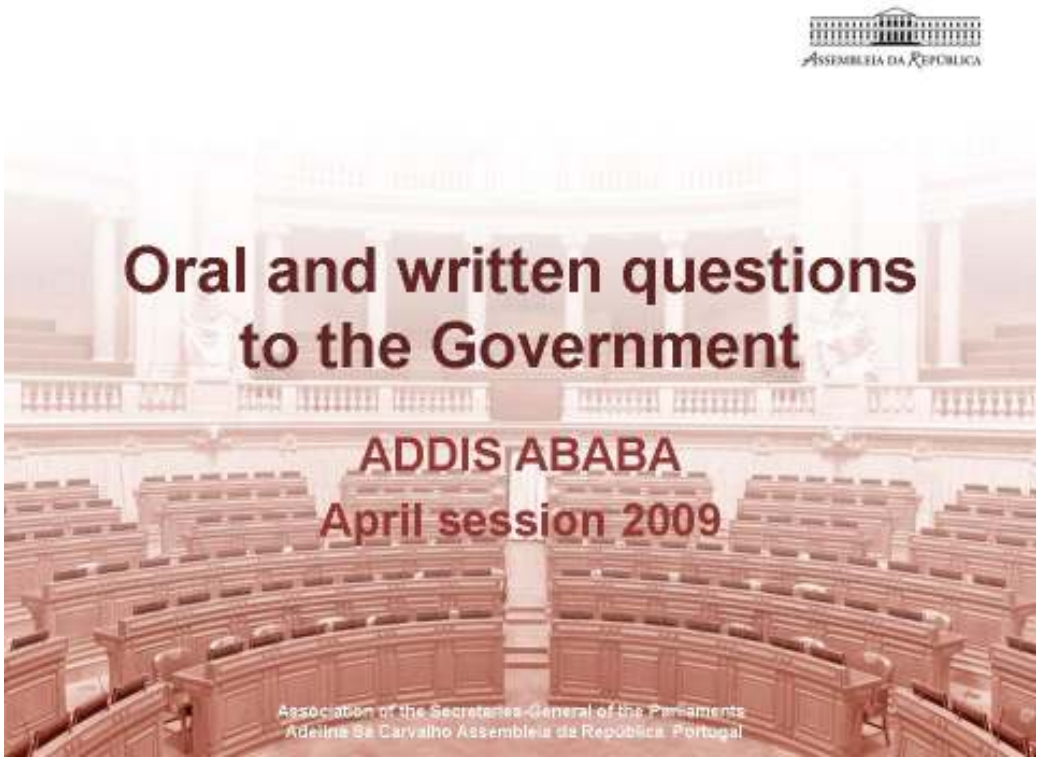
The working group focused on the procedures related to questions and answers and analysed the respective content. The Guide, which was published in the Official Journal of the Assembly of the Republic and in a brochure, and distributed to members of the Government and members of parliament, contains a set of recommendations and practical examples.

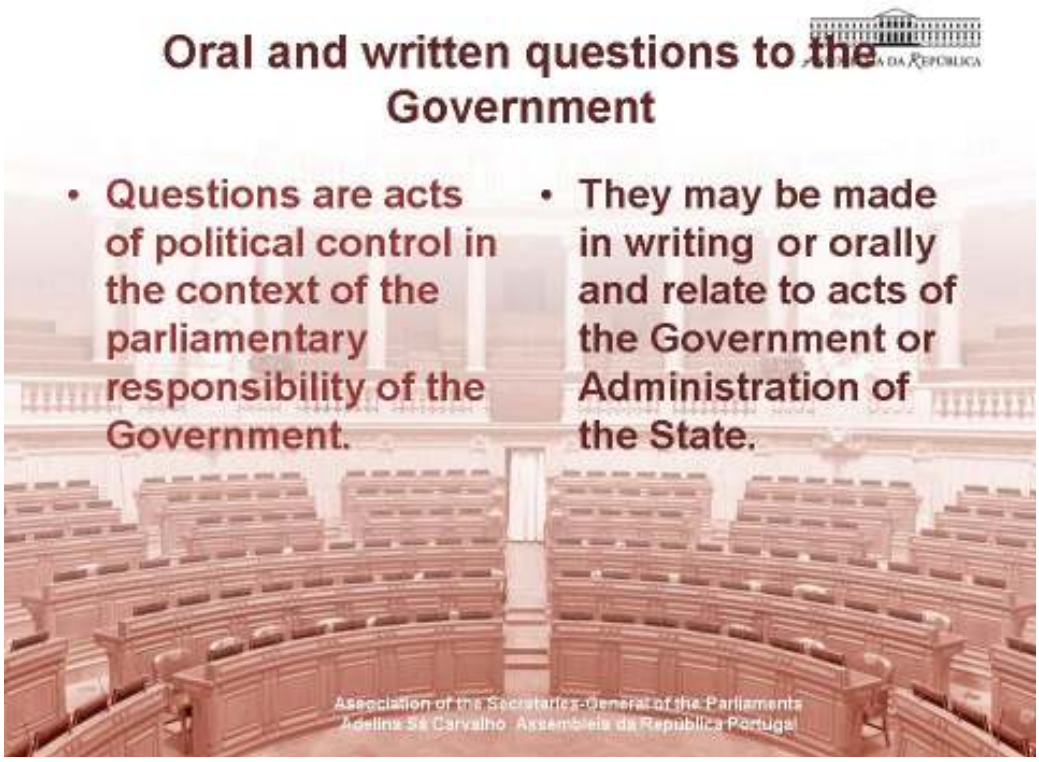
Regarding the questions, the main recommendations are that the receiver of the question should be clearly identified and that each question should include various questions to the same entity but, the same question addressed to two or more entities should be formulated autonomously. In situations where the receivers of questions do not have responsibility for the matter in question they should return it, within the period of 5 working days, indicating the competent entity, a new question can be asked if the member of parliament deems necessary.

Whenever the member of parliament who is the author of the question considers that the answer is not adequate, a new question should be presented, but, statistically, the first question is considered to have been answered.

Finally, in collaboration with the Cabinet of the Minister for Parliamentary Affairs, the Services have taken steps to simplify the procedures of the questions, namely through the creation of a specific form and its exclusively electronic circulation with the digital signature of the members of parliament. The electronic procedure will allow the acceleration of the question and answer process as well as their dissemination. In addition to these advantages, we reduced the use of paper, a policy that has been progressively implemented in the Assembly of the Republic.

The increase in transparency and effectiveness of parliamentary proceedings is often made by small steps and the needed articulation with the citizens' interest, willingness of parliamentarians and capacity of the services that support them."




Oral and written questions to the Government
• Questions are acts of political control in the context of the parliamentary responsibility of the Government.
• They may be made in writing or orally and relate to acts of the Government or Administration of the State.
Association of the Secretaries-General of the Parliaments
Adelina Sá Carvalho Assembleia da República Portugal


Oral and written questions to the Government
• In Portugal, MPs were empowered to make questions to the Government for the first time in 1959, during the dictatorship.
• Although the questions could only be formulated in writing and were not disclosed in any manner.
Association of the Secretaries-General of the Parliaments
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## Oral and written questions to the Government

- This distinction, established under a regime which despised the parliament and reduced the prerogatives of its members to a minimum, throws light on the difference between the scope of oral and written questions to the Government.



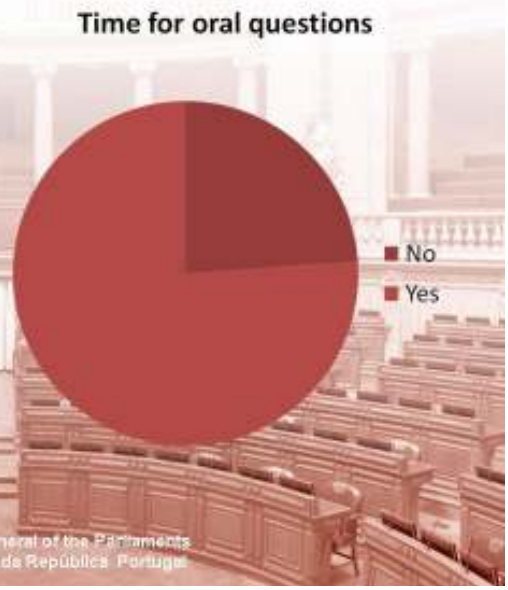
## Oral and written questions to the Government

Actually,

- Oral questions, asked during plenary meetings, frequently broadcasted live, place the Government and the opposition in a frontal position highlighting their respective standpoints;
- Written questions allow parliamentarians to get information, often indispensible to their parliamentary activity.

## Oral questions to the Government

- A comparative study published by IPU in 2007 notes that of 88 parliaments, only 21 do not reserve time for oral questions.
  - *Tools for Parliamentary Oversight – A comparative study of the 88 national parliaments* IPU, 2007






## Oral questions to the Government

- Amongst those reserving time for this purpose, 35 do so once or twice a week and 12 on a daily basis;
- Less than once a week (20);
- No time reserved for that purpose (21).

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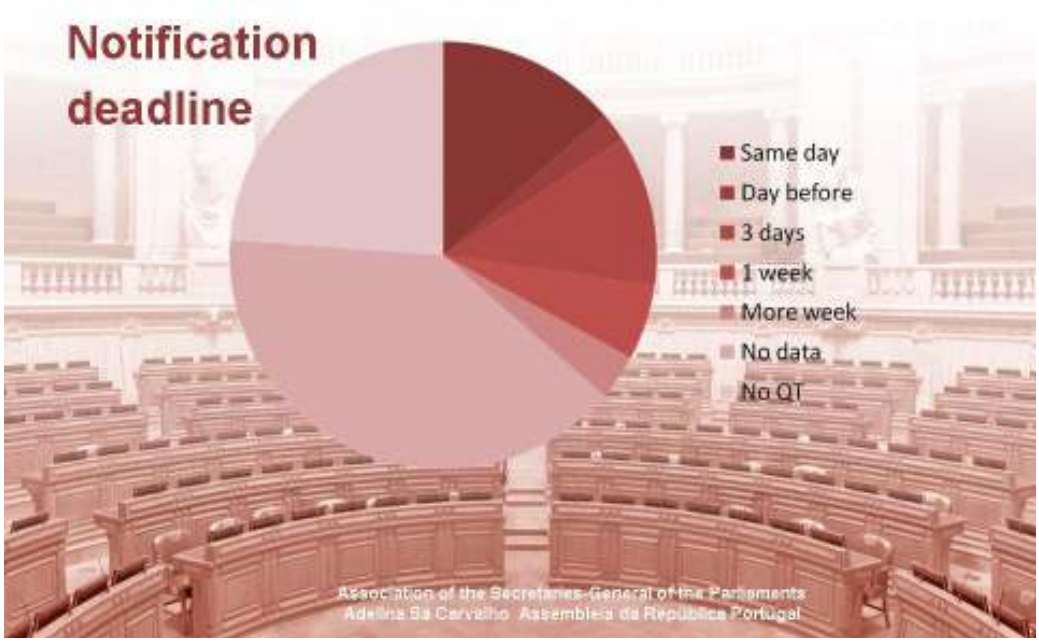
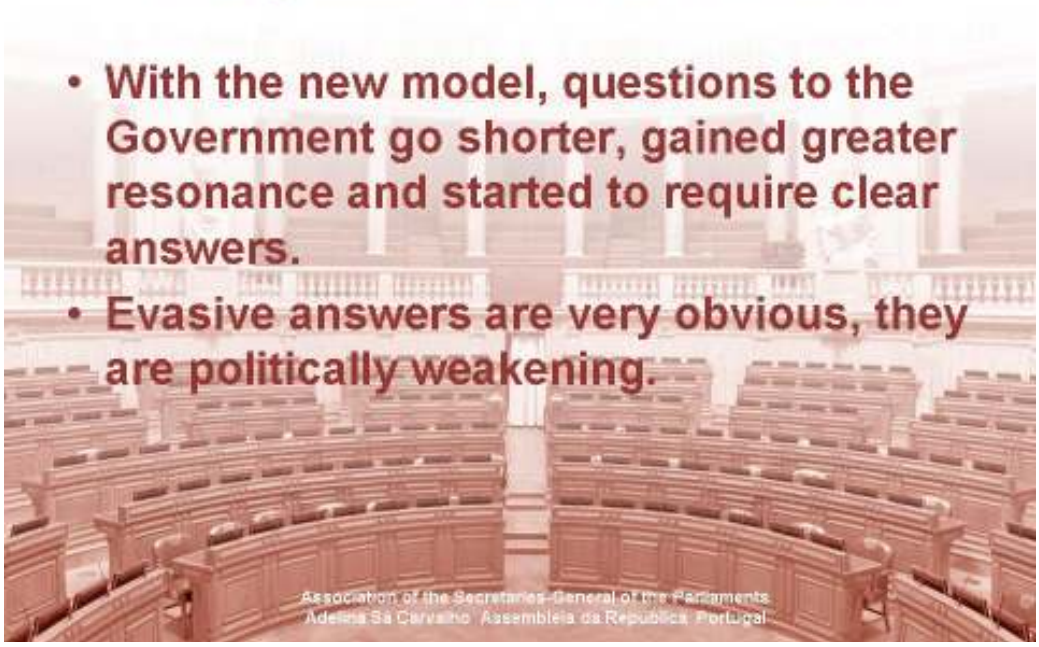
## Oral questions to the Government




## Oral questions to the Government

- In Portugal, nowadays, question time is carried out every 2 weeks, and the theme is chosen alternatively by the Government and by the parliamentary groups;
- Parliamentary groups may ask questions related to the debate, in accordance with the available time.

## Oral questions to the Government




## Written questions to the Government

## Written questions to the Government

**Written questions assure MPs**

- a space of autonomy and intervention outside the framework of party discipline and rigid sharing of time;
- that issues which are not crosscutting or of major importance, and therefore do not merit to be treated in plenary or committee meetings, are the object of parliamentary control.



## Written questions to the Government

- In Portugal, MPs are empowered to ask questions on any issues and without quantitative limits;
- In this Legislature, MPs presented 8 385 questions/requests to Government;
- Government answered 6 938 (83%).

Association of the Secretaries-General of the Parliaments
Adelina Sá Carvalho Assembleia da República Portugal

## Written questions to the Government

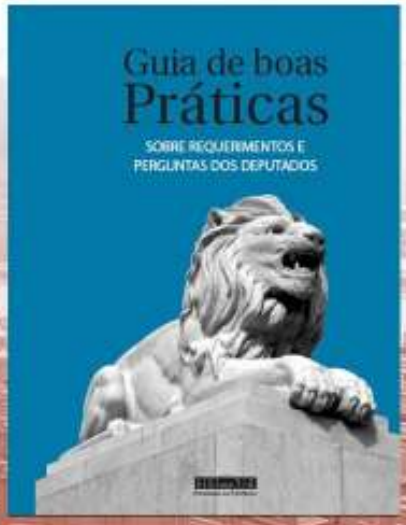
- It is not within the Government's power to decide if it should, or not, respond;
- It is bound to the duty of response which should, in addition, be sent in 30 days;
- A list of non answered questions is published monthly on the Journal of the Assembly of the Republic and on the parliament website.



## Written questions to the Government

Guide of Good Practices

- In 2007 a working group was created, composed of one member of parliament for each parliamentary group, in order to prepare a guide of good practices.



## Written questions to the Government

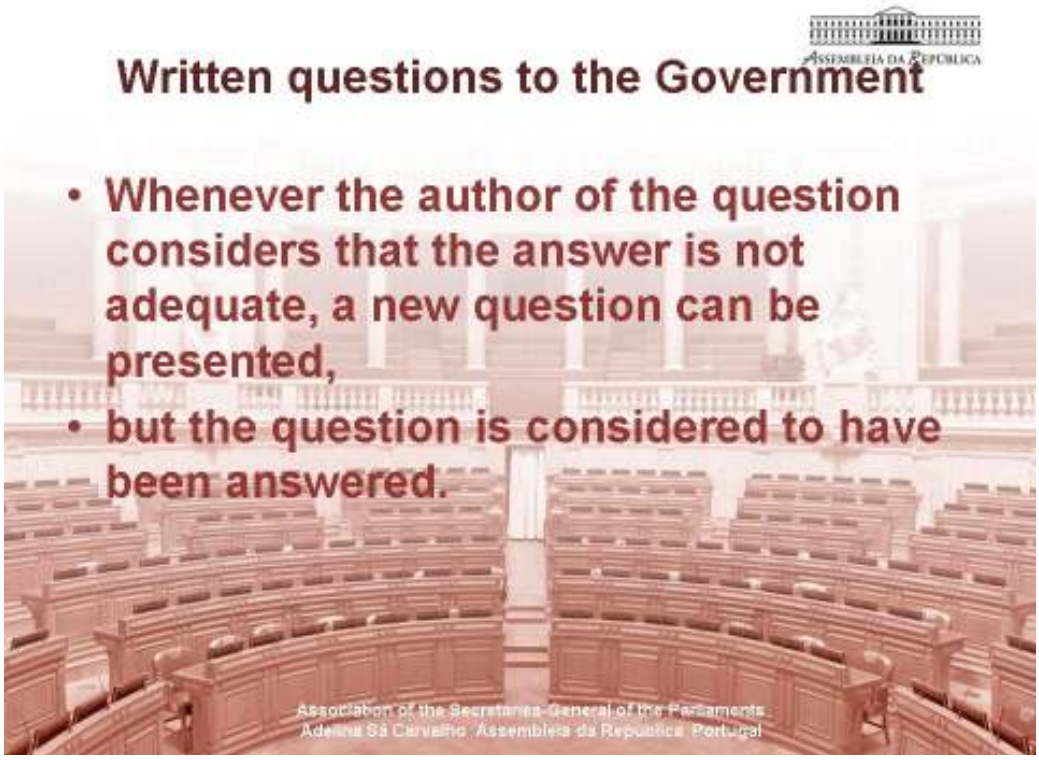
The main recommendations are :

- the receiver of the question should be clearly identified;
- each question can include various questions to the same entity, but the same question addressed to two or more entities should be formulated autonomously;



## Written questions to the Government

- In situations where the receivers of questions do not have responsibility for the matter in question they should return it, within the period of 5 working days, indicating the competent entity.
- In Portugal, the Ministry for Parliamentary Affairs assures this task


Written questions to the Government
• Whenever the author of the question considers that the answer is not adequate, a new question can be presented,
• but the question is considered to have been answered.
Association of the Secretaries-General of the Parliaments
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Written questions to the Government
• Services have taken steps to simplify the procedures of the questions, namely through the creation of a specific form and its exclusively electronic circulation with the digital signature of the members of parliament.
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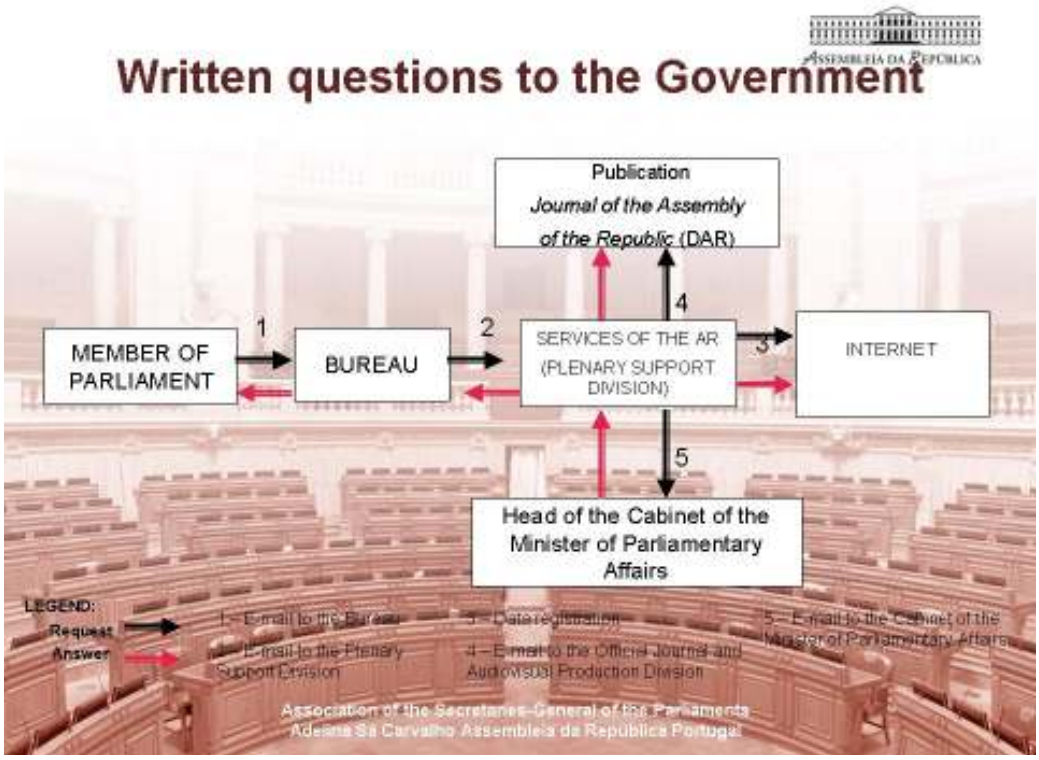



**Dr Hafnaoui AMRANI, President**, thanked Mrs Adelina SÁ CARVALHO for her contribution, and opened the debate to the floor.

**Dr V.K. AGNIHOTRI (India)** noted a dilemma relating to oral questions, touched on by Mrs SA CARVALHO. Essentially, there was a choice between taking up time in providing background to put questions and answers into context in a way that made wider sense, or asking shorter questions and providing brief answers which might make little sense to a wider public. In India, parliamentarians, ministers included, tended to opt for the first of these options. This meant that in the hour allocated for questions, with 20 questions set down for oral answer, normally only three or four actually received an answer in the allocated time.

**Mr Xavier ROQUES (France)** said that there were two different kinds of parliamentary question: those which were of general interest; and those which were of interest only to limited constituencies. Written questions in France tended to fall into the second category. Oral questions tended to become something of a political show, played out for the cameras. This did little to enhance the prestige of Parliament with the public. The idea had been mooted of introducing themed questions on specific subjects to specific ministers, as existed in Portugal. But this idea seemed unfortunately to have come to nothing.

**Mr Marc BOSC (Canada)** noted that conditions were different in different countries. In Canada, questions to ministers were asked every day. There were very strict time limits: 35 seconds both to ask a question and to answer it. The result was that the question period was the highlight of the parliamentary day, with very high attendance. The floor was left completely open: questions could be asked on any subject within the administrative responsibility of the Government. The Prime Minister attended on 3 or 4 days of the week; most ministers were present every day. The opposition had wide scope – most questions were accorded to their members. There was a symbiotic interaction between journalists and the opposition. 40 to 50 questions were asked each day. It was true that there was some negative publicity, with the behaviour of Members being called into question. But question time was a genuine test of a Government.

**Mr René KOTO SOUNON (Benin)** asked for further information about the processes outlined by Mrs SA CARVALHO. Were all questions a matter of political accountability? Did the government have the right to impose its will to choose the subject of debate at question time?

**Mrs Adelina SÁ CARVALHO (Portugal)** said that Portugal had the Latin parliamentary system closest to that of Westminster, except for the fact that ministers were not Members of Parliament. Answering Mr KOTO SOUNON, she made clear that governing party members could ask questions as well as opposition members. All questions in the Portuguese Parliament were a matter of political accountability. MPs had a constitutional right to ask questions of the Government. The power of the opposition was explained in part by the fact that it emanated from the first democratic constitution in Portugal following 50 years of dictatorship. Both Government and Opposition were free to choose the themes for question time when it was their turn to do so. Generally the opposition was constructive in trying to avoid asking questions relating to security issues. When ministers failed to answer questions, it tended to be for administrative

rather than political reasons. Ministers knew well that the political price for silence was high.

**Mr Manuel ALBA NAVARRO (Spain)** noted that in Spain, the right for MPs to question the Government was written into constitution. Three kinds of questions were forbidden: a question relevant to the interests of the MP asking it, a question about a specific individual, and any strictly legal question. It was for the Government to decide which minister would answer any question. For each oral question, 5 minutes were provided, divided between the MP and the minister, divided into two rounds of questioning. The Government could postpone answering a question until the next session, but it could not do so indefinitely. Written questions had to be answered within 20 days from publication, but in fact this deadline was often not met. If the Government failed to answer a written question in time, the MP in charge could insist on having the question put orally in committee. Finally, Mr Alba Navarro said that if called upon, he would be happy to offer his services to the Portuguese Parliament as an expert in bad practice in relation to parliamentary questions.

**Mr Mohamed Kamal MANSURA (South Africa)** thought that questions were just one of the tools of oversight – and a less exciting tool than they had been. Other mechanisms of oversight were overtaking questions, especially committee activity. Question time in South Africa had been revamped five years before, with questions asked of the President once every four months, and to the Deputy President more frequently. Despite its duty to take part in oversight of the executive, majority parliamentarians tended to ask what were locally termed "sweetheart" questions, offering the minister an easy opportunity to score political points.

**Dr Ulrich SCHÖLER (Germany)** said that in his country, as in South Africa, the system of questioning ministers was not a vivid part of parliamentary life. He noted that in Portugal, it was stated that it was not within the Government's power to decide whether it should respond or not to a question; but he suggested that ministers could nonetheless give answers to different questions from those actually asked, or simply suggest that to reply would adversely affect the national interest. In Germany, the Opposition had applied to the constitutional court to define this notion of national interest in the parliamentary context.

**Mrs Doris Katai Katebe MWINGA (Zambia)** said that she could relate to the idea of "sweetheart questions". MPs in Zambia preferred oral questions, which allowed them to shine, over written questions, the answers to which would be read by very few people.

**Ms Claressa SURTEES (Australia)** said that while question time was notionally a tool of oversight, there had been many criticisms of the current system in Australia. Oral Question Time was the parliamentary event of most media interest, and the only time journalists tended to attend Parliament in person. In Australia, there were no limits on the number of questions that could be asked, or on the length of questions or answers. The biggest concern was about relevance. Currently answers had to be relevant to the question – which was not the same thing as saying that they had to answer the question. This was an area ripe for reform.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN (Netherlands)** noted that MPs could achieve greater media coverage by asking questions than they could by participating in debates. Debates were less well attended as a result.

**Mr Vladimir SVINAREV (Russian Federation)** made the following contribution:

"1. In the theory and practice of bi-cameralism a special place belongs to the issues of the interaction of the upper chamber with the Government. The Constitution of the Russian Federation and the legislation on the Government grant our chamber a number of powers that may be defined in the aggregate as the controlling ones. In particular the reference is to such form of parliamentary control as the ministers' answers to the questions of the members of the Council of the Federation. Both collegial and individual forms of requests to the members of the Government are used in the practice of the Council of the Federation.

2. The questions may be asked primarily within the frameworks of holding of «the governmental hour». The Council of the Federation is entitled to invite the Chairman and the members of the Government of the Russian Federation to its session. Written proposals of the members of the Council of the Federation, its committees and commissions concerning the invitation of a minister and the questions to him or her are submitted to the Chairman of the chamber who determines the committee or the commission to be responsible for the preparation and holding of «the governmental hour». The decision to invite a member of the Government to the chamber session is adopted by the majority of votes of the total number of the members of the Council of the Federation.

The chamber's invitation indicating the questions of interest is sent to the member of the Government not later than 5 days before the holding of the chamber session. In case his or her presence at the chamber session is impossible the member of the Government notifies in advance the Council of the Federation about that, indicating the reason for his or her absence and naming the official who can arrive at the session and answer the questions asked.

The invited member of the Government is given up to 15 minutes to speak on the substance of the questions asked of him of her in written form. After that a discussion is held of the draft prepared by the responsible committee or commission and the decision of the Council of the Federation is adopted on the questions considered within the frameworks of «the governmental hour».

If the minister invited fails to arrive at the session of the Council of the Federation and the chamber members are not satisfied with the answers of his or her deputy, the minister may be invited to another session according to the decision of the Council of the Federation. As regards the questions considered at «the governmental hour», the chamber may adopt the following decisions: on an appeal to the President of the Russian Federation, to the Government of the Russian Federation, on recommendations to the Government of the Russian Federation, officials and bodies they head, on a

request to the Accounts Chamber of the Russian Federation or on the preparation of a parliamentary request.

The themes of «the governmental hour» are directly determined by the public needs, as well as the socio-economic situation. In particular, at the current session the questions about the priorities of the foreign policy of Russia, the promotion of the information and communication technologies, the development of the ship-building industry and the state of the labour market in the conditions of the crisis development of the country were put for the consideration at «the governmental hours».

3. The sending of a parliamentary request is one more method to ask the Chairman and the members of the Government of the Russian Federation a question. The rules of procedure of our chamber grant the right to put forward a proposal on a parliamentary request for the chamber's consideration to the Chairman of the Council of the Federation, his or her deputies, committees and commission of the Council of the Federation according to their competence, two chamber members representing one subject of the Russia Federation or a group of members of the Council of Federation numbering not less than five persons. A parliamentary request is adopted by the majority of votes of the total number of the chamber members. A member of the Government gives an oral answer at the nearest session of the Council of the Federation or on the date established by the chamber. A written answer must be sent to the Council of the Federation not later than 15 days after the receiving of the request. If the answer to a parliamentary request is deemed unsatisfactory, the Council of the Federation may adopt a decision on a repeated sending of the parliamentary request.

4. The members of the Council of the Federation are also entitled to independently send a request to the Chairman and the members of the Government of the Russian Federation. The minister to whom the request has been sent must give his or her answer to it in written form not later than 30 days after it was received or on another date agreed upon with the request's initiator.

5. During the work of the Council of the Federation of the most recent convocation yet another form of interaction with the Government in the field of legislative activity came into being. The reference here is to the regular meeting of the Chairman of the Council of the Federation with the state secretaries of the ministries and departments, who are at the same time deputies of the heads of the executive authority bodies and are responsible for the interaction with the Federal Assembly of the Russian Federation. Such meetings make it possible to get necessary and true information in the field of the draft law-making work of the Government.

6. The Council of the Federation is in a permanent contact with the State Duma in various spheres of joint activities. That, in particular, concerns the theme of our today's discussion. In that connection I would like to inform you about the last change in the sphere of answerability of the Government before the parliament concerning the lower chamber of the parliament. At the end of the previous year some amendments were introduced to the Constitution of Russia, according to which the government must annually report to the State Duma on the results of its activities.

Generally the 15 years of our chamber's work have shown the effectiveness of such kind of interaction with the Government and enabled the members of the Council of the Federation to correct the policies of the executive authority in the interests of the regions they represent, to participate in the shaping up of the united national policy in the field of economy, finance and international relations."

**Mr Francesco POSTERARO (Italy)** made the following written contribution:

"The Parliamentary Rules of Procedure provide for procedures directed at obtaining information from the Government. Some of the instruments envisaged (i.e. interpellations and questions) do not only have a fact-finding function but also serve to scrutinise the Government's activities. Other procedures, such as urgent information in the House, Committee hearings and requests for information made by the Committees, have exclusively fact-finding connotations. In any event, all these procedures may be used in connection with other Parliamentary functions, most particularly those of law-making and policy-setting.

The essential features of the various fact-finding instruments used by the Chamber of Deputies are set out below. Such instruments are governed by the Chamber's Rules of Procedure or, as far as urgent information is concerned, by established practice.

**INTERPELLATIONS AND PARLIAMENTARY QUESTIONS**

**Interpellations** are enquiries concerning the reasons and intentions behind Government conduct in matters regarding particular aspects of its policy (see Rule 136 of the Rules of Procedure). They constitute the specific instrument for questioning the Government about subjects linked to policy-making (including sectoral policy-making) and the reasons underlying adopted policies.

The speaking time allocated to the interpellation's author is 15 minutes for his/her explanation and 10 minutes for his/her response. According to practice, the author may waive his/her right to illustrate the interpellation, in order to add that time allocation to the time allocated to his/her response. In such response, the author states whether or not he/she is satisfied with the reply he/she has received. No more than two interpellations submitted by the same deputy may be included in the agenda for any one sitting.

If a questioner is not satisfied and intends to promote a debate on the explanations given by the Government, he or she may table a motion to this effect (which fact demonstrates the connection between policy-setting instruments and scrutiny instruments referred to in the introductory remarks above).

***Urgent interpellations*** (Rule 138-*bis*) are of a distinctive nature and enjoy a special fast-track procedure. The tabling of such instruments is reserved to the Chairpersons of the Parliamentary Groups or not less than thirty deputies. They must be tabled no later than the Tuesday of each week so that they may be dealt with on the Thursday of

that same week. Each Group Chairperson may sign not more than two urgent interpellations for each month of parliamentary business; each deputy may sign not more than one for the same period.

**Parliamentary Questions,** on the other hand, consist of a simple question "as to whether a fact is true or not, whether the Government has information on a fact and whether or not such information is accurate, whether the Government intends to transmit documents or information to the Chamber or whether it has adopted measures on a given subject or is about to do so" (see Rule 128). Parliamentary questions are therefore more limited in their content and essentially meet the need for information about specific events or instances of conduct. The questioner is allocated 5 minutes' speaking time in order to respond to the Government's reply.

The Rules of Procedure draw a distinction between various types of question: those for an oral reply, those for a reply in Committee, those requiring a written answer and those for an immediate reply.

Questions for an oral reply (governed by Rules 129-132) are concerned solely with those issues that have such a marked political significance as to justify their being dealt with in the full House.
Questions for reply in Committee (Rule 133) concern subjects of a sectoral nature falling within the various Committees' respective remits.

Questions requiring a written answer (Rule 134) regard issues of a prevalently local or technical nature which are, in any case, lacking in direct general political importance.

Questions for immediate answer or "question time" are characterised by the particular immediacy of their treatment and by rules that are distinct from those governing the other kinds of questions (those dealt with in the full House are governed by Rule 135-*bis* and those in Committee by Rule 135-*ter*).

In the full House, questions for immediate answer are dealt with once a week, usually on Wednesdays. Their submission is reserved to one deputy from each Group, through the Chairperson of that same Group. The content of the parliamentary question must consist of one single question, formulated in a clear and concise manner on a subject of general import, characterised by urgency or particular political topicality.

As far as the governmental interlocutors are concerned, the Rules of Procedure prescribe that the President or the Vice-President of the Council of Ministers shall be called to answer twice a month, whilst the Minister or Ministers responsible for the subjects covered by the questions submitted shall be called to reply once a month. The participation of other members of the Executive, such as Deputy Ministers or undersecretaries of State, is not permitted however.

Practice has shown that application of the competence criterion does not prevent an answer being given by the Minister for Relations with Parliament or by the Minister for

the Implementation of the Government Programme, in place of the Minister with competence by subject-matter.

Question time takes place live on a public television network. The deputy submitting each question speaks to it for one minute. The Government then replies for three minutes and then the questioner or another representative of the same Group responds for not more than two minutes.

The oral nature of the procedure is an inherent part of the procedure itself and thus excludes the possibility of lodging documents in connection with an oral reply.

The Standing Committees deal with questions for an immediate answer twice a month, usually on Thursdays. Such questions may be submitted (no later than twelve o'clock on the day before the one on which the question is to be dealt with) by one Committee member for each Group, through the representative of the Group to which he or she belongs.

There are no great differences between these questions and those for immediate reply in the House except for the fact that Undersecretaries of State, as well as ministers, are permitted to act as governmental interlocutors in Committee. The sittings dedicated to such questions are broadcast by way of closed-circuit television.

Interpellations and questions are presented to the President of the Chamber and submitted, like every other parliamentary instrument, to his/her scrutiny with regard to admissibility. Those instruments that do not pass such scrutiny are not published and therefore cannot be dealt with.

As specifically stated in the circular letter from the President of the Chamber dated 21 February 1996, such scrutiny regarding admissibility (which finds its basis in Rule 139 of the Rules of Procedure) is primarily directed at verifying the consistency of the instrument's content with the type of instrument presented. The President also evaluates the admissibility of such instruments with regard to the coherence of the documents' different parts, to areas of competence and the Government's accountability to Parliament. With regard to this last aspect and as stated in the circular from the President of the Chamber referred to above, the following instruments are inadmissible, for example: instruments concerning questions relating to facts or issues about which the Government is not institutionally able to reply or in relation to which a mere knowledge or evaluation of facts or issues is required of the Government and regarding which a government competence or responsibility cannot be identified; instruments concerning the powers, documents or conduct of the Chamber's Bureau or other bodies or the actions or statements of MPs; instruments concerning the powers, documents or conduct of constitutional organs other than the Government (i.e. the President of the Republic, the Senate and the Constitutional Court); instruments concerning the judiciary except those aspects either falling under the organisational jurisdiction of the Minister for Justice or under his powers to carry out inspections or institute disciplinary proceedings; the regions and local authorities, insofar as they are not subject to national powers exercised by the Government; and bodies of constitutional importance,

independent authorities or companies or bodies enjoying special autonomy, if not within the limits of the competence enjoyed by the Government in accordance with their establishing legislation.

The President also assesses admissibility with reference to the protection of privacy, the integrity of individuals and the prestige of institutions. In this connection, not admissible are instruments of Parliamentary control ascribing responsibility or containing judgements that concern individual privacy or damage the prestige of institutions unless they derive from sources outside Parliament and are precisely identified and their publication is legally permitted.

Lastly, instruments containing unparliamentary language are not published.

**URGENT INFORMATION**

Parliamentary practice has gradually developed a particular mechanism for providing "early information" to Parliament (particularly the Full House) which the Government uses in urgent situations.

The number of subjects such urgent information can include has noticeably increased during recent Parliaments. Indeed, initially used only in relation to exceptional events, this procedure has (over time and precisely on account of its flexibility) proved to be the most effective way of addressing particularly topical subjects and of debating them immediately, without the restraints inherent in the submission of written questions.

The information is generally requested by one or more of the Groups. No vote on policy-setting documents is held when it has been provided.

As a consequence, the debate following the Government's statement is organized according to the principles of limited debate. Thus only one deputy from each Group is entitled to speak (since the time allocated to the Group cannot normally be fractionized) and for such time and in such manner as is established by the President. Additional time is allocated to the Mixed Group.

**OTHER FACT-FINDING PROCEDURES**

**In the context of the legislative process,** the Standing Committee tasked with the pre-legislative scrutiny and consultation on a bill prior to formulating a text for the House can ask the Government to supply data and information, including by way of special technical reports (Rule 79[5]). It does this in order to obtain the facts needed to check the quality and effectiveness of the provisions under consideration. Such an initiative may also be taken at the request of a minority. Similarly, in the House, the rapporteurs (for both the majority and the minority) may ask the Government to answer questions concerning the assumptions and objectives of bills introduced by the Government itself, as well as the financial and legislative consequences deriving from the implementation of the rules contained in parliamentary bills. The Government may respond immediately or ask to postpone its reply until the final statement; it may also ask for the sitting or

the consideration of the bill to be suspended for not more than one hour, or declare that it cannot reply, giving the reasons therefore (Rule 83[1-*bis*].

The Committees may also use **hearings** to request Ministers to provide information and clarify questions of administration and policy relating to their individual area of competence (Rule 143[2]. They may also hear testimony from senior officials from the Public Administration and generally do so when it is necessary to examine the technical/administrative aspect of an issue in greater depth. In such cases, however, the Minister must authorize the intervention of such officials.

The Committees can also **ask the Government to report** (including in writing) on the implementation of laws and the follow-up on motions, resolutions approved by the House or accepted by the Government (Rule 143[3]).

In this respect, it should be remembered that many Acts provide for the submission of reports to Parliament (at regular intervals of respectively varying length) on progress in the implementation of those same Acts."

**Mrs Adelina SÁ CARVALHO** thanked colleagues for their contributions. Each parliament had its own traditions and rules. She answered a number of questions that had been posed during the debate. The majority party in Portugal had – intentionally - much less time to ask questions than the other parties. Answering Mrs BIESHEUVEL-VERMEIJDEN, the fact that written questions were published on the parliamentary website made both Members of Parliament and the Government more careful about the questions they asked and how they were answered. This was all the more so for oral questions, which were televised. She did not know if Members preferred written or oral questions – she thought that they liked having both avenues available. Answering Dr SCHÖLER, it was clear that a government would not fall if it failed to answer questions. However, the parliamentary website made clear which ministers were failing to answer questions: this led to bad publicity which ministers were keen to avoid. Members also had the opportunity to ask unanswered written questions orally in the plenary, where ministers could not avoid answering them. Finally, Portuguese law specified very clearly what constituted a security matter, and so it was very clear in which areas questions could not be asked.

**Dr Hafnaoui AMRANI, President**, thanked Mrs Adelina SÁ CARVALHO for moderating such an interesting opening debate.

## 2. Communication by Mr PARK Kye Dong, Secretary General of the National Assembly of the Republic of Korea, on "Promoting e-Democracy in the Global Era"

**Dr Hafnaoui AMRANI, President,** invited Mr PARK Kye Dong, Secretary General of the National Assembly of the Republic of Korea, to present his communication, as follows:

“**1. Introduction**

My name is PARK Kye-Dong, the Secretary General of the Korean National Assembly.

Last fall at the ASGP meeting in Geneva, I presented a communication on the general features of the information systems of the Korean National Assembly. Today, I would like to introduce to you the efforts of the Korean National Assembly to realize e-Democracy through e-Parliament and to share our experiences and achievements with parliaments around the world.

I hope that my communication will give us an opportunity to think about the meaning and value of e-Parliament.

The informatization of the 21st century has improved the capacity to generate and disseminate information, while at the same time the disillusionment of the public to democratic procedures and institutions has increased rapidly. This has led to the crisis of political communication.

However, the development and deployment of new information and communication technologies has also raised our expectations that the problems of representative democracy can be innovatively tackled and resolved. To be more specific, internet technologies can facilitate interactive communication and improve the levels of coordination and cooperation between different players of society.

The expansion of democracy through information and communication technologies - that is what I believe is the definition of e-Democracy.

The National Assembly of Korea has laid the cornerstone for e-Democracy by putting a great deal of effort into the establishment of e-Parliament, which features the digital Plenary Chamber and various information systems.

Now we want to take this one step further and share what we have learned and achieved with countries around the world.

An increasing number of participants expand the impact of networks exponentially. This is also true of e-Parliament. When it gets spread to a lot of countries, a wide network of information will activate communication between parliaments, ultimately serving as a driving force behind the birth of global parliaments and global democracy.

To realize its vision of e-Democracy, the Korean National Assembly has been providing assistance to countries in the world in their efforts to enable e-Parliament.

Through my communication today, I would like to present to you the case of the Korean e-Parliament and introduce a project to assist countries with e-Parliament known as e-Parliament Assistance Initiative, or e-PAI.

**2. Establishment of e-Parliament**

Let me start off with the e-Parliament of the Korean National Assembly.

The three major features of e-Parliament in Korea are the digital Plenary Chamber designed to enhance the efficiency of legislative activities, online information systems providing legislative information to the public and lastly, the e-Library.

First, the digital Plenary Chamber enables members of the National Assembly to access all available legislative information through computer terminals provided to each member. The system also supports electronic voting.

The large electronic boards in front display voting results and audio-visual materials for presentations and speeches. The results of all meetings are automatically sent to the database for storage. The digitization of the Plenary Chamber has contributed to enhancing the efficiency of legislative activities by saving time and expenses for meetings, increasing data accessibility and processing agenda items promptly.

Secondly, the e-Parliament of the Korean National Assembly runs online information systems, such as the Legislative Knowledge and Information System, the Minutes System and the Internet Broadcasting System. The databases of these systems contain old and new laws and ordinances and minutes of meetings, providing all relevant information through a one stop search.

The Internet Broadcasting System allows users to view all plenary and committee meetings broadcast live and past programs are also accessible anytime through the video-on-demand service.

The online information systems and the Internet Broadcasting System have posted 900,000 hits a month, promoting the public's right to know.

Lastly, the Library of the National Assembly successfully reinvented itself as a digital library by dramatically increasing its accessibility.

In total, the Library boasts a collection of 1.80 million digital books, including 600,000 masters' theses and doctoral dissertations and 800,000 academic journals.

In addition, the Assembly Library signed MOUs with prestigious academic institutions to promote the online exchange of knowledge and information - to name a few, the Congressional Library of the U.S., Stanford University, Yale University, University of South California and the Korean Culture Center in the U.K.

The number of visitors to the digital library reached a staggering 14 million last year, which amounts to one fourth of the total population.

I am confident that the Korean National Assembly has taken a first step toward e-Democracy through the effort to establish e-Parliament.

## 3. Overview of e-PAI

As I said before, the Korean National Assembly is determined to take this one step further and share our experiences and achievements. That is how the e-PAI project has been launched. e-PAI stands for e-Parliament Assistance Initiative, through which the Korean National Assembly assists countries in need of ICT infrastructure with PCs and software packages.

Like I said, informatization is a prerequisite for e-Parliament. But levels of informatization differ significantly from country to country. During the ASGP meeting last fall, the Secretary General of Senegal said that increasing the number of computer users is a priority in his country, which made me think about ways to bridge digital divides between parliaments in the world. Through the e-PAI project, the Korean National Assembly has focused on assisting parliaments to expand ICT infrastructure. The ultimate goal of the project is to help countries to build e-Parliament of their own.

Moreover, the informatization of parliaments, which are the cradle of democracy, will present future directions for society to take, promoting informatization and e-Democracy for the whole society.

This conviction led me to take the first step of the e-PAI project starting with Cambodia.

## 4. Results and Plans of e-PAI

When the Secretary General of the Senate of Cambodia Oum Sarith visited Korea last September to discuss specific ways of cooperation in implementing what the two countries agreed upon in the Protocol of Cooperation, he showed a keen interest in the Korean National Assembly's digital Plenary Chamber and its Internet Broadcasting System. This provided an opportunity for me to make a pledge to Cambodia to donate computers. The Deputy Secretary-General of the Korean National Assembly visited Cambodia in November to hand over computers.

Since I did not want the e-PAI project to end as a one-off event, further efforts have been made to figure out countries in need of IT infrastructure. Up to now, 30 parliaments have expressed interest with the number of computers in demand reaching 1,100.

Last month the Deputy Secretary-General of the National Assembly visited Nepal and Laos to donate computers and operating systems.

We plan to expand the Initiative to Africa and Latin America, starting from Rwanda and Ethiopia. The Korean National Assembly is ready and willing to provide assistance if any help is needed relating to this initiative.

I hope that the PCs that we donate will serve as seeds for e-Parliament in countries around the world, with the seeds bearing fruit in the form of a vibrant e-Democracy.

The e-PAI project is expected to grow into long-term low-interest loans and grants projects in cooperation with the Korean government.

The parliaments of recipient countries will be able to implement electronic voting and hold paperless meetings through computers. The Initiative will also help to build systems encompassing information on such areas as legislation, budgets and policies.

When this project is pursued by several countries together, the impact will be doubled or possibly tripled.

While some parliaments can afford to replace computers every time new members take office, others are stuck with a decade old models. When countries address this disparity through exchange and assistance, we can move together towards a mature e-Democracy.

It costs about 5,000 dollars to repair and transport 100 second-hand computers to countries in the same continent. I would like to ask distinguished secretaries general to join us in the efforts.

**5. Conclusion: Invitation to the Secretaries-General Forum of Asia-Pacific Parliaments**

Honorable president, Hafnaoui Amrani,
Distinguished delegates,

Have you heard the fable about a frog in the beaker? A live frog is in a beaker of cool water. The beaker is on an alcohol lamp and heat is applied steadily. The frog becomes so comfortable in the warming water that it fails to jump out in time. A life without change is an incomplete one.

The financial crisis is sweeping across the whole world. Through the crisis, we learned that we are in this together, and partnership, not competition, is what we need at the moment.

The transition to e-Democracy in the era of democratization and informatization is a tide that we cannot turn. Countries in the world are partners in this transition. When we think of us, not me, we can grow together.

This belief has led me to come to a decision to launch the Secretaries-General Forum of Asia-Pacific parliaments. The Forum, which will be held on July 7th in Seoul, Korea, will provide leaders of parliamentary secretariats with a venue to discuss e-Parliament and explore ways to step up cooperation. I hope that the Forum will serve as an opportunity to further expand the e-PAI project.

We are also arranging various programs for secretaries general to visit state-of-the-art industrial facilities and experience traditional culture and beautiful scenery, which I am sure will add a distinct pleasure to your visit.

Your interest and support for the Forum would be greatly appreciated.

This concludes my presentation on the endeavours of the Korean National Assembly to promote e-Democracy in the global era."

**Dr Hafnaoui AMRANI, President**, thanked Mr PARK Kye Dong for his communication, and invited members present to put questions to him.

**Mr Xavier ROQUES (France)** drew attention to a debate in the National Assembly on whether its proceedings should be televised via a dedicated channel, or simply over the internet. He wondered whether the spectre of deputies using mobile phones in the plenary would create a good public image, and he suggested that giving them internet access would lead to them being lobbied in the Chamber in real time, in a form of unintended direct democracy.

**Mr Tango LAMANI (South Africa)** wanted to know how the introduction of e-parliament had improved the efficiency of Korean public participation programmes.

**Mr Ian HARRIS (Australia)** asked two questions. First, had the Korean National Assembly considered the possibility of allowing Members of Parliament to participate remotely in debates? Second, would there be the opportunity at the proposed regional forum to consider more regular gatherings of regional secretaries general?

**Dr V.K. AGNIHOTRI (India)** said that India had been trying to introduce ICT services into its Parliament since at least 1995. Each MP now had a significant financial entitlement to ICT equipment, with advice proferred as to how desktop computers should be procured. In spite of all of these initiatives, most MPs remained uncomfortable with the use of computers, and bought them instead for their children and grandchildren. Very few MPs took up the ICT training that was offered. He asked, when the programme was taken up by Cambodia and Laos and other countries, what kind of capacity-building programme was there to ensure not only availability of hardware but also training to familiarise those meant to use the hardware? If this programme was there, what success had it had?

**Mr Baye Niass CISSÉ (Senegal)** said that what caused absenteeism in France was the system of bloc voting. He wanted to know if electronic voting could have a similar effect. He also said that Senegal could be interested in the assistance programme mentioned by Mr PARK.

**Mr OUM Sarith (Cambodia)** thanked Mr PARK for the support that the Cambodian Parliament had received from the Korean Parliament. The Cambodian Parliament's work was more effective and rapid as a result.

**Mr Vladimir SVINAREV (Russian Federation)** shared Mr PARK's view that the present-day crisis made it harder for parliaments to acquire new technologies, although many had already accumulated certain reserves. It meant that a focus would be needed on

training staff to use the equipment already in place. He asked whether the security of digital signatures could be ensured.

**Mr Sosthène CYITATIRE (Rwanda, candidate member)** said that the Rwandan Parliament was young, which meant that MPs did use computers! The use of computers meant that MPs were able to pass many more laws than in previous years, and also allowed MPs much greater access to legislative proposals no matter where they were based. Rwanda had been among the first countries to benefit from Korean assistance.

**Mr PARK Kye Dong (Republic of Korea)** sought to address the concerns raised about the use of laptop computers. The computers in the Korean National Assembly did have messaging and internet functions, which could be distracting. MPs would sometimes watch other activities on the internet if they found the business in Parliament boring. But it was also useful for instant fact-finding and to gauge public opinion. There were concerns when establishing the e-parliament system, and there had been some negative impacts, but these were outweighed by the efficiency it brought. Mr Park agreed with Dr AGNIHOTRI that it was important to concentrate on capacity-building, education and training, as well as equipment supply. He noted that in Ukraine and in Korea, Members could only vote if they were physically present with their own electronic ID card. There had been not a single case of ID fraud of this kind. MPs involved in such a fraud in Korea would be sanctioned, and would lose their seats in Parliament. The goal of e-PAI was to provide one PC to every Member of Parliament, and to secretariat staff as well where possible. This was being achieved in Cambodia and Rwanda. An e-signature was an essential feature of the e-PAI project. $1m annually was allocated to PC procurement in the Korean National Assembly, with the computers being replaced every three years. He was aware that this was a waste, which was why he wanted to donate the old computers to other parliaments. There was a demand for such computers, and their use in e-democracy. He asked for support for the forum later in the year.

**Dr Hafnaoui AMRANI, President**, thanked Mr PARK again and noted the substantial interest in e-PAI and the forum to be held in Seoul.

*The sitting rose at 5.40 pm.*

## THIRD SITTING
## Tuesday 7 April 2009 (Morning)

### Dr Hafnaoui AMRANI, President, in the Chair

***The sitting was opened at 10.00 am***

## 1. Orders of the Day

**Dr Hafnaoui AMRANI, President**, informed members of minor changes proposed to the Orders of the Day: Dr José Pedro MONTERO would present his communication on Thursday afternoon, while Dr AGNIHOTRI's communication had been brought forward to Tuesday afternoon. Mr Pitoon PUMHIRAN's presentation on the conference in Bangkok in 2010 would be made at the start of the day's business on Friday, instead of on Friday afternoon.

The Orders of the Day, as amended, were *agreed* to.

## 2. New Members

**Dr Hafnaoui AMRANI, President**, said that the secretariat had received several requests for membership which had been put to the Executive Committee and agreed to. These were:

| | |
|---|---|
| **Mr Pedro Agostinho de NERI** | Secretary General of the National Assembly of Angola (replacing Mr Diogo de Jesus) |
| **Mr Baye Niass CISSÉ** | Deputy Secretary General of the National Assembly of Senegal |
| **Mr Mohamed Hussein NUR** | Deputy Director General of the Transitional Federal Parliament of Somalia |

The new members were *agreed* to.

## 3. General debate: "Measures to limit the impact of Parliament on the Environment"

**Dr Hafnaoui AMRANI, President,** invited Mr Ulf CHRISTOFFERSSON, Deputy Secretary General of the Swedish Parliament, to open the debate.

**Mr Ulf CHRISTOFFERSSON (Sweden)** spoke as follows:

"For a number of years now, the Riksdag (Swedish Parliament) Administration has been actively working to reduce the negative impact of its activities on the external environment. Efforts have primarily targeted energy consumption and the use of cleaning chemicals.

In September 2007 the Riksdag Board approved a decision to intensify internal environmental efforts by introducing an environment management system for the activities of the Riksdag Administration, and its certification in accordance with ISO 14 001. Certification entails scrutiny by an independent party. This confirms that the organisation works systematically with environmental issues. The objective is for the Riksdag Administration to be certified in June 2009.

The Board's decision arises from a number of private members' motions expressing a wish that the Riksdag Administration and the Riksdag should work systematically with environmental issues in their daily activities.

The environmental management system covers the Riksdag Administration's activities. MPs and employees of the party group secretariats are influenced indirectly by the environmental management system since they use the Administration's premises, technical equipment etc.

The Board's decision gave fresh impetus to environmental work and a number of measures have been implemented over the past one and a half years.

The effects of the environmental efforts of the past few years are presented in the annual report for 2008, in which the Riksdag Administration was able to state the following:

- Energy consumption declined by 7%, heating and electricity by 4.5% (equivalent to about SEK 650,000);
- external cooling equipment was installed in Lake Mälaren, allowing us to use the lake's cold water in the to cool our computer rooms etc;
- when taxis are ordered via the Riksdag system, environmentally friendly vehicles are always given priority;
- low-flow showers, taps and toilets were installed in the Riksdag buildings and this has reduced water consumption;
- environmental requirements are systematically applied in relation to purchases and public procurement;
- paper consumption was reduced in certain areas, as duplex printing is now standard on all Riksdag printers, and documents and information material are increasingly distributed on a print-on-demand basis;
- the use of cleaning chemicals fell by about 30%, and products containing environmentally hazardous substances, such as chlorine, were phased out;
- the fire detectors that were radioactive (some 420) were exchanged for optical alarms;

- a legislative amendment was approved enabling MPs to purchase more environmentally friendly alternatives even if they were not the most economically advantageous;
- an “eco-friendly dish”, containing organic or eco-friendly ingredients, is now served at the Riksdag restaurant;
- climate compensation was to be made for all flights undertaken by officials and MPs in 2008.

The 2008 environmental study regarding the Riksdag Administration’s activities forms the basis of the Administration’s systematic environmental work. The starting point of the study was emissions into air, land and water, the impact on flora and fauna and the efficient management of resources. The study led to the identification of the most important environmental concerns, i.e., those activities having the greatest environmental impact. These fundamental concerns form the basis of the Riksdag Administration’s environmental policy (see Annex 1, and for the general environmental objectives and their associated action plans, see Annex 2). Policies and goals are decided by the Secretary-General of the Riksdag, and the support of the Riksdag Board has to be sought and obtained.

In addition, all staff has received thorough training with regard to the environment, and procedures have been put in place for implementing systematic environmental work. These procedures include monitoring and utilising proposals from the staff, MPs, and the employees of party secretariats for improving the environment, and finding ways of dealing with deviations.

**Some experiences**

The Riksdag Administration has accumulated valuable experience regarding the introduction of environmental management systems:

- We have already achieved concrete, quantifiable effects;
- We have launched a long-term effort (including procedures, attitudes and knowledge).

Key factors:

- Deciding to obtain certification;
- Active commitment on the part of the Administration leadership;
- Staff commitment;
- Following up of system performance.

The Riksdag Administration's environmental objectives and action plans 2008-2011

| **PAPER CONSUMPTION** | |
|---|---|
| ***Environmental objective*** | ***Measures*** |
| Paper consumption (incl. parliamentary documents) to be reduced by 10% compared with level between 1 July 2007 – 30 June 2008<br><br>Yr 1: 3% reduction<br>Yr 2: 7 % reduction<br>Yr 3: 10 % reduction<br><br>The objective applies to all paper purchased for all printers, photocopiers etc.<br><br>**Responsible for implementation:** Head of the Riksdag Printing Office | • Introduce rules for paper use, inform employees in the Riksdag Administration, party secretariats and MPs about rules and objective for paper consumption<br>• Adjust/change printers and photocopiers – perhaps make it necessary to enter code or swipe card before printing (investment decision for 2010)<br>• Follow up results of survey on preliminary record and take measures<br>• Continuous overview of printing of parliamentary documents and review interpretation of the word "distribute" in the Riksdag Act<br>• Review by committee secretariats of distribution of information prior to committee meetings, electronic distribution of documents for meetings should increase in an ongoing dialogue with members of each committee |

| ELECTRICITY CONSUMPTION | |
|---|---|
| ***Environmental objective*** | ***Measures*** |
| Electricity consumption to be reduced by 10% compared with level between 1 Jan. – 31 Dec. 2007<br><br>Yr 1: 3% reduction<br>Yr 2: 7 % reduction<br>Yr 3: 10 % reduction<br><br>**Responsible for implementation:**<br>Head of the Property Management Department | • Carry out energy declaration and energy audit and take proposed measures<br>• Introduce rules of conduct for electricity use in the Riksdag for everyone working in the Riksdag buildings (Riksdag Administration employees, MPs, party group secretariats, contractors, consultants, journalists etc.).<br>• Lighting<br>  o change to low-energy light bulbs<br>  o develop use of time-controlled and motion sensor lights<br>  o follow developments in LEDs and other types of electricity-saving lighting<br>• Purchase renewable energy as much as is possible<br>• Take measures to make servers more energy efficient<br>• Alternative energy<br>  o examine possibilities of installing solar cells on the roof of the East Wing of the Riksdag<br>  o examine possibilities of using energy from the water in Stallkanalen |
| **HEATING** | |
| ***Environmental objective*** | ***Measures*** |
| Electricity consumption for heating to be reduced by 10% compared with level between<br>1 Jan – 13 Dec 2007<br><br>Yr 1: 3% reduction<br>Yr 2: 7 % reduction<br>Yr 3: 10 % reduction<br><br>**Responsible for implementation:**<br>Head of the Property Management Department | • Implement energy declaration and proposed measures<br>• Review heating and ventilation systems, examine how heat from server and computer halls can be made use of<br>• Review heat retention potential incl. draught-proofing of windows |

| TRANSPORT | | | |
|---|---|---|---|
| ***Environmental objective*** | ***MPs and employees*** | ***MPs*** | ***Employees*** |
| For transport use that the Riksdag Administration can influence, i.e., our own cars and travel by employees without MPs, carbon dioxide emissions to be reduced by at least 10% compared with level between 1 July 2008 - 30 June 2009<br><br>For travel by employees together with MPs, and travel by MPs, environmental data on carbon dioxide emissions etc. to be produced<br><br>Yr 1: 0 % reduction<br>Yr 2: 5 % reduction<br>Yr 3: 10 % reduction<br><br>**Responsible for implementation:** Head of the Administrative Division | • Consider environ-mental impact when planning international conferences and visits<br>• Prioritise environmental cars when renting cars<br>• Recommend economical driving<br>• Create conditions for greater use of video conferences<br>• Travel Agency – services and information about environmentally-adapted travel<br>• Information about environmentally-adapted travel when booking travel<br>• Climate compensation for air travel | • Include environmental considerations in Ch. 4, Sec. 3 of the Com-pensation Act (i.e. do not only take into account cost and time when choosing means of transport)<br>• Inform all new MPs and alternate members of our work for a better environment | • Apply environmental requirements when purchasing vehicles<br>• Eco-driving courses for employees who drive in the performance of their duties<br>• Prepare checklist for planning of conferences and meetings<br>• Introduce rules/ guidelines for travel by car and air by employees and/or meeting policy<br>• Examine how technology can be used for e-meetings |

**TECHNICAL EQUIPMENT AND HAZARDOUS WASTE**

*Apply environmental requirements to purchases and procurement*

Environmental requirements are to be applied to all purchases and procurement. Each manager is responsible for ensuring that environmental requirements are applied in accordance with established routines within the framework of the Riksdag Administration's environmental management system, that is:

- the tenderer/supplier is to carry out systematic environmental work, either in the form of environmental certification (ISO or EMAS) or in the form of a documented environmental management system. Evidence of certification or an account of environmental work is to be submitted, including a description of the environmental policy, the name of the person or organisation responsible for environmental issues and a description of how the supplier works systematically with environmental issues.
- any subcontractors to the tenderer/supplier are to observe the same requirements as those imposed on the supplier.
- specific environmental requirements can be drawn up depending on the type of procurement. For technical equipment, for example, requirements should be imposed that they have low energy consumption and efforts should be made to minimise levels of hazardous substances. For chemicals, cleaning agents etc. environmentally friendly alternatives should be chosen. Etc.

Only in cases where it is clear that there are no suppliers that can meet these requirements may exceptions be made.

The Head of the Legal Services Department is responsible for ensuring that the environmental requirements are implemented.

*Further develop routines for management of hazardous waste incl. sales of used equipment*

- Carry out a review of routines for hazardous waste management and further develop these routines if necessary.
- Carry out a review of sales of used equipment."

*Mr Marc BOSC, Vice-President, took the Chair.*

**Mr Marc BOSC, Vice-President**, thanked Mr CHRISTOFFERSSON for his contribution, and opened the debate to the floor.

**Mr Michael POWNALL (United Kingdom)** said that Westminster's performance on environmental impact had not been good. Targets had not been pursued with enthusiasm or commitment, and as a result had not been met. High energy consumption had led to negative media coverage, including the publication of thermal photographs of the Palace of Westminster. A week before, the management boards of both Houses had

set a new strategy to meet energy objectives. None of this was easy however, in a nineteenth century building with high ceilings and ancient metal windows. At the same time, there was a drive to increase facilities for Members, including energy-hungry IT equipment. It was also difficult to replace old infrastructure when Parliament was in session. Finally, it had been necessary to persuade Members and staff of the need for a new strategy. Younger people tended to be more committed to the environmental agenda.

**Mrs Fatou Banel SOW GUEYE (Senegal)** asked about the level at which the decision had been taken in Sweden, and how the international dimension was to be taken into account.

**Ms Claressa SURTEES (Australia)** said that the parliament building was built into a hill, with grass growing on its roof, as a measure to lessen the need for air conditioning. The recent drought in Australia had led to water-usage restrictions in the building and in its grounds. Even if the drought receded, some of these measures were likely to remain. She asked about the economic impact of the measures taken in Sweden, and whether they had affected the operations of the Chamber.

**Mr Vladimir SVINAREV (Russian Federation)** presented the following contribution:

"1. It is symbolic that our meeting takes place on the World Health Day. Health and environmental wellbeing are closely connected to each other in the contemporary world.

The Council of the Federation for 15 years of its existence has been carrying an intensive work in the field of environmental protection. That work includes two main directions. The public political and law-making activity is the first direction. The ecologization of the internal daily life of the Council of the Federation is the second one.
2. The task of protection of the natural environment acquires a special acuteness in the conditions of the world economic and financial crisis. But the crisis also gives an additional impetus to reach an optimal balance between the development of the humankind and the protection of the nature. Mahatma Gandhi said: «There must be a law that is higher than the law of destruction. Only under such law the society will be built rightly and reasonably ... We must use it in the everyday life».[3]

3. The right to use a clean environment irrespectively of the place of residence, the status or the income is one of the most important for a human. Such right is established in the Constitution of the Russian Federation. It is also a value guideline for the state and the civil society.

The protection of the environment is given an ever increasing importance in Russia. The Council of the Federation deals with the annually growing volume of ecological initiatives. We pay a great attention to the cooperation with the representatives of the scientific and expert communities, the non-governmental ecological organizations and

[3] Gandhi M.K. My Belief in Non-Violence // Voprosy filosofii, 1992, #3.

the press.

Development of the practice of public environmental control and formation of mass environmental culture and ethics of the citizens is a topical task for us.

4. The Council of the Federation acts as the organizer and a participant of a number of large regular events where the environmental problems are discussed. Those include the Baikal, the Far Eastern and the Saint Petersburg Economic Fora. The first Neva International Ecological Congress was held in 2008 under the auspices of the Council of the Federation. The second Congress will take place this May. An international conference on «The role of Siberia and the Far East in the global development» will take place this June in the city of Ulan Ude within the framework of the Baikal Economic Forum and it will consider among the other topics the issues of protection of the lake of Baikal and other environmental problems.

**Dear session participants,**

5. A large number of laws in the field of ecology have been approved in the 15 years. They determine various aspects of the use of the nature and the protection of the environment.

The Water, Forestry, Land and Urban Construction Codes have been adopted, as well as the laws on protection of air, flora and fauna and the rational use of land and mineral resources.

A special attention has been given to the safe use of the nuclear power and the protection from emergencies. The issues of waste utilization and ecological examination have been legislatively determined.

The Council of the Federation is carrying out a permanent monitoring of the legislation and the law application, doing that in the environmental field as well. That activity is also carried out within the framework of drafting of the annual report of the Council of Federation on the state of legislation in the Russian Federation.

6. The Council of the Federation pays a great attention to the international cooperation for the cause of the environmental protection. We strive to progress in the mainstream of the common world tendencies. I'd like to commend the experience of the work of the Council of the Federation on the pilot legislative acts in the field of the environmental protection within the frameworks of the Inter-Parliamentary Assembly of the Member States of the Commonwealth of Independent States.

**Dear colleagues,**

7. The reduction of harmful influence on the environment, the saving of the resources and the protection of the health of the Chamber members and the Staff members are the guidelines of the internal activity of the Council of the Federation. For example, the use of digital documentation and non-paper technologies made it possible to reduce significantly the paper use. We strive to use water, heat and electric power economically. In accordance to the law «On the restriction of tobacco smoking» a

smoking room equipped with an intensive ventilation system was provided in the main building of the Council of the Federation.

I believe that the parliaments should serve as an example of the ecological organization of the daily work."

**Mr Vladimir SVINAREV** also asked how the Swedish Parliament assessed the balance between the different environmental impacts of document provision on paper and electronically, and how MPs were persuaded of the need to reduce paper use.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN (Netherlands)** mentioned the environmental measures taken by the Dutch Parliament, especially in reducing paper consumption and encouraging parliamentary staff to use bicycles, which most of them did. MPs were also taken on a guided tour to show them the environmental measures in place, which had had a positive impact on the behaviour of the people using the buildings.

**Mrs Adelina SÁ CARVALHO (Portugal)** said that in Portugal, similar measures were being investigated. Energy-saving light bulbs had been introduced throughout the parliamentary buildings. By the end of the year, documents would be available only electronically, leading to an 80% reduction in the use of paper. Thousands of trees were also to be planted to offset energy consumption.

**Mr Ulf CHRISTOFFERSSON (Sweden)** replied that he had great sympathy with the British problem of working in old buildings. The parliamentary buildings in Stockholm were also old, although because of the colder climate, they were better insulated than the Houses of Parliament at Westminster. There had been little publicity about the Swedish work so far, but a report was to be placed on the parliamentary website shortly. The most obvious economic impact related to Member travel, where a more expensive mode of travel could be justified by greater environmental friendliness. It was also important that Members should be able to visit their constituencies. An experiment with video-conferencing had shown that it was not a convincing substitute. It had been suggested to Mr Christoffersson that he should be moderating the debate from Stockholm by videolink! Environmental measures had had no negative impact on the plenary. Mr Christoffersson ensured that they did not. The main impact was that Members were now asked if they wanted to continue to receive papers which had previously been routinely distributed. He was certain that (although the trade-off had not been accurately calculated) electronic publication was much more environmentally friendly than paper publication. He was aware, however, of the need to make computers more efficient to reduce energy consumption. He praised the Dutch example of bicycle use – five bicycles were made available to MPs in Stockholm, but they were not heavily used.

**Mr Marc BOSC, Vice-President**, thanked all those who had contributed to the debate.

*Dr Hafnaoui AMRANI, President, took the Chair.*

## 4. Communication by Mr P.D.T. ACHARY, Secretary General of the Lok Sabha of India, on "Parliamentary privileges: Legislature and judiciary interface – the Indian experience"

**Dr Hafnaoui AMRANI, President,** invited Mr P.D.T. ACHARY, Secretary General of the Lok Sabha of India, to present his communication, as follows:

"**Introduction**

Each House of the Indian Parliament collectively and its members individually enjoy certain powers, privileges and immunities which are considered essential for them to discharge their functions and duties effectively, without any let or hindrance. The underlying object of the Powers, privileges and immunities of Parliament is to protect its freedom of speech, authority and dignity. When any individual or authority disregards or attacks any of the privileges, rights and immunities, either of the members or of the House or its Committees, the offence is termed as a breach of privilege and is punishable by the House.

**Constitutional Provision relating to Parliamentary Privileges**

Privileges and immunities of the Houses of Parliament and of the members and the Committee thereof are provided in article 105 of the Constitution as under:

(1) Subject to provisions of this Constitution and to the rules and standing orders regulating the Procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication, by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House shall be such as may from time to time be defined by Parliament by law, and until, so defined, shall be those of that House and of its members and Committees immediately before the coming into force of Section 15* of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise

* Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978 came into force with effect from 20 June, 1979. Prior to that, clause (3) of Article 105 provided that in other respects the powers, privileges and immunities of each House shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom, and of its Members and Committees at the commencement of the Constitution *i.e.* on the 26th January, 1950.

to take part in the proceedings of a House of Parliament or any Committee thereof as they apply in relation to members of Parliament.

**Provisions under the Statute**

In terms of provisions of Section 135 A of the Civil Procedure Code members enjoy freedom from arrest in civil cases during the continuation of the session of the House and during a period of 40 days before its commencement and 40 days after its conclusion. The object of this privilege is to ensure the safe arrival and regular attendance of Members of Parliament. The arrest of a Member of Parliament in Civil Proceedings during the period when he is exempt from such arrest is a breach of privilege and the member concerned is entitled to release.

**Privileges governed by precedents of House of Commons (UK)**

No law has so far been enacted by Parliament in pursuance of clause (3) of article 105 of the Constitution to define the powers, privileges and immunities of each House and of the Members and the Committees thereof. In the absence of any such law, therefore, the powers, privileges and immunities of the Houses of Parliament and of the Members and the Committees thereof (besides those enumerated in the Constitution and the Civil Procedure Code) continue in actual practice to be governed by the precedents of the British House of Commons as they existed on the date our Constitution came into force.

**Privileges evolving through conventions, under Rules etc.**

Some of the more important privileges and immunities enjoyed by Houses/members of Parliament other than those enjoyed by virtue of constitutional and statutory provisions are as follows:—

(i) Exemption of members from liability to serve as juror;

(ii) Prohibition of disclosure of the proceedings or decision of a secret sitting of the House;

(iii) Rights of the House to receive immediate information of the arrest, detention, convictions, imprisonment and release of a member (Rules 229 and 230 of the Rules of Procedure and Conduct of Business in Lok Sabha);

(iv) Prohibition of arrest and service of legal process within the precincts of the House without obtaining the permission of the Speaker (Rules 232 and 233 of the Rules of Procedure and Conduct of Business in Lok Sabha);

(v) Members or officers of the House cannot give evidence or produce documents in courts of law, relating to the proceedings of the House without the permission of the House (First Report of Committee of Privileges of Second Lok Sabha, adopted by Lok Sabha on 13th September, 1957);

(vi) Members or officers of the House cannot attend as a witness before the other House or a Committee thereof or before a House of State

Legislature or a Committee thereof without the permission of the House and they cannot be compelled to do so without their consent (Sixth Report of Committee of Privileges of Second Lok Sabha, adopted by Lok Sabha on 17 December, 1958);

(vii) All Parliamentary Committees are empowered to send for persons, papers and records relevant for the purpose of the inquiry by the Committee. A witness may be summoned by a Parliamentary Committee who may be required to produce such documents as are required for the use of a Committee (Rules 269 and 270 of the Rules of Procedure and Conduct of Business in Lok Sabha);

(viii) A Parliamentary Committee may administer oath or affirmation to a witness examined before it (Rule 272 of the Rules of Procedure and Conduct of Business in Lok Sabha);

(ix) The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these have been laid on the Table of the House (Rule 275 of the Rules of Procedure and Conduct of Business in Lok Sabha).

**Powers for the Protection of Privileges**

Each House of Parliament also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are as follows:

(i) to commit persons, whether they are members or not, for breach of privilege or contempt of the House;

(ii) to compel the attendance of witnesses and to send for papers and records;

(iii) to regulate its own procedure and conduct of its business (Article 118 of the Constitution);

(iv) to exclude strangers from the secret sittings of the House (Rule 248, of the *Rules of Procedure and Conduct of Business in Lok Sabha*);

(v) to prohibit the publication of debates and proceedings (Rule 249 of the Rules of Procedure and Conduct of Business in Lok Sabha);

(vi) to regulate admission to and order withdrawal/removal of strangers from any part of the House (Rules 386, 387, 387A of the Rules of Procedure and Conduct of Business in Lok Sabha).

In the matter of its own privileges, the House is supreme. The House combines in itself all the powers of the Legislature, Judiciary and Executive, while dealing with a question of its privilege. The House has power to declare what its privileges are, subject to its own precedents, name the accused who is alleged to have committed a breach of

privilege or contempt of the House, act as a court either by itself or through its Committee, to try the accused, to send for persons and records, to lay down its own procedure, commit a person held guilty, award the punishment, and execute the punishment under its own orders. The House, however, must function within the framework of the Constitution, more particularly within the ambit of fundamental rights, act *bona fide,* observe the norms of natural justice and not only do justice but seem to have done justice.

In case where the offence of breach of privilege or contempt is not so serious as to warrant the imprisonment of the offender by way of punishment, the person concerned may be summoned to the Bar of the House and admonished or reprimanded by the Speaker by order of the House. Admonition is the mildest form of punishment, whereas reprimand is a more serious mark of the displeasure of the House. In the Lok Sabha, there have been cases of persons having been summoned to the Bar of the House and reprimanded by the Speaker. In one case, Shri R.K. Karanjia, editor of *Blitz*, was reprimanded for publishing a libelous dispatch in his magazine. In the other case, Shri S.C. Mukherjee, a government officer, was reprimanded for deliberately misrepresenting facts and giving false evidence before the Committee on Public Accounts. In the case of a breach of privilege which is also an offence at law, the House may, if it thinks that the punishment which it has the power to inflict would not be adequate to the offence, or where for any other reason, the House feels that a proceeding at law is necessary, either as a substitute for, or in addition to, its own proceeding, direct the prosecution of the offender in a court of law.

The penal jurisdiction of the House is not confined to its own members, or to offences committed in its immediate precincts, but extends to all contempt of the House, whether committed by members or by persons who are not members, irrespective of whether the offence is committed within the House or beyond its walls.

**Parliament—Judiciary Interface**

The Judiciary has been largely sensitive to the constitutional spirit behind the privileges of the Legislature and recognized the immunity of parliamentary proceedings from being called in question in the Courts of Law.

An example for this is the case of *M.S.M. Sharma Vs. Shree Krishna Sinha* (AIR 1959 SC 395), popularly known as '*Search Light'* case. When contempt action was initiated by the Bihar Legislature against M.S.M. Sharma, editor of Search Light (a daily newspaper), Patna for having published the proceedings of the Bihar Legislature which had been expunged by the order of the Speaker. The Editor challenged the action of the Legislature on the ground that he had the fundamental right to speech and expression under article 19(1)(a), which certainly included the freedom of the Press. The Supreme Court, however, rejected the said contention and held that it was within the competence of the Legislature to initiate action against the Editor, if he had violated the privileges of the Bihar Legislature. By doing so, the Supreme Court upheld the supremacy of the constitutional provision which barred the jurisdiction of the Supreme Court on matters falling within the exclusive jurisdiction of the Legislature.

Again in *Tej Kiran Jain* Vs. *N. Sanjiva Reddy* (AIR 1970 SC 1573) where a suit had been filed by the admirers of the *Jagadguru* Shankaracharya for recovery of damages against the Speaker and some members alleging that during the course of the discussion on the Calling Attention motion certain remarks were made by the defendants which were defamatory and calculated to lower the dignity of the Shankaracharya, the Supreme Court held that:

> It is of the essence of Parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none.

Despite a broad consensus on the issue, there have been some occasions when judicial intervention in the procedural aspects of the Legislatures has created somewhat anomalous situations.

**Keshav Singh Case**

A leading case is that of Keshav Singh (AIR 1965 All.349). In March 1964, the Legislative Assembly of Uttar Pradesh referred to its Committee of Privileges the complaint made by a member that Shri Keshav Singh and two others who had committed contempt of the House and a breach of privilege of a member by having printed and distributed a leaflet containing false and defamatory allegations against a member in the discharge of his duties in the House. The Committee of Privileges held that a breach of privilege of the member and a contempt of the House had been committed by these persons and recommended that they be reprimanded by the Speaker. The House agreed with the report and the contempers were ordered to present themselves before the House to receive the reprimand. Two of them appeared before the House and they were reprimanded. Keshav Singh did not appear before the House. A warrant for his arrest and production was issued. Shri Singh sent a letter to the Speaker which was worked in a language derogatory to the dignity of the House and the Speaker. When he was arrested and produced before the House, he stood with his back towards the Speaker showing disrespect to the House and did not care to give any answer to the questions put to him by the Speaker. The Speaker reprimanded him.

On account of the disrespectful behaviour to the House and also regarding his derogatory letter a motion was moved that Keshav Singh be sentenced to imprisonment for seven days and motion was adopted and he was went to jail to serve the sentence.

On the sixth day, Keshav Singh represented by an advocate presented a petition to the Lucknow Bench of the Allahabad High Court under section 491 of Criminal Bench of the Allahabad High Court under section 491 of Criminal Procedure Code and article 226 of the Constitution against the Speaker, the Chief Minister and the Jail Superintendent praying that he be set at liberty on the ground *inter alia* that his detention, after the reprimand had been administered to him, was illegal and without any authority and further praying that pending the disposal of the petition be ordered to be released on bail.

The petition was admitted by the High Court and Keshav Singh was released on bail pending the disposal of the writ petition.

On 21 March 1964, the Legislative Assembly adopted a resolution to the effect that the two judges of the Allahabad High Court, who had entertained the petition of Keshav Singh and ordered him to be released on bail and the advocate who had represented him had by their actions committed contempt of the House. The Assembly ordered that Keshav Singh be taken into custody to serve the remaining part of his sentence and that the two Judges and the advocate be taken into custody and brought before the House. Further when the period of imprisonment of Keshav Singh was completed he was ordered to be brought before the House for having committed a contempt of the House by causing petition to be presented to the High Court against his committal.

The Judges of the High Court thereupon presented petitions to the Allahabad High Court under article 226 on 23 March praying for a writ of *mandamus* restraining the Speaker, the Marshal and the Superintendent of the Jail from implementing the resolution of the House dated 21 March and from securing execution of the warrant in pursuance of the resolution. The advocate also presented a petition to the High Court under article 226 for a similar writ of *mandamus* and further for taking action against the Speaker and the House for contempt of Court.

A full Bench of the Allahabad High Court consisting of 28 Judges admitted the petitions of the two Judges on the same day and directed the issue of notices to the respondents and restraining the Speaker from issuing the warrant in pursuance of the resolution of the House and from securing execution of the warrant if already issued and restraining the Government of Uttar Pradesh and the Marshal of the House from executing the said warrant if issued.

Similar orders were made by the High Court on 25 March on the petition of the advocate for a writ of *mandamus.*

The order passed by the High Court was served on the Speaker on the morning of 24 March. But in meanwhile, on the evening of 23 March, the Speaker had issued the warrants of arrest pursuant to the resolution passed by the Assembly on 21 March and they had been handed over to the Marshal for executing the same. The Marshal was also served with the Order of the Court but before the service of the Order, he had handed over the warrants to the Commissioner of the Lucknow for doing the needful.

On 25 March the Assembly passed another resolution declaring that by its resolution dated 21 March, it had not intended to deprive the two Judges of the Lucknow Bench of Allahabad High Court, the advocate and Keshav Singh of an opportunity of giving their explanations before a final decision about the commission of contempt by them and directing that such an opportunity should be given to them.

The warrants of arrest of the two Judges and the advocate were accordingly withdrawn by the Speaker and the resolution passed by the House on 25 March was referred by

him to the Committee of Privileges for necessary action. The Committee of Privileges decided on 26 March to issue notice to the said two Judges and the advocate to appear before it on the 6 April for submitting their explanations.

The two Judges, thereupon, moved fresh petitions before the High Court on 27 March for staying the implementation of the resolution passed by the Assembly on 26 March. A full Bench consisting of 28 Judges passed an interim order restricting the Speaker, the House and the Chairman of the Committee of Privileges from implementing the aforesaid resolution of the House and also the operation of the aforesaid notices issued to the two Judges by the Committee of Privileges.

Ultimately, the matter resulted in a reference under article 143 by the President to the Supreme Court. The main point of contention was the power claimed by the Legislatures under article 194(3) of the Constitution to commit a citizen for contempt by a general warrant with the consequent deprivation of the jurisdiction of the court of law in respect of that committal.

The Supreme Court, in its majority opinion, held that the powers and privileges conferred on State Legislatures by article 194(3) were subject to fundament rights and that the Legislatures did not have the privilege or power to the effect that their general warrants should be held to be conclusive. The Supreme Court held that in the *Case of Sharma* the general issue as to the relevance and applicability of all the fundamental rights guaranteed by Part III was not raised at all. Hence, it would not be correct "to read the majority decision as laying down a general proposition that whenever there is a conflict between the provisions of the latter part of article 194(3) and any of the provisions of the fundamental rights guaranteed by Part III, the latter must yield to the former. The majority decision, therefore, must be taken to have settled that art. 19(1) (a) would not apply, and art.21 would".

The opinion of the Supreme Court was discussed by the Conference of Presiding Officers of Legislative Bodies in India held at Bombay on 11 and 12 January 1965. The Conference unanimously adopted a resolution expressing its view that suitable amendments to articles 105 and 194 should be made in order to make the intention of the Constitution makers clear beyond doubt so that the powers, privileges and immunities of Legislatures, their members and Committees could not, in any case, be construed as being subject or subordinate to any other articles of the Constitution.

In the meantime, the Allahabad High Court upheld the power of the Legislative Assembly to commit for its contempt. The Government, therefore, decided that an amendment of the Constitution was not necessary. It was of the opinion that the Legislatures and the Judiciary would develop their own conventions in the light of the opinion given by the Supreme Court and the judgment pronounced by the Allahabad High Court.

**Kerala Legislative Assembly Case**

In the eighties there were two more privilege cases which attracted considerable attention one from Kerala and another from Andhra Pradesh.

In the Kerala Legislative Assembly case, the Press Gallery pass of a press correspondent was cancelled by the Speaker, Kerala Legislative Assembly for casting reflections on the Speaker. The press correspondent filed a writ petition in the Kerala High Court challenging the cancellation of his pass which issued notices to the Speaker and Secretary, Kerala Legislature. The full Bench of the Kerala High Court considered the matter and upheld the order of the single judge observing that no interference was called for in appeal. The Full Bench also observed that "the immunity envisaged in article 212(1) of the Constitution is restricted to a case where the complaint is no more than that the procedure was irregular. If the impugned proceedings are challenged as illegal or unconstitutional such proceedings would be open to scrutiny in a court of law. Subsequently, the Kerala Government filed a special leave petition in the Supreme Court against the order and judgment of the Full Bench. On 7 February 1984, the Constitution Bench of the Supreme Court admitted the appeal and stayed all further proceedings in the High Court.

**Andhra Pradesh Legislative Council Case**

In the Andhra Pradesh Legislative Council Case, the Editor of *Eenadu* allegedly cast reflections on the House and its proceedings in his newspaper dated 10 March 1983. The Chairman referred the matter to the Committee of Privileges who, in their report presented to the House on 27 February 1984, reported that the Editor had committee serious breach of privilege and contempt of the House. The Committee recommended that the Editor be summoned to the Bar of the House and admonished. The Report of the Committee was adopted by the House without any discussion on 6 March 1984. Before the House could take any action against the Editor, he filed a writ petition before the Supreme Court challenging the finding of the Committee.

On 25 April 1984, an Emergent Conference of Presiding Officers of the Legislative Bodies in India was held at New Delhi to consider the issues arising out of the said cases pending in the Supreme Court. After discussing the matter at great length, the Conference *inter alia* unanimously adopted the Resolution that mutual trust and respect must exist between the Legislatures and courts, each recognizing the independence, dignity and jurisdiction of the other inasmuch as their role are complementary to each other and that, if necessary, an amendment might be made in the Constitution so as to place the position beyond all shadow of doubt.

Before, however, the writ petitions could come up for hearing before the Supreme Court, the Kerala Legislative Assembly was dissolved. The Andhra Pradesh Legislative Council was abolished on 1 June 1985, by the Andhra Pradesh Legislative Council (Abolition) Act, 1985.

**Tamil Nadu Legislative Assembly Case**

In February 1992, a Tamil Nadu newspaper had published that a member of the Tamil Nadu Assembly had hit another member of the Assembly. The matter was raised in the House and it was referred to the Privileges Committee. The Committee submitted its report. The House accepted the report and the Editor of the newspaper was asked to appear before the Bar of the House. As the Editor did not appear before the House,

warrant of arrest was issued. But the Editor filed a writ in the Supreme Court and obtained a stay of the arrest warrant. This matter was discussed in the Presiding Officers Conference held in May 1992 in Gandhinagar. The Chairman in his concluding remarks said that members had expressed their views on a subject which may or may not be explosive but certainly it was delicate. Such a subject should be dealt with restraint, caution, prudence and wisdom.

**Jharkhand Case**

The elections to the Jharkhand Legislative Assembly were held in February 2005. The electorate gave a fractured mandate. The Governor of Jharkhand after consulting various political parties invited Jharkhand Mukti Morcha and its allies led by Shri Shibhu Soren, to form the Government on 2 March 2005. The Soren Government was required to prove its majority on the floor of the House by 21 March 2005 which was subsequently pre-poned by the Governor to 15 March 2005. The Leader of National Democratic Alliance who claimed to have the support of majority in the 81 member Jharkhand Legislative Assembly, filed a writ petition in the Supreme Court of India challenging the appointment of Shri Shibhu Soren as the Chief Minister of Jharkhand.

On 9 March 2005, a three Judge bench of the Supreme Court of India, presided over by the Chief Justice passed an interim order on the Writ Petition (Civil) No.123/2005, *Arjun Munda Vs. Governor of Jharkhand and Others* and another Writ Petition (Civil) No.120/2005, *Anil Kumar Jha Vs. Union of India and others inter alia* directing that (i) the session of the Jharkhand State Assembly convened for 10 March 2005 may continue on 11 March 2005, *i.e.,* the next day and on that day the vote of confidence be put to test; (ii) the only agenda in the Assembly on 11 March 2005, would be to have a floor test between the contending political alliances; (iii) the proceedings in the Assembly shall be totally peaceful, and disturbance, if any, caused therein shall be viewed seriously; (iv) the result of the floor test be announced by the Pro tem Speaker faithfully and truthfully.

The interim order of the Supreme Court thus contained directions about fixing of agenda of the House, maintenance of order in the House, and video recording of the proceedings of the Houses etc., which relate to matters decision on which, under the rules and by convention fall within the exclusive domain of the Presiding Officer of the House or the House itself.

The matter was discussed at the emergent Conference of Presiding Officers of Legislative Bodies held at New Delhi on 20 March 2005. The Conference in their unanimous resolution *inter alia* resolved:

> "that there must exist mutual trust and respect between the Legislature and the Judiciary and also an understanding that they are not acting at cross purposes but striving together to achieve the same goal that is to serve the common man of this country and to make this country strong...

"that the success of democratic governance would be greatly facilitated if these two important institutions respect each other's role in the national endeavour and do not transgress into areas assigned to them by the Constitution...

"that it is imperative to maintain harmonious relations between the Legislatures and the Judiciary."

**Cash for Query Case**

During Fourteenth Lok Sabha, the matter of acceptance of money by members of Parliament for raising parliamentary questions came to light on 12 December 2005 after an expose on a television news channels showing members of Parliament accepting money for tabling notices of Parliament questions. An Adhoc Committee *viz.* Committee to Inquire into Allegations of Improper Conduct on the Part of Some Members was constituted by the Speaker, Lok Sabha on 12 December 2005, to look into the matter. The Committee adopted their draft Report on 21 December 2005. The Report was presented to the Speaker, Lok Sabha on 21 December 2005 and laid on the Table of the House on 22 December 2005. The Committee in their Report recommended expulsion of ten members who were involved from the membership of Fourteenth Lok Sabha. On 23 December 2005, the Leader of House moved the motion for the expulsion of the members from the membership of Lok Sabha. An amendment to the motion moved by a Member that the matter may be referred to the Committee of Privileges, Lok Sabha was negatived by voice vote. The motion was adopted by the voice vote and consequently the ten members stood expelled from the membership of Lok Sabha. All the expelled members challenged their expulsion in the High Court of Delhi, other than Shri Raja Rampal who challenged his expulsion in the Supreme Court.

Taking cognizance of the expelled members' plea, the Delhi High Court and the Supreme Court directed that notices be issued to the parties, including the Speaker, Lok Sabha, and the Lok Sabha Secretariat.

In the meanwhile, the Lok Sabha Speaker convened an All-Party Meeting of the Leaders in Lok Sabha on 20 January 2006, to discuss the issues relating to and arising from the proceedings initiated in the court of law challenging the expulsion of members by the Lok Sabha. The Leaders unanimously endorsed the position taken by the Speaker not to accept and respond to the notices issued by the High Court and the Supreme Court. They were of the view that any action questioning Parliament regarding expulsion of its members tends to violate the provisions of article 105 of the Constitution.

Later, an Emergency Conference of the Presiding Officers of Legislative Bodies in India was held in New Delhi on 4 February 2006. The Emergency Conference adopted the Resolution unanimously endorsing the decision taken by the Chairman, Rajya Sabha, and the Speaker, Lok Sabha, not to accept or respond to the notices issued by Courts of Law in the matter of expulsion of the members of the two Houses.

A five judge Constitution bench of the Supreme Court of India which took up the core issue of power of the House of Parliament to expel their members, pronounced their judgment in the matter on 10 January 2007. The Supreme Court in their majority

judgment comprising of judgments given by the then Chief Justice of India Y.K. Sabharwal, Justice K.G. Balakrishnan and D.K. Jain and a separate judgment given by Justice C.K. Thakkar, upheld the powers of the House to expel members and that every legislative body possesses power to regulate its proceedings—power of self protection, self-preservation and maintenance of discipline in exercise of which it can suspend or expel a member. It was further held that the contempt of authority of Parliament can be tried and published nowhere except before Parliament though the exercise of the Legislatures' contempt power is subject to judicial review. In his dissenting judgment, Justice R.V. Raveendran held that Parliament did not have the power of expulsion. This judgment of the Supreme Court has put to rest the question of expulsion power of the Parliament.

By and large, as per the constitutional mandate, the courts in India have exercised restraint and recognized the immunity of parliamentary proceedings form being called in question in the courts of law.

**Codification of Parliamentary Privileges**

No comprehensive law has so far been passed by Parliament to define the powers, privileges and immunities of each House, and of the members and the Committees thereof. The dominant view has all along been that codification is more likely to harm the prestige and sovereignty of Parliament/State Legislatures.

The Committee of Privileges (Tenth Lok Sabha) adopted a draft Report on 'Codification of Parliamentary Privileges' on 18 July 1994 which was later laid on the Table of the House on 19 December 1994. The Committee held the view that the Legislature's power to punish for contempt is more or less akin and analogous to the power given to the courts to punish for their contempt. The Committee, therefore, felt that what constitutes a breach of privilege or contempt of House can be decided according to the facts and circumstances of each case rather than by specifying them in so many words. The Committee accordingly recommended against codifying parliamentary privileges.

The issue was revisited by the Committee on Privileges in the present Lok Sabha. The Committee, in their Eleventh Report (Fourteenth Lok Sabha) on the matter relating to the *Parliamentary Privileges-Codification and other Related matters,* laid on the Table of the House on 30 April, 2008 recommended against the codification of parliamentary privileges and *inter alia* observed that the penal powers of the House for breach of privileges or contempt of the House had been very sparingly used. During the past five and a half decades, in the Lok Sabha, there had been only one case of admonition, two cases of reprimand and one case of expulsion for commission of breach of privilege and contempt of the House. In the Rajya Sabha, the Committee reported that there had been only two cases of reprimand for commission of breach of privilege and contempt of the House. The Committee felt that this itself bore testimony to the fact that there had not been any misuse of the power of privileges as erroneously believed in some quarters. As such, the Committee recommended that there was no need for the codification of parliamentary privileges.

**Conclusion**
In short, the power of the House to punish any person who commits contempt of the House or a breach of any of its privileges is perhaps its most important privileges. It is this power that gives reality to the privileges of Parliament and emphasizes its sovereign character insofar as the protection of its rights and the maintenance of its dignity are concerned."

**Dr Hafnaoui AMRANI, President**, thanked Mr P.D.T. ACHARY for his communication and invited members present to put questions to him.

**Mr Xavier ROQUES (France)** said that the French legal system was very different from the Indian. It was unthinkable for Parliament in France to issue a writ against a citizen. But deputies did have immunities, and he cited a number of recent cases. Members of Christian sects not pleased with the views expressed in a report from commission of inquiry. They attempted to take legal action in turn against Members of Parliament, parliamentary staff and the publishers of the report. Each in turn was judged to be immune from such action. The sects then tried to take action against those who had given evidence to the inquiry, and the courts agreed to hear the case. This led to the voting of a law to extend parliamentary immunity to witnesses before commissions of inquiry. Parliamentarians were protected for what they said in Parliament – but not if they repeated it elsewhere. Finally, there had been a dispute around the copyright of material drawn from parliamentary debates and published. As the material was in the public domain, it was not covered by copyright, but the authors of a book drawing on such material had been none too pleased to discover this.

**Mr Manuel ALBA NAVARRO (Spain)** said that the issue of immunities was common to parliaments worldwide. In Spain, criminal cases against MPs could be considered only by the supreme court. Decisions not to prosecute MPs had been raised in the constitutional court as a breach of the fundamental right to justice. Parliament was effectively subject to the constitutional court, and was asked to provide reasons to this court when deciding not to allow a case to proceed – which could be difficult when a decision was taken by secret ballot! This showed that parliamentary sovereignty was a thing of the past. Parliament no longer had the last word.

**Mr Baye Niass CISSÉ (Senegal)** said that there were two types of immunity provided for by the Constitution of Senegal: absolute immunity (such as the freedom from arrest for remarks made in Parliament) and partial immunity (such as for a Member of Parliament's activities outside of Parliament). An MP could only be arrested with the permission of the Speaker, unless he was caught in flagrante delicto. Even in these cases, however, Parliament could call for a stay of proceedings.

**Mrs Maria Valeria AGOSTINI (Italy)** said that in Italy, until the beginning of the 1990s, MPs had had extensive immunities, including freedom from criminal investigation and prosecution without the permission of the relevant House of Parliament, which was scarcely ever granted. Following financial scandals in the early 1990s, however, new rules had been introduced, allowing investigations against MPs to take place without the permission of Parliament. Parliament's permission was now required only for an

arrest. However, too many MPs were now being investigated, some without due justification. A new law introduced last year had prevented the prosecution of state authorities (such as the President, Prime Minister and Speakers) during their terms of office.

**Mrs Jacqy SHARPE (United Kingdom)** said that the statutory basis for parliamentary privilege in the UK was the Bill of Rights 1689. The Speaker had intervened in recent cases to protect these privileges: for example, when a parliamentary question was treated as a valid request for information under the Freedom of Information Act, and when the Information Tribunal relied on the opinion of a select committee in reaching a decision.

**Mr Robert MYTTENAERE (Belgium)** mentioned a problem in Belgium similar to that cited by Mr ROQUES. The Supreme Court had ruled that a sect was legitimately offended by the failure of a parliamentary commission of inquiry to keep it properly informed and involved. The Court of Cassation had rejected a claim by Parliament that the supreme court decision had offended against a constitutional division of power. Taken to its logical conclusion, this would mean that parliamentarians no longer had the right to express themselves freely.

**Mrs Fatou Banel SOW GUEYE (Senegal)** raised a concern about the Indian Parliament's attempt to issue a writ against a judge. Under Senegalese law, only the courts could issue writs. It seemed to her that Indian MPs had 'super-privileges'.

**Mr Christoph LANZ (Switzerland)** mentioned two cases currently being considered by the Swiss Parliament. One concerned a case brought against an MP for what she had said at a press conference. It was decided that total immunity should be expanded into this area. Another case concerned whether immunity could be lifted if an MP abused it, for example by revealing confidential information in Parliament.

**Shri P.D.T. ACHARY (India)** thanked all those who had participated in the discussion and provided information about the position in their countries. Answering Mr ROQUES, in India, immunity extended only where debates were published under the authority of the House. But a fair reproduction of proceedings was protected under the law. Responding to a number of members, in India, MPs enjoyed no immunity under the criminal law; but they could not be arrested for a civil offence while Parliament was sitting. Issues regarding privileges and immunities were basically the same wherever there was a democratic parliamentary system. Warrants for arrest against citizens could indeed be issued by either House of Parliament in India.

**Dr Hafnaoui AMRANI, President**, suggested that this interesting subject could possibly be expanded on at a future meeting.

*The sitting rose at 12 pm.*

## FOURTH SITTING
## Tuesday 7 April 2009 (Afternoon)

## Dr Hafnaoui AMRANI, President, in the Chair

***The sitting was opened at 3.00 pm***

## 1. Introductory Remarks

**Dr Hafnaoui AMRANI, President**, reminded members that the deadline for the nomination of candidates for the post of ordinary member of the Executive Committee was at 11 am on Thursday.

**Dr Hafnaoui AMRANI, President**, announced that the Executive Committee had held a discussion that morning, at his request, on the possibility of conferring the status of honorary member of the Association on Mrs Hélène PONCEAU, former Secretary General of the Questure of the French Senate, and former Vice-President of the ASGP. The Executive Committee had been in favour of the proposal, which would be put to the Association formally on Friday.

## 2. Communication by Mr Xavier ROQUES, Secretary General of the Questure of the National Assembly of France, on "The reception of MPs at the beginning of a new term of Parliament at the French National Assembly"

**Dr Hafnaoui AMRANI, President,** invited Mr Xavier ROQUES, Secretary General of the Questure of the National Assembly of France, to present his communication, as follows:

"A specific operation for the reception of M.P.s is organized after every renewal of the French National Assembly.

It is, in fact, absolutely essential that the M.P.s carry out a certain number of procedures which are necessary for the administrative management of the rights provided by their status as M.P.s, for example, the payment of parliamentary allowances, social security or their retirement scheme.

This is also the opportunity to provide M.P.s with documents which deal both with their status as an M.P. and the exercise of their office.

In addition, there is the issue of training or help in organizational matters so that the new M.P.s can learn the methods of parliamentary work and, in particular, of its legislative and monitoring dimensions.

I will attempt to summarize the observations which our experience at the French National Assembly has highlighted, into two main categories:

- What does the reception procedure consist of?

- What support can the parliamentary administration give at the beginning of a new parliamentary term?

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## I.– WHAT DOES THE RECEPTION PROCEDURE CONSIST OF?

In essence, the reception procedure is characterized by elements similar to any administrative 'reception/counter' procedure. It is for this reason, that it has followed the general trends in the development of the relations between any administration and those it caters for, i.e. the user wishes to be considered more and more as a customer. This means that the parliamentary administration must call upon greater availability, simplicity and rapidity.

***First remark: the electoral procedures for M.P.s have an influence on the reception procedure.***

In France, M.P.s are elected using a uninominal, majority system in two rounds. The reception procedure must therefore be up-and-running from the day following the first round of the general election, right up until the end of the week when the Assembly holds its first meeting. Thus, after the 2007 general election, the reception procedure began on Monday June 11 and finished on Friday June 29.

Given the relatively small number of M.P.s who are elected at the first round, the arrangements which are set up, tend to be lighter during the first week and only really reach 'full capacity' during the second and at the beginning of the third week. Thus, of the 577 M.P.s, 110 were elected at the first round (of whom 93 were returning M.P.s, 12 had previously been M.P.s, in fact they were former M.P.s who had become ministers and 5 were elected for the first time). In total, after the two rounds, 405 out-going M.P.s were re-elected, 40 previous M.P.s became M.P.s again and 132 M.P.s were elected for the first time.

As far as the reception procedure is concerned, the " new M.P.s" are all those who are not directly returning, including M.P.s from previous parliamentary terms and members of the Government who were re-elected but gave way to their substitute (i.e. 172 M.P.s in 2007). In fact, this refers to all M.P.s for whom the various parliamentary departments possess no data or only out-of-date data.

In reality, 98 M.P.s were received during the week following the first round and 473 during the two weeks following the second round. The peak was reached on June 19,

when 263 M.P.s were received. The average time taken for each M.P. to carry out the procedures required during the reception phase (in particular the validation of the personal information file) was 22 minutes.

It should be underlined that, in France, an M.P. and his/her substitute are elected at the same time. The substitute replaces the M.P. during a term if, for example, the latter becomes a member of the Government or if he/she passes away. The substitute is only enrolled on the registers of the National Assembly when he/she takes up office officially: he/she is therefore not involved in the reception procedure at the beginning of a parliamentary term.

***Second remark: the reception procedure mobilizes, first of all, the departments of the National Assembly but also requires close collaboration between administrations.***

This collaboration works in both directions:

● *In the direction of assistance for the departments of the National Assembly.*

The help of the Ministry of the Interior is essential:

1°) to obtain the names of the candidates and the election results;

2°) to inform the elected M.P.s of the reception procedures at the *Palais Bourbon*.

What exactly does this entail?

− Around two weeks before the first round of the elections, the Ministry of the Interior electronically transmits the list of the candidates. By cross-referencing with this file, it is possible to draw up a list of M.P.s who are not standing again. Then, several days before the first round, the Computer Department brings together the candidate file and all the *SAP* files (allowances) and *Tribun* files (biographical information) on the out-going or former M.P.s in order to draw up its own list of candidates.

− Next, a computer link is set up between the Ministry of the Interior and the National Assembly. This enables access to the centralized results software.

− During election night, the Computer Department must extract the names of those elected from the file of candidates it has drawn up, as the results are being recorded by the Ministry of the Interior. It must also provide each new M.P. with an identification number (using *SAP* software) and produce files on the elected M.P.s which are filled out in advance. In the case of newly elected M.P.s, the Computer Department has only the following information: the M.P.'s last name, first name, constituency and date of birth.
The day after their election, the M.P.s receive, through the Prefect (the Government representative in each Department), a letter signed by the out-going President of the National Assembly. This letter provides them with a presentation of the reception

procedure at the *Palais Bourbon*, the timetable for the opening of the new parliamentary term and a personal information file to fill in.

● *However the departments of the National Assembly also provide assistance to other state administrations.*

The Departments of the National Assembly draw the attention of the M.P.s to several obligations which the laws imposes on them concerning questions which are not 'managed' by these departments:

− they remind the M.Ps of their obligation to declare the amount and extent of their estate to an independent administrative authority called the *Committee for Financial Openness in Political Life*. Failing to do this requires the M.P. to resign his/her position as M.P. and can lead to one year's ineligibility;

− they provide the M.P.s with information concerning the rules on the combination of elected offices and the cap on allowances connected to such offices. In France an M.P. can be a local elected representative (region, department or municipality). However he/she may not combine the office of M.P. with more than one other office as regional councilor, departmental councilor or municipal councilor in a borough of at least 3,500 inhabitants. A combination of parliamentary office and a position as executive in a local authority (president of a regional council, president of a departmental council, mayor) is allowed but the total of the parliamentary allowances and the allowances for the local office must not exceed one and a half times the amount of the basic parliamentary allowance. The local authorities and the Ministry of the Interior have the job of making sure these rules are followed.

The National Assembly also takes a sample of the M.P.'s signature and transmits it to the Constitutional Council (60 M.P.s can contest the constitutionality of a law before its promulgation by referring it to this Council).

***Third remark: general and practical documentation is made available to the M.P. during the reception procedure.***

This documentation consists of four elements. A distinct choice was made to provide documents in the form of files presenting an overall and practical picture.

● *The book: The National Assembly in the French Institutions*

This work is a collection of fact-files which attempt to answer all the frequently asked questions which the departments of the National Assembly meet. These files include a presentation of the institutions, the status of M.P.s, the bodies of the National Assembly, the organization of the work of the National Assembly, the legislative and monitoring functions, the different means of institutional communication within the National Assembly and the administration of the National Assembly. This collection can be consulted freely during the reception procedure and is also available in the M.P.s' offices and on-line on the internet site.

● A practical brochure called *A Practical Guide for M.P.s*. This booklet presents the following information, also in file form:

− the legal status and parliamentary work: 7 files dealing, in particular, with the notion of the incompatibility of parliamentary office with certain other positions, the declaration of estate, parliamentary initiative (the tabling of Members' Bills or of amendments, as well as of the different types of question: written questions, oral questions without debate and Government questions), the library and its resources, the internet site and the means of reporting debates in plenary sitting and in committee;

− the financial and social system: 8 files dealing, in particular, with the allowances paid to M.P.s, the parliamentary assistant allocation and the employment rules concerning parliamentary assistants (personal employees of the M.P.), the social security system and the retirement scheme;

− daily life at the National Assembly : 13 files dealing, in particular, with the organization of visits of the *Palais Bourbon*, the official National Assembly shop (a bookshop and gift shop themed specifically on the National Assembly), invitations to attend debates during the plenary sitting, as well as the facilities provided concerning copying and stationery, postage, telecommunications, transport and catering.

● A series of administrative forms (42 forms including 24 concerning the various contracts possible for assistants which the M.P. might personally recruit). These forms are also available on the M.P.s' intranet site.

● A map of the *Palais-Bourbon* and its annexes. The National Assembly, including the Chamber, is situated right in the heart of Paris in a series of historical buildings (the *Palais Bourbon*). However the National Assembly has had to move some of the offices of M.P.s' and of various departments (committee secretariats and administrative departments) out into various buildings in the vicinity of the *Palais Bourbon*. It therefore takes a certain time to get used to the geography of the site and not to get 'lost' moving from one building to another.

***Fourth remark: the organization of a reception procedure is certainly the most effective way to efficiently and rapidly obtain a certain amount of information and to have several essential forms filled in.***

This notably means:

− collecting the personal data necessary for the payment of the parliamentary allowance and the social rights of the M.P. and his/her dependents;

− obtaining an authentic signature of the M.P. ;

− taking a photograph of each M.P. which is used for his/her M.P.s' identity card, the on-line "trombinoscope" or photographic directory of M.P.s, the new edition of the

booklet, "*Notices and Portraits*" and for the photographs provided to M.P.s upon request, during the parliamentary term, if and as, they so require. Nonetheless, the M.P. may provide a photograph which he/she would prefer for the identity card either by downloading it onto the "reception" site or by bringing a paper version on the day of the reception.

− providing the M.P. with the official symbols of office (the blue, white and red "cockade" for the car, the blue, white and red sash and other emblems to be worn).

***Overall, what, in concrete terms does the reception procedure involve?***

Each M.P. (both former and newly-elected M.P.s) is met by a parliamentary civil servant who provides him/her with all the essential forms and the M.P.'s document case containing the practical guide, the map, the legislative provisions concerning incompatibilities, an abridged version of the telephone directory and administrative forms. The aforementioned civil servant takes two samples of the M.P.'s signature (one for the Constitutional Council, the other for the General Secretariat of the Presidency), and his/her bank details. The civil servant also briefly explains the M.P.'s obligations as regards the declaration of professional activities, the declaration of estate and the combination of offices, as well as checking that the M.P.'s reception form has been correctly filled in, in which case it is signed for validation. The M.P. is then led to the photo studio to have his/her identity photograph taken and subsequently to the place where he/she is provided with the "hold-all" bag containing the official emblems.

New M.P.s, after the aforementioned formalities have been completed, are given the opportunity of meeting civil servants of the various departments (General Secretariat of the Presidency, Financial Affairs Department, Social Affairs Department, General Administrative Affairs Department) who are available to provide more precise information on the legal status of the M.P. and on the practical aspects of the exercise of his/her office.

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## II.- SUPPORT AT THE BEGINNING OF THE PARLIAMENTARY TERM

During the first days of the new parliamentary term, a certain number of material and human resources are made available to M.P.s to assist in the exercise of their office. Whilst the reception procedure brings each M.P. into individual contact with the administration, the opening of the parliamentary term also brings the political groups into play.

It should be noted here that under the Fifth Republic, it is no longer the political assembly which is charge of judging the legality of the election of its members but the Constitutional Council.

***The distribution of premises***

During the first sitting of the new Parliament the election of the President (Speaker) of the National Assembly is carried out and the M.P.s sit in the Chamber in alphabetical order. After the election the President of the National Assembly and the chairmen of political groups meet in order to divide the Chamber into as many sectors as there are groups and to decide upon the seating for "non-enrolled" M.P.s (i.e. those not enrolled in any political group).

Each political group has a meeting room, offices for its M.P.s and for its secretariat. The allocation of these different areas is decided upon by the *Questeurs* after agreement with the various political groups.

As regards the allocation of meeting rooms for the political groups, there is never really any difficulty as the biggest of these (*Salle Colbert*) is given over to the political group with the most members.

The offices are, traditionally, divided in a proportional manner, within each building. The actual decision on the location of the office provided to each M.P. falls within the remit of each political group which allocates them within the space it is given. The number of offices allocated to each group is exactly equal to its number of M.P.s.

In practice, at the beginning of each parliamentary term, the Department of General Administrative Affairs proposes a distribution plan for the premises. The representatives of the various groups meet in order to reach agreement. Insofar as is possible, the plan seeks to propose the same geographical areas as in the previous Parliament to each group and if adjustments are to be made, they will generally occur on the margins of these areas.

***Computer facilities***

A distinction must be drawn between computer facilities used in the offices of the National Assembly and those used in the constituency offices.

In the offices of the National Assembly, the decision was made to provide new standardized material, as stipulated by the College of *Questeurs*. This standard equipment consists of two computers with large screens, a multifunction printer/photocopier/fax/scanner and a monochromatic printer. The computers are provided with free software which was installed during the first two weeks of July by an outside provider. The M.P.s and their assistants are provided with training on the software and guides and self-learning tools are also available.

As regards their constituency offices, M.P.s are provided with a financial allowance for the whole parliamentary term. They place orders directly with the providers and the invoices are drawn up directly in their name. The payment of the invoices is carried out by the Purchasing and Material Means Department. The M.P.s are free to use this particular allowance as they please. It may, for example, be used to finance micro-computers, peripheral material, software, training for users or the setting-up of internet sites.

***Relations with Assistants***

Parliamentary assistants are not civil servants of the National Assembly. They are in fact employees freely taken on by the M.P.s. M.P.s pay them by means of a parliamentary assistant allocation which they are free to use as they please. Assistants may work at the National Assembly or in the constituency. These employees are recruited personally by each M.P. and have a private law contract.

The managing of the obligations linked to the work contract signed with the assistant, can be carried out by the Financial Affairs Department on the basis of a power of attorney given to the Department by the M.P./employer. The M.P. may also decide to directly manage, under his/her own responsibility, all the payments, declarations, and social and fiscal requirements linked to the work contract, without the help of the Financial Affairs Department. At present, barely ten M.P.s have chosen this direct management method.

***Training in Legislative Work***

The National Assembly does not organize training sessions for the new M.P.s and new assistants. Their training is thus carried out "on the job". The administrative secretariats of the standing committees, which are made up of civil servants, are there to supply whatever help is necessary whether it be in the writing of amendments or of Members' Bills. An M.P. who is appointed *rapporteur* for a Government or Members' Bill or who is in charge of a fact-finding mission, can take avail of the civil servants placed at his/her disposal by the secretariat of the committee.

The increase in the number and the professionalism of the M.P.s' parliamentary assistants has had important consequences. The fact of being able to have them deal with more and more questions, as well as the generalization of computer access to a vast number of information and documentation sources, led to the closing of the Studies and Documentation Department which previously dealt with document research, assistance with the writing of amendments and Members' Bills, as well as with parliamentary mail.

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Overall, the reception procedure and the logistics of the first few days of the new parliamentary term represent heavy investments which have important consequences in terms of the "image" projected to the M.P.s.

The details of the reception procedure are of course laid down by the College of *Questeurs* of the previous Parliament and thus are part of the 'inheritance'. As such it is quite a sensitive question. In addition, it is clear that the procedure is conceived in such a way so as to give, to both the new and returning M.P.s, the image of a modern administration which has at heart, the mission of better serving them and not that of a huge enrollment exercise.

Of course the reception procedure is affected by the development of information and communication technology.

A web portal on the internet site of the National Assembly has thus given the possibility to each M.P. to complete certain of the formalities linked to the reception procedure. The letter which explains the procedure to be followed and which is passed on to each M.P. through the prefects, now includes a code and a personalized password granting access to the internet site. This code and password are created for each constituency and are transmitted to the prefect's office in advance.

Through the internet site, M.P.s have access to their individual information files which have been filled out in advance by the departments of the National Assembly, using the elements available in the database. The confidential nature of the information in these files, of course, led to the use of this type of secure and personalized access.

This information file can be completed by the M.P. directly from his/her own computer. The M.P. can also choose to print it, fill it in and send it to the departments by fax.

In all, 214 M.P.s logged on at least once to the Extranet site, i.e. 37% of members. This proportion was more or less the same for new, reelected or previous M.P.s.

In addition a digital memory stick is given to each M.P. containing the practical guide, the forms and the book, *The National Assembly in the French Institutions*, broken down into files.

Do the possibilities provided by new technologies mean that the reception procedure is doomed to disappear?

It cannot be denied that there is a symbolic dimension to the arrival of the newly elected M.P. at the *Palais Bourbon.* It is for this reason that the reception procedure provides the possibility of visiting the Chamber and of having a souvenir photograph taken from the benches or from the speaker's rostrum. This photograph is downloaded onto the M.P.'s digital memory stick or recorded on a CD ROM. The Parliamentary Television Channel is also present and records interviews with the M.P.s.

It must therefore be admitted that there is a ceremonial aspect to the reception procedure which resembles something like a rite of passage symbolizing the initiation of the M.P. among the representatives of the people. It would be neither possible nor perhaps even desirable to abolish this dimension."

**Dr Hafnaoui AMRANI, President**, thanked Mr Xavier ROQUES for his communication and invited members present to put questions to him. He said that French deputies seemed somewhat pampered by the services available to them.

**Mr Félix OWANSANGO DAECKEN (Gabon)** asked how seating for new MPs was organised in the Chamber.

**Mr Marc BOSC (Canada)** thought that the French system was quite similar to that in other parliaments. In Canada before the most recent elections, new temporary liaison officers had been appointed from among those already working in the Chamber to act as liaison for between three and five new MPs for several weeks after the elections. This was well-received by the MPs themselves.

**Mr René KOTO SOUNON (Benin)** said that in Benin the parliamentary staff waited for Parliament to be in session again before new MPs were welcomed – he thought he had something to learn from the French practice. He asked from which service the officials welcoming the new MPs were drawn. He remarked that in several African Parliaments, he had noticed that MPs served several terms without learning how Parliament really worked, because they lacked interest in the subject. Some African MPs lacked any education and had no clear sense of their rights and duties. In Benin, training sessions were organised for new MPs during the first few weeks of the Parliament.

**Mr Mohamed DIAKITE (ECOWAS Parliament)** asked what happened if the results of an election were contested, given that MPs were contacted immediately after the election.

**Mr Xavier ROQUES (France)** said that there was no designated individual seating for new MPs in the Chamber – nor for most other MPs. Individual MPs tended to congregate where the cameras were most likely to notice them. There were no staff mentors for new MPs in France, unlike in Canada, perhaps because the political groups carried out this task. If an election was contested, the process normally took some time, at least a month and often a year. The officials welcoming the new MPs were taken from whichever departments were best placed to help, ideally more experienced staff who would be able to answer questions. This was an excellent way for new MPs to get to know the staff and find out how Parliament was managed. Mr Roques had had an experience recently with a relatively experienced MP who had asked to be shown the Assembly properly because he had not discovered large parts of its work. Training for MPs was not usual, because of a certain reverence for the elected, and a sense that they did not need to be taught to do their jobs effectively. However, seminars had been organised to help MPs and their assistants understand the workings of the budget.

**Dr Hafnaoui AMRANI, President**, thanked Mr Xavier ROQUES for his communication as well as all those members who had put questions to him.

## 3. Communication by Dr V.K. AGNIHOTRI, Secretary General of the Rajya Sabha of India, on "The ordinance: legislation by the Executive in India"

**Dr Hafnaoui AMRANI, President,** invited Dr V.K. AGNIHOTRI, Secretary General of the Rajya Sabha of India, to present his communication, as follows:

"***INTRODUCTION***

1. In the democracies the world over, it is the Legislature that makes laws. Owing to certain practical considerations, however, Executive also has been entrusted the task of law-making, subject, of course, to the superintendence and control of the legislature. Subordinate legislation and Ordinance making powers of the Executive are two examples of legislation by the Executive. Legislatures do not and cannot sit regularly throughout the year. Therefore, the need and importance of Ordinance making by the Executive during the period when the legislature is not in session to meet the exigencies, can hardly be over-emphasised.

2. Despite significant complementarities of the legislative power exercised by the Legislature as well as by the Executive, there is a large body of opinion in India either in favour or against Ordinance, depending on whether one is on the side of the Government or the Opposition. While those who defend Ordinances almost unequivocally cite urgency and emergency as the factors, others who criticize Ordinances hold this as undemocratic and charge the Executive with wilful encroachment into the Legislature's legitimate domain. The charges and counter-charges notwithstanding, the fact remains that the Parliament of India is the supreme legislative body, representing the sovereign will of the people of the country. True to its position, the Parliament has guided the public governance, articulated the public concerns and accommodated the varied interests of different social groups through path breaking legislations. In fact, the Parliament, through its inherent law-making power, has consolidated democratic processes, engendered social cohesion and brought about significant reforms in the functioning of key democratic institutions. And, in the process, it has enabled the State to prove equal to the challenges of changing times.

***LEGISLATIVE POWER TO EXECUTIVE***

**Historical Perspective**

3. India, being a highly diverse and multicultural society, has had a rather complex trajectory of experiment with the democratic form of governance. Managing diversities has been one of the greatest challenges facing democratic governance. Such a scenario also had necessitated vesting Executive with legislative responsibilities. It also owes its origin to India's long colonial past. The constitutional scheme under the British rule had given considerable legislative power to the Executive. This was clearly spelt out in the Government of India Act 1919, and subsequently in the Government of India Act 1935. Both these Acts empowered the Governor-General at the Centre, and Governors at the States to promulgate Ordinances, even when the Legislature was in session. This, in fact, had created a parallel legislative authority that suited the colonial interest.

4. After Independence, the framers of the Indian Constitution had many serious challenges before them in the task of nation-building. Apart from fulfilling the democratic aspirations of a vast multitude of people, they had to work for their socio-economic betterment. In the wake of partition of the country, they had the daunting task of rehabilitation and settlement of the people migrating to India. There were disparate centrifugal forces that new budding democracy had to grapple with. To thrive as a welfare state on the principles of democratic governance, where the social,

economic and political rights of the common people were recognized, an inclination towards a strong executive was considered necessary. Therefore, a system having a holistic and complementary relation between the legislature and executive was preferred to that in a Presidential system. This is reflected in the composition of the Indian Parliament in which the President being the head of the Executive has also been made the Constitutional Head of the Parliament as well. This, thus, represents a real fusion of the highest executive and legislative authorities.

***Constituent Assembly Debate***

5. The Constituent Assembly also debated at length as to whether after Independence, the President at the Centre and the Governors in the States should have the authority to promulgate Ordinances, when the Legislatures were not in session. Dr. B.R. Ambedkar, the architect of the Indian Constitution, observed that the Ordinance making power during recess of Parliament was similar to the power of the British Crown to make a Proclamation of Emergency under the Emergency Powers Act, 1920:

> "…….it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation which may suddenly and immediately arise.... The emergency must be dealt with, and it seems to me that the only solution is to confer upon the President the power to promulgate a law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because again *ex-hypothesi* the legislature is not in session."

6. During the debate in the Constituent Assembly, this article was not criticized as much as the potential for its 'use and abuse'. Amendments were sought to be made to limit the life of the Ordinance or to get it replaced automatically before the Parliament within four weeks of its assembly. Fear was also expressed that Legislature would be ignored completely, and that there might be undue delay in summoning the Parliament. However, all the amendments were negatived on the popular belief that in a system where the executive depends upon the confidence of the legislature, such dilatory tactics would be difficult to practise.

***CONSTITUTIONAL PROVISIONS***

7. Article 123 in Chapter III of the Constitution of India empowers the President of the India to promulgate Ordinances and also lays down the circumstances and regulations under which an Ordinance can be promulgated. The Article 13 reads as under:

> **123.** (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.
>
> (2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance –
>
> (a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament,

or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

*Explanation:* Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

8. Two amendments were subsequently made in this article. The Constitution (Thirty-eighth Amendment) Act, 1975 inserted clause (4) which read as follows:

"(4) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground."

However, this clause was omitted by the Constitution (Forty-fourth Amendment) Act, 1978. This was apparently an offshoot of the Supreme Court's judgement in *Cooper v. Union of India*, 1970, according to which the satisfaction of the President under clause (1) was subjective and it could be challenged on the ground of *mala fides.*

9. The Ordinance making power has been vested with the Governors of the States too. Article 213 (Part VI Chapter IV of the Constitution) deals with the power of the Governor to promulgate Ordinances during recess of Legislature.

## *ORDINANCE MAKING: A POWER EXERCISED BY THE COUNCIL OF MINISTERS THROUGH THE PRESIDENT*

10. The clause regarding the 'satisfaction of the President' as to the existence of circumstances which render it necessary for him to promulgate an Ordinance has been a point of considerable debate. Several judicial pronouncements have dealt with this issue. The crux is that the 'satisfaction' referred to in this clause is not the 'personal satisfaction' of the President, but satisfaction arrived at on the advice received from the Council of Ministers. As such, the President exercises these powers on the advice of Council of Ministers. The Forty-second Amendment of the Constitution made it rigid requiring the President to act in accordance with the advice of the Council of Ministers. This rigidity was, partly diluted by the Forty-fourth Amendment Act, which provided that the President may require the Council of Ministers to reconsider the advice, but he shall act in accordance with the advice tendered after such reconsideration. Dr. B.R. Ambedkar too had definite views on this issue. He stated in the Constituent Assembly:

"Under the Draft Constitution, the President occupies the same position as the King under the English Constitution…… The President of the Indian Union will

be generally bound by the advice of his Ministers. He can do nothing contrary to their advice; nor can he do anything without their advice."

Thus, the Ordinance making power of the President is in reality a power vested with the Union Cabinet or the Council of Ministers. Moreover, it has become an established fact that the satisfaction of the President regarding the existence of circumstances that render it necessary for him to take immediate action is a subjective matter which cannot be probed or questioned in a court of law; and the precise nature of the action that he may decide to take in such circumstances is also left to his discretion and cannot be challenged. However, this whole aspect of subjective satisfaction is tempered with 'ifs and buts'. On a number of occasions, the Supreme Court has made it clear that the Court is competent to enquire whether in exercising his constitutional power in promulgating Ordinances, the President has exceeded the limits imposed by the Constitution.

### *A REGULAR LEGISLATION AND AN ORDINANCE: COMMONALITIES AND DIFFERENCES*

11. Article 123 (2) provides that an Ordinance issued under it, shall have the same force and effect as an Act of Parliament. Thus, there is hardly any difference between a regular Act and an Ordinance. A detailed look at some of the similarities and differences would make this point clear:

- An Ordinance made by the President is not an executive, but a legislative act. Hence, it is a 'law' within the meaning of Constitution. The power of the President to legislate by Ordinance during recess of the Union Parliament is co-extensive with the legislative power of the Parliament itself. An Ordinance, therefore, cannot be promulgated with respect to a subject which is beyond the legislative competence of Parliament.
- The initiative for both a regular legislation and an Ordinance comes from the Executive. In case of the former, the Legislature passes legislation on a current basis, while in the later, the legislative sanction is *post facto*.
- Unlike the passing of a regular Bill, there is no scope for detailed discussion and arriving at consensus at the time of promulgation of Ordinances.
- Like money bills and finance bills, there can be Ordinance on fiscal matters as well.
- Like an Act of Parliament, an Ordinance is subject to judicial review, on grounds of unconstitutionality. It has also been held by various courts that just as the propriety of the exercise of legislative power or the motives of the Legislature in passing a law cannot be questioned in a court of law, similar is the case with Ordinance passed under Article 123. The only function of the Court is to declare it invalid, if it transgresses the constitutional limits of the power.
- Whereas the life of an Act made by Parliament would depend upon the provision in the Act, the life of an Ordinance can in no case extend beyond six weeks from the date of reassembly of Parliament. An Ordinance may be withdrawn by the President at any time before it ceases to have effect, but an Act of Parliament cannot be withdrawn; it can only be repealed by another Act of Parliament.

- An Ordinance is equally subject to the limitations and constraints which are put upon the Parliament by the Constitution, such as, abridgement of Fundamental Rights. There are no additional restraints upon the Ordinance making power of the President.

12. The President may issue an Ordinance to enforce the provisions of a Bill introduced in, and pending before a House; or to enforce the provisions of a Bill already passed by one House but not yet passed by the other House. Ordinance can also be on a completely new matter to be replaced subsequently by a Bill to be brought before the House or for a purpose not requiring permanent legislation.

***PARLIAMENTARY RULES AND PROCEDURES***
**Laying of an Ordinance and Bill Replacing Ordinance**

13. Ordinances promulgated by the President are required to be laid before both the Houses of Parliament. Normally, Ordinances are laid on the first sitting of the House held after the promulgation of the Ordinances on which formal business is transacted. The Parliament has framed certain rules to ensure that this power is not abused by the Executive, simply to avoid a vote or debate in Parliament. Rule 66 and Rule 71 of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha) and the House of the People (Lok Sabha), respectively seek to make the Executive accountable to the Parliament by appending an explanatory Statement along with ordinance. The uniform provisions of the rules in both Houses are as under:

(1) Whenever a Bill seeking to replace an Ordinance with or without modification is introduced in the House, there shall be placed before the House along with the Bill a statement explaining the circumstances which had necessitated immediate legislation by Ordinance.

(2) Whenever an Ordinance, which embodies wholly or partly or with modification the provisions of a Bill pending before the House, is promulgated, a statement explaining the circumstances which had necessitated immediate legislation by Ordinance shall be laid on the Table at the commencement of the session following the promulgation of the Ordinance.

**Statutory Resolutions seeking Disapproval of Ordinances**

14. If a notice of a statutory resolution given by a private member, seeking disapproval of an Ordinance, is admitted by the Chairman, Rajya Sabha or the Speaker, Lok Sabha, as the case may be, time has to be provided by the Government for discussion thereof. The resolution after discussion is put to vote first; because if the resolution is adopted, it would mean disapproval of the Ordinance and the Government Bill seeking to replace that Ordinance would automatically fall through. If the resolution is negatived, the motion for consideration of the Bill is then put to vote and further stages of the Bill are proceeded with.

***PROMULGATION OF ORDINANCES: AN UNHEALTHY TREND***

15. If we leave aside the exact constitutional provisions and regulations, Parliamentary rules and procedures regarding the Ordinance making power of the President or in real terms, the executive, what ground reality can be gauged? Would it be possible to reach a conclusion as to the use of this provision over the years, *i.e.* whether it has been done in good faith or the power has been abused or misused at the whims and fancy of the Government of the day. A list of Ordinances promulgated by the President from 1952 to 2007 is given as under:

**Table 1**

| Year | Number of Ordinances promulgated | Year | Number of Ordinances promulgated |
|---|---|---|---|
| 1952 | 09 | 1953 | 07 |
| 1954 | 09 | 1955 | 07 |
| 1956 | 09 | 1957 | 06 |
| 1958 | 07 | 1959 | 03 |
| 1960 | 01 | 1961 | 03 |
| 1962 | 08 | 1963 | _ |
| 1964 | 03 | 1965 | 07 |
| 1966 | 13 | 1967 | 09 |
| 1968 | 13 | 1969 | 10 |
| 1970 | 05 | 1971 | 23 |
| 1972 | 09 | 1973 | 04 |
| 1974 | 15 | 1975 | 29 |
| 1976 | 16 | 1977 | 16 |
| 1978 | 06 | 1979 | 10 |
| 1980 | 10 | 1981 | 12 |
| 1982 | 01 | 1983 | 11 |
| 1984 | 15 | 1985 | 08 |
| 1986 | 08 | 1987 | 10 |
| 1988 | 07 | 1989 | 02 |
| 1990 | 10 | 1991 | 09 |
| 1992 | 21 | 1993 | 34 |
| 1994 | 14 | 1995 | 15 |
| 1996 | 32 | 1997 | 31 |
| 1998 | 20 | 1999 | 10 |
| 2000 | 05 | 2001 | 12 |
| 2002 | 07 | 2003 | 08 |
| 2004 | 08 | 2005 | 04 |
| 2006 | 03 | 2007 | 08 |

*(Source: Statistical Handbook of the Ministry of Parliamentary Affairs)*

The above table shows that 34 Ordinances, the highest in any year, were promulgated in 1993, followed by 32 Ordinances in 1996. While in all these years, 1963 was the only year which saw no Ordinance. The Table 2 shows decade wise break-up reflecting

increasing trend in the issuance of Ordinances, with the peak being reached in the 1990s:

**Table 2**

| | |
|---|---|
| 1952-1959 | 57 |
| 1960-1969 | 67 |
| 1970-1979 | 133 |
| 1980-1989 | 84 |
| 1990-1999 | 196 |
| 2000-2007 | 55 |

16. Another trend, as is clear from the Table 3, is that in certain years during the later decades, particularly in the 1990s, there is a very negligible difference between the number of Bills passed by both Houses of the Parliament and the number of Ordinances promulgated by the President:

**Table 3**

| Yr | No. of Bills passed by both Houses of Parliament | No. of Ordinances promulgated | %age of Ord. with respect to Bills |
|---|---|---|---|
| 1990 | 30 | 10 | 33% |
| 1992 | 44 | 21 | 47.7% |
| 1993 | 75 | 34 | 45.3% |
| 1995 | 45 | 15 | 33.3% |
| 1996 | 36 | 32 | 88.8% |
| 1997 | 35 | 31 | 88.5% |
| 1998 | 40 | 20 | 50% |

Thus, during these years, a major portion of legislative work was done through Ordinances.

17. The Ordinance making power of the President is contingent upon the prorogation of either House of the Parliament. If an Ordinance is promulgated before the order of prorogation is made and notified, the Ordinance is void. It has been established through various court cases that the action of the President in proroguing Parliament simply for the purpose of making an Ordinance cannot be challenged. Even if, one of the two Houses is in session, an Ordinance may be promulgated. This particular provision has been widely debated over the years. If we look at the figures regarding the Ordinances promulgated during the period from 26 January 1950 to 31 December 2007, a number of facts come to light. During this span of 57 years, a total number of 592 Ordinances were issued. Thus, one thing becomes clear that this power has not been used sparingly to meet extraordinary situations, which could not withstand any delay till the next meeting of the Parliament. During the period from 26 January 1950 to 31 December 1984, in all 348 Ordinances were promulgated. There were 23 instances during this period when Ordinances were promulgated for the purpose of levying taxes or duties. Out of the 348 Ordinances, there had been 56 instances when Ordinances were promulgated after a lapse of less than 10 days since the termination of the

session of the House or before the commencement of the following session. The details are as under:

**Table 4**
***INSTANCES OF PROMULGATION OF ORDINANCES NEARING COMMENCEMENT/TERMINATION OF SESSION***
***(26 JANUARY 1950 – 31 DECEMBER 1984)***

| Sl no. | Dt. of termination of previous session | Dt. of promulgation of Ordinance | Dt. of commencement of following session |
|---|---|---|---|
| 1. | 24.12.49 | 26.1.50 (3 Ord. promulgated) | 28.1.50 |
| 2. | 20.4.50. | 23.7.50. | 31.7.50. |
| 3. | 20.4.50. | 24.7.50. | 31.7.50. |
| 4. | | 8.11.50. (2 Ord. promulgated) | 14.11.50. |
| 5. | | 3.8.51. (2 Ord. promulgated) | 6.8.51. |
| 6. | | 5.5.52. | 13.5.52. |
| 7. | | 29.10.52. (2 Ord. promulgated) | 5.11.52. |
| 8. | 24.12.53. | 31.12.53. | |
| 9. | 21.5.54. | 24.5.54. | |
| 10. | 23.12.55. | 30.12.55. | |
| 11. | | 8.11.56. | 14.11.56. |
| 12. | | 5.3.62. | 12.3.62. |
| 13. | | 3.11.62. (2 Ord. promulgated) | 8.11.62. |
| 14. | | 6.11.62. | 8.11.62. |
| 15. | 11.5.65. | 20.5.65. | |
| 16. | 24.9.65. | 29.9.65. | |
| 17. | | 5.2.66. | 14.2.66. |
| 18. | 23.12.67. | 30.12.67. | |
| 19. | | 3.2.68. | 12.2.68. |
| 20. | | 9.2.68. | 12.2.68. |
| 21. | | 17.7.69. | 21.7.69. |
| 22. | | 19.7.69. | 21.7.69. |
| 23. | | 13.11.69. | 17.11.69. |
| 24. | 24.12.69. | 30.12.69. | |
| 25. | | 14.2.70. | 20.2.70. |
| 26. | | 18.5.71. | 24.5.71. |
| 27. | | 20.5.71. (2 Ord. promulgated) | 25.5.71. |
| 28. | | 9.11.71. | 15.11.71. |
| 29. | | 8.3.72. | 13.3.72. |
| 30. | | 10.3.72. | 13.3.72. |
| 31. | | 7.11.73. | 12.11.73. |
| 32. | | 15.7.74. | 22.7.7.4. |
| 33. | | 17.7.74. | 22.7.74. |

| | | | |
|---|---|---|---|
| 34. | 20.12.74. | 27.12.74. | |
| 35. | 20.12.74. | 28.12.74. | |
| 36. | | 15.7.75. | 21.7.75. |
| 37. | | 1.3.76. (2 Ord. promulgated) | 8.3.76. |
| 38. | | 2.8.76. | 10.8.76. |
| 39. | 23.12.78. | 30.12.78. | |
| 40. | | 4.7.79. (2 Ord. promulgated) | 9.7.79. |
| 41. | | 7.3.80. | 11.3.80. |
| 42. | | 5.6.80. | 9.6.80. |
| 43. | 12.8.80. | 21.8.80. | |
| 44. | | 10.11.80. | 17.11.80. |
| 45. | | 8.11.83. | 15.11.83. |
| 46. | | 14.2.84. | 23.2.84. |
| 47. | | 14.7.84. | 23.7.84. |

*(Presidential Ordinances 1950-1984, Lok Sabha Secretariat, 1985)*

***ORDINANCES: ENCROACHMENT OF EXECUTIVE ON LEGISLATIVE DOMAIN***

18. On several occasions, the Government of the day has faced widespread criticism for its frequent and large-scale resort to executive legislation through Ordinances. Speakers of the Lower House, on many occasions, have expressed disapproval over the frequent use of this constitutional provision. It has been generally held that Ordinances by themselves are not very welcome, especially so when the date (for session of the House) is very clear and also very near. In such cases, unless there are very special reasons, Ordinances should be avoided. The first Speaker of the Lok Sabha had categorically observed:

> "The procedure of the promulgation of Ordinances is inherently undemocratic. Whether an Ordinance is justifiable or not, the issue of a large number of Ordinances has psychologically a bad effect. The people carry an impression that Government is carried on by Ordinances. The House carries a sense of being ignored, and the Central Secretariat perhaps get into the habit of slackness, which necessitates Ordinances, and an impression is created that it is desired to commit the House to a particular legislation as the House has no alternative but to put its seal on matters that have been legislated upon by Ordinances. Such a state of things is not conducive to the development of the best parliamentary traditions."

***ORDINANCES: REAFFIRMATION OF LEGISLATIVE SUPREMACY***

19. Notwithstanding the frequent resort to legislation through Ordinances, Government has generally been wary about facing the Parliament for obtaining its approval, unless there are pressing reasons to promulgate Ordinances. There have been numerous instances where Ordinances have been allowed to lapse or fresh Bills have been brought subsequently in the normal manner. For example, during the period

from 1950 to 1984, as many as 45 Ordinances had expired as the Government of the day did not pursue for their approval by the House.

20. It may also be stated that generally a Bill to replace an Ordinance is not referred to the Department-related Parliamentary Standing Committee for examination and report since an Ordinance, unless replaced by a Bill passed by the Houses of Parliament, ceases to operate at the expiration of six weeks from the reassembly of Parliament. Government's priority, therefore, remains to have such Bill passed within the stipulated time. There are, however, instances when even the Ordinance replacing Bills were referred to the Department-related Parliamentary Standing Committees.

**Table 5**

**INSTANCES WHEN BILLS TO REPLACE ORDINANCES WERE REFERRED TO PARLIAMENTARY STANDING COMMITTEES**

| S. N. | Title of the Bill | Date of introduction/ House in which introduced | Date of promulgation of Ordinance | Date of Reference/Committee to which referred |
|---|---|---|---|---|
| 1. | The Electricity Laws (Amendment) Bill, 1997 | 13.03.1997 | 24.01.1997 | 20.03.1997 (Standing Committee on Energy) |
| 2. | The Lotteries (Regulation) Bill, 1998 | 27.05.1998 (L.S.) | 23.04.1998 | Referred on 08.06.1998 for examination and report by 03.07.1998 (Standing Committee on Home Affairs) |
| 3. | The Finance (Amendment) Bill, 1998 | 29.05.1998 (L.S.) | 21.04.1998 | Referred on 08.06.1998 for examination and report by 03.07.1998 (Standing Committee on Finance) |
| 4. | The Essential Commodities (Amendment) Bill, 1998 | 29.05.1998 (L.S.) | 25.04.1998 | Referred on 08.06.1998 for examination and report by 03.07.1998 (Standing Committee on Food, Civil, Supplies and Public Distribution) |

These instances reflect the reaffirmation of the legislative powers of Parliament.

***ROLE OF JUDICIARY***

21. The role of the Judiciary in interpreting this extra-ordinary power of the executive has been a highly contentious one. Whether Courts can intervene on the ground of *mala fides* or fraud on the Constitution, if this provision is used in a manner that defeats Parliamentary democracy? As has already been mentioned, a court of law cannot inquire into the motive behind or the propriety of promulgating an Ordinance. Its only function is to declare it invalid, if it transgresses the constitutional limits of legislative power. The Court should also intervene, if the President (or Governor), instead of transgressing the limits directly, resorts to a device or practice which indirectly violates the limits of the power. For example, re-promulgating Ordinances without placing them before the Legislature or getting them replaced by Acts of Parliament. The Supreme Court of India has outlined a number of observations while passing judgments on various cases dealing with the Ordinance making power of the President:

- The ***Barium Chemicals*** Ltd. ***v***. The ***Company Law*** Board And Others AIR ***1967*** SC 295
- Rustom Cowasjee ***Cooper v***. ***Union of India*** AIR 1970 SC 564
- The ***State of Rajasthan v***. The ***Union of India*** AIR ***1977*** SC 1361
- AK Roy ***v***. The ***Union of India*** AIR 1982 SC 710
- ***State of Punjab v. Satya Pal*** AIR ***1969*** SC 903

22. Another important case in point is the *Dr. D.C. Wadhwa & others v. State of Bihar (AIR 1987 SC 579)* whereby the Constitution Bench headed by the Chief Justice of the Supreme Court made certain important observations. The Bihar Government was promulgating and re-promulgating Ordinances without approaching the State Legislature. At the expiry of an Ordinance, it would promulgate another, reproducing the contents of the defunct Ordinance. It re-promulgated as many as 256 Ordinances between 1967 and 1981. One particular Ordinance was re-promulgated continuously for 13 years without approaching the State legislature for regular enactment. This practice was resorted to without even considering whether circumstances existed which rendered it necessary to take immediate action by way of re-promulgation of expiring Ordinances. The Supreme Court took strong objection to this and laid down the following propositions:

- The power to promulgate an Ordinance is an emergency power which may be used where immediate action may be necessary at a time when the legislature is not in session. It is contrary to all democratic norms that the Executive should have the power to make a law; hence such emergency power must, of necessity, be limited in point of time.
- A constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a constitutional provision inhibiting the authority to do an act, to avoid that limitation by resorting to a subterfuge would be a fraud on the constitutional provision.

- While the satisfaction of the President as to the existence of circumstances necessitating immediate action by issuing an Ordinance cannot be examined by Court, it is competent for the Court to inquire whether he has exceeded the limits imposed by the Constitution. He would be usurping the function of the Legislature if he, in disregard of the constitutional limitations, goes on re-promulgating the same Ordinance successively, for years together, without bringing it before the legislature.
- Though, in general the motive behind issuing an Ordinance cannot be questioned, the Court cannot allow it to be 'perverted for political ends'.

***CONCLUDING REMARKS***

23. I have already noted in the beginning the prevailing conditions under which India had attained freedom. There was much social and political turmoil. Inequality, conflict and disorder and forces antithetical to successful functioning of democracy were prevalent. In such a scenario, the ideal of constructing a socio-political order based on liberty, equality and harmony posed a major challenge to the makers of the Constitution. The Constitution itself became a reflection of all these ideals and challenges. The Ordinance making power of the executive was one such provision, which though adverse to democratic ideals, was conjured up to tide over any emergent situation. It has been used over the decades satisfying the purpose for which it was meant and also misused at times, for it is not possible in a democratic order to insulate completely the domain of law from that of politics. Any constitutional law in order to be effective has to be based on a sound foundation of constitutional morality. As a noted scholar has rightly observed, in the absence of constitutional morality, the operation of a Constitution, no matter how carefully written, tends to become arbitrary, erratic and capricious. As the Founding Fathers of our Constitution have remarked, constitutional morality is not a natural sentiment but one which needs to be cultivated. Therefore, irrespective of the steps taken by the Government or those by the Parliament in dealing with such special provisions, a sincere attempt should be made to develop the virtues of accountability and constitutional morality."

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**Dr Hafnaoui AMRANI, President**, thanked Dr V.K. AGNIHOTRI for his communication and invited members present to put questions to him.

**Mr René KOTO SOUNON (Benin)** said that the Executive in Benin did not like to use the power to decree laws. He thought the Indian experience extraordinary in that emergency measures were being used as a matter of course. What could be done to re-establish the usual legislative process through Parliament? He also asked which courts considered challenges to ordinances.

**Mr Tango LAMANI (South Africa)** said that the doctrine of the separation of powers seemed not to apply in India. He asked if there was any possibility of removing the ordinance provision.

**Mr Xavier ROQUES (France)** asked if the President of the Republic could refuse to allow an ordinance to be made, as had happened in France. Had it ever happened that Parliament had rejected an ordinance? Was it possible to reintroduce expired ordinances? Could ordinances be used to adopt a budget or modify electoral law?

**Mrs Fatou Banel SOW GUEYE (Senegal)** asked if Parliament could be prorogued indefinitely in order to make law by ordinance.

**Mrs Doris Katai Katebe MWINGA (Zambia)** asked about the subjective nature of the decision whether to enact an ordinance. Would it be possible to limit this power only to certain issues in order to avoid abuse? Was there any pattern to the kinds of ordinance that were being enacted? Were these really emergency measures or not?

**Shri P.D.T. ACHARY (India)** disagreed with Mr LAMANI that the ordinance was a dangerous practice. Constitutionally, the ordinance was clearly an emergency power to be used only when Parliament was not in session. Such a power was clearly necessary, especially in a country like India. Ordinances were generally replaced in due course by legislation enacted by Parliament.

**Dr V.K. AGNIHOTRI (India)** noted that there were safeguards written into the constitution to prevent ordinances being overused. It was necessary to appreciate that in India the Executive brought legislation to Parliament, and that the Executive depended on its majority in Parliament to remain in power. The Executive when making ordinances therefore always had to have in mind the support of the parliamentary majority. The fears expressed by colleagues were not generally well-founded. The

judiciary was also a check, looking into the constitutionality and legality of ordinances. It was only during a brief period of two years that 88% of laws had been made through the ordinance process, and this was a particular period of instability. Standing Committee procedure meant that the parliamentary legislative procedure took more time than previously. There was no proposal to remove the ordinance provision from the constitution. The President could refuse to allow an ordinance or any piece of legislation to pass, but could only refer it back to the legislating body. If the Cabinet insisted, he had no option but to allow it to pass. Parliament could reject ordinances, but Government tended to lobby parliamentarians in advance, and would allow an ordinance to lapse if they thought that it would not receive parliamentary approval. The ordinance had not been used to pass a budget, but taxation proposals had been introduced through ordinances, as well as through the more usual legislative process, but without discussion in Parliament. Parliament could be convened at short notice – within three days. But because of the geography of India, it was not always convenient to do this. Often ordinances were issued to meet international obligations and to manage technical but time-sensitive issues, rather than to force through substantial legislative business.

**Dr Hafnaoui AMRANI, President**, thanked Dr V.K. AGNIHOTRI for his communication as well as all those members who had put questions to him.

## 4. Communication by Mr Ghulam Hassan GRAN, Secretary General of the House of Representatives of Afghanistan, on "Afghanistan: the beginning of democracy – achievements and challenges"

**Dr Hafnaoui AMRANI, President,** invited Mr Ghulam Hassan GRAN, Secretary General of the House of Representatives of Afghanistan, to present his communication, as follows:

"This presentation will be a different one in comparison to other presentations because instead of focusing on a specific Parliamentary issue, it discusses general points. Afghanistan has one of the youngest Parliaments in the world, and thus this presentation tends to focus more on the establishment of a legislative body in a post-crisis country.

Following the fall of the Taliban regime and the subsequent Bonn Agreement in 2001, the establishment of the National Assembly of the Islamic Republic Afghanistan is one of the most important achievements of the citizens of my country.

In accordance with the Bonn Agreement, for a period of two years, the Emergency *Loya Jirga* (Grand Assembly) established a transitional government, led by Hamid Karzai. At the end of this two year transitional period, the first-ever, free, fair, and independent Presidential and Parliamentary elections were held in the country. This was indeed an outstanding step towards Democracy in Afghanistan.

In compliance with the Constitution and the Agreement reached in Bonn, Afghanistan with support from the International Community held Parliamentary and Provincial elections across the country on September 18, 2005. Following this, the newly established Parliament of Afghanistan held its first inaugural session on December 19, 2005. This again was a significant step towards Democracy.

Allow me to point out early into my presentation that women's membership in the current Parliament of Afghanistan is unique. According to Constitutional provisions 28% of the Wolesi Jirga's (House of Representatives) members must be women. In the Mishrano Jirga (House of Elders) where membership is by appointment, 1/3rd of the members are directly appointed by the President, 1/3rd from Provincial Councils, and the remaining 1/3rd from District Councils. 1/3rd of the appointed members by the President must be women. As a result, in the Mishrano Jirga (House of Elders) there are 23 women, 6 of whom were voted in through the Provincial Councils.

**Structure of the National Assembly of Afghanistan:**

In brief, I will discuss the structure of the National Assembly of Afghanistan. The National Assembly Afghanistan is divided into two Houses in terms of the Constitution. The Mishrano Jirga (House of Elders) has 102 members, and the Wolesi Jirga (House of Representatives) 249. Speakers and Deputies (who are called President and Deputy President of the House) were democratically selected.

A special feature of the Afghan Parliament is the lack of a political party system. Although nearly 100 political parties have been registered and approved by the Ministry of Justice, and loose coalitions were made at a personal level, by and large the elections were fought on independent lines. In order to get over the problem, the Wolesi Jirga (House of Representatives) has adopted the "Parliamentary Groups" procedure and the groups are now under formation. In the Mishrano Jirga (House of Elders) 7 groups have been formed. While the Wolesi Jirga (House of Representatives) has only 5 Parliamentary groups formed. A Committee structure has been formed with 18 Committees in the Wolesi Jirga (House of Representatives) and 16 in the Mishrano Jirga (House of Elders).

**Achievements of the Wolesi Jirga of Afghanistan:**

Since its establishment, the National Assembly of Afghanistan has made significant achievements toward realization of the highest values of democracy through performing its constitutional duties of the Legislative function, exercising Oversight, and Representation. I would like to name the following as most significant:

1. Those who previously fought against each other during the period of internal armed conflict, sit together under one roof to resolve their issues peacefully through dialogues.

2. The Wolesi Jirga has passed significant laws aimed at National Development and ratified and in some cases domesticated International treaties, agreements and protocols.
3. After almost three decades of war, the proposed cabinet of the President is now given a vote of confidence by the Parliament according to democratic principles.
4. The Wolesi Jirga has activated a radio frequency through which constituents hear the live Parliament discussion and it intends to install a TV channel.
5. To date, through its oversight of the government's performance, the Parliament gave no-confidence votes to three cabinet members.
6. To institutionalize Parliamentary and Democratic principles, the Wolesi Jirga has prepared a strategy, aimed at overseeing the government's performances, and representing its constituents.
7. Public Hearing sessions have been held both in the capital and in provinces.
8. The young Parliament has achieved membership of world organizations and regional inter-parliamentary bodies.
9. The Wolesi Jirga has established Inter-Parliamentary relations with regional countries.
10. The National Assembly has ensured close relationship and dialogue with the media and civil society

**Achievements of the Secretariat**

In the fall of 2004, supported by the United Nations Development Program, UNDP, the core staff members of the Secretariat of the National Assembly of Afghanistan was selected through a process of free competition. After receiving training in abroad the core members started their work of organizing and preparing for the National Assembly. These core staff members took important measures towards the establishment of the legislative body of Afghanistan, of which I will mention the key points:

1. Reconstruction of the current building of the National Assembly of Afghanistan, which had been completely destroyed during Internal armed conflict.
2. The equipping with appropriate technology of the Administrative offices as well as chamber including IT technology and internet access for each MP in their individual offices.
3. Development of an organizational structure and job descriptions for members of the General Secretariat of both chambers, and appointment of professional staff members through free competition and merit-based employment. It is worth noting that most of the appointed staff members are the most educated young Afghan nationals.
4. Development of programs in order to acquaint new Parliament members with parliamentary issues.
5. Designing of education programs for Secretariat staff members first in Kabul, who were trained by expatriate experts, and later on sending them to foreign parliaments for further education purposes.
6. The Secretariat has established Parliamentary Institute of Afghanistan.

One of the most important and prominent achievements of the secretariat is the establishment of the Parliamentary Institute of Afghanistan, which play a vital role in developing and institutionalizing democracy; I will mention the key points very briefly.

**What is Parliamentary Institute of Afghanistan?**

The Afghanistan Parliamentary Institute was launched in 2008 in order to meet the needs expressed by Members and Staff of the National Assembly to enhance their skills in areas they identified as relevant to their work.

The Parliamentary Institute of Afghanistan holds specific training courses on the structure of the government and the best parliamentary experiences in the world. Substantive education courses are offered on demand from participants.

- The Institute provides and collects parliamentary, professional, and Academic reference material. This is important because all documents belonging to previous parliaments of Afghanistan had been destroyed during the years of war.
- The Institute established fellowship programs. Fellows are selected from graduates of the Universities.

7. A Budget Unit has also been established to professionally support the parliamentary committees for the process of national budget and parliamentary budgetary oversight.
8. The Secretariat has designed and implemented a short, medium, and long term education strategy for parliament members and Secretariat staff.
9. In line with the constitution, the Rules of Procedures have been developed in coordination with international experts and in accordance with International best practice.
10. Development of separate codes of conduct for Parliament members and staffs
11. Job description for Parliamentary Committees
12. Development of Regulations for the security regime of the House

**Challenges ahead of the Wolesi Jirga of Afghanistan:**

In spite of the significant and remarkable achievements I have outlined, the young Parliament of Afghanistan still is faced with numerous challenges, some of which include the following:

1. Poor Parliamentary culture
2. Weak Comprehension and Understanding of Democratic principles is a serious impediment to the Parliament
3. Low salaries for the Secretariat staff members, has forced many who have received professional training both inside and outside the country to leave the National Assembly, staff retention is therefore a serious concern.

4. The fact that Democratic culture in Afghanistan society has just started has triggered unreasonable expectations of the constituents from their elected representatives.
5. The unstable and insecure environment has slowed down the working relationship between the Parliament members and their constituents, which is one of their main duties. Sad to say, in recent years, some of Parliament members have been targeted by terrorists and lost their lives.
6. The absence of official Political Parties in the Parliament, has led the Parliament towards personal interest as opposed to National Interests.
7. The curriculum provided for training remains incomplete.
8. Interference in the internal affairs of the secretariat by the chamber.

**Expectations from the young parliament:**

To strengthen an effective and stable Democratic process, the International community must continuously provide financial and technical support to the Wolesi Jirga. Through this, the Parliament can pay attention to two important points, both at internal and external level to overcome the above-mentioned challenges.

**Internal level:**

In line with its key roles/functions of being a legislative, Oversight, and Representative body, the Wolesi Jirga will perform its mandate based on adopted norms and international principles, as reflected in the constitution, democratic values and norms, respect for human rights, and in the national interest of the people of Afghanistan.

**External level:**

Considering the remarkable influence the Parliament members have in their electoral zones, and that the constituents elected their representatives:

- To ensure human rights, strengthening of gender equality.
- Disarming of irresponsible groups, prevention of cultivation and trafficking of narcotics.
- Fighting against poverty, ensuring security, and removing ethnical and regional differences.
- As well as ending administrative corruption which is widespread across Governmental offices and increasingly presents Afghanistan with challenges

The international community must also provide Financial and Technical assistance to the Parliament to improve its institutional capacity to meet the above challenges. Under current circumstances, it is vital for the Afghan Parliament to receive support from the International Community and to be better able to perform its duties effectively as reflected in the Constitution.

Allow me to take this opportunity to draw attention of the esteemed members of this union to the priorities of the Afghan Parliament. Afghanistan is going through a very sensitive period after the years of war; it is natural for the young Afghan Parliament to face numerous challenges. To support and empower this important process, the Wolesi Jirga is willing to take prominent steps towards democracy, exchange experiences with post-conflict countries.

**Constitutional Crisis:**

The Constitution was drafted by an expert commission, and the Constitutional *Loya-Jirga,* (Grand Assembly) ratified it in 2004. Without doubt, from a legal and civil point of view, this Constitution is a unique one compared to the past four Constitutions of Afghanistan. It is based on sound principles of check and balance, the recognition of traditional of power structures, individual rights and freedom have been guaranteed and civil and political organizations have been given the opportunity to be established. In order to restore the civil and political rights of women, who had been deprived of their rights, the Constitution has provided for affirmative discrimination for women.

However, due to lack of experience of civil and governmental organizations, some technical shortcomings have been realized in the Constitution. As some of you maybe aware, these errors have resulted to a serious political crisis, regarding the term of office of the President. According to article 61 of the Afghan Constitution, "Five years after elections, the duty of the President is finished in first of Jawza (22nd May 2009)." What this effectively means is that the term of the President ends months before the next elections scheduled for August 2009. This has resulted in calls for the President to step down, while this will create a power vacuum. The Supreme Court has since ruled that the president can remain in office so as to avoid a power vacuum.

Let me express my appreciation to those countries' general secretaries who support Afghanistan's young Parliament especially France, United States, Italy, Germany, India, China, Denmark and Norway, Australia, UNDP and IPU.

In conclusion I take this opportunity to request the IPU to create a special mechanism, whereby the Wolesi Jirga will be able to exchange and share their experiences with some post-conflict countries who are members here, on a regular basis."

**Dr Hafnaoui AMRANI, President**, thanked Mr Ghulam Hassan GRAN for his communication and invited members present to put questions to him. He said that he found Mr GRAN's communication worthy of particular attention.

**Dr Ulrich SCHÖLER (Germany)** asked about the formation of parliamentary groups in Afghanistan, and the level of participation in these groups. He also asked whether the groups could form a platform for a more structured electoral process. Further, he asked about the interference by politicians in the work of the administration mentioned in Mr Ghulam Hassan GRAN's paper.

**Dr Hafnaoui AMRANI, President**, said that he was impressed by the establishment of the parliamentary institute to enable staff training in Afghanistan. He asked who was responsible for the training of parliamentary staff. He also asked whether each Chamber had its own staff or whether they were shared – and whether politicians approved the staff structure. Finally, he asked how many staff worked for the Afghan Parliament.

**Mr Vladimir SVINAREV (Russian Federation)** noted the existence of an Afghan friendship group within the Council of Federation. He wished Afghan colleagues success in their work in setting up a parliamentary administration. He asked if the structure and rules of procedure of the Parliament were approved by law or through the internal procedures of the Parliament.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN (Netherlands)** noted a recent visit by the Speaker of the Dutch House of Representatives to the Afghan Parliament. She asked what affirmative action for women meant in practice for the staff of the Afghan Parliament.

**Mr Michael POWNALL (United Kingdom)** asked for more information about the different roles of the two Chambers of the Afghan Parliament and he also asked whether attendance was affected by the difficulty for some Members of reaching Kabul.

**Mr Xavier ROQUES (France)** paid tribute to the bravery of all officials working in the Afghan Parliament, given the difficult conditions in which they had to work. He appealed to colleagues to give their support to the Afghan Parliament and other Parliaments in need.

**Dr Hafnaoui AMRANI, President**, gave floor to Mr GRAN.

**Mr Ghulam Hassan GRAN (Afghanistan)** said that the number of Members in each parliamentary group was changeable, as it was based on individual requests. There were no country-wide political parties in Afghanistan. This was why the voting system in Afghanistan was on the single transferable vote system, not a list system. It was very difficult for the general secretariat to persuade Members not to become involved in recruitment and financial affairs, although this was not a specifically Afghan problem. The Parliamentary Institute was part of the general secretariat and was supported by a donor, in close contact with Afghan academics. Its services were available to government ministries as well as parliamentary staff and Members. The general secretariat of the lower House had 271 staff, with a further 200 staff for the upper chamber. There were also a very large number of security staff, with four bodyguards for each Member of Parliament. Each Member also had one private secretary, recruited by them, but incorporated into the general secretariat. The Parliament had approved its own rules of procedure without the involvement of the Executive. About 25% of civil servants were women. Well-trained staff tended to leave for other organisations. The lower House had stronger powers than the upper house when questioning ministers in the plenary, but only the upper house had committees able to interrogate ministers. The

upper house had power only to make recommendations on the budget, not to approve it, which was the prerogative of the lower House. Moreover, only the lower House could pass a vote of no confidence.

**Dr Hafnaoui AMRANI, President**, thanked Mr GRAN for allowing members to understand the Afghan Parliament better. He said that he could count on the support of the Association.

## 5. Concluding Remarks

**Dr Hafnaoui AMRANI, President**, thanked all the participants. He said that the Plenary would resume on Thursday 9 April at 10.00 a.m. with a general debate on "Election of the Speaker", moderated by Mr Marc BOSC, followed by a communication from Ms Claressa SURTEES on "First Speeches in Parliament by new Members of Parliament".

*The sitting rose at 5.30 pm*

## FIFTH SITTING
## Thursday 9 April 2009 (Morning)

### Dr Hafnaoui AMRANI, President, in the Chair

***The sitting was opened at 10.10 am***

## 1. Introductory Remarks

**Dr Hafnaoui AMRANI, President**, thanked the Ethiopian hosts for the excellent and well-organised excursion the previous day. He also reminded members that the deadline for nominations for the post of ordinary member of the Executive Committee was at 11 o'clock that morning.

## 2. Orders of the Day

**Dr Hafnaoui AMRANI, President**, announced one proposed change to the Orders of the Day: Daniela GIACOMELLI from the Global Centre for ICT in Parliaments would make a brief intervention during the afternoon.

The Orders of the Day, as amended, were *agreed* to.

## 3. New Members

**Dr Hafnaoui AMRANI, President**, said that the secretariat had received several requests for membership which had been put to the Executive Committee and agreed to. These were:

| | |
|---|---|
| **Mr Pranab CHAKRABORTY** | Additional Secretary of the Bangladesh Parliament |
| **Mr Sosthène CYITATIRE** | Secretary General of the Senate of Rwanda (replacing Mr Fidel Rwigamba) |

The new members were *agreed* to.

## 4. General Debate: Election of the Speaker

**Dr Hafnaoui AMRANI, President**, invited Mr Marc BOSC, Vice-President of the ASGP, Deputy Clerk of the House of Commons of Canada, to open the debate.

**Mr Marc BOSC** spoke as follows:

"On the occasion of the opening of a new Parliament, the first scheduled item of business is the election of a Speaker.

*MEMBER PRESIDING OVER THE ELECTION*

The election is presided over by the Member with the longest period of uninterrupted service who is neither a Minister of the Crown, nor the holder of any office within the House. This Member is vested with all of the powers of the Chair, save that he or she retains the right to vote in the ensuing election, and is unable to cast a deciding vote in the event of an equality of votes being cast for two of the candidates. The Mace (symbol of the authority of the House) rests on a cushion on the floor beneath the table until such time as a new Speaker is elected.

Before proceeding with the election, the Member presiding will call upon any candidate for the office of Speaker to address the House for not more than five minutes; when no further candidate rises to speak, the Member presiding will leave the Chair for one hour after which Members will proceed to the election of a Speaker.

No debate may take place during the election, and the Member presiding shall not be permitted to entertain any question of privilege; no motion for adjournment nor any other motion shall be accepted while the election is proceeding and the House shall continue to sit, if necessary, beyond its ordinary hour of daily adjournment.

## CANDIDATES

All Members of the House, except for Ministers of the Crown and Party Leaders, are automatically considered candidates for the position of Speaker. Any Member who does not wish to have his or her name appear on the list of candidates must so inform the Clerk of the House in writing by no later than 6:00 p.m. on the day before the election is to take place.

## THE VOTING PROCEDURE

The election is conducted by secret ballot. A ballot box is placed at the foot of the Table and voting booths are placed on either side of the Table. The Member presiding announces that an alphabetical list of Members who may not be elected Speaker, either because they have notified the Clerk of their wish not to be considered for election, or because they are ineligible by virtue of being a Minister of the Crown or a Party Leader, is available at the Table, and that an alphabetical list of Members who are eligible to the Office of Speaker is available in each voting booth. Both lists are also distributed to Members at their desks.

The voting begins when the Member presiding asks those Members who wish to cast their ballot to leave their desks by way of the curtains, to proceed along the corridors in the direction of the Chair and to come to the Table through the door to the left of the Chair if the Member sits on the Speaker's left, or through the door to the right if the Member sits on the Speaker's right. At these doors, Members have their names recorded and are issued a ballot paper by one of the Table Officers. Members must enter through the correct door, as the Table Officers have only a partial list of Members' names at each entrance, depending on which side of the House Members are seated. From there, each Member proceeds to the appropriate voting booth installed at the Table, print on the ballot paper the first and last name of his or her choice, deposit it in the ballot box at the foot of the Table and then leave the area around the Table to ensure the confidentiality of the voting procedure for other Members.

When the Member presiding is satisfied that all Members wishing to vote have done so, the Clerk and the Table Officers withdraw from the Chamber and proceed to count the ballots. The Member presiding then signifies that the sitting is temporarily suspended while the counting of the ballots takes place.

## RESULTS OF THE FIRST BALLOT

Once the Clerk is satisfied with the accuracy of the count, she destroys all ballot papers and related records. The Standing Orders enjoin the Clerk not to divulge in any way the number of ballots cast for any candidate. When the count is complete, the Member presiding orders the bells to be rung for five minutes and then calls the House to order.

If any Member has received a majority of the votes cast, the Clerk gives the Member presiding the name of the successful candidate, which is then announced from the Chair. Having invited the Speaker-elect to take the Chair, the Member presiding steps down. The Speaker-elect, standing on the upper step of the dais, thanks the Members and assumes the Chair. The Sergeant-at-Arms takes the Mace from under the Table and places it on the Table, signifying that now, with the Speaker in the Chair, the House is properly constituted.

## THE SECOND BALLOT

If, however, no Member has received a majority of the votes cast on the first ballot, the Clerk gives the Member presiding an alphabetical list of those Members who can be considered on the second ballot. The name or names of the Member or Members who have received the least number of votes on the previous ballot, and the names of the Members who have received five percent or less of the total votes cast are dropped from the list. The Member presiding indicates that a second ballot is necessary and announces the names of the candidates on the second ballot. He or she also asks any Member whose name has been so announced and who does not wish to be further

considered to state the reason, after which the Clerk is instructed to remove from the list of eligible candidates the names of Members who have withdrawn.

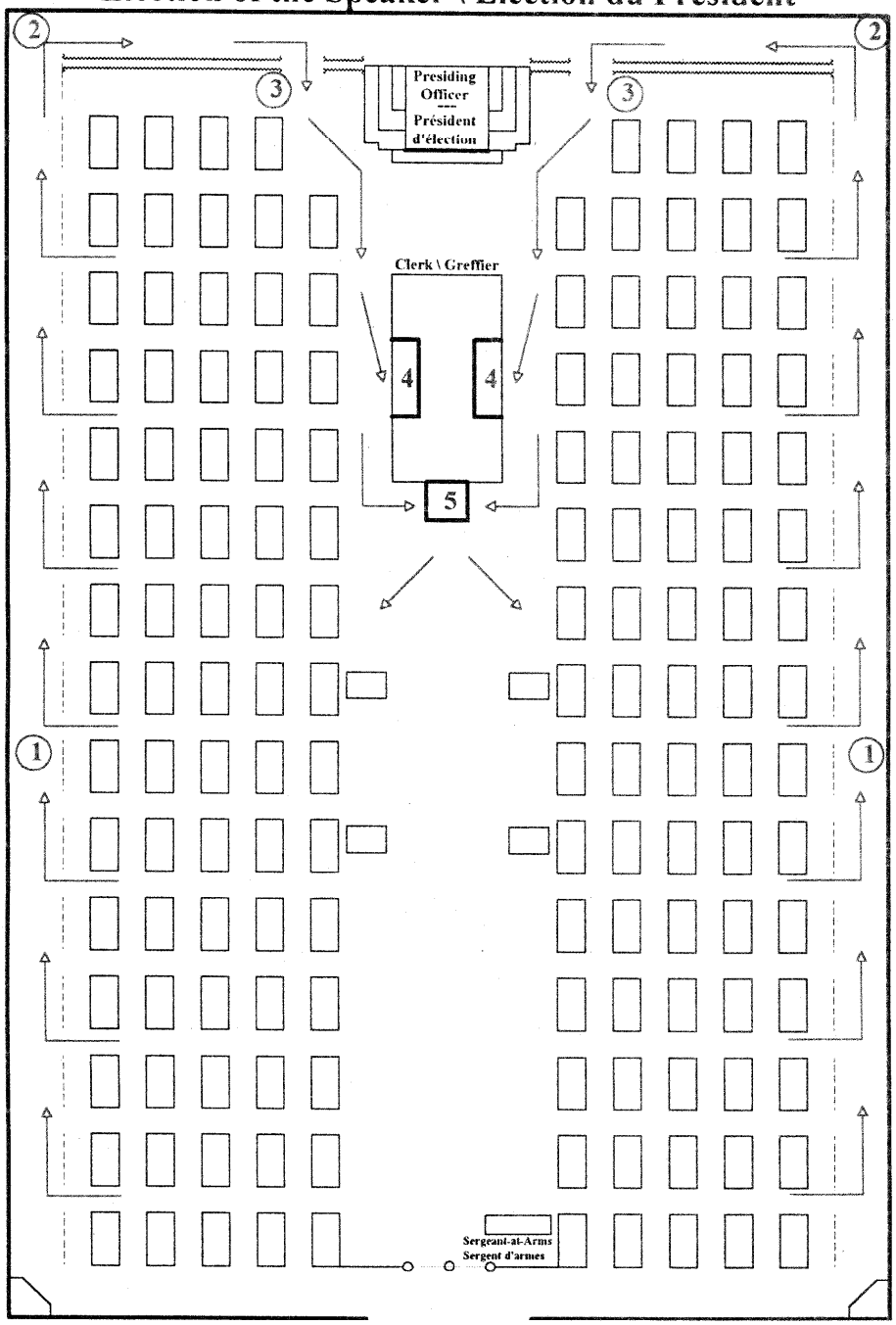
When an alphabetical list of Members eligible to be considered on the second ballot is available in each voting booth, the Member presiding asks those Members who wish to vote to leave their desks and proceed to the Table in the same manner as was done on the first ballot.

## RESULTS OF THE SECOND BALLOT — ADDITIONAL BALLOTS

The voting procedure for the second ballot is the same as for the first, except that for this and any subsequent ballots, ballot papers are of different colours. When the Member presiding is satisfied that all Members wishing to vote have done so, he or she instructs the Clerk to proceed with the count of the second ballot. When the count is complete, the Clerk again proceeds to destroy all the ballot papers and related records. This being done, the Member presiding calls the House to order and announces the name of the successful candidate (in which case the subsequent procedure is the same as if a candidate had been successful on the first ballot), or announces that a third ballot is necessary (in which case the names of the candidates eligible for the third ballot are read). The Member presiding also asks any Member whose name has been announced and who does not wish to be further considered to so indicate, although on this third and any subsequent ballots which may be necessary, he or she does not ask them to state their reasons for withdrawal. The Clerk then removes from the list of candidates eligible for the third ballot the names of Members who have withdrawn.

The voting procedure for the third ballot is the same as for the second, and balloting continues until a candidate has received a majority of the votes cast.

# Election of the Speaker \ Élection du Président




1 -- To the Ballot box \ Vers l'urne
2 -- Candidates lists \ Listes de candidats
3 -- Ballot papers \ Bulletins de vote
4 -- Voting booths \ Isoloirs
5 -- Ballot box \ L'urne

**Ms Maria Valeria AGOSTINI (Italy)** presented the following contribution:

"Before talking about how a President of the Assembly is elected, I should need to point out from the start that the Italian Parliament consists of two Houses which, under the Constitution, have totally equal powers: both Houses pass bills and vote the confidence in a new Government, as per Article 94 of the Constitution. This arrangement is known in Italy as *bicameralismo perfetto*, or perfect bicameralism.

This said, I will now illustrate how the Presiding Officer of each House is elected, and then I will briefly touch upon their responsibilities.

First of all, a few words should be spent on the Interim Bureaus.

The first sitting of a new Senate after a general election is chaired by the oldest member, with the youngest members acting as Secretaries, or Tellers.

The first sitting of the Chamber of Deputies, instead, is presided over by the senior most Vice President of the previous term, by election, if he or she is still a member. Otherwise, a Vice President from older Parliaments is considered.

As you can see, the Rules of the Chamber attach more importance to the experience gathered in previous Parliaments rather than age, as is the case with the Senate. It is worth noting, though, that the Senate includes among its members a small group of life-appointees, which means that the interim chair is usually held by a rather old senator.

The interim Presiding Officer, however, keeps the chair only until a new President is elected.

Also the election of a President follows different rules in the Senate and the Chamber.

In the Senate, the candidate who gains an absolute majority of the members of the Senate in the first two ballots is elected. If such majority is not attained, a third ballot is held on the following day, in which the absolute majority of votes cast shall be sufficient. If again no candidate reaches that threshold, a fourth ballot is held between the two candidates who have obtained the most votes in the third ballot.

To elect the President of the Chamber, the majorities required are two-thirds of members in the first ballot, two-thirds of votes cast in the second ballot and an absolute majority of votes cast in the third ballot and thereafter. Ballots continue until such threshold is reached by a candidate.

What are the reasons at the root of these differences in the election of a President?

The ample majority needed to elect a President in the Chamber has been construed to make it imperative for a Presidential candidate to obtain a support broader than that required to vote the confidence in the Government.

In the Senate, instead, recourse to a run-off vote on the fourth ballot is intended to spell out the risk of a long vacancy at the helm of the Upper House, which might be dangerous in that the President of the Senate is the second highest ranking officer in the country and acts as Head of State when the President of the Republic is incapacitated.

The ways in which the Presiding Officers are elected is therefore closely linked with the institutional roles vested into them by the Italian Constitution.

I cannot dwell at length here on the responsibilities of the two Presiding Officers, which might well be the object of a wholly different debate and exchange of experiences in the various arrangements.

Suffice it to say here that the rules governing the election of a President are meant to lead to the choice of an officer who is a guardian of fair implementation of the Rules of procedure and an impartial guarantor of the rights of the opposition. The ample majorities required to elect such figures bear testimony of this, although such requirement, as I said before, must be reconciled in the Senate with the need to avert a constitutional vacancy if the third ballot is unsuccessful."

**Dr Hafnaoui AMRANI, President**, thanked Mr Marc BOSC and opened the debate to the floor.

**Mr Austin ZVOMA (Zimbabwe)** asked what the rationale was for considering all eligible members as candidates, as well as for the destruction of ballot papers and for not allowing candidates to observe the count. He noted similarities and differences in the system in Zimbabwe. The Clerk of the Parliament was responsible for presiding over the election of the Speaker of the House of Assembly and the President of the Senate. There was a nomination process: only those nominated and seconded were included on the ballot papers. Voting booths and ballot boxes were provided in the Chamber. Counting was observed, and results were announced in the Chamber.

**Mr Abdelhamid Badis BELKAS (Algeria)** was particularly interested by the fact that only the clerks knew the results of the elections. What was the procedure then for contesting these results?

**Mr Mohamed Kamal MANSURA (South Africa)** asked how the oath was administered to swear the clerks to secrecy. In South Africa the election was presided over by the Chief Justice. Ballots were sealed and kept for a year, before being destroyed. They could only be opened on an order of the court.

**Mr René KOTO SOUNON (Benin)** was also concerned by the destruction of ballot papers. He asked why the ballot papers were not counted in front of the Members. In the Benin system, there was a temporary Bureau of the Ages, made up of the oldest and youngest of Members. The election of the Speaker took place at the same time as the election of other members of the bureau.

**Mr Ibrahim MOHAMED IBRAHIM (Sudan)** said that in his country the oldest Member presided over proceedings at the opening of a Parliament. Any Member could nominate any other for the Speakership. Those nominated were prohibited from advancing their own candidacy, either themselves or through other Members.

**Dr V.K. AGNIHOTRI (India)** said that the procedure in India was similar to that in Zimbabwe. He asked for clarification on three points: How many candidates normally were there? Why was it important that the Member presiding should have unbroken service? What happened if Members who voted in the first ballot abstained from voting in subsequent ballots, or if some who abstained in the first ballot voted in subsequent ballots?

**Mr Constantin TSHISUAKA KABANDA (Democratic Republic of the Congo)** said that in his country, the Secretary General convened the plenary sitting after elections and established a provisional bureau made up of the oldest and youngest Members. Recently, the Bureau of the National Assembly had been forced to resign en masse by the political groups, a situation not provided for in the Constitution. He wondered what solutions had been found in other countries for this kind of predicament. In Congo, the situation had arisen during a recess; but the Speaker insisted on waiting until the plenary was again in session to tender his resignation. He asked the plenary to agree that the outgoing bureau should deal with interim issues. There was opposition to this proposal, and a technical bureau was established instead.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN (Netherlands)** said that in her country, until 2002, there had been no elections for the Speakership. A name was simply proposed by the largest party group. The current procedure was that at the end of a Parliament, a profile was devised for the Speaker: this was readopted by the new Parliament and candidacies were invited. The former Speaker served as acting Speaker, or, if no former Speaker had been re-elected, a former Deputy Speaker. Counting of votes was conducted by four Members selected by the interim Speaker. There was a system of multiple ballots: normally there were three. There was a debate before voting, which required a full day. She was not sure that the current system of free elections was better than the system in place before 2002. The position of the Speaker had become more political than before.

**Mrs Maria Valeria AGOSTINI (Italy)** said that in the House of Representatives, a candidate needed an absolute majority of Members to be elected as Speaker, not a majority of the votes cast. Was this different from the Canadian system? In the Italian Senate, run-off votes took place from the third ballot. This was because of the need to avoid a risk of a long vacancy, as the Senate President needed to be available to replace the President of the Republic in extremis.

**Dr Ulrich SCHÖLER (Germany)** mentioned two ways in which the German system differed from the Canadian. After an election, the oldest Member presided. More importantly, there was an unwritten rule that the biggest political group in Parliament had the right to present the candidate for the Speakership. There was the opportunity for a vote, but there had never been a situation in which a majority had not been

achieved. Following a vote, the Speaker could not be removed. He asked if under the Canadian system, a Speaker could be removed during a Parliament. Additionally, how many candidates were there normally?

**Mrs Marie-Françoise PUCETTI (Gabon)** said that officers of the bureau in Gabon were elected in the same way as in Congo and Benin. She asked if two candidates from the same party could stand for election as Speaker.

**Mr Sosthène CYITATIRE (Rwanda)** said that the Canadian system was similar to that in Rwanda, but there were some differences. In Rwanda, the whole Bureau was elected at the same time. Under Rwanda's constitution, no party could take more than 50% of the seats in Parliament. The Speaker of the Assembly had to come from a different party from that of the President of the Republic, the Prime Minister, and the presiding officer of the Senate. Deputy Speakers had to come from other parties than the Speaker: they tended to be representatives of the smallest parties. At the opening of Parliament, the President of the Republic himself presided.

**Dr José Pedro MONTERO (Uruguay)** said that the Speaker in Uruguay was elected in a very different way from the Speaker in Canada. There was a different Speaker for each year of a five-year Parliament: in three of the years the Speaker would come from the party of government, in the other two years from opposition parties.

**Mrs Jacqy SHARPE (United Kingdom)** said that in the House of Commons, the rules had changed recently. In 2000, 12 different MPs had put themselves forward for election as Speaker. Following criticism of the process, the Procedure Committee made recommendations which were accepted by the House in March 2001. The new procedure involved an exhaustive secret ballot. Candidates had to show willingness to stand, and acquire the signatures of at least 12 Members, three of whom had to be from parties other than their own. Each candidate had the opportunity to address the House, in an order chosen by lot. The last time a Speaker had been removed from office was in 1835.

**Mr Christoph LANZ (Switzerland)** suggested that the Clerks seemed to have a determining role in the future Speaker in Canada! In Switzerland, a provisional committee of MPs was created to count the results of ballots for the Speakership. Ballots were destroyed after they had been counted, but as MPs were involved in observing the count, there was an opportunity to raise questions before this happened. He asked if issues regarding the count in Canada had ever been raised.

**Mr Mohamed TRAORÉ (Mali)** said that the Malian experience was similar to that of other African countries. He noted a kind of 'copycat' behaviour, and thought it important to revisit procedures in the light of those of others. In Mali, there were inter-party negotiations about the composition of the bureau. He asked about the role of an elected Speaker compared with that of the Executive, and about the stability of national institutions. He mentioned events in Senegal and the Democratic Republic of Congo which suggested that the Executive had become involved in the conduct of the Speakership.

**Mrs Fatou Banel SOW GUEYE (Senegal)** asked how a contested election in Canada would be managed given the fact that ballot papers were destroyed. She suggested giving precedence to a consensual arrangement for electing a bureau.

**Mr Marc BOSC (Canada)**, concluding the debate, said that the number of contributors underlined the importance of the issue, and of general debates as part of the Association's work. The number of candidates in Canada had varied over time. It was easy to distinguish, however, between real and 'accidental' candidates, who declared themselves almost immediately. The number of real candidates had varied between 3 and 10. The first secret ballot for Speaker had taken 11 hours, but subsequently it had become much faster. The power of the clerks was peculiar to the Canadian context. In the 1980s when the procedure was established, there had been a long period of majority rule, with a name always being put forward by the majority party. The Procedure Committee had thought it important to empower private Members through a secret ballot, and the involvement of the clerks was designed to ensure absolute secrecy in the ballot, and no semblance of party interference. Apart from a few individual questions and comments, there had been no serious challenge to the elections. This was a mark of the status of the clerks in Canada as impartial servants of Parliament. The Clerk of the House was administered the oath by the Speaker on taking up office, and other clerks involved in the count had the oath administered to them by the Clerk of the House. The reason for keeping the results of ballots secret was so as not to influence the outcome of subsequent rounds. Members of Parliament in Canada were not controlled in any way: they were free not to vote if they chose. So to seek an absolute majority of Members rather than of votes cast could give unexpected power to Members wanting to boycott the process. To date, turnout had been very good. There was no Canadian counterpart to the bureau, so it was difficult for him to comment on this area. Unbroken service as a criterion for presiding over the first session was an arbitrary decision. The new Speaker was much more independent than under the old system in Canada because of the method of election. A Speaker could be removed under a motion of censure, but he was not aware that it had ever happened. A resignation would be the most likely outcome of such a motion. There were often several candidates from the same party. If any questions remained to be answered, he would be happy to do so afterwards.

**Dr Hafnaoui AMRANI, President**, thanked Mr Marc BOSC and all the members present for their numerous and useful contributions.

## 5. Ordinary Member of the Executive Committee

**Dr Hafnaoui AMRANI, President**, noted that the deadline for nominations for ordinary member of the Executive Committee of the Association had passed at 11 am. One nomination had been received: Dr Ulrich SCHÖLER (Germany). The President declared that Dr SCHÖLER was accordingly elected as an ordinary member of the Executive Committee by acclamation.

## 6. Communication by Ms Claressa SURTEES, Deputy Serjeant at Arms of the House of Representatives of the Parliament of Australia, on "First speeches in Parliament by new Members of Parliament"

**Dr Hafnaoui AMRANI, President,** invited Ms Claressa SURTEES, Deputy Serjeant at Arms of the House of Representatives of the Parliament of Australia, to present her communication, as follows:

"**The meaning of 'first speech'**
At the Australian House of Representatives, 'first speech' means the first speech made by a Member of the House following his or her first election to the House for the first time, even though the Member may have had previous parliamentary experience in the Senate or a state or territory parliament.

A Member makes his or her first speech at a time convenient to the Member, during debate on formal business in the House of Representatives Chamber. The speech forms part of the permanent record of proceedings but it is much more than a contribution to a debate on business. It heralds a Member's parliamentary career, and the speech might be referred to long after its initial delivery, as Members often use the occasion to articulate their philosophy and political values.

**Content of first speech**
There are no rules regarding content of a first speech. Most Members cover one or more of the following: their personal backgrounds, their political philosophies, what they hope to achieve as Members, the history and general description of their electorates, references to their families and friends, and thanks to those persons who helped their election to Parliament. Members are particularly thoughtful about the content of their first speeches because they may be used as a guide to what a Member believes or stands for, well into the future.

**When first speech is made**
In a new Parliament, following a general election, a newly elected Member would usually make his or her first speech during the debate on the Address in Reply to the Governor-General's speech at the opening of the Parliament.[4] This debate commences on a day shortly after the opening of Parliament and continues for three or four weeks. If a first speech cannot be made during the Address in Reply debate (because of the unavailability of the Member), a first speech would be made at the earliest practical time. The first sitting week usually is the most convenient because Members' families are often visiting Canberra for the swearing in of Members and the opening of Parliament.

[4] The Governor-General gives a speech to members of both Houses, declaring the causes of the calling together of the Parliament. The speech briefly reviews the affairs of the nation and gives a forecast of the Government's proposed program of legislation for the session of Parliament. At the conclusion of the speech a copy is presented to the Speaker of the House of Representatives by the Governor-General's Official Secretary. A committee of members of the House is formed to prepare an Address in Reply, which is debated in the chamber and presented to the Governor-General by the Speaker.

**Standing orders and practice apply**

First speeches are notionally 20 minutes long. Under the standing orders[5] this is the maximum time allowed for each Member during the Address in Reply debate. If a first speech is delivered during another item of business before the House, as a matter of courtesy the usual time limit imposed by the standing orders is suspended to allow the Member to speak for a period not exceeding 20 minutes. Further, the Speaker has discretion to allow some leeway on the occasion of a first speech so as not to curtail a new Member.[6]

By convention, Members' first speeches are heard without interjection or interruption. The Speaker normally reminds the House of this practice with the words:

> "Order! Before I call the honourable member for [name of electorate], I remind the House that this is the honourable member's first speech and I ask that the usual courtesies be extended to him/her."

In return for this courtesy a Member is expected not to be unduly provocative. There have been occasions, however, when a Member's first speech has not been heard in silence.

Members elected at by-elections have sometimes made their first speeches in debate on Appropriation Bills to which the normal rule of relevance does not apply. Also, standing order 76, the relevance rule, has been suspended to allow a Member to make a first speech during debate on a bill to which the rule would otherwise have applied.

A speech made because of a Member's parliamentary duty is not regarded as a first speech. For example, a speech in relation to a condolence motion is not regarded as a first speech, nor is the asking of a question without notice. A speech by a newly elected Member in his or her capacity as Minister or opposition spokesperson—for example, a Minister's second reading speech on a bill or the opposition speech in reply, or a speech in reply on a matter of public importance—is also not regarded as a first speech.

However, private speaking contributions should not be made prior to a first speech. For example, it is considered that a Member should not make a 90 second or three minute statement or a speech in the adjournment debate until he or she has made a first speech. It has also been customary not to make other than kindly references to the first speech of a Member, although this convention also has not always been observed.

**Member's guests**

New Members traditionally invite their families and friends to sit in the public galleries to hear their first speeches. There is a (usually strictly enforced) rule that people sitting in the public galleries of the chamber must observe proceedings in silence. This rule

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[5] http://www.aph.gov.au/house/pubs/standos/index.htm

[6] The longest first speech of the 41st Parliament took 24 minutes and 47 seconds, the shortest was 15 minutes and 48 seconds. [Chamber Research Office statistics].

may be relaxed at the end of a first speech, when families and friends have been known to offer applause.

**Member's record of a first speech**
As the first speech of a Member is of such significance, the House facilitates a recording of a Member's first speech, taken from the official televised proceedings of the House and a personal copy is made available to the Member. Also, the official photographer takes still photographs of a Member during a first speech.

The *Hansard* extract of a Member's first speech is placed on the Member's website on the parliamentary website (under the section for biographical details)."

**Dr Hafnaoui AMRANI, President**, thanked Ms Claressa SURTEES for her communication and invited members present to put questions to her.

**Mr Moussa MOUTARI (Niger)** wondered how the Australian system worked in practice, when there were a large number of new Members of Parliament. He also wondered if the first speech could have an effect on a new Member's career, or if it was more of a symbolic ritual.

**Mr René KOTO SOUNON (Benin)** asked for further clarification of some of the issues raised by Ms SURTEES, and whether there were written rules on first speeches, or simply practices based in tradition. In Benin, only the Speaker was allowed to take the floor on his investiture. Other MPs did not have the opportunity to make a maiden speech.

**Mr Xavier ROQUES (France)** said that there was no equivalent process in France. There was however a tradition that a new deputy should not take the floor until a decent amount of time had passed. In the Senate, the tradition had been that new senators should not speak for at least two years! He asked about the duties of the Serjeant at Arms in the Australian Parliament.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN (Netherlands)** said that in her country, new Members' first speeches were also festive occasions with special rules: they could be made at any moment and they were never interrupted. New Members had been known to make their first speech on the very day they entered the House.

**Dr V.K. AGNIHOTRI (India)** said that in his country there was an aura about 'maiden' speeches, although there were no specific rules attached to them. Members were allowed to intervene before making their first speeches. There was no notice given of maiden speeches: it was left to the Chair and Table Office to identify the fact that a Member was speaking for the first time.

**Mr Michael POWNALL (United Kingdom)** made two observations: in the House of Lords, twenty minutes would be considered too long for a first speech – eight to ten minutes was more normal. In the Lords, there was also a tradition that first speeches should not be controversial. In practice, this meant that they should not be delivered in

a heated manner. He gave as an example a new Member of the Lords who had just retired as head of the British secret service spoke and who spoke in her first speech on a very sensitive matter relating to the detention of terrorists, but, because she did so in a calm way, the speech was within the rules.

**Dr Hafnaoui AMRANI, President**, said that in 1987, when he gave his first speech as a Member of Parliament, he talked about the conditions of steelworkers in his constituency. However, it happened that the relevant minister was from the same region as himself. Other MPs from his region criticised him for taking task with someone from his own region. He had found this ridiculous. Nowadays, however, new MPs in Algeria tended not to ask questions of ministers from their own party at all, unless asked to do so by the ministers. He asked Ms SURTEES about the order in which new Members took the floor in Australia: was it simply in the order in which they put their names forward, or was it by rotation among the parties?

**Ms Claressa SURTEES (Australia)** clarified that it was not normal for new Members' first speeches to be made during debates on legislation. This took place only following by-elections when special opportunities for these speeches needed to be found. Members could not fully participate in proceedings until they had made their introduction to the Chamber by way of a first speech. First speeches were not covered by Standing Orders; it was entirely a matter of precedent and custom. There was an air of celebration whenever a Member from whichever party made their first speech. She was not sure that the example cited by Mr POWNALL would have been allowed in Australia, as it would have been judged too sensitive. In the Australian tradition, the Serjeants at Arms carried out not only ceremonial and security roles but also acted as Clerks at the Table of the House.

**Dr Hafnaoui AMRANI, President**, thanked Ms Claressa SURTEES for her communication as well as all those members who had put questions to her.

*The sitting rose at 12.00 pm.*

## SIXTH SITTING
## Thursday 9 April 2009 (Afternoon)

## Dr Hafnaoui AMRANI, President, in the Chair

***The sitting was opened at 3.05 pm***

## 1. Presentation by Mr Martin CHUNGONG on the recent activities of the IPU

**Dr Hafnaoui AMRANI, President**, invited Mr Martin CHUNGONG, Director of the Division for the Promotion of Democracy of the Inter-Parliamentary Union, to make his presentation, a summary of which follows:

**Mr Martin CHUNGONG** said that he was very happy to come to the ASGP to talk about the work carried out by the IPU over the previous six months. He introduced Andy RICHARDSON and Laurence MARZAL, also from the IPU Secretariat. An annual report on the IPU's democracy-building activities had been made available to the ASGP. In the annex to this document was a detailed listing of the activities carried out by the IPU in 2008 and early 2009.

He highlighted salient developments in recent years. The bulk of the IPU's work continued to be carried out in the parliaments of post-conflict countries. The IPU had organised training programmes and seminars, and was now looking with the World Bank Institute at innovative ways of delivering training, using distance learning facilities. This programme was being tested in Sierra Leone, Sudan and Liberia, and would be extended if successful. Parliaments worked increasingly to improve how they functioned, and were increasingly seeking to be transparent and accountable, and to this end were developing standards of integrity for their Members. The IPU was helping to devise Codes of Ethics to assist in this area. An increasing number of parliaments were seeking to develop a longer-term vision; the IPU was assisting them to develop strategic plans, for example in Sierra Leone, with the help of Mr ZVOMA from Zimbabwe. Parliaments were also increasingly involved in assuring the management of development aid. Both donors and recipients had an interest in this.

In the area of human rights, the bulk of work involved the human rights of parliamentarians themselves. Recent successes included the release of Palestinian, Egyptian and Colombian MPs. But there remained unfortunate situations, for example in Sri Lanka, where some MPs had been assassinated, and in Afghanistan, where an outspoken female parliamentarian continued to be denied her mandate. There were also similar cases in Burundi, DRC and Ecuador. The IPU committee dealt largely with issues regarding the freedom of expression of Members of Parliament. A successful

project had been concluded to promote the implementation of human rights treaties in francophone Africa. There had been palpable results in Togo, for example. A declaration had also been agreed providing for a human rights observatory in Africa.

In the area of gender, research continued to track the representation of women worldwide. The IPU was now branching out into the area of preventing violence against women. The IPU focussed on areas where women were grossly underrepresented, namely the Arab and Asia-Pacific regions. Its aim was to keep this issue alive in these parts of the world.

In the area of generating knowledge of parliaments, PARLINE continued to be improved. This database would not exist were it not for co-operation received from members of the ASGP. The reward for these efforts included 10,000 recorded searches per month. Work had also been done to follow up on a 2006 study on parliamentary democracy in the 21st century.

The self-assessment toolkit mentioned six months before had been field-tested in Rwanda and Algeria and lessons had been learned that could already be shared. While the toolkit was very important from the political perspective, it was not well adapted to the needs of parliamentary administrations. Discussions with the ASGP President had been held with this in mind. Mr Chungong hoped that the ASGP would give thought to how these needs could better be taken into account.

Another area to flag up was support for the International Day of Democracy, the first such day having been held on 15 September 2008. It would be a challenge to sustain this momentum. A menu of activities had been proposed for 2009, including a major parliamentary conference on democracy in Botswana, focussing on political tolerance. A survey of 20 countries on public attitudes to democracy had been launched; the findings would be released on the International Day of Democracy as a resource for the Botswana conference.

A major project had been launched to promote inclusive parliaments, gathering data on how minorities and indigenous peoples were included in parliaments around the world. The hope was to use this data to promote inclusive parliaments. A questionnaire had been sent out in January 2009, but the response rate had been low. He asked ASGP members to help speed up this response rate.

Work with the Global Centre for ICT in Parliaments was continuing apace. A world e-parliament conference was to take place at the US Congress; the ASGP might want to have some input into this conference. There were also plans for the second e-parliament report, to be published in 2010. Updated guidelines for parliamentary websites had just been published.

Mr Chungong noted that the increase in the quantity of democracy-related work was putting a strain on the IPU's financial and human resources. Two parliaments would be suspended from the IPU the following day: Guinea and Madagascar, in the light of political developments there. Bangladesh, however, had been readmitted following

elections. The April 2010 meeting of the IPU would take place in Bangkok, Thailand. The April 2011 meeting would be held in Panama. The Third World Conference of Speakers was likely to be held in Geneva in June-July 2010 instead of in New York, because there were no guarantees that all Speakers would be allowed on US soil. A questionnaire had been issued to help the IPU in its work to map the ways in which parliaments interacted with the United Nations and its agencies. The response rate had again been low, and ASGP members were again asked to help achieve a higher rate of response.

**Dr Hafnaoui AMRANI, President**, thanked Mr CHUNGONG.

**Mr Ian HARRIS (Australia)** asked about whether there would be a supplementary day at the Geneva conference in 2009.

**Dr Hafnaoui AMRANI, President**, mentioned the successful conferences that had been held to date at Geneva, and was also interested to hear Mr Chungong's answer to Mr Harris' question.

**Mr Martin CHUNGONG** asked the ASGP to help identify issues of interest to ASGP members and the wider parliamentary community. No specific issue had been identified for October 2009, although space had been left in the programme for such a conference.

**Dr V.K. AGNIHOTRI (India)** noted that because of a technical error, even pages were missing from the IPU document that had been circulated.

**Mr Martin CHUNGONG** asked the ASGP secretariat to correct what was a photocopying error.

**Dr Hafnaoui AMRANI, President**, congratulated Mr CHUNGONG on his excellent presentation, and hoped that co-operation between the IPU and ASGP would continue to deepen.

## 2. General Debate: Administrative self-evaluation within Parliaments

**Dr Hafnaoui AMRANI, President,** presented the following contribution**:**

"**I Introduction**

I would like to make a presentation on self-evaluation of the Parliament Administration.

This is not so much a communication in its proper sense, but rather an experience of the Algerian Parliament, which I hope will lead to the establishment of a working group, and will hopefully give rise to a general debate at our next meeting in Geneva.

We are fully aware that the human and material resources available to parliaments in developed and developing countries cannot be compared. In most developing countries, these resources fail to meet the needs and parliamentarians often denounce the administration's inefficiency. To make up for these inadequacies, the parliamentary administration must continue to pursue capacity-building programmes for administrative staff.

A number of parliaments are looking for technical assistance to help them with capacity-building so that they can carry out their functions as well as possible. This technical assistance can be urgent, especially for developing countries and new democracies and can take different forms:

- Development of infrastructure
- Modernisation of Parliament
- Exchange of information and experience
- Professional improvement: training of staff.

This technical assistance can also involve:

- The organogram
- The Standing Orders
- The work of committees
- The functioning of the parliamentary administration (libraries, documentation and research services, archives)
- The sound system and audio-visual recording
- Print services
- Information and communication technology

This technical assistance can also be:

- Multilateral: international organisations (UNDP, IPU), NGOs
- Bilateral: between two parliaments

This last option has developed considerably over the last few years.

In 2007, the Speaker of our Parliament asked the IPU Secretary General for assistance. The objectives of this audit were:

- To carry out a "review" of the administration and Parliament and to draw up an inventory of human and material resources.
- To evaluate the strengths and weaknesses of the administration of the Parliament on a technical level, on the basis of objective and accurate criteria.
- To define the priorities and the means so as to improve the functioning of the Parliament in particular in the administrative field.
- To make assessment of the assistance already provided by other sources in the administrative field in order to avoid duplication.

– To make recommendations aiming at strengthening the administration in the field of the organization, the working methods and the means of actions.

To this end, we welcomed two experts allocated by the IPU (Mr Bruno Baufumé from the French Senate and Mr Roland Mees from the Belgian House of Representatives), to carry out an evaluation of the Algerian Parliament, in the month of November 2008.

On reflection, I wondered if this evaluation (audit) could not be conducted by parliaments themselves (Members and staff together). We have therefore launched an experiment in self-evaluation by the administrative staff of the Algerian Parliament. And to carry out this self-evaluation we have compiled a questionnaire to which staff have replied in the presence of the experts.

We have confirmed that the self-evaluation carried out by administrative staff presented no notable differences from the evaluation carried out by the experts. However, the questionnaire, compiled, no doubt in haste, did not tackle all of the questions relevant to parliamentary work. That is why I think it would be desirable to reflect on this question of "self-evaluation" and to identify the tools for this evaluation. To achieve this, I think it would be interesting to profit from the experience of our Association to put into place a working group which could present a report to us for a general debate.

**II Specificities of the self-assessment of the parliamentary administration**

Considering the subtlety of the specificities of the Parliaments that sometimes, the experts sent to their audit do not know well, it would be desirable, in my opinion, that the evaluation of the Parliament is carried out by the persons in charge (administrative and parliamentary for the concerned Parliament, even though one can resort to external experts or facilitators for assistance and guidance.

Thus this self-evaluation in which the Parliament is the main actor and the judge, at the same time, will be perceived as a voluntary practice (operation), undoubtedly guarantees its full taking into account by the administrative civil servants since it is carried out by the latter.

Finally, we need to be clear that administrative self-evaluation is different from the evaluation of the political structures or staff of a Parliament. If the working group were established, its role would be to define a toolbox, which is to say criteria for evaluation applying only to administrative work, in order to improve its efficiency.

**III Self assessment of the Parliamentary administration**

In order to ensure its objectivity and effectiveness, this self-assessment must meet the three (03) following conditions:

1) To be conducted by a group of people never by one single person. Within this framework it would be necessary that this operation be supervised by the highest

ranking official (SG) after approval by the political leader (the President) and possibly the questeurs.

The main participants in this operation are:
- Administration executives;
- Civil servants, at all levels; and
- Members of Parliament.

Thus, the composition of the self-evaluation group must reflect the variety of points of views, the broadest possible among the civil servants and the Members of Parliament who must give their appreciations, in all objectivity and responsibility, on the organization and functioning of Parliament and make concrete proposals for its improvement.

2) To be based on precise and objective criteria (questions).

3) To be exhaustive and deal with all aspects of the activity of the parliamentary administration, of which in particular:

    * The nature of the administrative work.
    * Human, financial and material means.
    * The mode of organization and operation.
    * The relation between the administration and Members of Parliament.
    * Communication and information.

    Each aspect (or topic) mentioned above includes a number of questions. Such questions are not closed; they are formulated in order to ask “to what extent” and “which is the degree” and invite the questioned people to quantify their evaluation on a 5-point scale:

    5: to a very large extent / (to) a very high degree.
    4: to a large extent / (to) a high degree.
    3: fairly (to) an average degree.
    2: to a small extent / (to) a low degree.
    1: to a very small extent / (to) a very low degree.

**IV Method of self-assessment of the parliamentary administration**

These procedures are essentially as follows:

**1 Answering the questions**

After having evaluated each question, the questioned people quite simply register their evaluation in the box allotted to the various questions below each topic (or group of questions).

Three other “general” questions will require the questioned people to define what they regard as:

- ♣ The greatest improvement recently made in this particular field;
- ♣ The most serious current deficiency ;
- ♣ The nature of the required measures to improve the performance.

The conclusions from all of the answers should provide a basis for the formulation of the recommendations concluding the self-assessment.

**2 Recourse to facilitators**

The participation of an external facilitator may help ensure that all the participants in the self-evaluation have a common vision of the pursued objective. The IPU and other organizations may be responsible for providing an external facilitator.

**3 Determination of a timetable**

The timetable (schedule) of the self-assessment operation should be set at the beginning of the process. The time required to complete the self assessment varies depending on the specificities of the Parliament. It would be sufficient to provide for this purpose, between 2 meetings at least and 8 meetings maximum.

**4 Determination of data sources**

- ✓ The participants themselves: The civil servants
- ✓ Political leaders
- ✓ Members of Parliament
- ✓ External sources, for instance Electoral Commission, opinion polls on precise questions such as the relation between the Parliament and the population, the communication of the Parliament, the civil society and the Parliament …

**5 Safeguarding the records of the process**

- ✓ To draft the minutes of the meetings
- ✓ Recording if necessary.

This scenario will have as its goal to make parliamentarians feel, from the beginning that they are engaged, even involved, in the process of improving their institution.

**CONCLUSION**

The recommendations arising from self-evaluation then need to be the subject of progressive implementation, under the authority of the secretary (or secretaries) general, and of the Speaker of the chamber concerned. Even if this implementation is only partial, as the parliamentary administration is made up of many actors and is thus difficult to reform, this kind of initiative (self-evaluation) allows for the creation of a

framework and constitutes a point of departure for reforms which may be enacted in due course."

**Dr Hafnaoui AMRANI, President**, invited colleagues to contribute.

**Mr Xavier ROQUES (France)** said that he was reminded of an experience at the French National Assembly where there had been no fewer than six simultaneous internal and external audits of the administration. Self-evaluation was indispensable to avoid falling into routine; but he did not think that internal audits of this kind were enough. The results of an external audit made for a more convincing case when discussing proposals with staff and trade unions. External audit also carried greater political weight. However, time needed to be taken to explain the administration to external auditors – as much as several weeks – before they began their real work. He also cautioned against expecting too much of external auditors, who tended to act as midwives rather than giving birth to ideas themselves.

**Dr V.K. AGNIHOTRI (India)** said that each of the ten separate cadres within the Indian parliamentary administration would need to be assessed against different criteria. An internationally leading management institute had studied the structure of the Indian parliamentary administration and made recommendations on restructuring. The administration existed to serve Parliament and its Members. Service delivery to Members' satisfaction was the ultimate test of quality. While self-assessment could be a first step, quality assurance also had to be in place, and a certification system.

**Mr OUM Sarith (Cambodia)** mentioned the Senate of Cambodia's experience of self-evaluation. On 25 March 2009, the tenth anniversary of the creation of the Senate, a seminar had been held to take stock of ten years of achievement. Senators, senate staff, foreign partners, and NGO and civil society representatives took part, as well as ministerial representatives. He had taken the opportunity to publicise the IPU self-assessment toolkit. All of the participants had expressed an interest. Thanks to IPU support, and the necessary political will, the Senate would in April set up a committee of three senators and two parliamentary staff to carry out a self-evaulation exercise. He hoped to be able to come back to say what progress had been made.

**Mr Austin ZVOMA (Zimbabwe)** saw self-evaluation as a process rather than an event, underpinned by an objective-setting process and a commitment to achieve these objectives. It was important to be clear what the purpose of self-assessment was. It could be to initiate reform, or it could be part of a strategic planning process. Staff needed to know where they were starting from and where they were going. This could involve a current realities assessment. He asked what the lessons were of the Algerian experience. Zimbabwe had a five-year strategic plan, with delivery shown via a balanced scorecard. ISO certification was also an option. External audit was expensive, and for young parliaments this was a major constraint. As service delivery was demand-led, feedback from clients was crucial. Parliament had displayed a stand at an international trade fair as a limited step in this direction.

**Mr Michael POWNALL (United Kingdom)** responded to points raised by Mr ROQUES. Westminster was constantly evaluating its processes. There were strategic plans, business plans, risk registers, and value for money studies. The external element was invaluable provided the consultants understood the parliamentary environment. But it was important not to forget that parliaments existed to support Members and Chambers. Too much self-evaluation could place extra pressure on senior managers. He himself spent 60-70% of his time on management work, and it was important that this should not increase further. He hoped that the President's initiative would not be too onerous and would be complementary to what was already happening.

**Mr Sosthène CYITATIRE (Rwanda)** found the subject interesting because in Rwanda, the Senate had tried to put a strategic plan in place in 2004. It had then conducted several self-evaluation exercises in 2005, 2007 and 2008, the most recent with IPU support. What had been found? To the Senate's dismay, each time the exercise was conducted it was not an administrative but rather a politically focused evaluation. He therefore agreed with the President's proposal, and supported the idea of a working group. He also endorsed the preparation of toolkits based on objective criteria. He suggested that younger as well as older parliaments should be included in the working group, such as Rwanda.

**Mr Abdelhamid Badis BELKAS (Algeria)** noted that the IPU experts who had assisted Algeria in self-evaluation had not had access to the necessary toolkits and had had to rely on their own subjective experience. They had been able to highlight strengths and weaknesses, but without clearly defined criteria available. He supported the development of objective criteria for self-evaluation.

**Mr Ian HARRIS (Australia)** said that the Australian House of Representatives was an accredited Investors in People agency. A statement of skills for every job had been published. Each year there was a planning day, and an annual assessment. A very brave action had been to ask staff what they expected of their leaders, and to formulate these into principles, against which staff were to assess their supervisors: the results were published. This had caused some concern, but also an improvement in interaction with staff. The Australian House of Representatives would be looking for a new Secretary-General between this meeting and the one in Geneva in October. Criteria for this job had been made available to members of the ASGP. He wondered if thought might be given to sponsoring a formal ASGP questionnaire on self-evaluation as well as proceeding with the working group.

**Dr Hafnaoui AMRANI, President**, responded by making clear that he had started thinking about the need for self-evaluation because the Algerian Parliament, despite being young, lacked a single consistent organisation. The evaluation process he had in mind would involve parliamentarians as well as parliamentary staff. The aim was to serve parliamentarians better, and to do this it was important that they should be involved. Political will was necessary. Without the Speaker's approval, Dr Amrani would not have been able to conduct the exercise as he had. Mr ZVOMA was right that it was not just a snapshot event; it needed honest analysis and then constant evaluation and implementation. Self-evaluation was not just a management tool, but also a procedural

tool. It was time-consuming, but not expensive. Staff felt consulted. It was true that emerging democracies were most interested in the self-evaluation process, but the experience of more seasoned democracies was also required. He read the titles of the Algerian questionnaire, and gave examples of the kinds of questions that were included to give a flavour. It had been developed hurriedly, which was why he would be interested in a more thoughtful process, leading to a general debate in due course.

**Mr Andy Richardson (IPU)** spoke briefly of the IPU secretariat's experience of the self-assessment toolkit published in 2008. He saw it as a demand-led tool. It was offered to parliaments that were interested in and willing to look at their own working methods. There seemed to be very many such parliaments, in every continent in the world. The IPU had facilitated work in Rwanda, Sierra Leone and Algeria. In Cambodia, the Senate had carried out the process on its own. There was preparatory work under way in Ethiopia and South Africa, with interest shown from other parliaments in Latin America and Arab states. It was a learning experience for the IPU. Other organisations were also looking at approaches to measuring parliamentary performance, but the self-assessment approach seemed to be of particular value. It was important to set a purpose from the outset. Political leadership was crucial. Parliaments needed to internalise the goals of the self-assessment, and adapt the toolkit as necessary to their own specific contexts. The IPU toolkit had not placed enough emphasis on the preparatory steps that were needed. These were issues that deserved thought as the ASGP prepared its own toolkit. The IPU was delighted at the ASGP's proposal. The questions in the toolkit were intended as a first step, an entry point, in a process of framing the debate. The second step was a dialogue about the strengths and weaknesses that emerged – this was of much greater value. The IPU's toolkit was aimed to be as universal as possible. It was this second step, the dialogue, which would allow specificities to emerge. It was also supposed to be flexible, to meet the needs of the Parliament, whatever these might happen to be. The IPU would be pleased to assist the ASGP in whatever way it could, but was also pleased that the process was to be owned and developed by secretaries-general themselves.

**Dr Hafnaoui AMRANI, President**, proposed that a working group should be established to take this work further, and that it should include Ms Claressa SURTEES, Mr Sosthène CYITATIRE, Mr Abdelhamid Badis BELKAS, Mr Manuel ALBA NAVARRO, Mr Marc BOSC, Mrs Jacqueline BIESHEUVEL-VERMEIJDEN, and Mr OUM Sarith. The proposal was *agreed* to.

## 3. Intervention by Mrs Daniela Giacomelli of the Global Centre for ICT in Parliaments

**Dr Hafnaoui AMRANI, President,** invited Mrs Daniela GIACOMELLI, Global Centre for ICT in Parliaments, to the platform to make her intervention.

**Mrs Daniela GIACOMELLI** made the following presentation:


## Response to 2007 Survey

- 263 assemblies in 188 countries received the survey
- 105 assemblies responded (40%)
- 89 countries were represented in the survey (47%)

ICTParliament

Global Centre for Information and Communication Technology in Parliament

## Key Findings of the 2007 Survey

1. Some parliaments are clearly innovators in their use of ICT (10%)
2. For most parliaments there is a substantial gap between what is possible with ICT and what has been accomplished
3. Resources constrain some to the point where they cannot provide even the most basic ICT services, such as PCs for members, networks, or even websites
4. Many parliaments, regardless of the income level of their country, clearly have plans to improve their use of technology

ICTParliament

Global Centre for Information and Communication Technology in Parliament

## Structure of the 2009 Survey

1. Oversight, management, resources, and cooperation
2. Infrastructure, services, applications, staffing
3. Document management systems and open standards
4. Libraries and research services
5. Websites
6. Enhancing communication with citizens

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Global Centre for Information and Communication Technology in Parliament

## Schedule for 2009 Survey

Distribute survey: *1 May*

Parliaments complete survey: *May-June*

Statistical analysis: *July-August*

Preliminary results: *September-October*

Prepare final report: *November-December*

Publish WePR2010: *January*

ICTParliament

Global Centre for Information and Communication Technology in Parliament

## Contact Information

Daniela Giacomelli, Programme Officer

Global Centre for ICT in Parliament

giacomellid@un.org

## 4. Communication by Dr José Pedro MONTERO, Vice-President of the ASGP, Secretary General of the House of Representatives of Uruguay, on "Functions of the Chamber of the House of Representatives of Uruguay during non-working periods"

**Dr Hafnaoui AMRANI, President,** invited Dr José Pedro MONTERO, Vice-President of the ASGP, Secretary General of the House of Representatives of Uruguay, to present his communication, as follows:

"Introduction

The present Uruguayan constitutional regime states that every legislature period would have a duration of five years. It begins on the 15th February immediately after the date of the general elections and ends on the 14th February of the fifth year after the general elections were held.

Each legislature is divided into five periods which are classified as ordinary and extraordinary.

Article No. 9 of the rules of the Chamber states that every legislature will comprehend a period of preparatory sessions, five periods of ordinary sessions and extraordinary sessions when necessary. The first ordinary period would begin the 15th February and end on the 15th December; the second, third and fourth periods would begin on the 1st March and end on the 15th December and the fifth period would begin on the 1st March and end on the 15th September. Beyond these periods the Chamber is not on duty. It is understood by extraordinary periods any number of sessions which comprehend the ones appointed by means of which, a grave and urgent reason might come up. This is stated by decision of the Chamber or the executive power during the non-working periods.

The reason for which the last ordinary period ends before the first four ones is the celebration of the legislative and presidential elections which are carried out this year in the month of October and eventually November. It is relevant to point out that MPs may commit to the activities which concern the election's events and it is not convenient that the beginning of the parliamentary recess takes place on the 15th December like the other periods, due to the fact that the elections are being held on those dates.

The parliamentary recess takes place between the 16th December and 1st March in the first periods of each legislature and between 16th September and 14th February in the last period. The extraordinary periods are ocassional ones.

The Chamber of Representatives adopts in the first ordinary session of each period, its regime of ordinary sessions, it is the one which will be applied during the whole period.

Parliamentary recess

Chamber of Representatives:

Plenary

The ordinary regime of sessions does not work for the extraordinary periods. So if there is not a convocatory for the celebration of an extraordinary session, the Chamber will not be on duty until the beginning of the last ordinary period.

Article No. 104 of our constitution states that “only for grave and urgent reasons” each Chamber “as well as the executive power” could request extraordinary sessions to make the legislative period end, and with the only aim of treating the matters that moved the request of the session as well as the legal project declared of urgent consideration under study. Even if the project was not included in the agenda of the session. Even though, the break will be automatically suspended for the Chamber to have or receive during its performance, for its consideration, a project labeled as urgent.

An important aspect is the statement of the last part of Article 104: “the mere request for an extraordinary session will not be accountable as enough to cease the recess of the general assembly or any of the chambers. For the recess to be ceased, the sessions should be carried out and the interruption would last during their performance.

Article 90 of the rules of the Chamber of Representatives demands a special majority to “declare as grave and urgent according to Article 104 of the constitution, the reasons quoted to make the legislative recess cease. This statement must be done over any of the matters included in the invocation.... after the break was interrupted”.

From the mentioned statements it clearly emerges that the parliamentary recess of the Chamber of Representatives can be interrupted by:

The will of more than half of the members of the corpse by the invocation of extraordinary sessions or,

In an automatic manner through the invocation of extraordinary and permanent session, imposed by number 7 of Article 168 of the constitution of the Republic. Such invocation works out when, during the recess, a project of law with declaration of urgent consideration was sent by the executive power for the Chamber to be considered.

The proceedings for the law projects with declaration of urgency is extraordinary since it differs in several aspects with the ordinary law projects. In such a way the constitution imposes deadlines for its approval: forty-five days for the Chamber to receive it the first time, and thirty days for the second Chamber.

In case the second Chamber approved a text different to the first Chamber, this one will have fifteen days for its consideration. The absence of a pronouncement

on the project of the Chamber in the agreed deadline will mean its approval whatsoever.

Another peculiarity of these projects of law is that each Chamber could cease its declaration of urgency by decision adopted by the vote of third fives of the total of its components. In such cases, its consideration will be an ordinary law project.

With the projects of law under declaration of urgent consideration, what is pursued is to provide the executive power with enough speed in the treatment of a legislative initiative. Under such considerations the constitution establishes the lift of the parliamentary recess for the legislative power to adopt a pronouncement about it.

Commission of the Chamber of Representatives:

Article 130 of the rules of the Chamber states that "the permanent commissions, either special or of investigation, will not be able to gather during breaking times.... except with express authorization conceded by the absolute majority of the total components of the Chamber". The constitutional recess suspends deadlines placed by the Chamber for its commissions to issue a statement. If there is an extraordinary period of sessions, they will recover all the atributives in plain lawful frame.

Reports:

MPs may request that the state ministers, the supreme court of justice, the electoral court, the tribunal of administrative issues and the accountancy tribunal, provide data and reports they regard as necessary to accomplish the controls of their management.

Article 118 of the constitution states such faculties and by legal norms it is regulated the deadline in which they must be answered.

During the parliamentary break the MPs keep the right to exercise the faculty of introducing the reports they think appropriate.

Human resources

During the parliamentary recess the duties to be accomplished by the staff of the Chamber of Representatives will be reduced because of the reasons already mentioned, it is warned that the accomplishment of the functions requires less employees. Because of this reason it has implemented a regime of "on duty" or "shift" frameworks that implies that all employees of the Chamber could only attend to accomplish its duties during the shift they were assigned to work in. In case of the celebration of extraordinary sessions during the break, all the staff must attend to accomplish their duties in a similar manner to the work performed during a normal period of sessions.

Permanent commission:

During parliamentary recess, the functions of control of the performance of the executive power that are of the legislative power through its chambers, are developed by the permanent commission. Because of this, article 129 of the constitution states that “the commission will oversee the respect and obedience to the constitution and laws, issuing the executive power the convenient warnings under the responsibility of the General Assembly…”

In accomplishment of such functions of control, it is frequent for the permanent commission to request the secretaries of state for interrogation on certain aspects of their administration.

The permanent commission will be integrated by eleven MPs, four senators and seven deputies, appointed by its respective chambers and it is chaired by a senator of the majority.

Article 131 of the chart states the temporal framework when it declares that “it will exercise its functions starting from the date indicated by the constitution for the beginning of the recess… until the commencement of the ordinary sessions”. It states as well that “however and when the break is interrupted and during the period of the extraordinary sessions, the General Assembly or the Chambers of Senators, will be able, when they understand it, to assume the jurisdiction in the matters of their competence which were under consideration of the permanent commission, prior communication to this body”.”

**Dr Hafnaoui AMRANI, President**, thanked Dr José Pedro MONTERO for his communication and invited members present to put questions to him. He asked who convened extraordinary sessions of the Uruguayan Parliament. In Algeria, only the President of the Republic had the authority to do this. He also asked if questions could be tabled when Parliament was not sitting.

**Mr Marc BOSC (Canada)** asked what the staff of the Uruguayan Parliament did during non-sitting periods and how they were managed.

**Mrs Fatou Banel SOW GUEYE (Senegal)** asked about the mechanics of how the plenary was reconvened.

**Mr Vladimir SVINAREV (Russian Federation)** said that recesses were an important time both for MPs and for parliamentary staff. It was a time to ensure that buildings were in good repair and for staff to prepare for the next sitting period. He asked whether staff numbers were reduced during non-sitting periods, or whether they were sent on vacation.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN (Netherlands)** said that in her country, only Standing Committees were reconvened during recesses, and asked whether the same situation prevailed in Uruguay.

**Mr Said MOKADEM (Maghreb Consultative Council)** asked for a point of clarification about Standing Committees and Special Commissions in Uruguay.

**Dr José Pedro MONTERO (Uruguay)** replied that an absolute majority of MPs could recall Parliament, by writing to the Speaker. Recesses happened in the summer. There were three kinds of shift during this time: those staff who remained working in the Chamber, those on call and those on holiday. Chairmen of permanent committees or any two members could reconvene these committees. There were no extraordinary permanent committees in Uruguay.

**Dr Hafnaoui AMRANI, President**, thanked Dr José Pedro MONTERO for his communication as well as all those members who had put questions to him. He announced that the aim would be to complete the following day's business during the morning, if possible.

*The sitting rose at 5.40 pm.*

## SEVENTH SITTING
## Friday 10 April 2009 (Morning)

## Dr Hafnaoui AMRANI, President, in the Chair

***The sitting was opened at 10.00 am***

## 1. New Members

**Dr Hafnaoui AMRANI, President**, said that the secretariat had received several requests for membership which had been put to the Executive Committee and agreed to. These were:

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|---|---|
| **Mr Thebenala THEBENALA** | Acting Deputy Clerk of the National Assembly of Botswana |
| **Mr Matjaž PLEVELJ** | Deputy Secretary General of the National Assembly of Slovenia |

The new members were *agreed* to.

## 2. Presentation by Mr Pitoon PUMHIRAN, Secretary General of the House of Representatives of Thailand, on the organisation of the meeting in Bangkok in March/April 2010

**Mr Pitoon PUMHIRAN (Thailand)** gave a presentation on the conference to be held in Bangkok in March-April 2010.

**Dr Hafnaoui AMRANI, President**, thanked Mr Pitoon PUMHIRAN for his presentation, and looked forward to the session in Bangkok, at which he hoped colleagues would turn out in force.

## 3. General Debate: Observing parliamentary traditions and meeting expectations of Members and electors

**Dr Hafnaoui AMRANI, President,** invited Mrs Jacqueline BIESHEUVEL-VERMEIJDEN, Secretary General of the House of Representatives of the States General of the Netherlands, and Mr Ian HARRIS, former President of the ASGP, Secretary General of the House of Representatives of the Parliament of Australia to open the debate.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN (Netherlands)** presented the following contribution:

"I don't believe in the saying, 'a country gets the parliament that it deserves.' To me, such a statement is too fatalistic. Over the last few days here, we have heard descriptions of the unique nature of many parliaments, and we have also learned how much every one of us is attached to parliamentary forms that reflect our own countries' best traditions and intentions.

Hence a parliament is thus not something that we deserve. Rather, it is something that we inherit, and that emerges from deeply rooted traditions. And it is within these traditions that we work on a daily basis to improve the functioning of parliament, and to keep it up to date.

I would like to briefly outline the historical roots and traditions that characterise the Dutch parliament and how, at the present time, we are continuously busy to ensure that our working procedures keep pace with the changes around us.

Of course, while you may not be an expert in Dutch history, you may well know that the Netherlands is a notable country in one particular respect. During a time when virtually the entire world lay under the rule of absolute monarchs, the Netherlands was a republic with a fairly democratic character, at least for its time: the Republic of the Seven United Provinces. Now, at a time when the republic is the dominant form of state across the globe, the Netherlands has manifested itself as a parliamentary democratic monarchy under the House of Orange.

What is now the Netherlands was, as I said, previously a republic: a confederation of seven small mini-countries, or provinces, of which Holland was by far the most important. These seven provinces deliberated with one another in the so-called States General, the immediate precursor of the present-day Dutch Parliament, on the basis of formal equality. Formal equality provided the starting point; the provinces were sovereign and were fully entitled to express their differences in character. The nobility might be dominant in one province, the prosperous agrarian classes in another, while Holland was dominated by the commercial classes in the large trading towns. In fact, the province of Holland largely determined the Republic's policy, certainly if it involved foreign affairs and costs were implicated. After all, Holland contributed over half of the budget that was used to finance the Republic's actions. In the process of deliberating in the Republic's States General, its members, who represented the various provinces, sharpened not only their understanding of equality, but also their self-confidence, austerity and awareness of costs, professionalism, and willingness to compromise. In the absence of such attitudes – at least implicitly – no member of parliament, each of whom would have been strongly attached to the assignment that they had received from the 'home front,' would have been able to operate in the States General.

For brevity's sake, I shall now skip all of the developments that led from the States General of the Republic of the Seven United Provinces to the Dutch parliament with which we are familiar today. This is because, despite all of these developments, the

characteristics of the Dutch parliament have, for a large part, remained unchanged. It is a restrained and self-confident parliament that operates in a professional and open manner, and in which strong egalitarian tendencies can be discerned.

In the Dutch parliament, one finds that little attention is paid to symbols or meaningful 'grand gestures.' The Dutch are far too sober a people for such behaviour; and hence the Dutch parliament also has few 'traditions.' After all, tradition is often rooted in unwritten agreements between different groups, or the common denominators to be found among them. In the Netherlands, however, various groups have always lived side by side, and the Dutch parliament has always provided ample space for representing this diversity. The Dutch electoral system of proportional representation has a very low threshold for entry to parliament, namely, the obtaining of at least one seat in an election. For this reason, many parties have always been represented in parliament. Eleven parties are currently represented, and historically speaking, this is far from being an exceptional situation. Regardless of their differences, these parties work together in the parliamentary process in a manner that is both purposeful and lacking in outward show. The start of the plenary session provides a small daily show of decorum; and the official entry of the President, preceded by the Chamberlain and accompanied by the Secretary General, escapes the attention of practically every MP. After all, at that very moment, every honourable member is taken up with the core of their parliamentary business: wheeling and dealing with crucial colleagues who are easiest to catch at that particular moment.

Tangible symbolic objects are also scarce. No portrait of the head of state adorns the plenary meeting hall, and you will search the plenary hall in vain for the national coat of arms. Each MP's seat does bear the House of Representatives' seal, and to be sure, this includes the national coat of arms – but it nevertheless remains the House of Representatives' seal! One cannot doubt the confidence of such an institution. The Dutch flag, meanwhile, is nowhere to be seen in the plenary hall, and indeed, one rarely sees it elsewhere in the building. The flag is flown outside the parliament building, however, when the House is in session. The flag also has a permanent presence by the memorial of those who fell during the Second World War. While the war was unquestionably a terrible event, it was also an experience that was shared by the whole population. It undoubtedly brought different parts of the population closer together, and it is thus appropriate that the flag should be present. Likewise, the act whereby each day a page is turned in the book that records the names of those who died in the violence of war, constitutes a tangible and undisputed ritual.

This absence of grand gestures and the lack of symbolism is also reflected in the style of debate. MPs speak from the platform, not from their seats. The President grants them the floor, and they are obliged to take it. Some decades ago, an MP from the Middle Class Party considered the predicament of his supporters, the middle classes, to have become so bad that it should be mourned, and to this end, he wished to observe a two-minute silence on the platform. The then President showed little mercy in his call to order: the platform was for speaking, not for remaining silent! The honourable MP had to return to his seat.

One rule that, until recently, used to be less strictly observed, but that appears to be gaining in popularity in view of the supposed deterioration in parliamentary etiquette, is the expectation that MPs should not speak directly to one another, but via the President. The President determines whether a speaker may be interrupted. The MP making the interruption may formulate a short question, which the speaker is obliged to answer; though he is of course free to determine the content of his answer. This generally results in a businesslike debate.

Statements that are not made from the place officially reserved for that purpose are not included in the proceedings of the House. Cries from the hall that can be easily understood by all present are thus 'coincidentally' omitted by the stenographer. What might in the actual meeting have been a fierce debate will thus later appear in the official report as a peaceful exchange of views. This is a shame, because a great deal of liveliness is lost as a result.

The MPs also behave according to this style. They read out prepared texts, while seldom deviating from them. In any case, MPs do not allow themselves to be seduced into speaking without notes; doing so means that things could go wrong. Such was the case for the chairman of the social democratic party, who wanted to give an impassioned speech on how the time had finally come for social democracy in the Netherlands. Painting a negative picture of the past, he endeavoured to strengthen his argument by referring to a passage from Macbeth: 'And all our yesterdays have lighted fools the way to dusty death' – a tactic that cost him dearly. An alert liberal MP responded that he could not simply break off the citation at that point, and added the following lines: 'It is a tale, told by an idiot, full of sound and fury, signifying nothing.' Conclusion: avoid making impassioned speeches!

Becoming impassioned is not the only thing that Dutch MPs should avoid. Then, as now, it would certainly have been the case that not everyone would have understood an English joke told in the Dutch parliament. There has always been a certain gap between MPs' words and deeds, and those of the voters that they represent. Until the 1960s, the decade in which modern communications made their powerful entry into society, people did not feel so strongly about this gap. One could still make a joke that would not be understood by the majority of voters. Since the invention of radio and television, however, every politician has had to come across to voters in a clear and transparent way. Such efforts have long met with mixed success, and I have the strong impression that precisely since this time, talk of 'some distance' between voters and the elected has been replaced with talk of a 'gap.' Speaking clearly in a manner that can be understood by all has thus become the first commandment for every MP: passion should be avoided, and clarity embraced.

Nowadays, the Dutch parliament continues to function according to these norms of austerity, professionalism and clarity. You might then suppose that everyone in the Netherlands is entirely satisfied with this situation, and that I am able to carry out my daily work in peace and serenity. I must confess, however, that this is definitely not the case! The manner in which parliamentary processes function is a constant topic of discussion in the Netherlands.

One striking example is the fact that currently many people are asking themselves whether notions of openness and freedom have not been pushed a little too far in the overly frank use of language. The manner in which some MPs express themselves in debates can, at times, be perceived as vindictive or coarse. The 'guilty parties' defend their use of language on the grounds that they want to be clear, and to speak the language of their supporters. Moreover, they are very aware of the publicity to be gained by such behaviour. Whether such an approach has positive or negative effects is thus largely beside the point. In the past, the President had the authority to strike certain statements from the proceedings, which were then recorded in the so-called 'corpse register.' This register was maintained by the House of Representatives between 1934 and 2001, whereupon it was abolished on a number of grounds. For one thing, it was thought that an MP should not be curtailed in his choice of words. Moreover, the inclusion of censurable statements was not, in fact, such a bad thing. Last but not least, in an age of modern communications, censurable statements can be divulged in a fraction of a second and thereafter repeated many times. Inclusion in the 'corpse register' would thus result in their undeservedly receiving yet more attention – especially given the sharp increase in the visibility of parliamentary debates, via the internet and the media. Nowadays, there is greater awareness than a few years previously of the value of the corpse register; and while they might not want the register back, many people are in favour of a greater degree of personal consideration.

How the Dutch parliament operates is also the topic of continuous discussion in a broader sense. Following the expansion of the House of Representatives from 100 to 150 MPs in 1956, its members were for a considerable time again able to carry out their activities, which had sharply increased since the Second World War. New capacity-related problems gradually emerged, however. At the beginning of the 1980s, this led to a review of the House's organisational and working procedures, under the leadership of the then President. As a result, the decision was made to expand the amount of support given to the House, so as to strengthen its ability to supervise government policy. In any case, none of these amendments impeded constitutional relationships. This was not the case ten years later, however, in the sense that once again, a commission led by the then President undertook to examine parliament's functioning. This time, however, the commission also explicitly took constitutional and governmental reforms into consideration. Among other things, it addressed the position and working procedures of standing committees, the events that occur when a cabinet is outgoing, contact between parliament and departmental officials, and contact with governmental advisory bodies. The House of Representatives' working procedures were streamlined in a process which included reducing the number of standing committees in order to create more time for scrutinising the quality of legislation, the enforceability and the feasibility of policy and realised legislation.

After this, one development followed another at a faster pace. Until this point, it had been thought adequate to critically review the functioning of parliament every ten years. Around the year 2000, this approach clearly appeared to be lacking. Parliamentary research, including parliamentary questionnaires, identified shortcomings in the various ways in which parliament was operating. Second, the political landscape in the

Netherlands had changed significantly: in elections, large swings occurred in the number of seats that the hitherto established political parties managed to obtain. The electorate was showing a clear drift towards the margins of the political spectrum. It was also in light of this latter tendency that another review of parliament's functioning was needed, and this task was taken up by the current President's predecessor in 2003.

His goal was to strengthen the involvement of parliamentary minorities in the House of Representatives' work, by formally granting them new competencies on a number of procedural matters. As a result, they gained the right to convene the House for interpellations and emergency debates, a rule that is now known as the 'thirty member rule.' Furthermore, it was thought desirable to strengthen the House's role as co-legislator, for example by enlarging the possibilities for holding an outline debate as soon as possible after a bill had been tabled. It was also found that decision-making within standing committees should become more transparent, for example by holding procedural meetings in public – a goal that has now been realised.

Finally, it was thought that parliament should be able to take the initiative itself more frequently, so as to allow it to develop a more emphatically dualistic relationship with the government. The use of instruments such as thematic committees and bills of initiative, and the holding of debates in the absence of the government were thought useful in this respect. While these goals have since been realised, they have evidently been insufficient to eradicate the feeling that it has once again become necessary to review the functioning of parliament.

This time, though, a more open approach has been taken, one known as 'self-reflection.' A steering group, led by the current President, recently published a report providing material for discussion, so as to reflect on the following points:

- Has the focus of the House of Representatives shifted from being a co-legislator and controller to being a co-ruler, along with insufficient attention being paid by the House to the feasibility of policy reforms?

The steering group recommends that the House of Representatives should start using an *ex ante* (i.e. beforehand) policy implementation test. In addition, the steering group recommends that every year, temporary parliamentary research commissions should carry out two to three *ex post* (i.e. afterwards) investigations into policy implementation.

- Are the members of the House addressing the right issues at the right times, or are they engaging in 'incident politics?'

On this point, the steering group recommends being more selective with the holding of emergency debates. A variant on the thirty member rule could be introduced that would lead to greater selectiveness, without negatively affecting the core principle of minority rights.

- Is there a growing information and knowledge deficit among MPs in comparison with the government, and if so, is this a problem?

The steering group suggests that the House of Representatives should consider adopting a distinct agenda for the future and a research plan. For this purpose, personal and general support services should be improved, and should be better linked to the generally available official support provided to the House. MPs should

receive assistance in dealing with the enormous amount of digital information that they are presented with, including the ever-increasing amount of e-mail traffic.

- To what extent is the shorter term that MPs serve (high turnover rate) a problem?

On this point, the steering group advocates further developing the (introductory) programme for promoting expertise among new members and party employees.

- Are governmental/coalition agreements thought to be a problem, in light of the dualistic relationship between the government and the parliament?

The steering group recommends that prior to an election, the House of Representatives should be informed about possible moves during the formation of a new cabinet. They also recommend holding a debate immediately after an election, so as to agree on the implications of the election results and thereby give direction to the formation of the cabinet. The steering group is keen to initiate a discussion on the question of whether it is desirable to further strengthen the House's role in the formation of the cabinet, for example by hearing candidate members of the government prior to their appointment.

As you may well have noticed, the discussion that the steering group wishes to instigate is both broad and extremely open. Perhaps most notable and most typical of the Dutch parliament is the general condition that the steering group has attached to discussions of its proposals: its plea that discussions concerning the political order should not become politicised. In the steering group's view, the preservation and the optimal functioning of parliament are collective responsibilities. The House of Representatives is an institution that people must want to be a part of. The more authority that the institution of the House of Representatives enjoys vis-à-vis the government and the people, the more authority that its individual members will also regain, obtain, and preserve.

These statements are not only relevant to the Dutch parliament, but reflect sentiments that any parliament, wherever it operates, should want to adhere to. Indeed, the plea for the preservation of peaceful deliberation, as enshrined in parliamentary democracy, is perhaps the deepest tradition that underlies the way in which the Dutch parliament functions; and perhaps, on this point, we should speak of a meta-tradition."

**Mr Ian HARRIS (Australia)** presented the following contribution:

"**Is the past a foreign country?**
The first words in L P Hartley's novel *The Go-Between* are:

> The past is a foreign country. They do things differently there.

Much of parliamentary work is dependent on the past and on tradition. In terms of expectations of elected representatives and the citizens they represent, the question must be posed as to whether the things that parliamentary institutions do, and the way in which they perform their functions, come from another country and from a different time.

**Parliamentary heritage and tradition**

The German philosopher and poet Goethe lived during the time of the French Revolution, and he fought in the wars that followed. Goethe was not fond of the concept of revolution. He believed that revolutions did away with much of the good as well as the bad. Perhaps those of us who operate within an environment of parliamentary procedure would be sympathetic to this attitude. The keynote of parliamentary change is evolution rather than revolution. To maintain the relevance of the Parliament to the people it serves will on occasion mean dispensing with tradition to "modernise" the practices. However, care should be exercised not to dispense with much of the good in the process.

Most of the legislatures formed under the Westminster system continue the procedural legacy of the conflict, physical and constitutional, between the Monarchy and the Parliament in 17th Century England. In many countries that were compelled to forge their nation and the legislatures within it by means of civil war or conflict with a foreign power, the bullet holes of their democracy can be seen in the walls of the buildings. It could be said that the bullet holes in the nation of Australia, its States and Territories appear in their parliamentary procedure. These procedures are part of Australian parliamentary heritage and tradition.

**Westminster, Washminster or Ausminster**

During one of the official discussion groups of the late 19th Century that preceded the decision of the Australian colonies to form a federation, the person who was to become the first Prime Minister of the new nation compared governmental systems to footwear. He said that he had always purchased his boots in Great Britain and he would continue to buy them there. Advancing an alternative point of view, the person who was to become the first President of the Senate suggested that people were wiser to purchase their boots where they fitted their feet the best. By and large, the Australian national legislature has followed this philosophy, adapting and adopting parliamentary institutions and procedures from around the world. Consequently, it has been said that we are not ***purely*** Westminster or even Washminster; a more appropriate description might well be "Ausminster".

Nationally, Australia has been fortunate to experience a fairly stable constitutional environment, although instances of constitutional excitement have occurred, such as the one that led to the 1975 dismissal of a validly-elected Prime Minister by the unelected Head of State. There have been a number of variations attempted, such as:

- the combination of responsible government together with American federalism,
- strong party government, with a government, by definition, able to control a majority in the House of Representatives,
- selection of Senators by a proportional representation (PR) voting system, and an increase in the number of Senators so as to make it extremely difficult for the government of the day to command a majority in the Senate,
- compulsory voting,
- public funding of political parties,
- an independent parliamentary administration,

- independent officers of the parliament exercising oversight functions such as the Auditor-General (working closely with the Public Accounts and Audit Committee and other parliamentary committees) and the Ombudsman,
- procedural innovations such as the House Main Committee, in effect a second Chamber within the House, adapted and adopted by other jurisdictions such as the United Kingdom House of Commons and House of Lords, with concomitant increased opportunities for private Member participation, and currently the destination of most private Members' business.

**The importance of ritual**

In an address to members of the Society of Clerks held in association with the Commonwealth Parliamentary Conference in Nigeria in 2006, the Clerk of the United Kingdom House of Commons gave a talk on "A convenient and necessary elasticity of practice". In that address, Dr Jack alluded to the probable absence of the word "ritual" from the pages of *May's Parliamentary Practice*, but he went on to say that Parliament, and particularly the House of Commons, had always been part of the ritualistic aspect of the British constitution, which the British constitutional commentator Bagehot called its "dignified" aspect. However, Dr Jack said, Bagehot had also expressed a view that the dignity of the House was altogether secondary to its efficient use. Whatever trappings and rites of procedure were in place, they always needed to relate to the principal functions of the House that is to legislate, to debate and to agree to provide finance, if the whole institution was not to become moribund. This was more so in current times when, unlike those of Bagehot, public confidence in parliamentary institutions is not high.

**Variation in House of Representatives Procedure**

*Opening Day*

When the new House of Representatives first met in February 2008, following the 2007 general election, another new feature was added to the procedure of the House in that an indigenous element took place before the official Opening Ceremony. In doing so, the Government implemented in part an earlier report from the House Standing Committee on Procedure entitled *Balancing tradition and progress* (August 2001). In the opening chapter of this report, covering parliamentary history and tradition, the committee indicated that the Parliament, much as a living being, is an adaptation of an earlier form surviving in a new environment. It suggested that some elements of parliamentary procedure are so ritualised that the original necessity that gave birth to them has been almost forgotten. The committee felt that the opening of Parliament in particular contained many symbolic elements which commemorate the evolution of Parliament, and that these elements deserved acknowledgement in any review that sought to modernise procedures or make them more meaningful and efficient.

Several submissions were received by the 2001 inquiry urging that the opening ceremony be made more relevant to the community, more "Australian", and more modern. The committee concluded that it was possible to devise a ceremonial procedure representing the voice of all Australians, and reminding Senators and Members of the pre-eminent place of the people in the democratic system. It also acknowledged that at least two other Australian Parliaments had taken steps to

recognise their obligations to the communities they serve. More recently, the Speaker of the Australian House of Representatives caused a large public outcry in suggesting that the prayer used to open proceedings (the King James version in vogue in 1901) should be examined with a view to change.

The Procedure Committee recommended that, at the Opening of Parliament, there should be a brief welcoming ceremony by representatives of the traditional owners of the land on which Parliament House was built. It also recommended a short address by the incumbent Australian of the Year. At the opening of the current Parliament, the Government decided on an indigenous welcome to country, which took place in Members' Hall in Parliament House. General opinion was that the event was most successful, and was followed by a more traditional Opening Day. As such, it represented a balance of introducing elements that were new, while maintaining respect for heritage and tradition.

*Procedural innovation in response to demographical & sociological change*
The House has made procedural change to reflect the changing composition of its Members, and their responsibilities and challenges. For example, it had made special provision for a proxy vote in divisions to be cast on behalf of nursing mothers.

**Possible future procedural changes**
One major concern to a secretary-general is that the legislature that she or he serves should remain relevant to the needs of the people its Members represent. The word "Parliament" comes from the French word "parler", to talk. Words must remain the basic building blocks of parliamentary proceedings, but parliament must be more than a word shop, and there should be more interactivity in the views expressed rather than the delivery of pre-determined positions. Almost all current presentations outside the legislature are delivered with illustrative aids, but this does not occur within the Australian Parliament. In Australia, proceedings are usually slanted towards those who are literate, and well versed in the dictates of an Anglo-Saxon culture. (Admittedly, parliamentary committees on occasions utilise more inventive operative and reporting techniques). The House of Representatives has recently made significant changes in the way in which it processes petitions and engages petitioners who put so much time and effort making views known to the House. Examination of the petitioning process remains a continuing consideration. A current inquiry is examining electronic petitions, thus linking one of the most ancient and traditional parliamentary forms with modern technology. The Procedure Committee has completed another inquiry into Opening Day procedures.

Mark Twain said many things about the English language. One of these was:
"There is no such thing as the Queen's English. The property has gone into the hands of a joint stock company, and we [*that is, Americans*] own the bulk of the shares."

The Westminster system has undergone similar changes. It has been a huge legacy from Great Britain to many parts of the world, but it has been adapted on occasion, as mentioned earlier.

The public perception of the parliamentary institution is also a matter that requires ongoing attention. The Australian House of Representatives has put considerable effort into its outreach program, with a goal of explaining the workings of the House and the Parliament to the people the Parliament represents. One of the greatest challenges faced by parliamentary institutions is the need to maintain the relevance of parliamentary proceedings to the people, and to take all steps possible for the people to realise and concur in the relevance of parliamentary events to them.

**Departing from local tradition in the name of Westminster**

Much of the Australian House of Representatives' experience has been marked by recognition of the importance of Westminster while adapting for local circumstance or adopting from other jurisdictions, and inventing procedures where appropriate. Whenever the House has had the opportunity to assist developing legislatures in the development of their procedures and practices, it has attempted to do so with due regard to local customs and requirements. I believe that there is salutary guidance in this.

The address of Dr Jack to the Society of Clerks contained the following segment:

> "But let me turn attention now to some of the practices in the Chamber itself which are both ritualistic and of practical importance. Let me begin with a very sound physical object – the mace, a silver ornamental club which is carried by the Serjeant-at-Arms attending upon the Speaker. Despite its solidity, the mace has been described as having 'almost mystical significance'. ".

The Mace is an important element in many legislatures. In legislatures that follow the Westminster system, the traditional Westminster model of the Mace is utilised. The Australian House of Representatives Mace was a gift from the United Kingdom, and was based on the United Kingdom House of Commons design. However some legislatures, such as the National Assembly of the Republic of South Africa, have a distinctive Mace. There is no doubt to observers that the Mace is part of the procedure and established ritual of a legislature stemming from the Westminster tradition. However, the South African Mace has been developed to symbolise as well distinctly South African elements. The legislature of the Kingdom of Tonga has been given the gift of a Mace, but I understand that it is not used, as Tonga has its own Monarchy.

**The impact on parliamentary processes of technology and physical surroundings**

*The media, radio, television and internet broadcasting*

Media bureaux have officers within Parliament House, and there is a dedicated Press Gallery. It seems that Members of Parliament have long "played" to the gallery, probably before the time that Edmund Burke is reputed to have referred to the media as "the Fourth Estate". Ministers and Opposition spokespersons still make their parliamentary contributions with one eye, if not two, fixed on the Press Gallery. Australia's Prime Minister recently made an appeal to the media during a speech in the House, pointing out the significance of their work. The influence of the media has intensified with the development of more effective technology.

New Zealand was the first national parliament to radio broadcast its proceedings, beginning in 1936. Australia was the second national legislature in the world to utilise the "new" technology to enable an interrupted sound broadcast of its proceedings, beginning in July 1946. Access to the proceedings of the House of Representatives has been permitted on an ongoing basis since 1991, under strict guidelines. The 'feed" for the Chamber and the Main Committee is produced by parliamentary employees and is provided to the broadcasting networks. The public proceedings of parliamentary committees are available for televising or radio broadcasting with the permission of the committee concerned. Live video broadcasts of House and Main Committee proceedings, and selected public committee proceedings, are available on the internet.

One of Australia's more recent Prime Ministers actively opposed the introduction of television cameras, because of the effect he felt it would have on the House. In fact, there appears to be no doubt that the wider transmission of proceedings has had a significant impact on the way in which the business of the legislature is conducted.

For example, in the early days of radio broadcasting, some more inventive Members used the medium to send cheerio calls and messages during their speeches.

Cameras in the Chamber and the Main Committee have had a particularly strong effect:

- Television has influenced the dress of members, particularly male Members. Instead of a sometimes rebellious move towards more informal dress, most Members now wish to appear very business-like. During one period, there appeared to be an unofficial competition as to which male Member could wear the most outlandish necktie.
- In a sparsely-occupied Chamber, there is frequently the "doughnut" effect, where a ring of Members will sit around the person addressing the House.
- Camera angles are extremely important. Members in more marginal seats will be located in a position where they are in the background to their party leader, which means in many instances the Prime Minister or the Leader of the Opposition. There is usually greater gender-equity in the seats surrounding the Prime Minister and the Leader of the Opposition than elsewhere in the Chamber.
- While there is no red light on the cameras to indicate which camera is taking the shot that is providing the feed at the moment, Members do tend to "play" to the cameras or to the press gallery. In some instances there are complaints that Members are attempting to place themselves in the line of sight between one of the cameras and a party leader to make it more difficult for the producer to use a particular shot.
- Network timing can influence parliamentary timing. Significant parliamentary events are sometimes delayed, even if only slightly, for introductory promotional material to be run by the telecaster.

*The influence of the parliamentary building on proceedings*

Many secretaries-general carry out their work in heritage buildings, often constructed for another purpose. Many of us work in specially constructed new buildings. The Australian national legislature is fortunate to be in the latter category. The "new"

Parliament House in Canberra was built to a specifically prepared design brief and had a parliamentary committee representing the wider clientele. Last year it passed the 20th anniversary of functioning as a parliamentary building. On the actual 20th anniversary of the day on which the Houses first met in the new building, a roundtable was held about the way in which buildings help shape parliamentary business. The roundtable was held in conjunction with the Parliamentary Studies Centre (PSC), on which I have previously reported to the Association[7]. A summary of the roundtable proceedings appears on the PSC website[8]. The secretaries-general of both Houses participated in the function, as did Professor Clement Macintyre who had just previously delivered a talk on *Parliamentary Architecture and Political Culture* in the Australian Senate Occasional Lecture series[9].

Some interesting points arose in connection with the impact of the building on the way in which the legislature operates. One was that parliamentary buildings occupy a unique place in that they simultaneously reflect and shape parts of the national culture in which they are found[10]. This is true of the Palace of Westminster and the Capitol. Constructing a building of similar national symbolism was a target in the Australian Parliament's design brief, and to a large extent it has achieved this purpose.

Another point was that the new building is a magnificent architectural achievement. However, its sheer size works against interaction between Members themselves, between Members and the Executive, and between Members, Ministers and the public.

There is a connection between physical surroundings and the quality of debate. The Macintyre paper indicated that Westminster parliaments were deliberately designed for debate and to accommodate conflict. The front benches in the United Kingdom House of Commons are supposedly just a little over two swords' lengths apart, but they also reflect the earlier model of an ecclesiastical pattern, stemming from the legislature's first meetings in chapels[11]. The Australian system is for an inverted horseshoe sitting arrangement, with all seats facing the Speaker. The adversarial model is not necessarily a bad thing. The 17th Century English poet Andrew Marvel, in writing about Oliver Cromwell's attempts to establish constitutional order, saw oppositional debate as necessary to give the outcome strength[12].

There is also the consideration of whether size matters. Macintyre's conclusion (which I endorse) was that a bigger Chamber necessarily changes the mood and dynamic of debates[13]. It seems that the directions for the 1835 competition resulting in the Barry-designed UK House of Commons specified that the Chamber should not be sufficiently large so as to provide a seat for every Member[14], and Churchill's plea to reconstruct the

[7] Nusa Dua April May 2007 Session
[8] http://www.parliamentarystudies.anu.edu.au/papers_etc/2008/Architecture%20and%20Parliament-final.pdf
[9] http://www.aph.gov.au/Senate/pubs/occa_lect/transcripts/090508/index.htm. Hereinafter referred to as "the Macintyre paper.
[10] Macintyre paper page 2.
[11] Macintyre, op. cit. P6.
[12] Ibid, P11.
[13] Ibid P7
[14] Ibid P8.

same smaller model following the 1941 bombing of the Chamber is well known[15] . In a similar vein, a former Australian Minister and Member complained that he had been in crematoria with more life than the new building; he wanted Members to be able to see the whites of their opponents' eyes[16].

In many instances, this deficiency has been rectified in part at least with the construction of the second chamber of the Australian House of Representatives. Perhaps the greatest tribute paid to this location came from another former senior Member who initially had reservations about participating in proceedings in the Main Committee. He became a convert to the advantages of the Main Committee after experiencing the way in which Members could engage in interactive debate.

Participants in the roundtable discussion also spoke of the importance of having the Executive presence within the building. It was also said (by fellow ASGP member Harry Evans, Clerk of the Australian Senate) that the design reinforced the parliament's bicameral nature and the cultural, physical and procedural distance between the Houses. I concur, and hope that long may the differences continue.

**Secretaries-General and heritage & tradition**

Secretaries-General are expected to keep records of precedents and practices of their legislature, and occasionally to produce procedural guides, manuals and other publications. They are frequently the custodians of the heritage and tradition of the parliamentary institution.

*Chamber laptops*

A large portion of the practices of Secretaries-General in the Westminster system (usually referred to as "Clerks") stems from Norman tradition, such as our annotations on Bills (1°, 2°, 3° denoting first reading, etc), and I understand that, in the United Kingdom, announcements to the Houses are sometimes made in Norman French.

In Australia, laptops have now made their way into the principal Chamber, the second Chamber and parliamentary committees. They have been a mixed blessing. Benefits include having participants in proceedings able to receive external advice on an ongoing basis. However, there are also disadvantages. For example, the Chair can be reminded of a ruling or determination at odds with a recently-given one (context is a frequently used convenient explanation).

The performance by the Clerk of the role in the Chamber has also changed as a result. The Speaker's Chair in the Australian House of Representatives has a button to summon the Clerk. However, the Clerk also has a small laptop linked to one on the Speaker's desk by which two-way communication is possible. Most frequently the link conveys procedural suggestions and other advice to the Chair. In the last Parliament the Manager of Opposition Business raised a question as to the changing role of the Clerk. The role had not changed; the way in which it was being performed had changed.

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[15] Ibid PP7&8.

[16] Melbourne Age, 25 October 1988, cited in the Macintyre paper, P4.

The process had begun some years previously in the second Chamber. This is another example of the second Chamber as an experiment ground, both in respect of people and material.

Previously, the Clerks at the Table kept a hand-written record of times to answers to questions without notice. These were privately kept. Subsequently a system was developed which enables the Clerk to record the net length of answers and the times taken by interruptions for points of order etc. A summary is distributed to a number of recipients including the Leader of the House so as to provide evidence in disciplining garrulous Ministers. It is also used for archival and research purposes. The Deputy Clerk administers a similar system that enables monitoring of the length of a question.

Document production
There has also been a quiet revolution in the way the House processes its documents. The range includes agenda sheets, final stages of draft legislation, procedural scripts for use in the Chamber and the second Chamber, and the transmission of committee documents.

The Government Printer
All formal House documentation was once produced by professional printers using hot-metal type. The building occupied by the parliament from 1927 until 1988 was well-equipped for its time. For example It was linked by pneumatic tube to the Government Printer some five kilometres away. It had its advantages, but there were some disadvantages such as when rain made the system unusable.

Votes Officer's Minutes
A system of Votes Officer's minutes has now been introduced, for the main and the second chambers. This is available electronically, and enables staff to become aware quickly of previous and current events.

*House of Representatives Practice*
For many years in Australia, there was no practice and procedural manual to guide Members and staff. Staff generally learned on-the-job or in small informal discussion groups. Over a period of some years, the first House of Representatives Practice was developed, and a 6th edition is now being produced. It is now available electronically, including in searchable form on laptops which also operates in stand-alone mode.

E-Mail
Hand-written communication was the only means available to most staff thirty years ago. File records were manually constructed, and usually scrupulously maintained. The first chinks appeared with the usage of post-it notes. Official concern began to be expressed when clerical people started attaching notes of this kind to file folios.

Then e-mail was developed. Because of the immediacy of the medium, archiving and recording in other than electronic form is often neglected, and a "paper trail" not maintained. Special care is necessary to ensure that an accurate record is available.

**Conclusion**

To maintain its relevance to the people it represents, a legislature should make use of the benefits of modern technology. This is expected of the general population, and of the Members themselves. However, there is great benefit in preserving the traditional ritualistic elements of operation that stem from the heritage and history of the legislature.

Secretaries-general have a particular role to play. They are frequently the custodians of a legislature's heritage, traditions and past practice. Their advice is frequently sought on current practice and possible change. Secretaries-general also have a responsibility to keep in touch with technological and cultural change, to ensure efficient practices and the delivery of multi-dimensional procedural advice."

# Parliamentary traditions & Members' expectations

## Les traditions parlementaires et les attentes des députés

ASGP 2009

Addis Ababa

Ian Harris
Clerk of the House of Representatives
Australia

Une cérémonie d'accueil indigène
An indigenous welcoming ceremony

An indigenous welcoming ceremony
Une cérémonie d'accueil indigène

The Importance of Ritual
L'importance du rituel

L'importance du rituel
Importance of Ritual

## The TLWS
## (Wales/le Pays de Galles)

## South Africa
## Afrique du Sud


The telephone
Le téléphone
!# &* \+?@

Qu'est-ce que c'est?
What is it?

# Chamber laptops
## Ordinateurs portables de la Chambre

**QUESTIONS WITHOUT NOTICE - 19 MARCH 2009**

**CLERK'S RECORD**

| Q No | Asked by | Question to | Answer started at | Total time for interruptions [F12] | Answer finished at | Total time for answer less interruptions |
|---|---|---|---|---|---|---|
| 1 | Mr Turnbull | Mr Rudd | 2:12:02 | 0:01 | 2:14:08 | 2:05 |
| 2 | Mr Gibbons | Ms Macklin | 2:14:45 | | 2:20:33 | 5:48 |
| 3 | Mr Hockey | Mr Swan | 2:21:20 | 0:42 | 2:26:02 | 4:00 |
| 4 | Mrs D'Ath | Mr Rudd | 2:26:24 | | 2:33:21 | 6:57 |
| 5 | Mr Turnbull | Mr Rudd | 2:34:02 | 1:43 | 2:38:39 | 2:54 |
| 6 | Ms Campbell | Ms Roxon | 2:39:00 | 2:25 | 2:43:39 | 2:14 |
| 7 | Mr Hockey | Mr Swan | 2:45:07 | 2:25 | 2:51:46 | 4:14 |
| 8 | Mr Symon | Mr Rudd | 2:52:08 | 0:07 | 2:59:47 | 7:32 |
| 9 | Mr Hockey | Mr Swan | 3:00:38 | | 3:03:18 | 2:40 |
| 10 | Mr Sidebottom | Ms Gillard | 3:03:45 | | 3:10:31 | 6:46 |
| 11 | Mr Turnbull | Mr Rudd | 3:11:10 | 0:57 | 3:12:58 | 0:51<br>Suspension SO's moved 3.13 -3.45pm |
| 12 | Mr Sullivan | Ms Gillard | 3:46:50 | 0:29 | 3:54:51 | 7:32 |
| 13 | Mr Hawke | Mr Rudd | 3:55:19 | | 3:55:31 | 0:12 |
| 14 | Mr Bidgood | Mr A. S. Burke | 3:56:21 | | 4:00:27 | 4:06 |
| 15 | Dr Washer | Mr Rudd | 4:00:45 | | 4:01:10 | 0:25 |
| 16 | Mr Perrett | Mr Bowen | 4:01:42 | | 4:06:37 | 4:55 |
| 17 | Mr Chester | Mr Rudd | 4:06:56 | | 4:07:12 | 0:16 |
| 18 | Mr Trevor | Mr Rudd | 4:07:39 | 0:18 | 4:16:06 | 8:09 |

*Diffusion par le biais des médias, de la radio, de la télévision et d'Internet*

*The media, radio, television and internet broadcasting*


Parliament of Australia
Department of Parliamentary Services
House of
Representatives
The influence of the parliamentary building on proceedings
L'influence du bâtiment parlementaire sur les débats


1901-1927
1927-1988
1988 □


**Dr Hafnaoui AMRANI, President**, thanked Mrs Jacqueline BIESHEUVEL-VERMEIJDEN and Mr Ian HARRIS for their contributions.

**Mr Marc BOSC (Canada)** remarked on the potential clash between tradition and modern technology. The broadcasting of parliamentary proceedings was now some thirty years old. He asked the two moderators for their impressions in this area, particularly with regard to public perceptions of parliamentary institutions.

**Mrs Doris Katai Katebe MWINGA (Zambia)** noted that Zambia was a former British colony. The Speaker and the clerks all wore robes and wigs. The public saw these as a symbol of authority. There was a reluctance to remove them, despite reforms in this area at Westminster. When mobile phones rang in the Zambian Parliament, they were confiscated by the Serjeant at Arms. Some Members tried to shock the House with their unusual ringtones, but Mrs Mwinga's threat to sell the confiscated phones seemed to have stopped this practice. She had been asked by her Speaker to find out if there was a way to stop mobile phones from working in the Chamber. There was radio coverage of parliamentary proceedings in Zambia, but not usually television coverage. This had led to greater public knowledge of Parliament. Members communicated with each other via notes sent by House messengers. Some messengers gave messages to the wrong Members, with embarrassing results.

**Mr Xavier ROQUES (France)** responded to Mrs MWINGA's remarks by saying that it was forbidden to bring mobile phones into the National Assembly chamber. Members of Parliament were unhappy about this, as they did not like to be out of phone contact.

There were technologies that could stop mobile phones from working, but these were not used in the French Parliament. Members wanted to be able to be online in the Chamber, but this was not yet the case. He feared the development of an electronic agora or public space in Parliament instead of a representative forum. He wondered how it was possible to reconcile the need to be a disciplined member of a party and at the same time a representative of one's constituents. This was a tension within Parliament: often Members abstained instead of voting against their party.

**Mr Mohamed Kamal MANSURA (South Africa)** talked about matching global and local traditions in the parliamentary context. South Africa had a Commonwealth parliamentary system, but with some of the trappings of an African culture, such as an upright mace. Questions in this area were still being asked fifteen years after the introduction of representative parliamentary democracy in South Africa. One current idea was that division bells should be replaced with drums. The South African Speaker did not wear robes, to show that she was one of the people, but insisted on Clerks wearing robes. She also did not want her portrait to be hung in Parliament. Members with special needs were a further challenge: one Member could not speak or hear, and sign-language interpretation was provided on her behalf. Members had to sign in to record their attendance. Members had not wanted their access permit to sign them in electronically, because of surveillance fears. Clerks at the Table could communicate electronically with any Member in the Chamber. The Chamber was also paperless; all documents were provided electronically.

**Mr Vladimir SVINAREV (Russian Federation)** talked about the historical parliamentary tradition in Russia. The parliamentary idea was inseparable from the two-chamber structure, which had been in place since the first Russian Parliament in 1896. This was related to the specific state structure of the country, and the cultural and ethnic diversity of its regions. This would be covered in Mr Svinarev's communication later in the morning. There was constant interchange between the staffs of the two Chambers. Political parties did not organise in the second chamber. Parliament aimed to promote its traditions into wider society. A Youth Parliamentary Assembly had been created in the hope of fostering future parliamentarians. In this regard, he asked how parliamentary traditions were spread more widely in societies outside Russia.

**Mr René KOTO SOUNON (Benin)** observed that in Africa, traditions and procedures were very different in French-speaking and English-speaking parliaments. The problem became obvious in regional parliaments incorporating Members from both traditions, and had arisen with the creation of the Pan-African Parliament. Initially, there had been one minute's prayer; but some Members had objected. There had been a lively dispute over whether secretaries-general should wear European or African robes. Procedural issues continued to cause problems in combining the two systems.

**Mr Sosthène CYITATIRE (Rwanda)** said that customs and practices in Parliaments around the world depended on the history and traditions of each country or of their former colonisers. He wondered if there were not also more universal traditions, towards which all parliaments should strive, such as the promotion of democracy, good governance and popular welfare.

Dr Hafnaoui AMRANI, President, thanked members for their useful contributions and asked Mrs BIESHEUVEL-VERMEIJDEN AND Mr HARRIS to reply.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN (Netherlands)** thanked all those who had contributed to the debate. She agreed with Mr CYITATIRE that there were universal values as well as specific national traditions. Replying to Mr BOSC, she said that broadcasting could be a wonderful instrument to show people, especially young people, how Parliament worked and how it differed from Government. Research had proved that this was the case.

**Mr Ian HARRIS (Australia)** added that his Parliament experienced the 'doughnut' effect on behalf of the television cameras. Members in marginal seats were often placed at a camera angle so that they could appear in the same shot as their party leader. Anecdotally, Parliament House was the centre of the nation's feelings, be they celebration or mourning. Question Time was the most viewed segment of proceedings, but this did not show Parliament at its best, and there were therefore many complaints.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN** noted that in the Netherlands, clerks did not wear robes or wigs. Mobile phones were allowed in the Chamber and in Committee rooms, but it was not permitted to speak loudly. Members generally used them to communicate by text message. Members were not allowed to use laptops in the plenary, although party group officials could. Parliament was for debate, not for other work. There was also the same kind of paper messaging system as in Zambia.

**Mr Ian HARRIS** said that the House of Representatives had dispensed with wigs some time before - just as Mr Harris had begun to need one! Gowns remained, however, as a sign of the fact that clerks were not elected members. Laptops were allowed in the Chamber and they were sometimes used to challenge the Speaker on abstruse points of procedure. Text messaging was allowed, as well as paper notes.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN** mentioned an embarrassing occasion on which she had been asked on a live Chamber microphone if she had remembered her nightrobe. Compromises were always necessary in the Dutch Parliament, where no one party ever had a majority. Political party groups spent a lot of time reaching a consensus, and it was rare that a Member voted against their own party line.

Mr Ian HARRIS said that his Members were very sensitive to the kinds of issue raised by Mr ROQUES. The press were allowed into the galleries for significant votes.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN** said that the Dutch Parliament did its best to make special arrangements for Members with special needs, despite the age of the parliamentary buildings. She could, if required, talk about a paperless Chamber for hours.

**Mr Ian HARRIS** said that he loved the idea of drums instead of bells, and suggested a didgeridoo in Australia. Clerks in the Australian Parliament could not communicate

electronically directly with Members in the Chamber. Nor would Members accept electronic chips to follow their movements.

**Mrs Jacqueline BIESHEUVEL-VERMEIJDEN** said in conclusion that there was an attendance list in the Dutch Parliament to ensure a quorum was present. She hoped that she had answered other Members' questions in her earlier remarks.

**Mr Ian HARRIS** said that he thought that promotion of parliamentary traditions could be achieved by former Members' associations, and by current parliamentary staff. Responding to Mr KOTO SOUNON, he noted that the Speaker of the Australian Parliament had encountered opposition when he had suggested looking at the form of the prayer at the beginning of the parliamentary sitting. There were certain principles that applied across all Parliaments, as suggested by Mr CYITATIRE. Australia had borrowed certain traditions, despite being based in the Westminster tradition: they had been described as Washminster and Ozminster. It was important not to be bound by traditions, while at the same time needing to respect them.

**Dr Hafnaoui AMRANI, President**, thanked Mrs Jacqueline BIESHEUVEL-VERMEIJDEN and Mr Ian HARRIS as well as all the members present for their numerous and useful contributions.

## 4. Communication by Mr Vladimir SVINAREV, Secretary General of the Council of Federation of the Federal Assembly of the Russian Federation, on "The interaction of the Council of the Federation with the legislative assemblies of the subjects of the Russian Federation in the law making processes"

**Dr Hafnaoui AMRANI, President,** invited Mr Vladimir SVINAREV, Secretary General of the Council of Federation of the Federal Assembly of the Russian Federation, to present his communication, as follows:

"1. **Ensuring the representation of interests of the citizens as the members of the territorial communities - the subjects of the Federation is one of the major justifications for the existence of the second chamber in a parliament of a federative state**. This thesis has always had a special significance for such multicultural and multinational state like Russia. In 15 years of its work the Council of the Federation managed to build a system of full-fledged participation of the regions in the formation and conduct of the general state policy. That has been facilitated by the finely tuned mechanism of interaction of our chamber with the subjects of the Federation, which is carried out in a great number of directions. The interaction at the federal level via the regions' representatives at the Council of the Federation with the purpose of promotion of the regional legislative initiatives is the most important of those.

2. Those who drafted the Constitution of the Russian Federation of 1993 established such mechanism of formation of the Council of the Federation according to which there are two representatives from each subject of the Federation in the chamber: one from the representative body of state authority and one from the executive one.

One should note that in their search for an optimal balance between the democratic legitimacy of the chamber members, on the one hand, and their ability to effectively represent the interests of the authority bodies of their regions, on the other hand, the Russian law-makers changed the model of formation of the Council of the Federation three times, each time remaining within the frameworks of the constitutional norms. At present the members of the chamber - the representatives of the regional parliaments - are elected by the respective legislative bodies. The representatives of the executive authority of the subjects of the Federation are appointed by the heads of the respective regions on the condition that the legislative assembly of the subject of the Federation does not oppose the appointment of that candidate.

At the end of 2008 President of Russia Dmitry Anatolievich Medvedev initiated a principal specification of that procedure of formation of the Council of the Federation, according to which the circle of the seekers of the membership in the chamber should be limited to the deputies of the regional legislative authority bodies and the municipal entities of a subject of the Federation. The relevant Federal Law was supported by both chambers of the parliament and signed by the President. As a result, starting from the 1st of January of 2011 «people who have gone through a procedure of public election, have experience of working with voters and represent not only the regional authorities but most importantly represent the region's people will work in the Federation Council»[17]. According to the common opinion, the adopted law will assist not only the democratization of the procedure of formation of the Council of the Federation, but also the bringing of the senators closer to their subjects. That is also in accordance to the general vector of formation of the upper chambers of the parliaments of the federative states.

3. **As the chamber of the regions the Council of the Federation pays a special attention to the issue of improvement of the forms and methods of its interaction with the subjects of the Federation, their legislative bodies. It should be noted that under the Constitution the regional parliaments have the right of legislative initiative.**

Of great importance for ensuring the united legal space of the country was the creation in 2002 of the Council of the Legislators - an advisory body under the Council of the Federation, which consists of the heads of the legislative assemblies of the subjects of the Russian Federation. It has become an effective coordinating institution actively promoting the harmonization of the interests of the center and the regions, the advancement of the legislative initiatives of the state authority bodies of the subjects of the Federation.

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[17] См.: Address of the President of the Russian Federation to the Federal Assembly of the Russian Federation. The 5th of November of 2008.

At the current stage, when the overcoming of the consequences of the global financial and economic crisis is the main guideline for the work of the legislative bodies of all levels, **the Council of the Legislators undertakes the work of promotion of the best practices of formation of the anti-crisis regional policies**.

I should remark that in the complex conditions of the crisis the regions have already accumulated quite a few positive experiences in the prevention of negative phenomena in the economy and the social sphere. A whole number of timely proposals addressed to the federal bodies of state authority has been formulated. Promotion of the regional experience and regional initiatives in the interests of the whole country is a task of the Council of the Federation."

**Dr Hafnaoui AMRANI, President**, thanked Mr Vladimir SVINAREV for his communication and invited members present to put questions to him. He asked about the reform of the Council of Federation. Had the reform affected the prerogatives of the Council? He also asked who presided over the Council of Legislators, and what the length of their term was. He asked further for information about relations between the Council of Legislators and the Council of Federation.

**Mr Christoph LANZ (Switzerland)** asked what role the Council of Legislators had to play after the recent reform of the Council of Federation.

**Ms Claressa SURTEES (Australia)** wondered whether or not the Council of Federation had committees, or operated only in plenary session.

**Mr Said MOKADEM (Maghreb Consultative Council)** also asked about the links between the Council of Federation and the regional councils. How did legislation come into force? Was it adapted to regional circumstances?

**Mr Vladimir SVINAREV (Russian Federation)** replied that the changes to procedures in the Council of Federation resulted from changes to the Russian Constitution altering the relations between the executive and legislative authorities. The Government was now obliged to report annually to the Council. Each subject of the Federation was now represented in the Council by two people, one representing the regional executive authority, the other the regional legislative authority. Representatives of the regional executive authorities were currently appointed by that authority. From 2011, however, all delegates would have to be elected at either the regional or municipal level. Thus, in due course, all members of the Council would have to have received a public mandate. The Council of Legislators was an advisory body, including the Chairs of all regional legislative authorities. It served the Council of Federation, and was chaired by the Speaker of that Council. The main outcomes of its meetings were proposals to improve existing legislation.

There were 27 permanent committees and commissions of the Council of Federation, each with different competences and remits. For example, there were committees on constitutional legislation and on judicial issues. These committees received all draft

laws arriving from the lower House and put proposals to the plenary. It was for the Council of Federation to regulate the relations between federal and regional legislative authorities. Draft laws to the same effect were also adopted by regional legislatures. Regional law could replicate provisions in the federal law, but could not contradict them.

**Dr Hafnaoui AMRANI, President**, thanked Mr Vladimir SVINAREV for his communication as well as all those members who had put questions to him.

## 5. Review of the Rules of the Association

**Dr Hafnaoui AMRANI, President**, informed the Association that discussions had been taking place within the Executive Committee on a review of the rules of the Association, but there were numerous points that remained to be addressed. He said that members would be informed as soon as possible of the results of these discussions, before proposals were submitted to the Association.

## 6. Administrative and financial questions

**Dr Hafnaoui AMRANI, President**, proposed that Mrs Hélène PONCEAU be accepted as an honorary member of the Association.

The proposal was *agreed* to.

## 7. Examination of the draft Orders of the Day for the next session (Geneva, Autumn 2009)

**Dr Hafnaoui AMRANI, President**, presented the draft Orders of the Day for the next session (October 2009), as approved by the Executive Committee:

1. Possible subjects for general debate:

   "The Office of Secretary General" (Mr Ian HARRIS, Former President of the ASGP, Clerk of the House of Representatives of the Parliament of Australia)

   "Administrative self-evaluation by Parliaments" (Dr Hafnaoui AMRANI, President of the ASGP, Secretary General of the Council of the Nation of Algeria)

2. Communication by Mr Edwin BELLEN, Deputy Secretary for Legislation and Mrs Emma Lirio REYES, Secretary of the Senate of Philippines: "Executive privilege a tool of executive non-cooperation in congressional inquiries and exercise of oversight functions: the recent experience of the Philippines"

3. Communication by Mr Felix OWANSANGO DAECKEN, Secretary General of the Senate of Gabon: “Parliamentary immunity: the experience of Gabon”

4. Communication by Dr Georg POSCH, Secretary General of the Parliament of Austria: “The Demokratiewerkstatt in the Austrian Parliament – take part, influence, play your part.”

5. Communication by Mrs Adelina SÁ CARVALHO, Former President of the ASGP, Secretary General of the Assembly of the Republic of Portugal: “A hemicycle for the 21st century”

6. Communication by Mrs Martine MASIKA KATSUVA, Secretary General of the Senate of the Republic of Congo: “The relations between the Senate and the provincials Assemblies”

7. Communication by Mrs Jacqueline BIESHEUVEL-VERMEIJDEN, Secretary General of the House of Representatives of the States General: “The process of Parliamentary self-reflection in the House of Representatives of the States General”

8. Communication by Mrs Doris Katai Katebe MWINGA, Clerk of the National Assembly of Zambia: “Contempt of the House by Members of Parliament – The Zambian experience”

9. Communication by Mr Constantin TSHISUAKA KABANDA, Secretary General of the National Assembly of the Democratic Republic of Congo: “Election of the Bureau of a legislative chamber following the collective resignation of its members during their term of office”

10. Administrative and financial questions

11. New subjects for discussion and draft agenda for the next meeting in Bangkok 2010

The draft Orders of the Day were *adopted*.

## 8. Closure of the Session

**Dr Hafnaoui AMRANI, President**, thanked the hosts for their warm welcome and for the excellent organisation of the session. He also thanked the Joint Secretaries, interpreters, technicians and Ethiopian assistants for their valuable help. He said that it had been a very interesting, enjoyable and instructive session, and he thanked members for supporting him during his first meeting as President.

*The sitting rose at 12.25 pm.*