## IV Time reserved for non-government business

### Communication from Mr Pierre HONTEBEYRIE (France), Marrakech Session (March 2002)

**Mrs Adelina SÁ CARVALHO, President,** invited Mr Pierre HONTEBEYRIE to take his place to present his communication on time reserved for non-government business.

**Mr. Pierre HONTEBEYRIE** said that the Constitution of 1958, Article 48, 3rd paragraph, guaranteed the position of private members' time in the orders of the day and that the Rules of the National Assembly provided that in addition to orders of the day giving priority to government business, it could set its own orders of the day. In practical terms this meant that almost all the orders of the day related to government matters. He noted that between 1968 and 1995 in a normal year the number of private members' bills which became law rarely exceeded ten, whereas in any year government bills which became law could be numbered in the hundreds. This led to a situation which many members found hard to accept.

So when the Constitution was revised in 1995, for unconnected reasons, at the suggestion of various members, a change was made to allow the Assembly to settle its own priority on its orders of the day at one sitting a month.

Quite apart from the changes to procedure which this led about, this change illustrated how parliamentary assemblies could function to bring about reform. He would examine first the measures which had to be taken to put the change into effect, secondly the ways and forms which the measures took and thirdly how the new measures worked.

### I Bringing the new procedure into effect

Bringing the Constitutional reform into effect required several measures relating to the principal stages of legislative procedure.

#### 1. Insertion in the orders of the day

Article 48 of the Constitution laid down only in its new paragraph 3 that one sitting a month would be reserved for orders of the day fixed by each assembly. Normally, apart from requests from the government, a matter is not put down for public session until the assembly has decided on the proposal from the Conference of Speakers, which receives requests.

One of the first questions to be decided was who would receive such requests.

It was decided by analogy with what happened with supplementary matters on the orders of the day, that chairmen of permanent committees who had received texts before their examination in plenary session, or chairmen of groups to which the authors of such proposals might have an interest in such matters, would be the ones to make the requests. Nonetheless and differently from what happens with supplementary matters on the orders of the day, requests to the Conference of Speakers by such chairmen of groups would not be put to formal decision b y the assembly, since

a vote by a hostile majority against such a proposition would be to obstruct the procedure which should take place under the Constitution.

## 2. The sitting reserved to orders of the day for private members matters

A more delicate question was which day should be reserved for the sitting for non-government business.

Up till 1995, the National Assembly devoted its time according to its Rules to the almost exclusive examination of government bills or to questions to members of the government. Matters were complicated by the fact that in addition to the one day a month given for parliamentary or private members initiatives, a second sitting would be provided for supplementary orders of the day.

For this reason, at the start of the parliament, non-government business was put down for at first Friday morning and then Friday morning and afternoon. This fourth weekly sitting day, even on a monthly basis was both against the practice of the assembly and outside its Rules. It was also disliked by the members, even though it had rapidly become the occasion most exceptionally on which a majority of members of the opposition had managed to reject a draft private members bill put down in the orders of the day at the request of the majority party.

An alternative was to allocate two sittings on Thursday morning each month. This came out of government time. This was hardly more favourable because that took away from the time usually taken up by party meetings or oral questions to which party groups were particularly attached.

The final solution which was adopted was to allocate each month one sitting of Tuesday morning to respond to the new constitutional demands and one sitting on Thursday morning for the supplementary orders of the day. In response to this the time for oral questions on Tuesday morning was extended so that instead of ending at 1.30 pm it ended at 4.00 pm.

As far as dividing up the various sessions between the parties was concerned, because there were nine sitting months, there were nine days to be divided up between five or six political groups that were registered. Each political group saw itself as entitled to one of those monthly sittings. Two additional sittings were given to the group with the most members and one additional sitting to the group with the second most members. The three majority groups therefore had five (3 + 1 + 1) sittings and three opposition groups four (2 + 1 + 1).

Each monthly sitting was reserved for a group according to a rule which takes account both of the number and the principle of alternating between majority and opposition groups.

## 3. Organization of the sitting

As far as the Tuesday morning once a month sittings were concerned, the Rules of the Assembly set out that sittings in the morning start at 9.00 am and end at 1.00 pm. Several measures had been taken to ensure that the debate should end within its time limit of four hours or at some stage before that. So it was decided that general discussion, that is to say speeches by party representatives, would be fixed at one and a half hours to allow the rapporteur from the committee

and the ministry the time to speak as well as to allow time for debate on the various articles an amendments.

However, the Assembly Rules allowed that any text might give rise to three procedural motion relating either to the unconstitutionality of the proposals ,to suggest that they be rejected in thei entirety, or to refer them to a committee and such a motion gave a right to the mover to speak fo an hour and a half as well as giving right to the relevant committee and the government to speal and to each party group for five minutes to explain their reasons for voting in a particular direction.

Clearly, full use of these rights would obstruct the examination of a text according to th constitutional rule. For that reason it was decided that such procedural motions would be tim limited to a quarter of an hour for the mover.

Other changes were made to guarantee that the debate could take place in its entirety. Normally text sent off to a committee would not be put back to plenary session on the basis that th committee would reflect the political composition of the entire Assembly and therefore there woul be no point in repeating any votes in plenary. In order to bring into effect the new constitution rule it was decided to revive an old and little used rule which allowed examination of texts in publi session even though they had been examined in committee.

A further change was made relating to the terms of Article 40 of the Constitution which prevente proposals by members of either House to lessen the charges imposed by government or to creat another public charge. If such a proposal was declared to contravene this rule, procedure on tha immediately stopped, and any member of the House or any member of the government coul demand at any time that the Assembly vote on that rule.

In order to prevent this from obstructing the procedure under Article 48 of the Constitution, it wa decided that this question would only then be taken in plenary session at the end of the genera debate.

### 4. Contents of the orders of the day

The drafting of the third paragraph of Article 48 of the Constitution was in very general terms and leaves a lot of scope for initiative as far as setting out the orders of the day were concerned. Most of such orders of the day relate to private members' bills. Nonetheless, there was no reason why they should not take the form of questions to the government or debates on general themes or even on draft government bills.

So far no party had used the possibility of debating a draft government bill and only two had used to talk about the organization of debates. In addition, on only two occasions had this nev procedure been used for proposing the creation of committees of inquiry.

### 5. The procedure to be adopted

As had been seen, the time allowed for non-government business was a sitting of four hours but fc private members' bills to become law they had to be adopted in identical terms by the Nationa Assembly and by the Senate. This raised the question of the future of those texts which wer

being examined, apart from the monthly sitting which was guaranteed to them under the Constitution. The practice had rapidly grown up that groups requested examination of a text in the course of a sitting. Nonetheless, it might be that one sitting was not enough to finish examination of that text. From this two situations could occur. The party group might decide to give up the next sitting which it had at its disposal to pursue the discussion in course. The government in turn might decide to pick up the idea and put it down for government business. It went without saying that this second course of action was usually taken when the private members' proposals had been put down by the majority party and that the first situation was mainly reserved for propositions by the opposition.

Rather more difficult to solve was the problem of what happened to texts which had been adopted by the National Assembly. When the procedure was put in place in previous legislatures and when there was a majority which was the same in both houses, it was decided to base the procedure on an exchange of letters between the respective speakers of each house, on the requirement for one Assembly to take charge of a particular matter. It was worth noting that neither the speaker of the National Assembly nor that of the Senate had the power to intervene directly in the choice of which initiative could be put on the orders of the day. Nonetheless, of course, both speakers maintained a certain power of influence.

The fact that under the present legislature the majority in power in each house was different made it less certain that one or other of them would be able to place a particular matter on its orders of the day.

There was a similar correspondence between the Speaker of the National Assembly and the Prime Minister underlying the interest in involving the government in pursuing the examination of texts produced by both Assemblies. Nothing prevented the government from putting in the orders of the day a matter raised under the non-government business procedure. Obviously it was more likely to do this relating to a matter coming from its own party than from the opposition.

## II. The nature of the decisions undertaken

All the above showed the number and complexity of the decisions which were demanded as a result of the new constitutional disposition. It was worth examining some of these.

As far as changes in the Rules of the Assembly were concerned, three only were required to be introduced as a result of the new third paragraph of Article 48. One was relating to the decision about the date of the monthly sitting which would be set by the Conference of Chairmen. The second change related to those who were able to put forward propositions on the orders of the day. As had been seen this related to the chairmen of the party groups and chairmen of committees. The third consisted of fixing on Tuesday mornings, in alternance with oral questions, the monthly sessions reserved to private members' initiatives.

All the other decisions which had to be taken were taken by the Conference of Chairmen. Under the Rules of the National Assembly, the Conference of Chairmen had the power to fix the orders of the day relating to organisation of general debates on texts and debates on declarations of the

government, or fixing and arrangements for oral questions. The Bureau of the Assembly had a powers to organise the deliberations of the Assembly under the Assembly Rules.

This, however, was not applied in respect of non-government business. This was a result c modern practice that all the relevant questions were dealt with at the Conference of Chairmer Furthermore, the Conference of Chairmen met every week, much more frequently than the Bureat This meant that it could take decisions when they were required. Finally, it also included th chairmen of party groups, unlike the Bureau, who were therefore associated with importar decisions directly concerning the way in which they carried out their duties.

None of the decisions taken in the Conference of Chairmen had given rise to a vote. They ha always been on the basis of consensus between representatives of the majority and the opposition Furthermore, these decisions were decided in the presence of a member of the government, an who therefore was able to intervene relating to matters which might affect the prerogative of th Executive.

The decisions of the Conference of Chairmen had been inspired by a double preoccupation: t assure the effectiveness of the constitutional arrangement and to guarantee the rights of th opposition.

For example, the Conference of Chairmen took decisions to make sure that the time limit of fou hours for a sitting was observed. In addition, it ensured that there was a fair division of tim between the various party groups. From time to time, the Conference of Chairmen departed fror the letter of the law, for example by reserving only for chairmen of party groups the possibility c requesting matters to be included in the orders of the day and to exclude chairmen of permaner committees, contrary to the terms of Article 48 of the Rules.

Furthermore, the Constitution only set down that the orders of the day should give priority to nor government business. The Conference of Chairmen had in fact established that only such matter should go down on the orders of the day for those sittings.

In addition, in order to observe the constitutional monthly sittings pattern, because of interruption c the work of the Assembly or, as in this year, for the reduction of the length of the session becaus of presidential or parliamentary elections, a so-called monthly sitting might in fact take plac several times in a particular month, or in turn not actually take place during one particular month a all.

## III Analysis and conclusion

The new procedure was by no means negligeable.

The most visible result was the great increase in the number of private members' bills adopted a law in comparison with government bills. Before the constitutional revision of 1995, the fir represented at best hardly 10% of laws agreed. Henceforth the number has risen to the order c about 30%.

Nonetheless, this should not create any sense of illusion. Draft bills put down by the government were very often long and complex texts. They might contain one hundred articles or more. By contrast, private members' bills usually aimed to solve a particular problem. They had no ambition to respond to deep seated problems with society, or to regulate complex matters, or to reform entirely a large section of the law. So the largest body of law created in each year by parliament remained of government origin. It was not easy to make a statement about the type of private members' bills which were examined in the framework of the new sittings arrangements. Nonetheless, there were some interesting statistics. In the present legislature, that is to say, between October 1977 and February 2002, 76 texts had been examined in the course of 71 sittings, to which the third paragraph of Article 48 of the Constitution applied, and 26 sittings under the rules relating to additional parliamentary sittings. In total 76 drafts had been examined, of which 70 were started by members and 6 resulted from a transmission from the Senate.

Thirty-three draft private members' bills were agreed to which became law and there were two proposals for creations of a committee of inquiry, with the majority groups being the originators of 27 of those proposals. 26 texts had been disagreed to, of which 22 were put forward by opposition groups. Finally, 15 texts were still pending in one or other Assembly.

There was always a stock of private members' bills waiting in the Assembly, which might be put on the orders of the day, but frequently when the time came for the sitting which had been allocated to them political groups would put forward new drafts in an effort to seize on newsworthy topics.

Many of the draft motions put forward by opposition groups aimed to put the government and its majority in difficulty, to criticize government policy in one or other area and to reflect public opinion.

Propositions put forward by majority groups had a different aim. Nonetheless, it might happen that some political groups would take the opportunity to put forward a question, which the government itself was not ready to see debated, or at least did not wish to be debated at that particular time. It might well be that the government uses this procedure for putting forward, under the form of a private members' bill, a particular draft, usually limited, which it wished to see progress quickly. The parliamentary procedure which applied was, in fact, rather more relaxed. Such drafts were subject to the filter of financial admissibility, but they were not examined by the Council of State and were not required to be agreed to by the Council of Ministers, as formal government bills were before they are placed with the Bureau of each Assembly.

For various reasons described above particularly because of press interest private members' draft laws tend to be debated by more numerous groups of members than is normal. It was necessary for members to demonstrate both that they supported proposals coming from their own ranks and for members of the majority group to be in sufficient number to oppose in votes which were contrary to their political programs.

The monthly sittings of private members' proposals had thus become one of the more exciting moments in the life of the National Assembly. Even if, because of the parliamentary arithmetic, various proposals, particularly from opposition groups, had no chance of succeeding, nonetheless they allowed a discussion in the presence of a minister who was in charge of the matter, a lively debate and a discussion which would end with a vote.

Previously the rationalized parliamentarism of the Fifth Republic did not permit such procedure and the Rules essentially limited debates to government matters. Henceforth, such sittings base on private members' initiatives were rather more similar to the procedure, which took place unde the Third and Fourth Republics. These sittings had undoubtedly contributed to an opening up of new type of freedom of debate within the National Assembly.

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**Mrs. Adelina SÁ CARVALHO, President**, thanked Mr. Pierre HONTEBEYRIE for his interestin communication and invited members to ask questions.

**Mr. Jean-Claude BECANE** (France) said that the constitutional arrangements applied equally t the Senate. Within the Second Chamber the rules set down, nonetheless, that the sitting given u to non-government business should last for an entire day. That allowed the orders of the day t include more than one private members' bill and indeed to organize oral questions with a debate Furthermore, it was not on any particular fixed day.

**Mr. Pierre HONTEBEYRIE** recognized that the same disposition gave rise to different practice within the National Assembly and the Senate.

**Mr. Prosper VOKOUMA** (Burkina Faso) thought that political groups complained that they did no have enough time to prepare laws. He asked whether the establishment of a single annual sessior of nine months influenced the decision to create, on the orders of the day, a section for non government business. He explained that in his country, private members' bills were mainly abou questions relating to the status of parliamentary members.

**Mr. Pierre HONTEBEYRIE** said that previously the French Parliament had had two annua sessions, each one of three months' length. Nowadays, members were only willing to sit for three days a week so there was always not enough time. The time for examining private members' bills resulted from a re-organisation of the time for oral questions without debate.

**Mr. Mamadou SANTARA** (Mali) said the question of the orders of the day and the priority o particular matters on it was different in Mali. In order to draw attention to the urgency of a particular draft bill, the government, which was represented at the Conference of Chairmen, had to put in a written request. He asked whether the loss of power by the Bureau in favour of the Conference of Chairmen was a move of influence from the sitting to the Conference, which decided the orders of the day. He thought it should be possible for a member to raise the question in plenary session about the examination of a motion relating to admissibility. He said that in France, such a motion could only be discussed at the end of the general debate. He thought that was rather an odd application of the rule.

**Mr. Pierre HONTEBEYRIE** recognized that normally the orders of the day should be submitted to the Assembly, but it was true that in France that was never discussed. Everything was either accepted or rejected. If it were possible to refuse inclusion of a particular point of a private members' initiative on the orders of the day, then the new disposition would be made inoperable. When a private members' draft bill was deposited, its financial admissibility was examined in a

liberal way. It is still possible to have a debate, unless the government raised Article 40 of the Constitution. In such a case the Bureau of the Committee on Finances was consulted. If it agreed with the government, then the private members' draft bill disappeared. Any private member could use this procedure. For this reason it was decided by general agreement that the question of financial admissibility should be examined at the latest possible stage.

**Sir Michael DAVIES, former President** (United Kingdom) said that although the British Government in theory had no right of priority in the orders of the day in the House of Lords, obviously the reality was very different. He asked whether a private member could put something on the orders of the day for plenary sitting without its being examined in advance by the committee. Further, was it possible to examine a question and debate it without its being supported by a text? Finally, he wanted to know what the term "rationalized parliamentarism" meant?

**Mr. Pierre HONTEBEYRIE** said that any member could put down a private members' bill. Out of 577 members, only 6 belonged to a political group. Nonetheless, it was only on the basis of a report from the committee that there could be a presentation in public sitting on a private members' motion. It was only possible in France to examine draft government or private members' bills and resolutions, for example, calling for the creation of committees of inquiry and so on. The notion of rationalized parliamentarism was difficult to explain in a few words. It was a typically French notion. There had been several Constitutions since 1875, Third, Fourth and then the Fifth Republic. The final periods in the Third and Fourth Republics had been characterized by great governmental instability. At that time there was no limit on the number of committees. Today, the Constitution limited the number of committees to six in each chamber. It was no longer, for example, possible to vote on simple motions because these previously led to the fall of governments. When the government organized a debate, that could only be followed by a vote for that reason. So a constraint on the power of parliament and reinforcement of the powers of government were the essence of rationalized parliamentarism.

**Mr.Carlos GUELFI** (Italy) said that in Italy there was a sense that the powers of government were increasing as parliament was finding increasing difficulty in scrutinising its activities. He thought that private members' motions were an important method of scrutiny. This had been tried in Italy where in particular there was an opposition day and the opposition could propose the subjects. Clearly, these did not lead to agreement unless they were on uncontroversial matters.

**Mr. Pierre HONTEBEYRIE** thought that the new arrangement was a very good thing for the National Assembly. It had revivified the political debate about subjects, which the government did not feel it was necessary to examine or deliberate on at any particular moment. Even if a negative vote ended the work done it nonetheless had the merit of shining a light on a particular subject.

**Mr. John CLERC** (Switzerland) asked about the circumstances in which the reform had come to be. According to the communication, it seemed that it had rather been the fruit of circumstances. What was the principal matter which had led to the constitutional revision? What types of texts are adopted? What were the subjects dealt with? Furthermore, each time that France changed its Constitution, it moved away from the De Gaulle and Michel Debré model, and he wondered whether it was insidiously returning towards the Fourth Republic.

**Mr. Pierre HONTEBEYRIE** said that the reform was a corollary of the establishment of the single annual session in 1995. Discussions about constitutional matters often led to the adoption o arrangements, which were different from those originally thought of. Some thought it was a usefu opportunity, as all reform required the agreement of numerous parties between parliament government and the President of the Republic. A compromise acceptable to everybody wa always looked for in order to avoid the initial project from being blocked. Generally, that was greec to when dealing with texts which were put forward by private members and which related t particular subjects. As far as a probable return to the Fourth Republic was concerned, there was basic difference. At present there was a majority-based system. Previously, small parties in the centre could make the difference in supporting or not large parties. It was true that there was move away from the founding fathers of the Fifth Republic. Thus the system of two sessions fo three months each was aimed to prevent control of the government by the Assembly. With the single session of nine months, this control henceforth was re-established.

**Mr. Everhard VOSS** (Germany) mentioned the impossibility of being able to increase a public charge on the basis of a private members' bill or an amendment. He asked who decided whethe this rule was infringed or not and how that worked in practice in parliamentary life?

**Mr. Pierre HONTEBEYRIE** said if that disposition disappointed members it did not limit them i their powers as much as they thought. Amendments were sent to the Committee on Finance. It Chairman decided on admissibility with regard to Article 40 of the Constitution. Of course, he wa assisted in this by a number of staff. As far as private members' bills were concerned, there was first form of filter within the Bureau of the Assembly. Whether the draft bill was examined or not, i might still be opposed by the government on the basis of admissibility when it came up for debate At that moment it was the Bureau of the Committee on Finance which decided.

**Mr. Ibrahim SALIM** (Nigeria) was astonished that there were so many restrictions relating to th examination of motions in France. He wondered whether the government alone could reflect th interests of the people rather than include the opposition which equally had a role to play.

**Mr. Pierre HONTEBEYRIE** said that it was still the case that there were other means for member of parliament to speak. Furthermore, draft members' bills which were not debated could still b published and gain publicity. Each week there were two sittings where there were questions to th government. The procedure relating to committees of inquiry could also satisfy certain aspirations Finally, control of the government if reinforced by the development of specific inquiries. No mean alone was sufficient, but as a totality they could allow scrutiny of the government.

**Mr. Hans BRATTESTÅ** (Norway) compared the orders of the day of parliamentary origin with th English term non-government business. He said that although Norway had a strictly governmen regime, that did not prevent the development of draft private members' bills. This allowed member to publish at a small cost his opinions, even if they did not reach a happy conclusion i terms of procedure. This took up the time of ministers who had to be present in the chamber whe they were being examined. He asked about the practice in France. What rank of minister had t be represented in the public session.

**Mr. Pierre HONTEBEYRIE** replied that it was the practice that a member of the governmer should always be present in the course of a debate. For the most part it was the minister who wa

responsible for the matter concerned. The government would argue in favour or against the private members' draft bill. It could propose amendments. The practice was therefore that the government was always represented and could put forward its opinions when private members' draft bills were being examined.

**Mrs. Adelina SÁ CARVALHO, President,** thanked once again Mr Pierre HONTEBEYRIE for his communication. She wished to underline that it would probably be his last speech as a members of the Association, because in the course of the following summer he would retire and leave his duties in the French Parliament. She emphasised how his contribution to the Association has always been pertinent and rich. She recognised his complete knowledge of parliamentary life and also of his great kindness. It was with great sadness that she would see him leave. Pierre HONTEBEYRIE had been, until recently, a member of the Executive Committee of the Association, and his work as a member of that body had always been extremely appreciated. Nonetheless, in losing in the near future a colleague she knew that she was keeping Pierre HONTEBEYRIE as a friend. She was convinced that many present would share this feeling.