UNION INTERPARLEMENTAIRE

INTER-PARLIAMENTARY UNION

Association of Secretaries General of Parliaments

MINUTES OF THE AUTUMN SESSION

GENEVA

17 – 19 OCTOBER 2005

ASSOCIATION OF SECRETARIES GENERAL OF PARLIAMENTS

Minutes of the Autumn Session 2005

Geneva
17 – 19 October 2005

LIST OF ATTENDANCE

MEMBERS PRESENT

Mr Boubeker Assoul	Algeria
Mr Hafnaoui Amrani	Algeria
Mr Valenti Marti Castanyer	Andorra
Mr Juan Hector Estrada	Argentina
Mr Ian Harris	Australia
Mr Md Lutfar Rahman Talukder	Bangladesh
Mr Robert Myttenaere	Belgium
Mr Luc Blondeel	Belgium
Mrs Keorapetse Boepetswe	Botswana
Mr Ognyan Avramov	Bulgaria
Mr Prosper Vokouma	Burkina Faso
Mr Samson Ename Ename	Cameroon
Mr Marc Bosc	Canada
Mr Carlos Hoffmann Contreras	Chile
Mr Carlos Loyola Opazo	Chile
Mrs Martine Masika Katsuva	Congo (Dem Rep)
Mr Constantin Tshisuaka Kabanda	Congo (Dem Rep)
Mr Brissi Lucas Guehi	Cote d'Ivoire
Mr Bruno Haller	Council of Europe
Mr Peter Kynstetr	Czech Republic
Mr Jan Vodrazka	Czech Republic
Mr John Argudo Pesantez	Ecuador
Mr Heike Sibul	Estonia
Mr Jarmo Vuorinen	Finland
Mrs Hélène Ponceau	France
Mr Xavier Roques	France
Mr Raymond Okinda	Gabon
Mrs Marie-Françoise Pucetti	Gabon
Mr Kenneth E.K. Tachie	Ghana
Mr Helgi Bernodusson	Iceland
Mr P.D.T. Achary	India
Dr Yogendra Narain	India
Mr Faisal Djamal	Indonesia
Mr Paolo Santomauro	Italy

Mr Fayez Al-Shawabkeh	Jordan
Mr Samuel Waweru Ndindiri	Kenya
Mr Ha Sung Jun	Korea (Rep of)
Mr Adnan Daher	Lebanon
Mr Claude Frieseisen	Luxembourg
Mr Mamadou Santara	Mali
Mr Namsraijav Luvsanjav	Mongolia
Mr Abdeljalil Zerhouni	Morocco
Mr Henk Bakker	Netherlands
Mr Moussa Moutari	Niger
Mr Nasiru I. Arab	Nigeria
Mr Umar Sani	Nigeria
Mr Hans Brattestå	Norway
Mr Muhammad Rafiq	Pakistan
Mr José Carlos Smith	Panama
Mrs Halima Ahmed	Parliament of the ECOWAS
Mr Oscar Yabes	Philippines
Mrs Adeline Sa Carvalho	Portugal
Mrs Cecilia Paduroiu	Romania
Mr Peter Tckachenko	Russian Federation
Mr Francisco Silva	Sao Tome & Principe
Mrs Marie-Josée Boucher-Camara	Senegal
Mr Djordjije Radulovic	Serbia & Montenegro
Mr Lovro Loncar	Slovenia
Mrs Priyanee Wijesekera	Sri Lanka
Mr Ibrahim Mohamed Ibrahim	Sudan
Mr Anders Forsberg	Sweden
Mr Ulf Christoffersson	Sweden
Mr John Clerc	Switzerland
Mr Pitoon Pumhiran	Thailand
Mr Sompol Vanigbandhu	Thailand
Mr Aleksandar Novakoski	The FYR of Madedonia
Mr Manandoh Kokou Kama	Togo
Mr Valentyn Zaichuk	Ukraine
Mr Jugo Rodriguez Filippini	Uruguay
Mr José Pedro Montero	Uruguay
Mr Eike Burchard	W.E.U.
Mr Abdullah Ahmed Sofan	Yemen (Republic of)
Mrs Doris Katai Mwinga	Zambia

SUBSTITUTES

Ms Claressa Surtees (for Mr B. Wright)	Australia
Ms Judy Middlebrook (for Ms H. Penfold	Australia
Dr Joseph Wirnsperger (for Dr G. Posch	Austria
Mme Mariam Pitroipa (for Mr P. Vokouma)	Burkina Faso
Ms Jacqueline Peillard (for Mr. C. Loyola Opazo)	Chile
Mme Martine Boitard (for Mr Y. Michel)	France
Mr Olivier Delamarre-Deboutteville (for Mr A. Delcamp)	France
Mr Ulrich Schöler (for Dr Zeh)	Germany
Mr George Papakostas (for Mr G. Karabatzos)	Greece
Ms Katalin Adam Somfai (for Mr I. Soltesz)	Hungary
Ms Cait Hayes (for Mr. K. Coughlan)	Ireland
Mr Roberto Sorbello (for Mr U. Zampetti)	Italy
Miss Anne Medecin (for Mrs V. Viora-Puyo)	Monaco
Mr Krishna Prasad Pandey	Nepal
Mr David Williams (for Mr D McGee)	New Zealand
Mr Amjed Pervez (for Mr M. Raja Amin))	Pakistan
Ms Anna Szklennik (for Mr A. Witalec)	Poland
Mr Wieslaw Staskiewicz (for Mr J. Mikosa)	Poland
Mr George Petricu (for Mr C.Dan Vasiliu)	Romania
Mr Yuriy Bezverkhov (for Mr. A. Lotorev)	Russian Federation
Mr Tango Lamani (for Mr Z. A. Dingani)	South Africa
Mr Brendan Keith(for Mr P. Hayter)	United Kingdom
Mr Malcolm Jack (for Mr D. Millar	United Kingdom
Mrs Carina Galvalisi (for Mr S. G. Barboni)	Uruguay
Mr Oscar Piquinela (for Mr M. Dalgalarrondo)	Uruguay

ALSO PRESENT

Dr Azzizullah Lodin	Afghanistan
Mr Hamed Akram	Afghanistan
Mr José Antonio	Angola
Mr Pedro Alberto Yaba	Angola
Mr Mario Heinrich	Council of Europe
Mr Kenneth Madete	East African Legislative Assembly
Mrs Stavroula Vasilouni	Greece
Mr G. C. Malhotra	India
Mr Y. M. Kandpal	India
Ms Luisa Accarino	Italy

Mr Pil Keun Jin	Korea (Republic of)
Mr Humberto Pelaez Gutierrez	Latin American Parliament
Mrs Rahila Ahmadu	Nigeria
Mr Ciprian Matei	Romania
Ms Adriana Badea	Romania
Mrs Cristina Dumitrescu	Romania
Mr Dhammika Kitulgoda	Sri Lanka
Mrs Anita Ognjanovsk	The FYR of Macedonia
Mrs Samonrutai Aksornmat	Thailand
Miss Neeranan Sungto	Thailand
Mr Mariam Nassali	Uganda
Mr Le Quang Vu	Vietnam

APOLOGIES

Mr Bernard Wright	Australia
Ms Hilary Penfold	Australia
Dr Georg Posch	Austria
Mrs Emma De Prins	Belgium
Mr Otero Dajud Emilio	Columbia
Mr Mateo Sorinas	Council of Europe
Mr Farag El Dorry	Egypt
Mr Yves Michel	France
Mr Alain Delcamp	France
Nr Dirk Bröer	Germany
Dr Zeh	Germany
Mr George Karabatzos	Greece
Mr Istvan Soltesz	Hungary
Mr Kieran Coughlan	Ireland
Mr Arie Hahn	Israel
Mr Ugo Zampetti	Italy
Mr Makoto Onitsuka	Japan
Mr Jorge Valdes Aguilera	Mexico
Mrs Valerie Viora-Puyo	Monaco
Mr Surya Kiran Gurung	Nepal
Mr Leendert Klaassen	Netherlands
Mr Bas Nieuwenhuizen	Netherlands
Mr David McGee	New Zealand
Mr Muhammad Raja Amin	Pakistan
Mr Adam Witalec	Poland
Mr Jozef Mikosa	Poland
Mr Constantin Dan Vasiliu	Romania
Mr Alexander Lotorev	Russian Federation

Mr Zingile A. Dingani	South Africa
Mrs Suvimol Phumisingharaj	Thailand
Mr Paul Hayter	United Kingdom
Mr Douglas Millar	United Kingdom
Mr Marti Dalgalarrondo	Uruguay
Mr Santiago Gonzalez Barboni	Uruguay
Mr Colin Cameron	Western European Union

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SIXTH SITTING – Wednesday 19 October [pm]

FIRST SITTING
Monday 17 October 2005 (Morning)

Mr Ian HARRIS, President, in the Chair

The sitting was opened at 10.00 am

1. Opening of the Session

Mr Ian HARRIS, President, welcomed members of the Association, especially those members who had been elected at the session in Manila to the conference of the ASGP as part of the 114th Assembly of the IPU. He thanked Anders JOHNSSON and his staff for their work in preparing for the conference with their usual efficiency.]

2. Orders of the Day

Mr Ian HARRIS, President, said that the election, for the post of President of the ASGP would take place on Tuesday 18th of October at 4 p.m. (on the assumption that the would be more than one candidate) and the deadline for nomination of candidates was fixed for that same day at 12 noon.

It was widely known to members of the Association that there would be at least two candidates for President; both of the candidates who had already announced their interest in standing for election (Mr Anders FORSBERG and Mr. Carlos HOFFMANN CONTRERAS) were current members of the Executive Committee. If either was elected there would be a consequential vacancy on the Executive Committee. Because of the difference in the nature of the two posts on the Executive Committee it was proposed that the consequential vacancies be dealt with differently. In the event that one of the Vice Presidents was elected as President, the election for the vacant post of Vice President would take place on Wednesday (nominations for election to the post of Vice President by 9 a.m. on Wednesday; election for the new Vice President at 11:45 a.m. on Wednesday).

Because there were already three vacancies to be filled on the Executive Committee it would not be an advantage to add a further one, if an ordinary member of the Executive Committee were elected as President. It was proposed that if such a vacancy arose, that it should be filled in Nairobi.

Elections to Executive Committee (ordinary members) to replace Mr G.C. MALHOTRA, Mr Ibrahim SALIM and Mrs Isabel CORTE-REAL would take place on Wednesday at 4 p.m.

This was *agreed* to.

Mr Ian Harris, President, read the draft Orders of the Day, as follows:

Monday 17 October

Morning

9.00 am Meeting of the Executive Committee

10.00 am Opening of the session.

Orders of the day of the Conference

New members

General debate : “Interparliamentary cooperation within geopolitical regions: the African and worldwide experience”

Moderator : Mr Samuel Waweru NDINDIRI, National Assembly, Kenya

Communication from Mrs Doris Katai K MWINGA, Clerk of the National Assembly of Zambia, on "Recent changes and procedures : the case of the National Assembly of Zambia”

Afternoon

3.00 pm Communication by Mr. Bruno HALLER, Secretary General of the Parliamentary Assembly of the Council of Europe : “Strengthening of democracy in Europe”

Communication by Shri P.D.T. ACHARY, Secretary General, Lok Sabha (India) : "Parliamentary Forum on Water Conservation and Management"

Communication by Mr. Prosper VOKOUMA, Secretary General of the National Assembly of Burkina Faso : “ A presentation of the Strategic Development Plan of the Parliament of Burkina Faso 2004 – 2014 ”

Tuesday 18 October

Morning

9.00 am Meeting of the Executive Committee

10.00 am New members

General Debate : “ Privileges and immunities in Parliament ”

Moderator : Mrs Hélène PONCEAU, Secretary General of the Questure of the Senate (France)

12.00 noon **Deadline for nominations for the post of the President of ASGP**

Afternoon

3.00 pm Communication by Dr Yogendra NARAIN, Secretary General of the Rajya Sabha (India) : "Relations between Parliament and the Judiciary"

4.00 pm **Election to the post of President of ASGP**

Wednesday 19 October

Morning

9.00 am Meeting of the Executive Committee

10.00 am New members

General debate : "Management issues relating to staff attached to the Speaker/President, Members of Parliament and political groups "

Moderator : Mr Xavier ROQUES, Secretary General of the Questure of the National Assembly, France

12.00 noon **Deadline for nominations for three vacant posts on the Executive Committee**

Wednesday 19 October

Afternoon

3.00 pm Communication from Mr Pitoon PUMHIRAN, Secretary General of the House of Representatives of Thailand : "The Legislation Petition of the Thai Parliament"

Presentation by Mr Samuel Waweru NDINDIRI, Secretary General of the National Assembly of Kenya, on the organisation of the Nairobi Session (Spring 2006)

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

4.00 pm **Election of three vacant posts on the Executive Committee**

Administrative and financial questions.

Examination of the draft agenda for the next meeting (Nairobi, Spring 2006).

Closure.

The draft Orders of the Day were *agreed* to

3. New Members

Mr Ian HARRIS, President, listed the candidates for membership of the association as follows:

Ms Hilary PENFOLD	Secretary of Department of Parliamentary Services of Australia
Mr Md. Lutfar Rahman TALUKDER	Secretary of the Parliament of Bangladesh (replacing Mr. Md. Omar Faruque KHAN)
Mr Conrad LEWIS	Clerk of the National Assembly of Belize (This country is joining the ASGP for the first time)
Mr Aljosa CAMPARA	Secretary General of the Parliament of Bosnia and Herzegovina (replacing Mr Vedran HADZOVIK)
Mr Alpheus MATIHAKU	Secretary General of the National Assembly of Botswana (replacing Mrs Constance MOMPEI)
Mr Alain DELCAMP	Secretary General of the Presidency of the Senate of France (replacing Mr. Jean-Claude BÉCANE)
Mr Raymond OKINDA	Secretary General of the National Assembly of Gabon (replacing Mr. Pierre MGUEMA-MVE)
Mr P.D.T. ACHARY	Secretary General of the Lok Sabha of India (replacing Mr G. C. MALHOTRA)
Mr Nasiru I. ARAB	Secretary General of the National Assembly of Nigeria (replacing Mr Ibrahim SALIM)
Mr Muhammad RAFIQ	Secretary General of the National Assembly of Pakistan (replacing Mr Mahmood Salim MAHMOOD)
Mrs Adelina SĂ CARVALHO	Secretary General of the Assembly of the Republic of Portugal (replacing Mrs Isabel CORTE-REAL)
Mr. Djordjije RADULOVIC	Secretary General of the Assembly of Serbia and Montenegro (replacing Mr Milan LUCIC)
Mrs Suvimol PHUMISINGHARAJ	Secretary General of the Senate of Thailand (replacing Mr Montree RUPSUWAN)
Mr Manondoh Kokou KAMA	Secretary General of the National Assembly of Togo

	(replacing Mr. Dinkpéli KANTONI)
Mr Douglas MILLAR	Clerk Assistant of the House of Commons of the United Kingdom (replacing Mr George CUBIE)
Mr Abdullah AHMED SOFAN	Secretary General of the House of Representatives of the Republic of Yemen (This country was joining the ASGP for the first time)

None of the candidates posed any difficulties in his view.

He noted that some applications had not been accompanied by the required questionnaire. Those applications could not be endorsed by the Executive Committee and had not been included in the list of members for approval by the plenary. There would be a further opportunity for members to be agreed to on the following day.

The proposed members were *agreed* to.

4. General Debate on Inter-parliamentary cooperation within geopolitical regions: the African and Worldwide experience

Mr Ian HARRIS, President, invited Mr Samuel Waweru NDINDIRI to open the debate.

Mr Samuel Waweru NDINDIRI Clerk of the National Assembly of Kenya, spoke as follows:

"OVERVIEW

There is great value to be gained when parliamentarians share information, experiences and lessons learned in their onerous duty. The knowledge gathered is useful in strengthening national Parliaments and parliamentary networks. Regional cooperation among Parliaments may serve as a stocktaking forum on a variety of issues, including political, economic and social matters. Further, action taken to honour the commitments made in international and regional fora, which are today more exposed and accordingly followed, demands the involvement of Parliaments, and many issues addressed by Parliaments at the national level have an international dimension.

Parliamentary diplomacy has therefore emerged as a major ingredient in addressing the challenges of the 21st Century. Parliaments and their members are progressively embracing increased responsibility in international relations and playing a more active role at the national, regional and global levels.

The constitutional mandates vested upon Parliaments continue to offer thrust to regional cooperation by closely seeking to influence and linking the national and global concerns through various ways. Firstly and foremost, participation in regional cooperation equips Parliaments with adequate knowledge to seek to influence their respective country policies on matters dealt with in the regional and other international negotiating fora besides being informed of the progress and outcome of these negotiations.

Multilateral fora should further serve as the rallying point to encourage member countries to ratify relevant international and regional treaties, conventions and protocols of issues affecting them. This equips national Parliaments with a competitive edge to actively press their respective governments to sign, accede to and ratify these international instruments as well as involvement in the subsequent implementation process.

Parliaments' involvement in regional cooperation will thus be effective in promoting some aspects of governance, such as accountability, advocacy, networking, partnership and general progress review.

INTER-FARLIAMENTARY COOPERATION WITHIN GEOPOLITICAL REGIONS:

The main outputs of the regional inter-parliamentary cooperation within geopolitical regions are :

i. Facilitation of effective implementation of regional policies and projects ;

ii. Promotion of principles of human rights and democracy within the regions ;

iii. Provision of a forum for discussion on matters of common interest to the geopolitical regions ;

iv. Promotion of peace, democracy, security and stability on the basis of collective responsibility by supporting the development of conflict resolution mechanisms in the various geopolitical sub-regions;

v. Contribution to a more prosperous future for the peoples of the regions by promoting collective self-reliance and economic efficiency;

vi. Hastening of economic cooperation and development integration in persuit of equity and mutual benefit;

vii. Strengthening regional solidarity and building on the recognition of the common destiny for the people of the region;

viii. Encourage good governance, transparency and accountability in the region and in the operation of regional institutions;

ix. Facilitate networking with other organizations of parliamentarians;

x. Promote participation of non-governmental organizations, business and intellectual communities in the geopolitical region activities;

xi. To study and make recommendations on any issue in order to facilitate the more effective and efficient operation of the geopolitical region's institutions, including the harmonization of laws.

The outstanding examples of inter-parliamentary cooperation within geopolitical regions in the African continent are the SADC Parliamentary Forum, Pan African Parliament and the African Parliamentary Union. In addition there is the West African, IGAD parliamentary forums.

THE SADC PARLIAMENTARY FORUM

The SADC Parliamentary forum is a regional organization that brings together 12 Parliaments of the southern Africa region and represents 1800 Members of Parliament. Among the Forum's critical issues of concern in the 2lst century is the support of the growing democracy in the region. The forum is motivated by the fact that for many years, the peoples of the region have fought and struggled for democracy and human right against forces, institutions and socio-economic and political bodies that limited or completely deprived them of democracy, human rights, and civil liberties.

THE AFRICAN PARLIAMENTARY UNION

The African Parliamentary Union (APU), formerly known as Union of African Parliaments, is a continental Inter-Parliamentary organization set up in Abidjan in February, 1976. Its Statutes were modified and adopted during the 22nd Conference which took place on 17 and 18 September 1999 in Luanda, Angola.

APU is a privileged framework for parliamentary dialogue and for promoting peace, democracy, good governance, sustainable development and social progress in Africa. At present, there are 35 National Parliaments members of the APU. The APU Parliaments work closely with UNESCO. This enables the Organization to mobilize a powerful network of national and regional legislators, meeting at times within regional or international forums, which are receptive to its ideals and wish to ensure that its programme objectives are reflected in national legislation. Entrusted with responsibility for making and applying their nation's political and legislative decisions, they relay the concerns of those who have mandated them and can adopt appropriate measures by way of response. World wide experience indicates the main parliamentary bodies in Asia, Europe, Caribbean and South America

The need to act collectively towards finding solutions to regional challenges in the 21st Century cannot be gainsaid. Inaction, with its destabilizing consequences is certainly not the best option. Parliament, as the institution which legitimately represents society in its diversity and is accountable to it, should have a permanent role in the regional cooperation process. This will not only provide a forum to interpret the concerns and aspirations of the people, but also ensures that decisions and international agreements effectively find their way to national legislation.

In the changing global context, no Parliament should remain isolated. The challenges of the 2lst Century are closely inter-linked with the Millennium Development Goals (MDGs). Multilateral interactions serve as suitable avenues for sensitising parliamentarians share experiences and best practice. Dimensions and initiatives of regional cooperation such as human rights, democratic order and conflict prevention are crucial in driving the human agenda and in making coordinated efforts and approaches towards solving global problems. This ensures legitimacy and precludes overlap and duplication of effort. They are a crucial ingredient to the parliamentary transition process besides nurturing a strong bond among Parliaments."

Mr Mamadou SANTARA, Secretary General of the National Assembly of Mali, made the following contribution entitled "Interparliamentary Co-operation in Africa : a new experience for African Parliamentary staff"

"In our session last April in Manila, our colleagues from Sweden, Italy, and Romania gave a very good explanation about various examples of inter-parliamentary cooperation between parliaments in Europe. We were able to establish that various types of inter-parliamentary cooperation existed and that they basically competed to "exchange information and support Parliamentary scrutiny in all areas of competence of the European Union and to ensure the efficient transaction of Parliamentary business relating to European questions, especially in the area of control of subsidiarity by national parliaments".

Another aspect of this inter-parliamentary co-operation deserves to be underlined, and this is what I wish to examine by way of reference to the network for African Parliamentary staff: the African Network of Parliamentary Staff (the French acronym is RAPP).

I. HISTORY

The initial idea for the creation of an association of African Parliamentary staff arose in May 1995 in the course of a study trip to the United States. African parliaments represented on this study trip included those from Benin, Cote d'Ivoire, Mali and Niger.

The idea developed in later meetings, notably at Porto-Novo in Benin, organised by the National Conference of State Legislatures (NCSL) in September 1995. Mr John Martin, formerly Speaker of the House of Representatives of the State of Maine, at that time agreed to support this project.

The representatives from Niger were tasked to prepare a draft terms of reference for the network which we planned to establish in order to encourage technical co-operation between African Parliaments. However, for various reasons, particularly linked to political instability which then prevailed in Niger, the project was greatly delayed.

It was only much later, thanks to the persistence of various members of the staff of the parliaments of Cote d'Ivoire, Chad, Madagascar and Mali, that the idea was taken up again with energy at a meeting organised again by the NCSL to finalise the basic texts of the organisation: the aims of the association and internal rules.

A committee composed of representatives of those parliaments present at that meeting in Bamako was established with the task of preparing for the general constituent assembly of the network. This took place at N'Djamena in August 2003 with the participation of 60 delegates from 15 countries.

The aims of the Network:

Education of Parliamentary staff;

Continuing increase in professional capacity;

Interparliamentary cooperation.

The conference at N'Djamena marked the official establishment of the Network. Five delegates who were Secretaries General of their Parliaments were elected to preside over the organisation with a mandate of two years. Our colleague from Chad was elected president.

The RAPP was therefore created in August 2003 at N'Djamena by the representatives of the Parliaments of 15 countries. Its principal objective is inter-parliamentary cooperation from the point of view of Parliamentary staff in the geographical area of Africa.

In addition to its members, Parliamentary staff, the network is also open to associate members.

This latter category is aimed at including substantial people from Parliamentary or academic life who are interested in Parliamentary law and inter-parliamentary discussions, whether this is from the point of view of Parliamentary diplomacy or that of staff training or even may include anything which contributes to the support of the capacities of Parliamentary institutions.

The RAPP, which holds a General Assembly each year in a different country (N'Djamena, Madagascar, Ouagadougou) is led by a Bureau of five members elected from the Secretaries General of Parliaments who belong to the Network. This bureau of five members is elected for two years.

The other organs of the Network are made up of the committees – four in number. These are:

Committee on finance and the budget;

Committee on basic texts;

Committee on communication and development;

Committee on study and training.

2. ORGANISATION AND METHOD

The programme for the General Assemblies combined plenary sessions with simultaneous workshops, working in Committee and Round Tables with colleagues. This creates problems of coordination of timetables.

The use of evaluation forms gives information on the interest which the different subjects raise among participants.

For example, at the General Assembly in Tananarive (19-23 August 2004), the participants evaluated the meeting according to the following scale: 5 = very satisfactory; 4 = satisfactory; 3 = average; 2 = unsatisfactory.

a) Workshops :

• Political analysis	3,63
• Government scrutiny	3,60
• Educational policy	3,92
• Programme for new parliamentarians	3,90
• Environment policy	3,56
• Links between Parliament and academics	3,59

b) Plenary sessions :

• On USAID	3,63
• On the Pan-African Parliament	3,66

• On NEPAD	3,70
c) Committee work	3,62
d) Round Tables with colleagues	3,77

The marks given to the different programmes by the participants reflect their interest in the activities of the RAPP, which seems relatively satisfactory.

3. PERCEPTION OF THE EVENT AS IT BECOMES MORE ESTABLISHED.

Holding the General Assemblies of the RAPP allows the host countries to show interest and the highest authorities are involved in organising the event in order to offer the best welcome possible to delegates.

The opening of the second General Assembly at Tananarive was honoured by the presence of the following VIPs:

The Speaker of the Malagasy National Assembly

The Prime Minister, Head of the Government;

The Vice-President of the Senate, representing the Speaker of the Senate;

Members of the Bureau of the two Chambers;

The Mayor of the City of Antananarivo;

The Charge d'Affaires of the United States Embassy to Madagascar;

The Ambassador of Algeria to Madagascar;

The Representative of UNDP in Madagascar;

The Director of Programmes of the NCSL (USA).

The Grand Opening was made with a lot of ceremony and an important speech. In this way, and also as result of the receptions for delegates, the meetings of the RAPP included a political aspect which was not expressly part of its original objectives.

4. MEANS

- Subscriptions
- Charges for individuals to participate in the sittings of the RAPP
- Voluntary contributions from sponsors and Honorary Members
- Material support from the NCSL (the US State Department), by way of assistance with the secretariat and publication of the RAPP periodical, creation of a web site to promote exchanges between members on a permanent basis.

5. SPECIFIC AIMS

The inter-parliamentary co-operation which the RAPP advocates is based on Parliamentary colleagues, organised in networks, within a given geographical space, which is different in kind from the inter-parliamentary co-operation which prevails within the European geopolitical area, according to what was told to us in the communications made by other colleagues on the subject.

In the same geopolitical area where the RAPP is developing there is a proposal to create a body of serving officials in the 15 member states of the CEDEAO with a view, among others, to increase convergence and harmonisation of the rules and procedures of parliaments. The main aim of this is to contribute to the promotion of good democratic governance in this area of the world by support for the community Parliament, the inaugural sitting of which took place in Bamako (Mali) in 2000 and the President of which is at present Mr Ali Nouhoum Diallo, Secretary General of the Parliament of CEDEAO.

The experiment which RAPP is carrying out involves cooperation between basic officials. The professional discussion relates to themes based on the daily work of ordinary staffers: staff management, Parliamentary procedure, technical support for Members of Parliament, conduct of sittings, research work etc.

In addition to this didactic aspect which profits all members of the Network, there is also the possibility for them to discuss any kind of subject, even outside sittings of the Association. The Network has a web site and an interactive forum which allows communication between staffers of the various Parliaments almost in real time.

6. OTHER TYPES OF INTER-PARLIAMENTARY COOPERATION

In the West African area there are traditional relationships between our various Parliaments and those of the North, in particular with France for historical reasons. In addition to working visits and Parliamentary discussions, the National Assembly of France organises regional seminars in Africa for the benefit of various parliaments in the same geographical area. The first of this kind took place in 1995 in Bamako and the last has just taken place, between 4 to 8 July 2005, again at Bamako (to mark the 10th anniversary of this event which each time has brought together delegates from a dozen Parliaments).

As was said in our session in Manila, there are also training courses for Parliamentary staff which the French Parliament (National Assembly and Senate) organised in Paris in co-operation with the National School for Administration (ENA). Formerly, this training had taken place at the International Institute for Public Administration (IIAP) which had as much enjoyment as now because of its combination of professional and tourist interests.

Nowadays, with globalisation and its linked liberalisation of all means of exchange, the area of inter-parliamentary co-operation is also entering a new phase which increasingly will involve the administration of Parliamentary understanding relating to international tenders arising from the establishment of consortiums of Parliaments of the sort that had already happened within the European programme TACIS (established for the Parliament of Georgia).

Here can be seen unexpected effects of globalisation, the impact of which has not yet been fully understood. On this subject, I would like to make a remark in parenthesis -- the recent news obliges me to – simply to raise a matter which constitutes to my eyes at any rate an aberration arising from globalisation: I want to speak of the humanitarian problem of illegal immigration which has affected my country in the past week. As far as I understand, globalisation permits free movement - in particular that of capital in the tradition of economic

liberalism. At the same time globalisation as it affects freedom of movement of people – in particular those of migrants – awakens national selfishness and emphasises the sovereignty of States which leads to the shocking spectacles which have recently been seen in the Spanish enclaves of Ceuta and Melina. This is not the moment to debate this in detail although we are all affected by this situation but I simply wish to mention it in passing.

To return to our subject, I would like to conclude by saying that inter-parliamentary co-operation has become well established in the geopolitical area of West Africa. This co-operation can be found in many areas and is a reflection of the policy adopted by each Parliament. If it is to be effective, it requires strict coordination to allow the various forms of it Parliamentary cooperation which take place in the same geographical area to coexist harmoniously and contribute to the high quality training of human resources in Parliaments in order to support good democratic governance."

Mrs Adelina SÁ CARVALHO, Secretary General of the Assembly of the Republic of Portugal, made the following contribution:

"**PORTUGUESE SPEAKING COMMUNITY**

Community of Portuguese-speaking Countries (CPLP) and Forum of Portuguese-speaking Countries

The formation by the Heads of State and Government of the Community of Portuguese-speaking Countries (CPLP) in July 1996 aimed at the progressive international assertion of the group of Portuguese-speaking countries which are located in a geographically discontinued area, though identified by their common language: Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal, São Tomé and Príncipe and East Timor.

Protecting the principles of peace and law, of democracy and Human Rights, of development and cooperation, as well as the existence of a common past and language, are the solid values of the CPLP in a shared goal of integration in an international society. It is to stress that there are more than 200 million speakers in this linguistic community.

The formation of the CPLP was also motivated by the different national parliaments' identical purpose to establish a solid and participating inter-parliamentary cooperation. This was achieved by the First Conference of Speakers held in Lisbon in March 1998 and by the First Meeting of Secretaries-General of Portuguese-speaking Parliaments which took place also in Lisbon in January 1998.

The Constitutive Declaration of the CPLP sets forth as one of its objectives "to encourage the development of inter-parliamentary cooperation actions".

Thus, this is the starting point for the Presidents of the Portuguese-speaking Parliaments to establish the **Forum of Portuguese-speaking Parliaments,** which introduced the true inter-parliamentary dimension within the Portuguese-speaking community.

The Forum is the best form of guaranteeing the establishment of democracy and development in the area of the Community of Portuguese-speaking Countries. Its functioning requires a high parliamentary cooperation and it is a relevant progress in the parliamentary relations of all Portuguese-speaking countries.

Some goals to be reached by the Forum of Portuguese-speaking Parliaments are as follows: to encourage peace and to strengthen democracy and the representative institutions; to collaborate on good governance and the consolidation of the rule of law; to promote and protect Human Rights; to analyse issues of common interest, namely with a view to intensify cultural, educational, economic, scientific and technological cooperation, to fight all forms of discrimination and all types of trafficking.

The Forum also wishes to keep computer communication networks on a permanent operation and free access basis, as privileged spaces for inter-parliamentary cooperation.

The parliaments represented at the Forum began to have a word not only about issues concerning their own area, but also about matters regarding the international community in which they are integrated and where they should have an active voice.

The Forum is composed of three bodies: the President of the Forum, the Conference of the Presidents of Parliaments and the Inter-parliamentary Assembly.

The Forum Presidency is rotating and annual and it is presently held by the President of the Brazilian Congress. The Conference holds an ordinary session once a year in the country holding the Presidency of the Forum at the moment and it is composed of the Presidents of the national parliaments. The Inter-parliamentary Assembly also meets annually and it is composed of the Presidents of parliaments and the national groups, which are composed of five Members of each parliament.

The last Forum meeting took place in Brasilia in January 2005 and the issues under discussion were the dissemination of the Portuguese language and its diffusion within the international organisations, the fight against HIV/AIDS and the use of new technologies in the parliaments. The forthcoming Forum meeting will take place already in November in Angola.

In a world so interdependent and global as the present one - a world of large institutionalised spaces - it is important to use the potentialities of the inter-parliamentary dialogue.

The community of Portuguese-speaking countries has today real possibilities to be asserted as an active response to the modern integration and globalisation tendencies.

INTERPARLIAMENTARY COOPERATION WITHIN PORTUGUESE-SPEAKING COUNTRIES

Protocols, Programmes of Parliamentary Cooperation and the Association of Secretaries-General of Portuguese-speaking Countries

Being aware of the role played by the respective bodies that exercise sovereign power in the establishment of democracy and in encouraging the citizens' participation in the consolidation and modernisation of the rule of law, the Portuguese-speaking parliaments have set different active cooperation mechanisms: **Protocols and Programmes of Parliamentary Cooperation**.

These mechanisms have put into practice parliamentary cooperation between the Portuguese Parliament and the parliaments of Angola, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe and East Timor.

They not only lead to the strengthening of friendship ties and solidarity relations but also to the consolidation of parliamentary structures. These are raised to a much higher level of operation and development than what simple annual action plans would possibly achieve.

Parliamentary cooperation developed by the Portuguese Parliament occurs autonomously of governmental policies, i.e. the Assembly of the Republic has always recognised the need to develop actions which would lead to the dissemination of the values of parliamentary democracy and to the consolidation of a Human Rights culture, in a common historical context which integrates its own linguistic community.

The Portuguese Parliament has taken an active role in forming a solid basis in inter-parliamentary relationship, by exchanging experiences and knowledge at the technical and administrative level of the parliamentary activity, and through the direct intervention in this domain of the Secretaries-General of the Portuguese-speaking parliaments.

Therefore, there is a consolidation of the role of Parliaments – the essential pillar in the democratic system – and that has gained a major importance if we consider the democratisation process in the Portuguese-speaking countries, namely in the countries with more recent democracies or in the assertion process.

Parliamentary cooperation, supervised by the Secretary-General of the Assembly of the Republic, is accomplished through pluri-annual cooperation programmes including projects with highly technical contents.

The technical assistance missions executed by the Assembly of the Republic at the Portuguese-speaking Parliaments are multidisciplinary. However, in the first years, the cooperation actions focused on the development of the services providing technical support to the plenary and the committees and of the financial management of the parliamentary institution.

These actions are completed through specific missions which adjust the content of the project to the specific reality of each country, by requesting the services of Portuguese parliamentary technical staff or of the Resident Expert, who acquires the know-how in the Portuguese Parliament and later develops his/her career in the Parliament of his/her country.

After the consolidation of the mentioned technical areas, the contents of the parliamentary cooperation programmes have evolved towards the new computer and communication technologies.

The Assembly of the Republic presently wishes to enhance the level of demand of the parliamentary cooperation in two different aspects. The first one aims at encouraging the exchange of experiences between the various services of the Portuguese-speaking parliaments, not only by organising inter-parliamentary training courses but also by developing a common website. All participant countries are responsible for the input of the site.

The second aspect is to bring the Portuguese-speaking civil society closer to its parliamentary institution. And in this case the new information technologies may be the bridge between the citizen and the political representatives elected by him.

Another fundamental body - a pillar in the development of the technical and parliamentary cooperation and in the modernisation of the parliamentary institutions - is the **Association of Secretaries-General of Portuguese-speaking Parliaments** (ASG-PLP). At present its President is the Director-General of the Brazilian Chamber of Deputies.

The ASG-PLP meets once a year in the country holding the presidency. Its activity is based on programmes duly approved by its members and it draws up activity reports on its annual performance.

Proving once more that the use of the information and communication technologies easier enables parliaments to come closer to citizens, the ASG-PLP has created its own homepage on the Internet, www.asg-plp.org, which is assumed as a dynamic and appealing instrument.

Bearing in mind the goal to modernise the parliamentary institution, the ASG-PLP has established inter-parliamentary training as one of the main aspects of its activity programme.

This training aims at promoting the quality of the performance of the parliamentary staff that give support to the political activity and develop logistical and administrative activities in the parliaments.

Inter-parliamentary training allows the ASG-PLP to fulfil one of its objectives: to promote the exchange of experiences between the member parliaments. The great advantage of multilateral training is the possibility to gather simultaneously parliamentary officials from different origins and experiences, but having in common a linguistic heritage and very strong cultural affinities.

The Assembly of the Republic of Portugal organised in 2004 the first inter-parliamentary training on the theme *The Parliament and the challenges of the contemporary society*. At this moment the second training is taking place in Lisbon under the theme *Inter-disciplinarity of the parliamentary staff*.

Finally, the ASG-PLP's structure and functioning is very similar to that of the Association of Secretaries-General of IPU Parliaments, which has inspired the conception of the ASG-PLP."

Mr Yogendra NARAIN (India) said that in a globalised world which tended to remove frontiers between countries, Parliaments were confronted with new challenges. The economic questions which were within the responsibility of international organisations or institutions such as the World Bank, the International Monetary Fund, the World Trade Organisation etc had gained a power of influence without precedent over, the political choices and laws of many States, including over subjects which were purely of national interest. This had also affected politics. In these circumstances, there was strong feeling that regional Parliament, should give greater importance to co-operative changes without hindrance, allowing efficient and systematic treatment of up-to-date subjects.

Apart from the growing integration of national economies, other subjects had gained a transnational character. Questions relating to the environment and natural disasters showed, for example, that wide-ranging catastrophes affecting many States could be better dealt with in the future if the responses and communications between countries worked faster and if early systems of warning were in place. All of this amounted to an appeal for greater involvement on the part of National Governments in international matters. In these circumstances, cooperation between National Parliaments within a particular geographical

region could make a significant difference if they demanded accountability from their respective Governments.

At the same time, although States pursued their particular interests within regional organisations, supranational Parliament, breathed a new life into cross-border cooperation. In addition, it was necessary to improve regional economic perspectives and support the means available to Governments to deal with problems which were common to a particular region.

Redevelopment of multilateral cooperation had introduced new dimension is to international relations. Concomitantly, there was a greater awareness that solutions proposed I way of treating your international Convention in a large number of areas such as sharing water resources, biodiversity, terrorism etc affected in the same way all the people of all particular region. It is probable that in the future the tendency will be to find a regional view on all of these subjects. Questions of common interest such as terrorism, drug trafficking, fitting in people or pollution would be better dealt with by way of regional cooperation. In this context it is possible that regional Parliaments would put into place appropriate institutional structures to deal with such questions more rapidly. Regional Parliament, also were able to give Parliamentary and public support to intergovernmental decisions. This could in all likelihood lead to regional integration which would contribute to regional peace and security. Furthermore, nations which grouped together to defend their regional interests within an international pantry would be more influential than if they acted separately. Regional integration would probably lead to regional peace,, creating new possibilities for improved international co-operation to bring to an end ignorance, poverty and disease.

Having regard to the number of questions to deal with, international cooperation in the 21st-century will require other working practices and the participation of new actors. The participation of Parliaments and parliamentarians was necessary in order to honour engagements undertaken in international and regional forums which had become more important than ever before. Many questions examined by Parliaments on a national basis had an international dimension. It is an acknowledged fact that changes in the law and politics of many countries were the result of multilateral agreements which bound national Governments and which meant that Parliaments had to examine and agree to laws which were in accordance with the goals and objectives of these multilateral agreements. Taking this into account, regional Parliaments could play the role of mediator and could contribute to the full development and growth of the region.

Nonetheless, sometimes one hears voices raised explaining that international Parliaments can only work where there is an agreement on the objectives between the member States—such as common political policies, a common currency etc. Regional groupings also entail a consensus on questions such as that of language, religion, ethnic differences, before it is possible to hope for any tangible progress. The working methods of new supranational Parliaments had to be based on democratic principles. If they were democratically elected that would allow correction of the democratic deficit which prevails at the moment in the international arena.

Because globalisation was dissolving many national frontiers some people were treating supranational or regional Parliaments as the next logical step towards a unified world government. Whatever the basic international trends appeared to be, it was important that the process of integration should encourage mankind to make closer contacts with people in other geographical regions. In this context, in India had been an active partner in international co-operation in the economic sphere at a regional level under the auspices of organisations or

initiatives such as the South Asian Association for Regional Co-operation (SAARC) or the Commonwealth and Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC).

In Southeast Asia, in application of successive decision is of summits of SAARC underlining the importance of reinforcement of direct cooperation between the peoples of member countries, the Presidents of Parliaments countries of the SAARC zone (Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka) had decided at their meeting in Kathmandu in 1992 to establish the Association of Speakers and Parliamentarians of countries of the SAARC region.

The Charter of the Association, among other things, sets out the aims of: promoting, coordinating and exchanging experience between member Parliaments; completing and improving work of the SAARC and of reinforcing knowledge of its principles and activities among Members of Parliament; of creating a forum for the exchange of ideas and information on practice and procedure of Parliament; and of cooperating in international forums on questions of common interest.

The first conference of the Association had been hosted by the Indian Parliament in New Delhi in July 1995, marking the start of greater inter-parliamentary co-operation in Southeast Asia. Since that time, several conferences of the Association had taken place in the region – but much remained to be done in order to push forward regional Parliamentary co-operation in Southeast Asia.

India was the most populous State in the Commonwealth, representing alone almost 60% of the total population of the association. India was fourth largest contributor to the budget of the Commonwealth Secretariat, after the United Kingdom, Canada and Australia. Some people thought that India, by reason of its population and size, constituted a region in itself. The Commonwealth Parliamentary Association had suggested that India should organise its annual conference in 2007, in the same way as India had done in 1957, 1975 and 1991.

In order to develop and maintain the healthy traditions and conventions of our Parliamentary institutions, India organised an annual conference of speakers of deliberative assemblies – this had started in 1921. This form had worked ceaselessly to reinforce the democratic process within the 28 States and 7 territories of the Union. At the moment, 69 conferences of Speakers had taken place which had dealt with questions of crucial importance for Parliamentary democracy, its functioning and rules of procedure. The conference for secretaries-general off deliberative assemblies took place at the same time.

Mr Petr TKACHENKO (Russia) raised the it Parliamentary Corporation between the Federation Council and the Parliaments of the Commonwealth of Independent States (CIS). This allowed various questions relating to Human Rights to be dealt with.

It was possible to say without exaggeration that this cooperation had a special place in the international activities of the Federation Council. These international activities were in the first place linked to a series off economic and humanitarian factors and the cultural and historic heritage of the people who lived in the territories of the Commonwealth.

The into Parliamentary Corporation within the Commonwealth was carried out as much on a bilateral basis as on a multilateral basis. Bilateral relations with Parliaments of these countries were based on agreements. Parallel agreements with Parliaments with only one

Chamber had been agreed on behalf of the Federal Assembly of the Federation of Russia (Azerbaijan, Armenia, Georgia, Moldavia, Ukraine), while co-operation with bicameral Parliaments was responsibility of the Federation Council directly with the corresponding Chamber of the Parliament of the State within the Commonwealth (Belarus, Kazakhstan, Kyrgyzstan).

Current moment, five agreements and three protocols had been signed with each of the States of the Commonwealth – with the exception of Tajikistan, Turkmenistan and Uzbekistan. As a result of these agreements and in order to organise coordination of the different parties, into Parliamentary bilateral commissions had been established which examined at their meetings (which was no less than once term) key subjects relating to the development and reinforcement of bilateral cooperation in politics, economics, humanitarian questions etc. In parallel, particular attention was given to questions relating to harmonisation of national legislation, synchronisation of bilateral treaties and procedures of ratification and coordination within the international Parliamentary arena.

The member States of the Commonwealth lacked unity in their legal systems. This state of affairs justified the essential role which could – and should – be played by a multilateral interparliamentary organisation such as the Inter-parliamentary Assembly of the Commonwealth of Independent States. The work of improvement and harmonisation of legal instruments across borders had become more and more important.

Recent events called for new advances in reform of the Commonwealth and reinforcement of co-operation at all levels in order to deal with geopolitical changes in the region and the wider world.

For that reason it was thought that the attempt to create a common economic area (EEC) between the “big four” – Russia, Belarus, Kazakhstan and the Ukraine—was an important advance in this area. Members of Parliament of these States had their own “niche” in this process because of the need for legislation to put into effect the agreement setting up the EEC. Important work was under way involving revision of the national legislation of the member States to make it conform with the Constitution of the EEC and its priorities. The process of formation of the EEC included the creation of a free exchange zone and plans for a common customs union.

One of the priorities for co-operation within the Commonwealth was the establishment of a Union of States with Belarus. This involved a continuing process based on application of a treaty and a programme of action which included steps towards integration. The Union State Constitutional Act was being prepared which would reflect the political structure of the association. Among its basic principles were the preservation of the integrity and sovereignty of the constituent member States.

In advance of the Parliament of the Union of States being established, the Parliamentary Assembly of Belarus and the Russian federation would continue.

Mr Anders FORSBERG (Sweden) said that knowledge of the experience of foreign Parliaments was always profitable. He asked whether the Parliamentary Association of East Africa regularly reported to national Parliaments on its work and, if this was the case, in what way. He also wanted to know if the reports were debated within national Parliaments.

Mr Xavier ROQUES (France) raised the experience of the National Assembly in France. There, inter-parliamentary co-operation followed three main directions.

The first direction was represented by European countries which were outside the European Union. On this basis, the National Assembly, in association with the German Bundestag, ran a programme of support extending over several years for the Duma of the Federation of Russia. The National Assembly had also, alongside the Bundestag and the Chamber of Representatives of Belgium, worked to create an Assembly in Kosovo. A working link with the Chamber of Deputies of Romania was being operated within the framework of the PHARE programme of the European Union.

Within the framework of the United Nations, the National Assembly had taken part in the establishment of the Afghan Parliament. French Parliamentary officials had been regularly sent to Kabul and Afghan delegations had been welcomed in Paris.

The second direction was that of special relationship with the German Bundestag. Within this framework long exchanges of staff (lasting between 18 months in two years) had been organised since 2000, which had involved three French officials and three German officials.

The third direction was that off French-speaking countries, “francophonie”. There was a Parliamentary Assembly of French-speaking Nations, which constituted the Parliamentary wing of the International Organisation of French-speaking Nations, as will as an Association of Secretaries General of French-speaking Parliaments (ASGPF).

The ASGPF met once a year, usually in Paris, and its activities were very similar to those of the ASGP.

Mrs Doris Katai Katebe MWINGA (Zambia) said that the Parliamentary Forum of the SADC included parliamentarians from the following States: Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The Forum, which was made up of representatives collected by their Parliaments, had examined the question of equality between men and women and its link with development.

In 2001, the Forum had accepted recommendations on the rules and procedures for election in the region and had sent of service to 10 countries to monitor 14 elections. The basic rules which had been prepared allowed the quality and transparency of these exercises to be judged.

The Forum took part in conflict resolution. This involved preparation of “Win Win” strategies.

The Forum was working on the question of AIDS, which was a priority for all the countries in the region. This work had to be carried forward in order for the requisite laws to be agreed in each of the countries.

The Forum also was interested in the management of Parliament, which was a question of no little importance relating to their efficiency and development. An information and guidance centre had been created which was aimed at training over 2000 Members and staff of parliaments within the SADC.

Mr Hafnaoui AMRANI (Algeria) mentioned that Parliamentary co-operation could take place on the political level (contacts and direct talks between Members) or on the technical level (co-operation between offices and staff of Parliament).

On the technical level, the African network for cooperation between Parliamentary staff – the latest meeting of which had been held in Burkina Faso – had given excellent results allowing more recently established Parliaments to profit from the experience of older Parliaments. This was particularly the case relating to professional training where staff dealing with Bills who had duty of following the work of Committees did not always have sufficient professional knowledge.

Mr George PETRICU (Romania) thought that the African experience, was rich information for the Parliaments of other geopolitical areas.

In the course of the last few years, the Romanian Parliament had undertaken many activities with African Parliaments both within an international framework as well as bilaterally. The Romanian Parliament was also extremely active within the Parliamentary Assembly of French-speaking Nations and the ASGPF.

Mr Boubeker ASSOUL (Algeria) referred to the long-term collaboration with the National Assembly in France, with which a seminar would soon be organised In Algiers (November 2005) on support for the role of national parliaments.

With the National Conference of State Legislatures (NCSL) a joint operation had been established to encourage research into the area of legislation.

Within the framework of the Union of the Arab Maghreb (UMA) the Maghreb consultative Council supported harmonisation of financial legislation and customs duties etc and also encouraged the exchange of experience.

Mr El Hadj Umar SANI (Nigeria) emphasise the importance of the question of cooperation for many African parliaments. The many African regional organisations often had praiseworthy objectives—promotion of human rights and democracy, reinforcement of regional solidarity – but they were often faced with serious difficulties relating to resources. They often needed help to attain their objectives, which should be the main direction for well interparliamentary co-operation. The question remained what form such help to regional organisations should take.

Mr Samuel Waweru NDINDIRI (Kenya) thought that the debate had been full of interest and underlined the importance of Pan African co-operation.

The debate had demonstrated the ability of various Parliament to share their experience. This was notably the case with the Kenyan Parliament and Nigeria, Ghana and Zambia. Exchanges of experience at the highest level were taking place with Somalia, where a new Parliament was being created, and these experiences would allow important lessons for the future to be learned.

Mr Ian HARRIS, President, thanked Mr Samuel NDINDIRI and those members present for their numerous interesting interventions.

5. Communication from Mrs Doris Katai K. MWINGA (Zambia) on Recent changes and Procedure: the case of the National Assembly of Zambia

Mr Ian HARRIS, President, invited Mrs Doris Katai Katebe MWINGA, Clerk of the National Assembly of Zambia to present her communication.

Mrs Doris Katai Katebe MWINGA made the following presentation:

"Colleagues,

I would like to thank you for affording me the opportunity to address you the recent efforts by the National Assembly of Zambia to enhance parliamentary democracy by making its practice and procedure more transparent and accountable. The changes demonstrate, albeit in a summarized form, what one can call an over whelming desire expressed at various forums by many Zambians and other stakeholders on the need to have the voice of the electorate taken into account in the Assembly's conduct of its functions. My presentation discusses the Assembly's Revised Standing Orders 2005, which were recently launched as an example of its commitment to change in practice and procedure. In the conclusion, my presentation will state the justification for the Assembly's commitment to change.

CONTEXT OF RECENT CHANGES AND PROCEDURE

On October 31, 1991, Zambia held her first multi-party elections since 1968. The elections saw the transfer of power from a one party political system introduced in 1972 to a multi-party system. The Movement for Multi-party Democracy (MMD) was elected into government with a manifesto, which laid out its policies, which included political democracy entailing good governance, transparency, accountability, respect for human rights, and the rule of law.

The new political climate placed new demands on the National Assembly whose main role has always been to legislate and to act as a forum for democratic participation by all members of society, through their elected representatives and, indeed, to scrutinise the policies and activities of the Executive including the approval of public expenditure and taxation measures.

Rationale for the Reforms

The National Assembly, in its efforts to meet the challenges associated with Parliamentary democracy, embarked upon a reform programme that is aimed at reorienting the institution to be able to perform its constitutional role effectively. There has been an overwhelming desire expressed at various forums by a growing number of Zambians and other stakeholders on the need to enhance the role and effectiveness of the National Assembly. As representative institutions, it has been strongly felt that the voice of the people should be heard in all its activities.

With the advent of democracy and multiparty politics in Zambia, issues of good governance and accountability have been emphasized and continue to be among the great expectations of the people in the country. Parliament, therefore, cannot afford to remain static; hence the parliamentary reforms which must be implemented in a continual and evolutionary manner.

The Constitution of Zambia embodies the salient features of the parliamentary system that exists in the country. It provides for a unicameral (or one Chamber) Parliament consisting of the President and the National Assembly. The Parliament in Zambia, therefore, is not a sovereign body with uncontrolled and unlimited powers. It functions within the bounds of a written Constitution.

Under Parts V, X and Article 54, Parliament is vested with powers to perform three functions namely: to legislate or make laws; to approve public expenditure and taxation measures; and to oversee government administration. In order to do this, Parliament must put in place adequate mechanisms, and thus the need for the parliamentary reforms. The rationale for reforms at the National Assembly arose from the need to ensure that the Zambian Parliament performs its functions effectively in order to enhance democracy and good governance in the country.

Key Areas of Reform

The following are the five areas that Parliament identified for instituting the on-going reform process:

(i) the Committee system;
(ii) the Legislative Process;
(iii) the Administration of the National Assembly;
(iv) the Support Services to the Assembly and its members; and the Member/Constituency relations.

The Committee System

The following are the objectives for reforming the Committee system:

(a) that Committees be aligned to Government Ministries to enhance policy development and scrutiny, this is to ensure that all Government Ministries are effectively covered and scrutinised;
(b) that Committee meetings be open to the public for public attendance and expert participation; and
(c) that Bills be referred to Committees for a more detailed and careful consideration with input from stakeholders and the public at large.

So far, there are eleven Watchdog Committees, which are accordingly aligned to respective government ministries.

Legislative Process

Under the Legislative Process area of reform, the main proposed reforms are to:

(a) enhance public participation in the legislative process by allowing stakeholders participation in Committees, especially those Committees considering Bills;
(b) increase opportunities for private members to table (or introduce) Bills by streamlining procedure;
(c) provide for adequate timeframe in which public notification of Bills is made before being tabled in the House; and

(d) increase oversight responsibilities, in other words, to oversee activities of the Executive in order to ensure that it carries out its governing role as laid down by the Constitution.

RECENT CHANGES AND PROCEDURES

In the Revised Standing Orders of 2005, the following are the changes that have been effected to the practice and procedure of the House:

The reforms programme that the Zambian Parliament is undergoing have also called for changes in the legislative process. These changes are necessitated as we endeavor to make the legislature more democratic and transparent. In the past, hardly any Private Member's Bill was brought to the House due to costs that were supposed to be borne by the presenter. In this regard, Standing Order 98 (7) now provides for the costs relating to the printing and publication of a Private Member's Bill, which shall be met by the Assembly. In this way, it is hoped that Members will feel encouraged to bring more Bills to the House.

The National Assembly Standing Orders issued under Article 88(1) of the Constitution have been revised as part of the on-going Parliamentary Reforms and the new additions in the revised Standing Orders provide for the following:

(1) The election of the Speaker, Deputy Speaker and the Deputy Chairman of Committees to be by secret ballot; (S.O 5 (2) and (11))

(2) Government or private members business to be discussed on any day, provided that the one with priority has no business; (S.O 26(1))

(3) Back bench Members of Parliament to ask Ministers questions to be answered by the Minister in fourteen (14) days if the question is not of a policy nature and seven days if a question is of a policy nature; (S.O 29 (3) and (4))

(4) The Standing Orders have also provided for other forms of parliamentary oversight like questions, motions, annual reports and petitions. One notable amendment to the Standing Orders is Standing Order 31 (1) whereby the Vice-President is allowed thirty minutes question time every Friday. Standing Order 31 (1) already referred to above is a novelty in that previously no specific time was allocated for questioning the Vice President directly. Now, under the new Standing Orders, the Vice President has up to thirty minutes question time each Friday. This Question Time is exclusively for the Vice President to answer the Members questions on any subject matter and in his absence no question time will be allocated. the Vice President's question time on any matter of national interest similar to that of Prime Minister's question time in the UK, Canada, India and many other Commonwealth jurisdictions; (S.O 31(1))

(5) the reduction of the time of a private member's motion to mature from one week to three days;(S.O 36 (2))

(6) the reduction of the time limits for members to debate on the President's Address from forty-five to twenty minutes but the member moving the motion on this debate to have

unlimited time, whilst also providing a member who is moving a motion to speak first and the seconder to speak first and the seconder to speak at any time; (S.O 44 (1))

(7) challenges to a decision of the chair by a member through a substantive motion subject to approval of the Committee on Privileges, Absences and Support Services; (S.O 61(1)) Any member wishing challenge the decision of the chair can do so by moving a substantive motion which will not be debated in the house unless the committee on Privileges, Absences and Support services has so resolved that it be tabled before the House (S.O 61 (1) and (2)

(8) voting by Hon Members of Parliament during a division to include a right to abstain, and a right to vote while seated for Hon Members who are incapacitated where a physical division takes place; (S.O 63 (4))

(9) the time for Division Bells to ring to allow members get ready to vote in the Chamber to be increased from two to a total of five minutes; (S.O 65)

(10) The budgetary process is one major function of the Legislature. In this area, a number of Standing Orders have been changed to enable the House effectively debate the budget. For example of Standing Order 83 (2) stipulates that Ministers to make their policy statements first before the debate on their vote ensues during the budget process (S.O 83 (2)). This will assist members see the need to either increase or reduce as necessary a portfolio's estimates of expenditure after they have heard the policy statement. The number of days for the Budget Debate has been increase from five days to ten days to allow the Estimates Committee more time to consider the Estimates; (S.O 82 (3))

(11) Standing Order 84 (1) now tries to break the tradition of the past of presenting annual reports to the House. Some bodies required to do so present reports three years after the financial year, thereby defeating the purpose of scrutiny by Parliament. Current changes, therefore, require that reports are presented within six months from the date of the end of each financial year. This is expected to assist in taking appropriate measures in time where need be. This is also intended to strengthen parliamentary oversight role as all annual reports will be discussed within a set time frame. (S.O. 84 (1))

(12) for the cost of processing private members Bills to be borne by the National Assembly to encourage private members to encourage private members to initiate legislation(S.O 98 (7)). The reforms programme that the Zambian Parliament is undergoing have also called for changes in the legislative process. These changes are necessitated as we endeavor to make the legislature more democratic and transparent. In the past, hardly any Private Member's Bill was brought to the House due to costs that were supposed to be borne by the presenter. In this regard, Standing Order 98 (7) now provides for the costs relating to the printing and publication of a Private Member's Bill, which shall be met by the Assembly. In this way, it is hoped that Members will feel encouraged to bring more Bills to the House. (S.O. 98 (7))

(13) for the committal of Bills to appropriate portfolio Committees in order to allow stakeholders and interested groups from the public to participate in the legislative process by affording them an opportunity to submit and contribute to the Committees; (S.O 103 (1))

(14) It is also to be noted that, the new Standing Order 103 (7) allows Committees considering Bills referred to them to sit while the House is also sitting. This is in order for the Members to have conclusive deliberations on the Bills and an opportunity for them to understand such Bills better. (S.O. 103 (7))

(15) In the quest to strengthen Parliament's oversight role, Standing Orders 130-158 provide for various matters relating to committee meetings. In order to make such meetings more accessible to the public, provision has been made for the public to attend committee meetings. Standing Order 130 (1) provides that all Sessional Committees of the National Assembly be held in public unless a committee resolves to hold it in camera. (S.O.130 (1))

(16) In the quest to strengthen Parliament's oversight role, Standing Orders 130-158 provide for various matters relating to committee meetings. In order to make such meetings more accessible to the public, provision has been made for the public to attend committee meetings. Standing Order 130 (1) provides that all Sessional Committees of the National Assembly be held in public unless a committee resolves to hold it in camera. (S.O.130 (1))

(17) for the portfolio Committees as such and not departmentally related as earlier named, to provide that the meetings of these Committees are open to the public which excludes Select Committees and House-keeping Committees; and to provide for the Reforms and Modernisation Committee and to expand the mandate of the Estimates Committee to include regular examination and scrutiny of the Budget Estimates and to conduct budget hearings; (S.O 130 (1))

(18) In the event that a mover or seconder of a report dissents from his/her own report, the report falls away and the committee reconstituted. (S.O 144(4))

(19) for flexible dress code to allow female Members of Parliament to wear executive trousers to the Chamber and allow make Members of Parliament to wear togas or safari suits with a scarf or a tie; and (S.O 207 91) and (2)

(20) for the conduct of Members of Parliament to be governed by the Parliamentary and Ministerial Code of Conduct. (S.O 218)

In conclusion, the recent changes and procedures in the National Assembly of Zambia bear testimony to the Assembly's commitment to political liberty and the rule of law. The parliamentary reforms so far implemented are also anchored in this commitment aimed at making the voice of the electorate to be taken into account. By launching, therefore, the new Standing Orders 2005, the Assembly has also confirmed its irreversible quest to guaranteeing a free and pluralist parliamentary democracy as demanded by the Zambian people and other stakeholders.

Thank You"

Mr Ian HARRIS, President, thanked Mrs Doris Katai Katebe MWINGA for her communication and invited members to put questions.

Mr Mark BOSC (Canada) said that the problem relating to women wearing trousers had also arisen in Canada.

He also shared in her frustration with the media who always have the last word: journalists always knew what to say but never to apologise for mistakes.

Mr Malcolm JACK (United Kingdom) asked for more details about public participation in the work of standing committees. This was a question which would soon be discussed in the House of Commons by the Modernisation Committee.

He asked if those drafting Bill were able to get technical assistance from the public service.

Mme Hélène Ponceau, Vice-President, took the chair.

Mr Xavier ROQUES (France) said that in 1970 the Secretary General of the National Assembly had brought to the attention of the female Member of Parliament who was wearing a trouser suit in public session that it was not proper dress. The same Secretary General had forbidden female staff – and particularly secretaries – to wear trousers and in the office. This decision had to give way to a change in custom and habits of dress.

The with journalists had been lost in advance, since they knew perfectly well how to make those in political life say what they wanted them to say.

As far as voting was concerned, the right to abstain had only been recognised in France fairly recently, for the reason that the Deputy had been elected to take a few and that he could not refuse to do so. An abstention was contrary to his mandate as an elected person and was even contrary to the basis of representative democracy. Apparently, the decision to allow Deputies to abstain was first made on the occasion of a famous vote, which was to give full powers to Marshall Petain on 10th of July 1940.

Mrs Judy MIDDLEBROOK (Australia) said that the Australian Parliament had decided to change its Rules in 2004 and that a full year had been needed before the Procedure Committee had been able to publish its proposals. The work of the Zambian Parliament therefore seemed to have been remarkably rapid and she asked how that had been possible.

Shri P.D.T. ACHARY (India) asked for further details on the arrangements for public meetings of Committees, which was an idea that was being explored by the Speaker of Lok Sabha. He noted the risk in the context of public meetings that a minister or representative of the Government might not be able to express themselves in complete freedom. He asked about the assembly and experience in this regard, three years after the introduction of these changes.

In addition, he asked about the procedure which was followed with Private Members' Bills and what became of them. In India frequently such Bills were withdrawn before they were debated.

Mrs Claressa SURTEES (Australia) underlined the difficulties in making an appropriate response to the sometimes hostile pressure of the media.

Mr Ibrahim Mohammed IBRAHIM (Sudan) thought that the media and the public should not be present and take part in Committee meetings but only in general debates. The work of

Committees were preparatory work and their presence could prejudice the quality of such work. The presence of journalists constituted an invitation to make a scene and to self-promotion. He asked what judgement had been made at the end of the three-year period of this new system.

Mr Hans BRATTESTÅ (Norway) recalled that he had started his career as a Parliamentary official in 1984 and said that often the Members of Parliament did not have at that time the right to abstain. Those Members of Parliament who are not present were noted down as absent and their names were made public.

In Norway the Committee hearings were opened to the public but their deliberations were in private. This system contributed to a consensus approach and allowed the possibility to each person to change their mind without running the risk that ill thought through opinions would then find their way into the public media.

In Norway Committees were unable to examine matters on their own initiative and were only able to examine questions which had been referred to them by Parliament. He asked whether this was the same in Zambia.

Mr Tango LAMANI (South Africa) said that in South Africa all Committee meetings and hearings were open to the public and to journalists. In order to avoid misreporting, Chairmen of Committees held regular press briefings personally with the main journalistic media in order to explain those questions which were being debated in the Committees.

Mr Yogendra NARAIN (India) asked for further details on two points: how had the reforms been started and what role had journalists played in this?

In India a specific programme had been organised for journalists in order to explain Parliamentary procedures to them but also to remind them of their rights and duties. This was a useful tool in particular in relation to inexperienced journalists who were sometimes tempted to alter the truth on particularly sensitive issues.

He also asked what sanctions were available to deal with a Member of Parliament whose conduct broke the rules of conduct laid down by the National Assembly in Zambia.

Mr Samuel Waweru NDINDIRI (Kenya) said that there had been a dress code in Kenya which had dated from before independence. Men had had to wear a suit and tie and women a dress (and optionally a hat – from now on forbidden for reasons of security). From now on women had the right to wear trousers.

As far as the work of Committees was concerned, their deliberations were not public although Members of Parliament afterwards often spoke about meetings to journalists and leaked various bits of information.

Mr Umaru SANI (Nigeria) said that in developing countries the media did not in general terms seem to have the same code of ethics as in developed countries. Journalists were only interested in sensational stories and did not hesitate to take sides with particular Members.

The press tended to report facts in a deliberately inexact way and it was very hard to deal with this.

In Nigeria there was Committee on Ethics and Privileges which could suggest punishment of a Member of Parliament who had been guilty of a breach – these sanctions had to be agreed to by the House itself.

Mr John CLERC (Switzerland) said that the question of women's clothing had not arisen in Switzerland until 1971, when women had obtained the right to vote. At that time "correct" dress had been required – this provision was difficult to enforce. From 2003 all rules relating to clothing had been abolished.

Mr Md Lutfar Rahman TALUKDER (Bangladesh) thought that the excesses of the press were a general problem in all countries.

In Bangladesh the media only was able to have access to Committee meetings if the Chairman of the Committee permitted it; the general principle was that they were in private. When Parliament was sitting there were specific places which were at the disposal of the press, and debates were broadcast.

Mr Robert MYTTENAERE (Belgium) said that the right to indicate, tension had to for long time been forbidden in Belgium; as a result it was still the case that when a Member of Parliament abstained he had to give explanation.

Apart from the question of trousers there was the matter of headscarves. The Rules of the House of Representatives in Belgium required that the public who were in the gallery could not give "any mark of approbation or disagreement" and that they must be "bare headed". This last provision had not been a particular problem for long time until the question arose relating to the wearing of scarves, by female school students of the Moslem faith. Until now, the House of Representatives - differently from the Senate - had not permitted the wearing off headscarf by the public, but the recent inquiry of other European Chambers had shown that this was an unusual requirement.

An amendment to this provision would be discussed in the near future.

Mrs Keorapetse BOEPETSWE (Botswana) said that in Botswana Committee meetings were held in private and that journalists could only speak to Members of Parliament between meetings.

Mr Raymond OKINDA (Gabon) said that in Gabon the public and journalists were not permitted to be present during the work of Committees. However, a Communications Officer of the National Assembly was present and was able to publicise the conclusions reached in such work to the media.

Mrs Doris MWINGA in reply to the various contributors said that a Committee on Reform had been officially set up in 2005—in reality this Committee had started work in 2002 shortly after the elections. It had worked in close collaboration with the Committee on Rules, had collected comments from all Members of Parliament and reported on the areas where reform had appeared particularly necessary. Workshops had been organised and recommendations for amendments to the internal Rules had been presented.

The role of committees in Zambia was similar to that of committees in many parliaments: they studied draft Bills, from the Government or private Members, and reported on their work to the House. Hearings were open to the public but their deliberations took place in private. When

a minister was giving evidence before a Committee his contribution and related debate involving members of the Committee were open to the public – the Government had for long time disliked this principle of publicity in the last decade of the previous century. Concerns were openly expressed that such publicity would have an impact on the effectiveness of the Committee.

Today, Members of Parliament were used to having to make a case and defend their position in public. Both the public and even the Government were happy with this reform.

As far as relations with the media were concerned, in Zambia there was a Committee of Privileges, chaired by the Deputy Speaker of Parliament. It was possible that in a case where there was repeated publication of false information the accreditation of particular journalists might be withdrawn.

A guide for relations with the press had been prepared which set out certain procedures or indicated which Committees met in private.

As far, voting and the right to abstain was concerned, it had been decided in 2005 that this right should be granted. In reality, the political parties themselves exercised certain control on the voting practices of Members of Parliament.

In order to inform the public better about the work of Parliament and to increase engagement constituency offices had been set up in each of the 150 constituencies. They were designed to facilitate contact between electors and the elected Members.

Mr Petr TKACHENKO (Russia) praised the quality of Mrs MWINGA's communication and noted the importance of the question of legislative reform. He proposed that the theme of the legislative process should be the subject of a debate at the next session of the ASGP.

Mrs Hélène PONCEAU, Vice President, thanked Mrs Doris MWINGA for her communication and also thanked those members present for their numerous and pertinent contributions.

The sitting rose at 12:40 p.m.

SECOND SITTING
Monday 17 October 2005 (Afternoon)

Mr Ian Harris, President, in the Chair

The sitting was opened at 3.00 pm

1. Introductory Remarks

Mr Ian HARRIS, President, welcomed members to the second sitting of the ASGP session. There was a change to the Orders of the Day: the communication by Mr Prosper Vokouma, Secretary General of the National the Assembly of Burkina Faso on "A presentation of the Strategic Development Plan of the Parliament of Burkina Faso 2004-2014" would now not take place this afternoon, but would be put off to the Session in Nairobi.

2. Communication from Mr Bruno Haller, Secretary General of the Parliamentary Assembly of the Council of Europe on the Strengthening of Democracy in Europe

Mr Ian HARRIS, President, welcomed Mr Bruno HALLER, Secretary General of the Parliamentary Assembly of the Council of Europe, to the platform to present his communication.

Mr Bruno HALLER, Secretary General of the Parliamentary Assembly of the Council of Europe, spoke as follows:

"1. Introduction: "Europe's democratic conscience"

When the Council of Europe was set up in 1949 its Statute provided it with two organs, the Committee of (Foreign) Ministers, and the Consultative (since re-named Parliamentary) Assembly. The latter was the very first European Assembly, and the first to bring together members of national parliaments in an international organisation.

This democratic impulse was essential to the very rationale and objectives of the Council of Europe, since its purpose was, and remains, to achieve greater unity between its member States as a unique way to strengthen democracy, human rights and the rule of law.

Since the beginning, the Parliamentary Assembly has consistently thought of itself as a beacon of democracy in Europe, as a model democratic institution and as "Europe's democratic conscience". Accordingly, it has not only done its utmost to protect and promote democracy and democratic institutions throughout the continent, but it has also sought to influence the development of the Council of Europe itself in a democratic direction.

Thus, for example, one of the Assembly's earliest campaigns was to ensure that the First Additional Protocol of the European Convention on Human Right (ECHR), the best known and most powerful of the some 200 international treaties concluded in the framework of the

Council of Europe, contained a clause obliging the Contracting Parties to hold free elections at reasonable intervals by secret ballot, under conditions which would ensure the free expression of the opinion of the people in the choice of the legislature. Another major concern of the Assembly was to protect through the European Convention on Human Rights the right to organise a political opposition.

2. The Parliamentary Assembly as a forum for debate and reflection on democracy

2.1. Future of democratic institutions

Acting in its capacity as a "think-tank" and "ideas laboratory", the Parliamentary Assembly has made significant contributions to the ongoing debate about the nature of democracy itself, its definition, conditions and prerequisites, its functioning and development. Such reflection has often followed on a growing or sudden awareness of threats such as terrorism, or challenges such as declining voter participation.

Thus, for example, considering that in most member States of the Council of Europe the role of parliaments was weakening, that they were encountering increasing difficulties in the exercise of their legislative powers and their control over the executive, and that democratic institutions must be adapted to meet the needs of contemporary society, the Parliamentary Assembly organised and then debated the results of a symposium on the future of democratic institutions in Europe in 1974 and a Conference on the Development of Democratic Institutions in Europe in 1976. The latter in particular focused on the growing predominance of political parties; extra-parliamentary forces and pressure groups, which can distort the traditional model of representative democracy; ways to strengthen control of government by parliament; the judicial review process; education policies for promoting equality of opportunity and democratic beliefs and behaviour; and the specific role of the mass media as a democratic counterweight to government.

One of the conclusions of the debate on the 1976 Conference, still a rationale for the Assembly's work, was that the problems of parliamentary democracy in Europe are too complex for solution solely at national level, and that, having regard to the European responsibilities of national parliaments, governments and political parties, these problems should be reviewed in a European context.

2.2. Strasbourg Conferences on Parliamentary Democracy

In 1983, 1987 and 1991, the Parliamentary Assembly organised the First, Second and Third Strasbourg Conferences on Parliamentary Democracy, which not only allowed for wide-ranging analysis of the challenges facing parliamentary democracy and how to strengthen and promote it, but also gave rise to the so-called "Strasbourg consensus", a definition of the essential elements of a pluralist parliamentary democracy.

It was agreed that central to all action by the State was protection of fundamental rights and freedoms (life, liberty, freedom of speech, thought and conscience, etc.) and that this protection was served by the citizen's right to choose and change government in elections conducted under universal suffrage and by secret ballot, the responsibility of the executive to the elected representatives of the people, and the right and duty of those elected representatives to regulate life in society by means of laws, and to control the executive. Democracy was described as an open society in which all state power is derived from the people. This implied the right to participation and consultation in political decision-making,

free access to information, freedom of the press and media, freedom to form political parties and to stand for political office, freedom of association, freedom to negotiate working conditions, and freedom from slavery and exploitation. A further essential component of democracy, equality before the law regardless of sex, race, colour, creed or birth, required an independent judiciary, a system of judicial scrutiny of executive decisions, subordination of the police and armed forces to the elected government, and the right to privacy and protection of personal freedom. The only restrictions that could be placed on such freedoms were such as to secure the rights and freedoms of others.

Discussion at the Strasbourg Conferences focused on such themes as "broadening participation in the electoral process", "the responsibility of elected representatives and the development of modern science and technology", "violence, mass media and democracy", "education for democratic citizenship", and "problems of transition from an authoritarian or totalitarian regime to a genuinely democratic system".

The 1991 Strasbourg Conference was held in the context of fundamental change in Europe and many other regions of the world, which led the participants to conclude that "the peoples of the world are demanding the replacement of the formal concept of legality by the more meaningful concept of 'legitimacy'". In their Final Declaration, they asserted that the "legitimacy" of political regimes could become a reality only in an international context combining a number of conditions, including, among other things, acceptance of an "international duty of intervention" where human rights are infringed. The experience gained through the Strasbourg Conferences was most useful for one of the main priorities of the Assembly in the 90s: to promote and stabilize democracy in the Central and Eastern European countries.

2.3. European Conferences of Presidents of Parliaments

Every year from 1975 to 1980, and biennially after that, the Parliamentary Assembly has organised European Conferences of Presidents of Parliaments, many of which have critically examined the challenges facing parliamentary democracy. In The Hague in 1994, for example, the Speakers considered whether Europe's parliamentary democracy was in jeopardy, focusing on the media as a power in politics, Parliament as true reflection of the population, and instruments likely to improve parliamentary control. In Zagreb in 2002 they discussed "Democracies facing terrorism: national strategies", and in Strasbourg in 2004 they asked "How democratic is our democracy?", with much attention paid to the impact of modern technology on democratic procedures, as well as to cooperation between national Parliaments and European Assemblies in promoting democracy. The next Speakers' Conference will be held in Tallin, Estonia, on 30-31 May 2006.

2.4. Specific problems of democracy

The Parliamentary Assembly has debated reports on many specific problems facing democracies, to which it has sought solutions. Thus, since 1972 it has regularly produced resolutions, recommendations and opinions addressing the *threat of terrorism* in the context of the Council of Europe's fundamental commitment to democracy, human rights and the rule of law. The most recent debate gave rise to Recommendation 1677 (2004) and Resolution 1400 (2004) on the challenge of terrorism in Council of Europe member States. These reiterated the Assembly's earlier definition of terrorism, its condemnation and utter rejection of terror as a means of achieving political ends, and its position of principle that the fight against terrorism must always be compatible with the fundamental freedoms and human rights which it has the

task of protecting, taking as its basis the absolute primacy of the fundamental and inalienable right to life. Among other things, the Assembly has influenced the drafting of the Council of Europe treaties concerning terrorism: the Convention on the Suppression of Terrorism (1977), its amending Protocol (2003) and the Council of Europe Convention on the Prevention of Terrorism opened for signature by the member States at the Organisation's Third Summit of Heads of State and Government held in Warsaw on 16-17 May 2005.

Conscious of a challenge to established *political parties* in Europe by new protest parties and citizens' action groups, in 1978 the Assembly organised a symposium on the role of political parties in the development of parliamentary democracy, whose participants carried out a thorough analysis of this perceived crisis of political and functional representation. More recently, the Parliamentary Assembly has debated the question of the threat posed to democracy by extremist parties and movements in Europe [Resolution 1344 (2003)], restrictions on political parties [Resolution 1308 (2002)] and their financing [Recommendation 1516 (2001)].

Further specific issues raised by the Assembly in its commitment to strengthen democracy have included, for example:

Minimum age for voting [Recommendation 1315 (1997)]: In order to extend and reinforce democracy and bring younger voters into the electorate, to give young people new rights and in particular new responsibilities with a view to making them fully fledged citizens, the Assembly recommends that the minimum age for the right to vote and stand for election be harmonised at 18 years for all elections and in all countries, and that attention be given to the preparation of young people for civic life through education and the promotion of community involvement.

Women's participation in elections [Recommendation 1676 (2004)]: The Assembly recommends that the Committee of Ministers draw up a "Charter for Electoral Equality" in which Council of Europe member states would subscribe to concerted action to guarantee women's electoral rights and to improve the electoral participation of women. This Charter should include all measures necessary to outlaw and eliminate such practices as "family voting" and set the objective to increase the representation of women in parliament and other elected assemblies to at least 40% by the year 2020.

Abolition of restrictions on the right to vote [Recommendation 1714 (2005) and Resolution 1459 (2005)]: The Assembly concludes that, in view of the importance of the right to vote in a democratic society, the member countries of the Council of Europe should review existing restrictions and abolish all those that are no longer necessary and proportionate in pursuit of a legitimate aim. The Resolution and Recommendation, in particular, invite member states to enable their citizens living abroad to vote during national elections.

Participation of immigrants and foreign residents in political life in the Council of Europe member States [Recommendation 1500 (2001)]: The Assembly stresses that democratic legitimacy requires equal participation by all groups of society in the political process, and that the contribution of legally resident non-citizens to a country's prosperity further justifies their right to influence political decisions in the country concerned. Therefore, it urges the governments of member States, among other things, to grant the right to vote and stand in local elections to all migrants legally established for at least three years, irrespective of their origin.

Instruments of citizen participation in representative democracy [Resolution 1121 (1997)]: Noting that the active interest and involvement of the electorate in public affairs is essential in keeping democracy alive, whereas in most Council of Europe member states the political institutions are designed in such a way that the citizen participation in political life is

limited to the election of representatives, the Assembly considers that opportunities for direct participation by citizens in the political process should be developed further. The Resolution sets out basic principles for consulting the electorate by referendum.

Referendums: towards good practices in Europe [Recommendation 1704 (2005)]: The Assembly believes that recourse to referendums should be encouraged as a way to reinforce the democratic process in Council of Europe member states and bridge the distance between the electorate and decision makers. The Council of Europe, in its role as guardian of democracy, should take the lead in codifying rules on the holding of referendums and promote models of good practice, to ensure that referendums are used as a supplement to representative democracy and avoid any manipulation.

Media and democratic culture [Recommendation 1407 (1999)]: The media are vital for the creation and the development of a democratic culture. They provide people with information, which influences the process of shaping opinions and attitudes and of making political choices. Therefore, the media must be free, pluralistic and independent, and at the same time they should voluntarily assume social accountability. The media are increasingly facing the same sort of problems, which require the same sort of co-ordinated approaches. The main challenges are: safeguarding media independence, both political and commercial; preserving public service broadcasting; avoiding dependence, uniformity, sensationalism, "infotainment", crime and violence; striking a balance between the right to privacy and the right to information. The Assembly stresses the need for politicians to ensure that the political and legal conditions are met so as to enable, on the one hand, media to perform freely and, on the other, to guarantee individual freedoms and other fundamental human rights.

Impact of the new communication and information technologies on democracy [Resolution 1120 (1997) and Order 531 (1997)]: Recognising that the NCITs provide an opportunity among other things to create a new type of two-way communication and develop a new concept of "electronic citizenship", the Assembly calls for the endowment of national parliaments and decentralised authorities with the equipment needed for developing consultations between elected representatives and citizens, thereby ensuring increased participation by the latter in political decision-making. It also calls on parliaments to take legislative action in order to ensure the most effective use of these technologies for the benefit of the public and to reconcile technological progress with respect for democratic principles and human rights.

Religion and democracy [Recommendation 1396 (1999)]: The Assembly recognises that there is a religious aspect to many of the problems that European contemporary society faces such as intolerant fundamentalist movements and terrorist acts, racism and xenophobia, ethnic conflicts. Although politics and religion should be kept apart, democracy and religion need not be incompatible and can be valid partners. By tackling societal problems, the authorities can remove many of the causes of religious extremism. Education is the key way to combat ignorance, stereotypes and misunderstanding of religions. The Assembly feels that governments should also do more to guarantee freedom of conscience and religious expression, to develop education about religions, to encourage dialogue with and between religions and to promote the cultural and social expression of religions.

Democracy and economic development [Resolution 1209 (2000)]: The Assembly sees democracy as fundamental for lasting economic development, just as economic development can lead a country to a stage where more democracy will not only be possible but even necessary for economic development to go further. In an integrated world economy, where a

financial crisis in one country or region increasingly risks involving all the others, democracy in its deepest and widest meaning provides the best guarantee against domestic and international economic instability.

3. Action to strengthen democracy in the member States

3.1. Strengthening democratic institutions in the member States

In its Resolution 1154 (1998) on *Democratic functioning of national parliaments*, the Assembly, based on a comparative analysis of 27 European parliamentary systems in the key areas of legislative initiative and procedures, parliamentary control over the executive and the status of parliamentarians, identified measures which would lead to greater effectiveness of parliaments in fulfilling their role.

In its Resolution 1353 (2003) on the *Future of democracy: strengthening democratic institutions*, the Assembly listed concrete proposals designed to ensure greater accessibility, openness, transparency, and accountability in democratic decision-making.

In addition to the traditional prerequisites of democracy (fundamental freedoms, free and fair elections, etc), the Assembly in its Recommendation 1680 (2004) and Resolution 1407 (2004) on *New concepts to evaluate the state of democratic development* identified a further detailed list of criteria for the evaluation of democratic development in a given country, such as the transparency of governmental action and administration, the level of anti-corruption measures and their effectiveness, and the condition of minorities. The Assembly resolved to introduce a process of periodical reports on the state of democratic development, allowing each member and Observer State to present updated information on democratic reforms and other measures undertaken.

In this connection, in February 2005 the Parliamentary Assembly's Political Affairs Committee organised a Symposium in Warsaw on "Strengthening Democracy in Europe". The participants concluded that although it may be exaggerated to say that democracy was in crisis, it was so valuable a commodity in itself that constant watch had to be kept to ensure its quality and stability. Everything must be done to safeguard it from future threats. In this connection, the establishment of a system for monitoring democracy and democratic institutions was discussed, involving the preparation of reports assessing the situation in member States in such areas as civil society, decentralisation of decision-making, political parties, the media, and civic education. The Symposium participants also called for further study of the impact of the new information and communication technologies on the democratic process.

Furthermore, the Assembly welcomed the decision taken at the Third Summit of Heads of State and Government of the Council of Europe to set up within the Council of Europe a Forum on the Future of Democracy. This idea, launched by the Assembly, now requires reflection as to how to implement it. The Assembly is determined to play a major role in this process and, in order to do so, wishes to be closely associated with it. In the Assembly's view, the aim of the Forum is to strengthen democracy, political freedoms and citizens' participation. The Forum will be open to all member states and civil society, represented by policymakers, officials, practitioners or academics. It will enable the exchange of ideas, information and examples of best practice, as well as discussions on possible future action, thus enhancing, through its discussions and proposals, the Council of Europe's work in the field of democracy.

Finally, the Assembly stands ready to intervene to offer direct political assistance or mediation in a political crisis involving a threat to democracy in a member State. For example, it sent a mission of inquiry to Albania during the crisis there in 1996-7, sent an election observation team and offered assistance in constitutional consensus-building. The Assembly also offered its good offices for promoting dialogue between the opposition and the government in the situation of political tension that prevailed in Moldova in 2002 and 2003.

3.2. The monitoring procedure of the Parliamentary Assembly

Since 1993, the Parliamentary Assembly has monitored the honouring of the obligations and commitments entered into by the new Member States upon their accession to the Council of Europe. But it was in 1997 that the Assembly set up a specialised committee, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), responsible for verifying the fulfilment of these accession commitments and indeed of all the obligations assumed by all the member States in regard to the Statute of the Council of Europe, the European Convention on Human Rights and all other Council of Europe Conventions to which they are parties.

The Monitoring Committee is required to report to the Assembly once a year on the general progress of monitoring procedures and to submit to it at least once every two years a report on each country being monitored. Parliamentary debates on monitoring are held in public. However, the monitoring procedure at the committee stage remains confidential. Monitoring reports are drawn up in respect of each country separately. Two co-rapporteurs are appointed in respect of each member state, with due consideration to political and regional balance. A report includes a draft resolution in which specific proposals are made for the improvement of the situation in the country under consideration, and a draft recommendation for the attention of the Committee of Ministers.

Since 1998 the Committee has presented six annual reports on the progress of the Assembly's monitoring procedure. Since 1997, it has produced a great number of country reports. At the moment ten States are subject to a monitoring procedure: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Monaco, Russia, Serbia and Montenegro and Ukraine.

Since 1997, when closing a monitoring procedure, the Parliamentary Assembly has decided at the same time to pursue a dialogue with the national authorities on certain issues mentioned in the resolutions adopted, allowing itself the choice of re-opening a procedure if further clarification or enhanced co-operation would seem desirable. In the course of 2000, the Committee renewed the dialogue with Estonia, Lithuania, Romania, Slovakia and the Czech Republic; in the course of 2001 with Bulgaria, Croatia, and the former Yugoslav Republic of Macedonia; and more recently, in 2002, with Latvia. A post-monitoring dialogue with Turkey has been initiated.

Having expressed its satisfaction with the outcome of the post-monitoring dialogue, the Monitoring Committee decided to recommend to the Assembly Bureau that the post-monitoring dialogue with Estonia, Lithuania, Romania, Croatia and the Czech Republic be concluded (in January 2001, January 2002, May 2002, September 2003 and October 2004 respectively).

The purpose of the monitoring procedure is the identify areas where the Assembly and other Council of Europe bodies, as appropriate, may provide support and assistance. It does this

through mutually agreed assistance programmes for the implementation of proposals for legislative or institutional reform, for example.

The Rules provide that the Assembly may sanction persistent failure to honour obligations and commitments accepted, or lack of co-operation in its monitoring process. It can do this through the adoption of an appropriate resolution or recommendation, through the non-ratification of the credentials of a national parliamentary delegation at the beginning of the Assembly's next ordinary session, or through the annulment of ratified credentials in the course of the same ordinary session in accordance with its Rules of Procedure. Should the member State continue not to respect its commitments, the Assembly may address a recommendation to the Committee of Ministers asking it to take the appropriate action provided for in Articles 8 and 9 of the Statute of the Council of Europe, namely suspension or expulsion.

Already before the introduction of the monitoring procedure, the Assembly had the possibility to react against undemocratic developments in member States through the checking of the credentials of their national delegations at the beginning of each session. Thus the examination of the credentials has, over the years, developed into a test of democratic legitimacy, in particular of democratic representativeness.

It should also be underlined that in the last three years the Monitoring Committee has prepared reports on the functioning of democratic institutions in several countries: Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, Ukraine, and Serbia and Montenegro.

The purpose of these reports is to respond to an emergency situation of a political or constitutional nature. Their objective is not to review all the commitments undertaken by the country at the time of joining but to make extremely concrete and precise recommendations designed to help resolve the crisis.

For example, in its Resolution 1458 (2005) on the *constitutional reform process in Armenia*, adopted at its June 2005 part-session, the Assembly expressed its deep concern that delay in adopting constitutional amendments was holding back Armenia's progress towards European democratic norms and standards in key areas of political life. The Assembly considered that the revision of the constitution was a pre-condition for the fulfilment of some of the most important commitments that Armenia had undertaken upon its accession to the Council of Europe, including the separation and balance of powers, the reform of the judicial system, and the reform of local self-government.

The Assembly then called on the Armenian authorities and the parliamentary majority to fully implement the recommendations of the Venice Commission [cf. section 3.5 below], to undertake clear and meaningful steps in order to resume an immediate dialogue with the opposition, and to adopt the text at second reading "no later than August 2005" with a view to holding the referendum "no later than November 2005".

Moreover, the Assembly called on the opposition "to stop its parliamentary boycott and to do everything possible to promote the recommendations of the Council of Europe with regard to the constitutional reform". The parliamentarians resolved to observe the constitutional referendum and, in the meantime, declared their readiness to provide any assistance that might be needed for its preparation.

3.3. Observation of elections

The Assembly sends parliamentary and presidential election observation missions, in cooperation with the OSCE/PA/ODIHR and the European Parliament, to those countries which are undergoing the monitoring procedure. The resulting assessments are debated by the Assembly.

3.4. Interparliamentary cooperation programme

The Assembly has regularly organised training seminars for members and staff of Parliaments, either in the countries themselves or at the Council of Europe headquarters. Study visits have also been arranged.

A specific cooperation assistance programme is in progress involving Armenia, Azerbaijan, and Georgia. Assistance by the Parliamentary Assembly is crucial for ensuring that the Parliaments of the region play their full constitutional role and for improving their democratic functioning. Members of Parliament and parliamentary staff thus become more familiar with European standards in order to contribute more efficiently to the legislative reforms in their country. Such assistance helps to ensure that draft laws, from the very beginning of the legislative process, correspond to European standards. There are plans for such an assistance programme for Ukraine.

The Assembly has also proposed draft parliamentary rules of procedure, or organised seminars on such questions as the relationship between the parliamentary majority and opposition. It is also planning assistance for the Palestinian Legislative Council and has involved Kazakhstan, with which the Assembly has a cooperation agreement, in some activities.

3.5. Co-operation Agreement with the European Commission for Democracy through Law (Venice Commission)

For many years, the Assembly has called on the Venice Commission for its expertise. Established in 1990, the Commission has played a leading role in constitutional reform in the countries of Central and Eastern Europe and in the adoption of constitutions that conform to the standards of Europe's constitutional heritage. Its work aims at upholding three underlying principles: democracy, human rights and the rule of law - the cornerstones of the Council of Europe. These three principles find their concrete expression in four key-areas: constitutional assistance, elections and referendums, co-operation with constitutional courts, and transnational studies, reports and seminars.

The Assembly has regularly consulted the Venice Commission when preparing reports requiring an opinion in the constitutional or legislative fields. This collaboration was put on a formal footing on 4 October 2004 through an agreement setting out the principles and methods of cooperation between the Assembly and the Venice Commission, with due regard for their respective competences.

4. Strengthening the Assembly's own democratic legitimacy and its powers within the Council of Europe

4.1 Ensuring fair representation in the Assembly

The Assembly's Rules of Procedure provide that insofar as the number of their members allows, national parliamentary delegations to the Assembly should be composed so as to ensure a fair representation of the political parties or groups in their parliaments. Moreover, national delegations should include the under-represented sex at least in the same percentage as is present in their parliaments and in any case one representative of each sex. Each parliament is bound to inform the Assembly of the methods used to appoint seats on their delegation and of the number of its women members. The Assembly may refuse to ratify the credentials of national parliamentary delegations whose composition does not ensure fair representation of the political parties or groups within their parliaments, or which do not include in any case one member of each sex. Likewise, nominations of Vice-Presidents of the Assembly and of chairpersons and vice-chairpersons of committees must take account of gender balance, which is also a consideration in the appointment of committee rapporteurs.

4.2 Parliamentary immunity

The members of the Assembly enjoy the privileges and immunities provided for in the General Agreement on Privileges and Immunities of the Council of Europe (of 2 September 1949) and its Additional Protocol (of 6 November 1952). These immunities are granted in order to preserve the integrity of the Assembly and to safeguard the independence of its members in exercising their European office. In the event of a member of the Assembly being arrested or deprived of freedom of movement in supposed violation of their privileges and immunities, the President of the Assembly may take the initiative of confirming the privileges and immunities of the member concerned, and members may petition the President to defend their immunity and privileges.

4.3 Enhancing the role of the Assembly

Originally conceived as a mainly consultative body in relation to the Committee of Ministers, the decision-making organ of the Council of Europe, the Assembly has increasingly sought to make its voice heard as a genuine, if not legislative, parliamentary body in relation to the executive power. The Assembly played a decisive pioneering role in the Organisation's enlargement process which led after 1989 to the inclusion of the new democracies in Central and Eastern Europe. It has always been the driving force in developing the political role of the Council of Europe and in promoting necessary institutional change. In the interest of the Council of Europe as a whole, the Assembly is increasingly assertive when it comes to decision-making involving the future of the Organisation. Moreover, the Assembly is campaigning for greater budgetary autonomy and a more pronounced role in the drawing up of Council of Europe treaties. To strengthen its position, it has over the last several years made a great effort to increase the transparency of its management, to bring its Rules of Procedure and practices up to date and to streamline its committee work.

5. Conclusion

The Parliamentary Assembly of the Council of Europe is increasingly seen as a model of regional parliamentary cooperation across the world. It has strongly encouraged the creation of other regional Assemblies such as the Pan-African Parliament, to which it has close ties,

and the embryonic Asian Parliamentary Assembly. This is no accident, since the Parliamentary Assembly will soon have sixty years of unique experience as an international parliamentary body to its credit, sixty years in which it will have shown the way as the guardian and the beacon of democracy in the wider Europe and beyond."

Mr Ian HARRIS, President, thanked Mr Haller and invited questions.

Mr Moussa MOUTARI (Niger) asked for clarification to get rid of confusion about the role of the Council of Europe and the Europe and Parliament and he asked which countries were members of both?

Mr John CLERC (Switzerland) asked for an explanation of the part of his text referring to media and culture. There had been some recent negative developments such as reality TV and political debates were relegated to late hours. When would the Council of Europe blow the whistle and implement the Declaration on Diversity of the Media.

Mrs Doris Katai Katebe MWINGA (Zambia) supported the question from her colleague from Niger. She also wanted to know about initiating legislation. How did this relate to legislation in national Parliaments?

Mrs Keorapetse BOEPETSWE (Botswana) noted that what was legitimate intervention by some was regarded as interference by others.

Mme Hélène PONCEAU (France) thanked Haller for an interesting presentation. She wanted to ask about the monitoring process on page 8 of the written presentation. She referred to the appointment of Rapporteurs who met representatives of Governments. She would like to know more about their working methods. Did they have investigative powers?

Mr Bruno HALLER (Council of Europe), in reply said that there were two questions about the relationship between the Council of Europe and the European Parliament. The European Parliament was the Parliamentary body of the EU, which included 25 States. This was elected by universal suffrage in each country. Members of the Council of Europe were elected members of national Parliaments who were appointed by their countries. Larger countries had more members than smaller ones. Political representation had to reflect that of their national Parliaments. The Council of Europe was active in the area of Gender Equality: there was a Rule about the number of women in a delegation. This had to reflect the proportion elected in each Parliament and had to include at least one woman. He recently had had to bring this matter up with two parliamentary delegations. One had given way but the other had not and its delegation had not been accepted.

As far as the powers of each was concerned, the EU Parliament had a role in drawing up laws for the EU. The Council of Europe issued conventions which were international treaties and not laws. They had to be ratified by the individual states. The Council of Europe played a role in the harmonization of laws across Europe. Both institutions were working towards the same objectives.

In relation to Television he agreed with much of what his Swiss colleague had said. The Council of Europe wanted to take part in the development of parliamentary TV. There had been recent meetings in Brussels on this. There was a plan to have more programmes on parliamentary democracy.

He referred to the intervention about whistle blowing; recent work had been done on this.

The question had been raised about the distinction between Interference and intervention: the debate had recently moved on in the Council of Europe. The Council of Europe had recently been able to convince other organizations that it was not interfering. It must not be forgotten that those who were being observed now were going to be observers later. Many difficulties had now been removed which used to exist. It was possible to withdraw a country's membership if it did not comply with the Council of Europe's work. So far this had never been done

Mr Ian HARRIS, President, thanked Mr HALLER. In relation to Mr CLERC's point on television he would ask Mr Forsberg to give an unscheduled presentation later on the outcome of the meeting at lunch time with the EBC.

3. Communication from Shri P.D.T. Achary, Secretary General of the Lok Sabha of India, on The Parliamentary Forum on Water Conservation and Managment

Mr Ian HARRIS, President, welcomed Shri P.D.T. ACHARY, Secretary General of the Lok Sabha of India, to the platform to present his communication.

Shri P.D.T. ACHARY, Secretary General of the Lok Sabha of India, spoke as follows:

"Introduction

Water is an essential and perhaps the most basic resource for life on earth. According to the United Nations estimate, presently, approximately 1.1 billion people in the world do not have access to sufficient drinking water, while 2.4 billion people live without decent sanitation. It is being predicted that if necessary water conservation measures are not undertaken at the earliest, half of the world's population will be affected by chronic shortage of fresh water by the year 2025, as a large portion of human population will be living in the urban areas stretching the facilities of water supply, sanitation and waste water management to a breaking point. The state of affairs is so alarming that the United Nations has declared 2005-2012 as the International Decade for "Water for Life".

Water is crucial for sustainable development, including the preservation of our natural environment. It is also undisputable that the lack of fresh water limits a country's ability to maintain public health and to develop industry and agriculture. In fact, inadequate water supplies are both a cause and an effect of poverty. Access to fresh water is, therefore, a pre-requisite for reducing poverty and in achieving sustainable development.

Indian Scenario

India is considered rich in terms of annual rainfall and total water resources available at the national level; however, the uneven distribution of the resources causes. India's hydro-meteorological features cause highly variable rains which result in limited water availability in some regions and abundance in others. Also the precipitation is confined to three to four months only in a year providing over 4000 billion cubic meters of fresh water.

The rapid increase in the country's population from about 343 million at the time of Independence to over 1027 million in 2001, accompanied by the growth of agriculture, rapid urbanization, economic growth and improved access to basic services has resulted in an increase in the demand for water. The widening gap between the demand and supply has led to a substantial increase in the share of groundwater consumption by the urban, agricultural and domestic sectors. Reducing per capita of water, over exploitation of groundwater sources, lack of an effective system for the conservation and management of water resources, adverse effects of water related disasters such as floods and droughts are some of the serious challenges before our country. In order to maintain our groundwater resource potential, measures for dovetailing rainwater harvesting are necessary on a large scale by the governmental and non-governmental organisations as well as by the public at large.

The Ministry of Water Resources is the principal nodal agency responsible for the overall planning, policy formulation, co-ordination and guidance in the sector of water resources. In addition, several other central Departments/agencies are also working for the development and management of water resources. We also have a National Water Policy, besides a large number of legislative measures on the subject. At the parliamentary level, we have the Consultative Committee as also the Departmentally Related Standing Committee on Water Resources.

Honourable Speaker's Initiative

On 12 May 2005, the Honourable Speaker of the Lok Sabha, Shri Somnath Chatterjee, expressing his deep concern at the alarming rate at which the level of the ground water is falling, made an Observation on the floor of the House and announced his decision to constitute a *Parliamentary Forum on Water*. The Speaker also offered the premises of the Parliament House Complex, the Speaker's residential premises in New Delhi and Kolkata and all the residential and official promises under the control of the Speaker to install the facilities for harvesting rain water. A preliminary meeting of the Forum was held on 8 August 2005 wherein the Honourable Speaker made it clear that the new Forum was, in no way, meant to encroach into the territories of the already existing Standing and Consultative Committee on Water Resources.

Parliamentary Forum on Water Conservation and Management

The Parliamentary Forum on Water Conservation and Management was constituted by the Speaker, Lok Sabha, in consultation with the Chairman, Rajya Sabha, on 12 August 2005.

The Forum has been conceived with a view to providing a separate platform to the members to discuss the issue of water resources and its wider ramifications outside the strict procedural confines of the Chambers of the Lok Sabha and the Rajya Sabha and the Committees, in a structured manner. The Forum would also help in equipping the members with information and knowledge regarding issues and new development in the area of water conservation and management so tat they can take up this crucial matter at the constituency level throughout the country. Also, besides articulating concern over the plight of the common man, the Forum is expected to accelerate popularizing water conservation measures in the whole country.

Composition

As per the Draft Guidelines, the Speaker, Lok Sabha, shall be the *ex-officio* President and the Deputy Speaker, Lok Sabha; Deputy Chairman, Rajya Sabha; the Ministers of (i) Water

Resources; (ii) Urban Development; (iii) Rural Development; (iv) Agriculture; and (v) Science and Technology shall be the *ex-officio* Vice-Presidents of the Forum.

The Forum shall consist of not more that 31 members (including the President, Vice-Presidents and *ex officio* Members) out of whom not more that 21 shall be from the Lok Sabha and not more that 10 shall be from the Rajya Sabha. Members, other than the office-bearers and *ex-officio* members, shall be nominated by the Speaker, Lok Sabha, and the Chairman, Rajya Sabha, as the case may be, from amongst the Leaders of Parties and Groups, or their nominees who have special knowledge/keen interest in the subject. The term of office of the members of the Forum shall be co-terminus with the term of the Lok Sabha.

Realising the increasingly crucial role of experts in policy formulation and implementation, experts in the field of water conservation also have been associated with the Forum as Special Invitees, who may share their views/present papers during the meetings/seminars of the Forum.

Functions

The Forum shall identify and discuss the problems regarding water in a structured manner with a result-oriented approach. The Forum shall:

- identify specific subjects/schemes which are of crucial importance and examine them in-depth and make suggestions/recommendations for consideration and appropriate action by the Government/Organisations concerned.

- identify the ways of involving members of Parliament in conservation and augmentation of water resources in their respective constituencies.

- be apprised periodically by the Government of the impact of implementation of the decisions taken regarding water conservation and management.

- organise seminars/workshops to create awareness for conservation and efficient management of water

- undertake such other related tasks as it may deem fit.

Role of the Government

The Ministry of Water Resources shall render necessary assistance to the Forum in all matters, including organising seminars. The representatives from the Ministries of Water Resources, Urban Development, Rural Development, Agriculture and Science and Technology will be present during the meetings/seminars of the Forum.

Meetings/Quorum/Procedure

The Forum will hold meetings from time to time, as may be necessary, during the Sessions of Parliament. The Quorum for the meeting shall be ten. The Forum may formulate its own procedures. The Secretary, Lok Sabha Secretariat, shall be the Secretary of the Forum which shall be serviced by the Lok Sabha Secretariat.

Lecture Series for Members of Parliament

Taking his initiative of water conservation further, the Speaker, Shri Somnath Chatterjee, has introduced yet another initiative of organising Lecture Series for members of Parliament on a wide range of subjects of topical concern that will provide a meeting ground for interaction between members of Parliament and experts in diverse fields. The first Lecture of the series was on *Water Conservation* by Ms Sunita, Narain, Director, Centre for Science and Environment, New Delhi. Inaugurating the Lecture Series on 17 August 2005, the Honourable Speaker expressed confidence that the Lectures will not only enlighten members of Parliament about the various contemporary problems substantially impacting on the socio-economic fabric of our country but would also help them in playing a pro-active role in tackling these problems meaningfully."

Mr Ian HARRIS, President, thanked Shri P.D.T. ACHARY and invited questions.

Mr Malcolm JACK (United Kingdom) said that one thought occurred – had there been any criticism of the notion of Parliament intruding on Government's responsibilities on this matter?

Mr Abdeljalil ZERHOUNI (Morocco) commended Srhri ACHARY for his interesting talk. This was a widely recognised problem – Morocco suffered from drought in some parts. In Morocco after independence Morocco had carried out a plan for conserving water as a matter of priority. This had included careful water management and construction of dams. But despite these major efforts there was still a major water shortage because of further droughts and greater water needs. Water resources were declining – there had been a drop in ground water levels and a general decline in water volumes. He congratulated India on the formation of the water management forum to sensitise politicians and the public. This was a good example for Morocco. The Koran said that God had created all living things and that all living things contained water.

Mr Petr TKACHENKO (Russia) said that this had been a very substantial and topical Report. Parliament of Russia was working on a Water Code. He asked who would work on a permanent basis on the water resources of India? Who organised this? What financial resources were being used and from where?

Mr Md Lutfar Rahman TALUKDER (Bangladesh) noted that water was part of State resources and was managed by the Government. So was it inserted in Government policy for the Parliamentary Forum to have management of water? How did this work? What was the system of coordination between the two parts of the constitution? One was Government and one was Parliament.

Mr George PETRICU (Romania) water was a crucial subject for us all. Such an important item had to be settled by Law. Was this to be at the initiative of Forum? Or did the Forum provide suggestions and recommendations for legislation? Would the Forum wait for the Government to propose a law? Was the Government eager to act?

Mrs Marie-José BOUCHER-CAMARA (Senegal) the issue of water was worth a full discussion in a future Session. Water would be the cause of the next big war. The use of run-off rainwater was being looked at in some countries. There were experiments in Senegal with water basins using run-off rainwater. These had been successful and animals had returned. A lot of rainwater was lost.

Mrs Keorapetse BOEPETSWE (Botswana) said that she had thought at first that this was a Government matter not one for Parliament. But then she had considered how AIDs in Botswana had been approached. AIDS coordination had been set up by the Government but Parliament had an ad hoc Committee on AIDS. The role of MPs in that Committee was about educating the public. Even though Government agencies acted, Parliament had a role.

Mr Anders FORSBERG (Sweden) thanked Shri P.D.T. ACHARY for his presentation. Important for countries which did not have this problem to understand the importance of this matter. In New York two panels had been set up for discussion and one had been on water.

Mr Ian HARRIS, President, said that in Australia water was a State matter. He asked whether there was any rivalry between the States in India? Also, he asked what had been the attendance at the public lectures organized by the Speaker?

Shri P.D.T. ACHARY, Secretary General of the Lok Sabha of India, in reply to the debate, said that he was very happy that colleagues had supported the initiative of the Speaker of Lok Sabha in setting up this Forum.

A question had been raised about the relationship between the Parliamentary Forum and the Government. There was a synergy between the two. The Forum had only been set up in August. The Speaker presided and other Chairmen and Deputy Chairmen of the other House were Vice Presidents of the Forum. He did not think that there was a problem in failing to scrutinise Government because the Forum was in the hands of the Speaker. Parliament would have overriding control. The Government would have to report on steps taken relating to water management.

A further question had been asked about who would organize and finance the Forum. This was done by Parliament and not at all by the Government. The costs were met out of the Parliamentary budget. There was an urgent need to set up similar Forums where there was a shortage of water.

Mr Ian HARRIS, President, thanked Shri P.D.T. ACHARY.

The President invited Mr Anders FORSBERG to speak about the lunchtime meeting with the European Broadcasting Union.

Mr Anders FORSBERG (Sweden) said that he had visited the European Broadcasting Union with the President. They had met the head of the broadcasting arm. Eurovision was a global satellite broadcaster. They cooperated with Parliaments and gave advice and know-how. They filled silent hours on parliamentary channels with relevant content. They want to cooperate with the IPU and the ASGP. This might include setting up a seminar for relevant officials dealing with TV in parliaments. The president and he would consult the IPU and consult colleagues further.

4. Concluding Remarks

Mr Ian HARRIS, President, announced the conclusion of the day's business.

He thanked participants for their contributions.

He reminded colleagues that they were encouraged to think of further subjects for communications, questionnaires or topics for a general debate which could be included on the agenda for Spring 2006. Members who had such proposals should approach the Joint Secretaries as soon as possible, so that their suggested topics could be included in the draft agenda to be adopted later.

The sitting would resume the following day at 10.00 a.m. with the general debate on privileges and immunities in Parliament moderated by Mrs PONCEAU.

The sitting rose at 4.40 pm.

THIRD SITTING
Tuesday 18 October 2005 (Morning)

Mr Ian Harris, President, in the Chair

The sitting was opened at 10.00 am

1. Introductory Remarks

Mr Ian HARRIS, President, , welcomed members to the third sitting of the Geneva meeting of the ASGP.

2. New Members

Mr Ian HARRIS, President, said that the Executive Committee had agreed the following candidates for membership of the Association, none of whom posed any difficulties.

He noted that Mr Marc BOSC, who would be a new full member of the Association, had attended as a substitute on many occasions and was well known to the Association. Although as a general rule the Executive Committee preferred that a new member of the Association should not be a candidate for election to the Executive Captain committee on the first session which they were taking part in, he thought that this principle could be set aside in the case of Mr BOSC, having regard to the fact that he had for a long time been a regular participant in the proceedings of the Association.

Mr Juan Hector ESTRADA	Secretary General of the Senate of Argentina
Mr Marc BOSC	Deputy Clerk of the House of Commons of Canada (replacing Mrs Audrey O'BRIEN who has become Clerk)
Mr Raja MUHAMMAD AMIN	Secretary of the Senate of Pakistan (replacing Mr Shahid IQBAL)
Mr Santiago Gonzalez BARBONI	Deputy Secretary General of the Senate of Uruguay

The new members were *agreed* to.

3. General Debate on Privileges and Immunities in Parliament

Mr Ian HARRIS, President, invited Mme Hélène PONCEAU to the platform to open the debate.

Mme Hélène PONCEAU, Secretary General of the Questure of the Senate of France, said that the question of the status of members of Parliament, their legal and practical protection and

the means at their disposal for carrying out their duties had always been a preoccupation of the IPU and the ASGP.

Giving Members of Parliament certain privileges did not mean that they were above the law but rather affirmed the importance of the mandate which they received from the sovereign people, which they had to be able to carry out without let or hindrance and completely independently.

Members of Parliament not only had to have the material and financial means necessary to carry out their duties, whatever their profession or social origin, but they had to be independent of all people and be available to do their duty. From this principle arose the rules relating to multiplicity of mandates. On the other hand, they should not make money out of their mandate and had to be able to be transparent in everything that they did.

Parliamentary immunity was within the general framework of rules because it was one of the main elements aimed at allowing Members of Parliament to carry out their duties without fear of consequence arising from their opinions or their votes.

She saluted the extensive comparative law studies carried out on this subject between 1998 and 2000 within the ASGP by Mr Robert Myttenaere on the basis of responses to his questionnaire given by 72 assemblies from 58 countries. This remarkable study had formed a main basis for the work published in 2000 on the Parliamentary mandate by a jurist of the Belgian parliament, Mr Hulst, at the request of the Secretary General of the IPU.

As a preliminary to the debate she wanted briefly to raise some questions which she thought necessary to touch upon in order to describe immunity, basing her remarks on the French example.

The first question related to definition. If the words “privilege” and “immunity” meant all of those rights allowing Members of Parliament to take advantage of a system of rules which set them apart from the general law, this was challenged by the general principle in contemporary society where any privilege was seen as an individual advantage and where immunity was generally regarded as meaning much the same as impunity. Neither of these two terms did justice to the reality which they covered. The generic term which was most appropriate was that of protection, because that covered both the content and the aim of a notion which in all its aspects had a universal and permanent value.

The second question related to the reasons for protecting Members of Parliament and the threats from which it was suitable to protect them.

“Immunity” was first born in England in resistance to the King, then was taken up in France at the Revolution, and rapidly became a necessary basis of all constitutions setting up elected assemblies. Immunity now meant protection against legal action which could be aimed at a Member of Parliament by the Government or his political adversaries in order to prevent him from freely carrying out his duties. Beyond the person it was the mandate and Parliament itself whose independence was being protected.

So what did this protection consist of?

There were two levels of guarantee given to Members of Parliament –

Freedom of speech of Members of Parliament included expression of opinions and votes which they were responsible for in carrying out their duties. This was at the heart of Parliamentary independence and was recognised almost entirely in those countries with a Parliamentary regime either in codified form or in the form of customary law;

Freedom of arrest was a complement for all other acts of a Member of Parliament as an individual.

What was the extent of these guarantees?

These measures had in common the character of public law which meant on the one hand and that the courts could not ignore them and on the other hand that the person benefiting from them could not renounce them. But the effects of these two principles were very different: in the case of freedom of speech this was a basic guarantee which exonerated the Member of Parliament absolutely, generally and finally in relation to any opinions or votes for which he was responsible during the period of his mandate; in the second case this was a guarantee based on procedure which was relative, reserved to certain types of wrongdoing – the assembly to which the Member of Parliament belonged might or might not authorise a prosecution or decide or not to suspend a prosecution if it had been started, the suspension having an effect only for a limited time.

In a Parliamentary system the need to protect a Member of Parliament for activities linked to his duties could not be put in question. Putting a Member of Parliament, even partially and temporarily, outside the common rule was for acts in his or her private life was far from being universally recognised and, where it was recognised, was applied very differently by different parliaments.

She would deal in turn which freedom of speech and freedom of arrest, the example of France being particularly illustrative in the evolution of these two types of protection.

Although the French parliamentary system had constantly assured detection within its constitution for acts linked to a mandate, with complementary protection for related activities which the evolution of Parliamentary life had produced, freedom of speech had greatly varied in the various constitutions and in recent years had drastically been reduced following an important challenge brought by Members of Parliament themselves to certain of its aspects which seemed greatly to go beyond the strict need for protection against attempts to prevent free exercise of the mandate.

FREEDOM OF SPEECH

In its current form, article 26 of the Constitution of 4th of October 1958, which set out the system for Parliamentary immunity, provided: “No Member of Parliament may be prosecuted, searched for, detained or be subject to judgement on the basis of opinions expressed or votes by him in the exercise of his duties”.

In this definition, protection was absolute since it concerned all acts carried out in the exercise of the mandate and affects criminal prosecution as well as civil action and it was final because it lasted after the ending of the mandate. A judge had no power to take into account the content of a written or oral opinion coming from a Member of Parliament; the judge must purely and simply end any related action brought before him. In addition, there

was no procedure for "removal of freedom of speech". For his part, the Member of Parliament could not renounce this privilege.

If this principle was simple and incontestable, the limitation of the field within which such an absolute protection could play a role had raised many questions which had had to be resolved progressively by legal theory and case law.

The four following criteria which had been set out in previous studies showed a clear picture of the limits of freedom of speech:

- Persons affected: Members of Parliament;
- Period affected: from the start of the mandate to its end, on a definitive basis;
- Subject affected: all activities relating to parliamentary duties;
- Place affected: things done inside the Parliamentary precincts.

Excluded were those acts which were not directly attached to the exercise of the mandate, (the mandate included those functions devolved to Parliament in the Constitution: deliberation in the plenary sitting and in committees; amendments; motions; votes; motions of censure and, by logical extension, duties carried outside the Parliamentary precincts if they were representative of parliamentary bodies).

A limited number of cases had created some case law:

- Expressions of opinion which were broadcast were excluded as they were considered his acts separate from the mandate, with the exception of simple broadcasts of Parliamentary proceedings.
- Reports published other than official Parliamentary publications, even if it concerned reports given to a Member of Parliament by the Government, were also excluded.
- Words or written opinions which were defamatory raised very difficult problems: they were covered by the guarantee if they were made within the Parliamentary precincts since they were covered by the disciplinary power of the President of the Assembly. This position, recognised by French courts, had been confirmed by the European courts in a case brought by a British citizen, also a breach in this defence had been made by recent decision of Belgian judges in a case brought by an association which had been accused of sectarianism in a Parliamentary inquiry.
- Non-Parliamentary people who in the course of their work were required to take part in Parliamentary activity or report upon it (journalists, witnesses called by a committee of inquiry, staff or other persons taking part in debates) were also excluded.

FREEDOM FROM ARREST &c

This was the most controversial as well as media friendly of all the measures for protection of Members of Parliament; freedom from arrest or civil suit aimed at sheltering Members of Parliament from criminal prosecution following acts outside their parliamentary duties. Its origin was in a time when Parliament was threatened by a hostile executive power, master of the criminal process, and this right became an intangible element of the Parliamentary status and the corollary of freedom of speech. In fact, a guarantee of freedom of speech would be theoretical only if a Member of Parliament could be prosecuted or arrested in an arbitrary way for spurious reasons. At the same time such protection was more directly in conflict with the principle of equality before the law.

For this reason it was regarded as simple procedural immunity, only designed to prevent legal action preventing a proper exercise of a mandate. It was:

- Relative, because it was limited to criminal matters which might prevent the carrying out of a mandate as result of restriction of liberty or because of their infamous nature;
- Temporary, because it only operated during the mandate, and indeed only for the duration of the session.

Article 26 of the Constitution of 1958 dealt with freedom of arrest in the following terms: "No Member of Parliament may be arrested for a criminal matter or otherwise be detained or have his liberty restricted except with the authorisation of the Bureau of the Assembly of which he is a member. This authorisation is not required in the case of serious crime or apprehension at the scene of crime or final judgement.

Detention, restrictions on liberty or prosecution of a Member of Parliament will be suspended for the duration of the session if the Assembly of which he is a member requires it."

This provision represented a restriction on freedom from arrest since the media and the judiciary presented the public with a view of immunities as being an abuse of procedure which allowed Members of Parliament to escape from the proper exercise of justice and to block investigation of matters which discredited political life and which implicated them. The constitutional Law of the 4th of August 1995 profoundly changed the system of freedom of arrest as it had existed up to then.

Before this reform the protection had distinguished periods of session (two sessions of three months each) – during which all criminal prosecution had to be authorised by the plenary Assembly – and periods between sessions, of equal length of time – where only limitations on liberty had to be authorised by the Bureau of the Assembly. Any criminal proceedings which had been begun had to be suspended if decided on by the plenary Assembly, for the length of the mandate (in the case of the Senate, up to nine years....).

The establishment of a continuous succession of nine months put this balance into question. In removing Members of Parliament from the scope of justice on an almost permanent basis, this status could no longer be considered as an integral part of the separation of powers. The lessening of the image if Members of Parliament in public opinion and developments in the judicial field had led to a profound rearrangement of the system in order to limit it strictly to its first goal: the each to ensure proper functioning of Parliament in the face of unjustified attempts to bring legal action.

In the system based on the constitutional Law of 4th August 1995, there was only one system for authorisation and this was only in the cases where liberty was affected – this involved not only detention and the rest but also judicial methods of control which had been recently introduced to place limitations on the liberty of the citizen. As previously, authorisation was not required in the case of serious crime or apprehension of a culprit on the spot or final judgement.

A further change was that authorisation was no longer given by the Assembly itself following public debate but by the Bureau of the Assembly; its role was limited to verify that the request satisfied the criteria of being serious and genuine; in other words that the proceedings were not being brought for political reasons. This system was aimed at preventing an excessive "mediatisation" of proceedings at the same time as respecting the presumption of innocence.

Finally, although it was still possible for the Assembly to suspend current proceedings following the previous procedure after public debate, this only had affected for that current session.

If freedom from arrest was now reduced to a strict minimum by the new constitutional provisions, their interpretation and application had led to a desire to protect the interests of Members of Parliament as prerogatives of the Bureaux of the Assemblies. There was no doubt that this represented a mark of distrust on the part of elected Members of justice which had shown itself throughout the debate in Parliament on the reform in the face of a multiplication of criminal proceedings taken against men in public life.

As a provisional conclusion to this overview, it was possible to draw a distinction between the two forms of protection of the Member of Parliament as a representative of the Nation and as an ordinary citizen.

The first appeared as something closely connected to Parliamentary democracy and which could not be broken up even if some drawbacks were apparent and even if changes in the law raised various questions. For example, in recognising the international criminal court the French Parliament had accepted inclusion in the criminal responsibility of the court encouragement or incitement to crime which included words spoken within Parliament.

It was no less clear that protection in relation to acts covered by the general law appeared more fragile and subject to challenge; also the notion or freedom of arrest would become more difficult to describe and evaluate since it was being established at different levels and in different ways. Its extent varied according to different types of actions, powers given to the assemblies concerned, the competent official organs, the effect on proceedings and the time limit to such effects.

Mrs PONCEAU gave the following written presentation:

“In referring to privileges and immunities, one speaks of the entire range of measures that enable members of Parliament to benefit from a system that overrides common law. This is a provocative statement in our society which regards any privilege as an unwarranted advantage and in which public opinion equates immunity with impunity. However, neither of these terms do justice to the real state of affairs.

The appropriate generic term is that of protection, since it simultaneously embraces both the contents and the aim of a notion that, while covering a host of subjects, is of universal and permanent value.

FIRST QUESTION : Why should parliamentarians be protected ? Against whom and against what ?

The first case in modern times where the principle of parliamentary irresponsibility was applied was the pardon obtained for Thomas Haxey, a member of England’s House of Commons. Haxey had been sentenced to death for high treason in 1392 after he tabled a bill denouncing immoral behaviour at the court of King Richard II and the massive expenditure that ensued. Irresponsibility was codified in the Freedom of Speech Act of 1689 which provided that freedom of speech and the right to debate matters in Parliament should not be hindered or challenged by any tribunal outside Parliament.

In France, one of the first acts of the National Assembly that emerged from the Revolution was to proclaim, on 23 June 1789, that the Person of the Deputies is inviolable. This decision was analysed -to repeat the phrase of one of our most celebrated specialists in parliamentary law- as a measure of public order that sought to shelter the legislative power from encroachments by the executive power and not as a privilege created for the advantage of a single category of individuals.

Irresponsibility quickly became an obligatory part of all constitutions that set up elected assemblies. Today the term is associated with the protection of the Member of Parliament against judicial action which might be taken against him by the government or his adversaries in order to prevent the free exercise of his office. Beyond the individual, it is the office and thus Parliament itself whose independence is guaranteed in this manner.

The strength of this protection rests on two axes : judicial and political. The judicial axis is based on the assumption that no judicial authority can ride roughshod over this protective system and that the parliamentarian himself cannot renounce it. The political axis requires the adherence of the citizenry to the principle and the range of this protection. Indeed, in this context there is a conflict between two republican precepts. These are the independence of Parliament and equality before the law which is undermined by the fact that parliamentarians benefit from a judicial privilege in their dealings with justice.

SECOND QUESTION : What are the elements that make up the protection and how far does it extend ?

In order to clarify a complex and evolving judicial matter the guarantees enjoyed by parliamentarians can be placed at two levels :

- a basic guarantee which affirms that parliamentarians cannot be called to account for the opinions expressed and votes cast while in office and consequently exempts them from any type of prosecution. This is the core of Parliament's independence since its members enjoy definite, general and absolute exoneration from any civil or penal responsibility. This immunity is recognised in almost all countries with a parliamentary system either in codified form or as custom. Its radical effects explain the fact that immunity is strictly applied within limits which themselves can vary from one Parliament to another.

- two complementary guarantees concern all the other acts of the parliamentarian as an individual. They are characterised as inviolability. But in fact their real effect is only on judicial procedures. That distinguishes them from the other guarantees. They have only a relative character, since they apply only to certain offences and their only effect is to suspend certain types of prosecution. The assembly to which the parliamentarian belongs is empowered not to authorise prosecution or to suspend it if it has already started, these decisions taking effect for only a limited period of time.

Under the parliamentary system it is impossible to challenge the need to protect a parliamentarian for actions taken as part of his office. However, the need to exempt a parliamentarian from the general rules either partially or temporarily as far as his private life

is concerned is far from being universally recognised. And when it is recognised, it varies immensely from one Parliament to another [1].

I will tackle in order the concepts of irresponsibility and inviolability by using the case of France as a yardstick. After England, France can be considered as the country which founded the doctrine and first applied the system of immunities. The French system, which is particularly complete, has evolved considerably over the past ten years.

Since its origins, the French parliamentary system has introduced constitutional provisions that protect the parliamentarian both for acts associated with his office and for extra-parliamentary activities. These functional and personal forms of protection are a matter of public order. This means that a parliamentarian cannot shed guarantees that were created not for him personally but for the entire Assembly.

Nevertheless, the system of protection has been severely contested recently, because certain aspects appeared to go far beyond the need to be protected against attempts to prevent the full exercise of the office. Proposals have been presented by parliamentarians themselves to limit the scope of protection and to affirm that in a state ruled by law the parliamentarian - more than anyone else must be bound by respect for law. We shall see that this state of mind has left a strong imprint on the evolution of law in this domain over the past ten years.

« IRRESPONSIBILITÉ » OR FREEDOM OF SPEECH

In its present form article 26 of the Constitution of 4 October 1958, which sets out the system of immunities, provides the following: No Member of Parliament can be prosecuted, sought, detained or tried whenever he expresses an opinion or casts a vote in the exercise of his functions.

This protection, the legacy of a tradition created over past centuries by the British Parliament and which has infused French constitutional history since the birth of the parliamentary system, seeks to protect the parliamentarian's constitutional freedom of speech and of decision. It has a dual form.

It is absolute, since it concerns all acts carried out by the parliamentarian during the exercise of his office and applies to both penal and civil prosecution. It is also permanent since it is extended in time after the end of his term of office. A judge is not empowered to assess the contents of a written or spoken opinion by a parliamentarian. He must simply and solely abandon any prosecution which he is asked to conduct. Furthermore, there is no procedure for removal of irresponsibility. On his side, the parliamentarian cannot renounce this guarantee.

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[1] Two remarkable studies of comparative law, conducted under the aegis of the Interparliamentary Union, include detailed comparisons that illustrate the scope of these differences. One was conducted in 1998 within the ASGP by our colleague Robert MYTTENAERE, secretary general of Belgium's Chamber of Representatives. The other was conducted by Marc Van der HULST, a jurist from the same Assembly at the request of the secretary general of the UIP.

The principle may be unchallengeable but a wide range of questions are raised concerning the scope of absolute protection enjoyed by parliamentarians because of their opinions and their votes.

The deliberate reference to « the exercise of parliamentary functions » covers all acts carried out by a parliamentarian in conformity with his status. This applies to both speeches and statements made in the chamber and within other organs of the Assembly. It also apples to legislative bills and to reports presented by this Assembly or one of its organs. But questions arise over the following issues:

- Interventions in arenas outside Parliament, particularly in the media.
- Utterances in the name of the parliamentarian by his staff.
- Reports published by a parliamentarian outside his parliamentary activities.
- Accounts given by the press of opinions expressed within Parliament.
- Utterances made within Parliament by persons empowered to do so but who are not parliamentarians.
- Defamatory utterances by Parliamentarians within Parliament.

Case law bears the imprint of decisions that have contributed to setting the boundaries of irresponsibility on these various points :

1) Utterances broadcast by a parliamentarian can provide grounds for prosecution, even if these remarks are taken in their entirety from a speech on the floor of the Assembly (Court of Cassation, 7 March 1988. *Forni*) with the exception of a rebroadcast of the debate concerned.

2) A report made by a parliamentarian in the framework of a mission entrusted to him by the government cannot benefit from immunity (Paris Court of Appeal, 11 Marc 1987, *Vivien*). This judgement has been vigorously contested and led to a legislative bill tabled by the Speaker of the National Assembly with the purpose of extending immunity to this case. However it was annulled by the Constitutional Council (decision of 7 November 1989). The Council considered that immunity could apply only for a report drawn up for Parliament and not in another framework, even if it was registered - as in this case - as an extension of the term of office. The Council ruled: By totally exonerating a parliamentarian of all responsibility for acts distinct from those that he accomplished in the exercise of his function, the legislator neglected the constitutional principle of equality in law.

3) The application of the principle of irresponsibility to reports by the Inquiry Committees has been clearly stated in a number of judicial disputes launched by organisations that have been described as sectarian in reports by the Inquiry Committees into sectarian movements (Administrative Court of Appeal of Nantes, 30 July 2003). The separate character of the comments presented to the media by the President of the Commission of Enquiry has also been confirmed (Paris Criminal Court, 21 March 2000) on appeal by another organisation quoted in the report, despite the heavy damages sustained by the plaintives. This characteristic applies regardless of any substantial prejudice that the plaintiffs invoke. It is worth noting that, if the Court takes this opportunity to give a basic ruling on the scrupulousness of the Commissions work, it does so only after establishing that in deliberately agreeing to denounce a specific group during a television interview, Mr. X has gone beyond his rights in the exercise of his office as a parliamentarian.

Concerning an appeal of the same type against affirmations included in the report of a commission of enquiry on the sects, the Brussels Appeal Court has broken into the sector of irresponsibility by passing judgement on the degree of seriousness of the work of the commission of enquiry and by condemning the Speaker of the Belgian Chamber of Deputies for violating his obligation of caution. This was an unprecedented ruling and is bound to have important consequences.

4) It has always been established that irresponsibility cannot be extended to persons who express themselves in the name of a parliamentarian. However, immunity is granted to those who are required by their functions to take part in parliamentary debates and also to witnesses called before the commission of enquiry (Paris Court of appeal, 16 January 1984).

5) Journalists are covered by the immunity when, as provided for by the freedom of the press law, the have provided a *bona fide* account of public sittings of Parliament.

6) Application of the immunity to defamatory utterances by a parliamentarian has given rise to a legal controversy in England, all the more interesting as it has been judged by the European Court of Human Rights. The plaintiff was an individual whose name had been mentioned in 1996 by an MP during a debate in the House of Commons.

The Court received the complaint despite the British government's contrary plea based on parliamentary non-liability. Faced with numerous third party interventions introduced by European states recognising the principal of parliamentary non-liability in their internal law, the Court gave a ruling which, far from weakening the principal, strengthens it. Despite regretting the seriousness and completely unfounded character of the utterance, the Court ruled that no exception can be made to the principal of non-liability, as long as these utterances, be they defamatory, are made in Parliament. A year later the Court in a way confirmed this position by waving the non-liability for defamatory utterances made by Italian MPs outside Parliament. The Court thus went against the ruling of the Italian courts which had recognised an "extended" non-liability.

The complete and final character of parliamentary non-liability is thus confirmed as far as the MP's stance taking is concerned but it is strictly confined to actions taken within Parliament or in its name.

This confinement can be doubly justified: firstly the common (and apparently tautological) saying whereby "once you are off limits there are no limits" here applies especially. If we move away from this framework it becomes exceedingly difficult to establish coherent lines of judgement since a large proportion of public behaviour, outside Parliament is in some way linked to the MP status. The extension of non-liability that would follow would certainly be rejected by public opinion and call into question effects that would quickly be considered as an unfair privilege given to a tiny segment of the population.

The second justification lies in the fact that inside an Assembly, a parliamentarian is subject to its disciplinary rules which prevent him making excessive, defamatory or insulting remarks. These can be censored by the Speaker who is empowered to refuse their entry in the records of the sitting. A number of precedents exist in the French Assemblies, the ritual formula being that the contested remarks had not reached the

Speaker's ear. The French rule calls for written and spoken questions to exclude any slur of a personal nature concerning an identified third party.

INVIOLABILITY

Inviolability is designed to shelter parliamentarians from prosecution as a result of acts which have nothing to do with their parliamentary functions. It is certainly the form of protection that arouses the strongest attraction among the media and simultaneously the most controversy. Inviolability's origins stretch back to a time when Parliament was threatened by a hostile executive power that was master of penal prosecution. This arrangement was imposed as an untouchable element of the status of the parliamentarian and as a corollary for irresponsibility. Indeed, the guarantee of freedom of expression would have only a theoretical effect if the parliamentarian was exposed to prosecution or arrest in an arbitrary and groundless manner. But at the same time this type of protection comes increasingly into direct conflict with equality before the law.

Irresponsibility removes the elected person from the scope of common law and guarantees him total immunity for his acts as a parliamentarian. In contrast to irresponsibility, the protection from which he benefits for all other acts performed as an individual or as a holder of local elected office is analysed as simply immunity from proceedings and is designed solely to spare him from unjustified prosecution which would damage the exercise of his office. This is a measure of public order since its objective, like that of irresponsibility, is to protect beyond the person of the parliamentarian the integrity of the country's representatives. However, inviolability is only relative and temporary.

It is relative because it is confined to criminal cases or cases of delinquency, which alone could potentially prevent the exercise of an office following measures that restrict liberty or because of their shaming character.

Its effect is temporary because it operates only during the exercise of office or even solely for the duration of the session.

After setting out the principles of irresponsibility, article 26 of France's 1958 Constitution deals with inviolability in the following terms :

« No member of Parliament can be subject, in criminal affairs, to arrest or to any other measure of a depriving character or that restricts his freedom except with the authorisation of the Managing Committee of the Assembly to which he belongs. This authorisation is not required in the case of a crime, arrest red handed, or final sentencing.

Detention, measures that infringe on privacy or liberty or prosecution of a Member of Parliament are suspended for the duration of the session if the Assembly that he belongs demands this. »

These measures reflect the trend towards increasing restrictions on inviolability under the impact of the media and high profile law suits in our modern society. These privileges are presented to public opinion as a bunch of unjustified procedures that enable parliamentarians to escape from the clutches of justice and to block the

investigation of criminal affairs that multiply in public life and in which they could find themselves implicated.

In this respect, the case of France is particularly illuminating since the applicable law has undergone substantial change over the past ten years with the intention of reconciling the independent nature of the office with the principle of equality before the judge. Indeed, the constitutional law of 4 August1995 has deeply modified the system of inviolability as it had existed until then.

Before 4 August 1995 prosecution during sessions following offences rated as acts of delinquency or crimes had to be authorised at the request of the Minister of Justice except in cases where the accused was caught in the very act of committing an offence. The decision was taken by entire Assembly on the basis of a report established by an ad hoc committee according to a procedure defined in the Regulations for the Assemblies. Outside session periods such prosecutions were only possible if they did not have an adverse effect on the freedom of the parliamentarian. In the event of detention or arrest, it was up to the Standing Committee of the Assembly concerned to give its authorisation or not. Furthermore, the prosecution under way could be suspended during the session, at the request of any member of the Assembly, by the entire House in accordance with a procedure identical to the withdrawal of immunity. The suspension then applied throughout the duration of the member's tenure of office, according to a wide ranging interpretation by the assemblies of the constitutional text.

This system of protection had already been limited to the most serious penal offences and could not be invoked in civil, fiscal and minor delinquency cases. Furthermore, it could only be applied at the start of a judicial investigation and not to preparatory measures carried out in the context of a preliminary enquiry. Above all, the system of sessions (two sessions, each of three months, per year) left wide scope during the remaining six months a year to start a prosecution process, except where detention or arrest were involved.

The introduction of a system with a continuous session for nine months challenged this equilibrium. By putting parliamentarians out of justice's reach on an almost permanent base, this status could no longer be regarded as inseparable from the separation of powers. The deterioration of the public image of parliamentarians, the evolution of the judicial world into a sort of censor of the political class and the increasingly strong affirmation of the individual's right of recourse to law were key elements in this change. They led to a deeply rooted revamping of the system in order to confine it strictly to its original vocation: the need to ensure that Parliament could function normally when confronted by attempts to prosecute that were intended to bind it and when faced by the injustice that could heaped on a parliamentarian simply because he was a parliamentarian.

Under the regime that emerged under the constitutional law of 4 August 1995, there is only one system of authorisation, independently of the session's system and solely for measures that restrict liberty and which include not only detention and arrest but also measures of judicial supervision created recently and which introduce restrictions on freedom but without abolishing it.

However, as in the past, this authorisation is not required in the case of crime, capture red-handed or final sentencing. According to the time proven phrase, the

parliamentarian must be subject to arrest at the very moment when he raises a dagger against his victim. Since the crime cannot be challenged there is little danger that the penal prosecution would be excessive or nuisance making. In the absence of any constitutional notion of capture red handed it is up to the common law judge, under the control of higher courts to define the limits of the domain of this so-called situation of *flagrante delicto*.

In parallel, the authorisation is no longer delivered by the Assembly itself after public debate but by the Managing Committee of the Assembly. At the undoubted cost of reduced transparency, the impact of the public session through the media is consequently avoided. At the same time the secrecy of the judicial investigation and the presumption of innocence are better respected. The publication of the report by the ad hoc Commission and of the debates are bound to appear as a pre-judgement even merely because of the publicity accorded to parts of the dossier, and this would be contrary to the spirit in which the authorisation ought to be given. It is not up to the Assembly which receives the request to rule on the basic issues. Its role should be limited to verifying that the request has met the criteria of seriousness, loyalty and sincerity which permit guarantees that the prosecution is not inspired by political motives.

In its ruling of 10 July 1962 the Constitutional Council states that the Assemblies must confine themselves to making a statement on the « serious, loyal and sincere character of the demand with which it is presented, with regard to the facts on which this request is based and excluding any other object. »

Finally, the Assembly retains its ability to suspend a prosecution already begun following the previous procedure of a public debate. But this possibility no longer has the same scope because, if ordered, the suspension can apply only during the current session.

Any withdrawal of immunity is limited to the sole facts targeted in the request. Whereas the Standing Committee can judge on how these facts should be qualified, the courts are empowered after the authorisation to modify this qualification -- provided that the facts are the same.

In fact, the parliamentarian retains the benefit of his inviolability except for the facts invoked in the authorisation. With respect to these, justice then follows its normal course. The parliamentarian continues to benefit from his rights and prerogatives. If he is not detained, he can vote and take part in the work of the Assembly. The judge can carry out any search that he wishes on premises occupied by the parliamentarian. However, out of respect for the principle of the separation of powers, this measure is subject to the agreement of the Speaker.

If he is detained, the parliamentarian can no longer take part in the legislative work of the Assemblies which presupposes he is free. But he remains a parliamentarian, is reckoned among the party groups and continues to receive his emoluments unless he flees from prosecution or is sentenced.

In the event of a sentence that makes him ineligible for public office, the person concerned is stripped of his quality as a parliamentarian, an indignity which is recorded by the Constitutional Council.

Between 1958 and 1994, the Senate was asked to rule on eleven requests for the withdrawal of immunity and six of these were granted. During the same period the National Assembly was asked to rule on thirty demands and seven of these were granted. Since the revision of the Constitution the Senate's Managing Committee handed down rulings on five occasions and gave three authorisations, whereas the National Assembly, with seven requests, issued three authorisations. The requests for the suspension of prosecution have remained few and the scope of preliminary authorisation has shrunk: nine requests to the Senate, all of which were granted since 1958, nine requests to the National Assembly of which only three were granted.

Inviolability has consequently been reduced to a strict minimum by the new constitutional measures. But the manner in which they are interpreted and applied reveals a protective concern for both the interests of parliamentarians and for the prerogatives of the Assemblies Managing Committees. Consequently, if a parliamentarian fails to respect the obligations imposed on him in the framework of judicial supervision and which is immediately punishable by arrest, a new authorisation needs to be given by the Managing Committee. Likewise, the end of the suspension of prosecution, which coincides with the end of the session, does not permit detention without the Committee's authorisation. This is not imposed in the constitutional text.

We must undoubtedly see in this a demonstration of distrust by those elected to public office towards a system of justice. Confronted with the multiplication of penal actions against public figures, this mistrust has been displayed throughout the parliamentary debates on reform. « To gnaw at inviolability, a Senator declared, is to hand over parliamentarians to the vengeance and the arbitrary decisions of those who, with complete impunity, profit from the weakness of a state terrorised by excessive media coverage in order to set themselves up as a power independent of the law itself and to launch a concerted attack on the authorities and principles of the Republic. One can even bar parliamentarians from attending sittings on the grounds that they have to answer judges' summons. »

In a provisional conclusion to this overall view, we can already note the difference between the two forms of protection of the parliamentarian, as representative of the nation and as an ordinary citizen.

The protection as a parliamentarian appears as a whole that cannot be separated from parliamentary democracy. It cannot be fragmented even if infringements occasionally show up and even if the evolution of law justifies asking questions. For instance, in recognising the International Penal Court, the French parliament has itself agreed to include the remarks uttered by a member in the Chamber in its definition of penal responsibility which now includes the encouragement of a crime or incitation to commit it.

But the fact remains that protection concerning acts in common law appears increasingly subject to dispute. This is testified by the fluctuations that this protection has gone through in the course of history and by the broad diversity to be seen in different democracies. Today's debate is bound to underline this.

The notion of inviolability will therefore be harder to identify and evaluate because it establishes itself at different levels and in different manners. Its range varies according

to the category of acts and measures that are targeted, the powers bestowed on the assemblies concerned, the courts qualified to try these issues, and the effects on the unfolding of these procedures and the duration of the results."

Mr Paolo SANTOMAURO (Italy) gave the following presentation entitled "Parliamentary Immunity and Privilege":

"Parliamentary immunity and privilege serve to ensure the independence of Parliament from the other powers of government and to secure the smooth functioning of representative institutions. As early as 1870, when the Constitution of Piedmont and Sardinia granted by King Carlo Alberto in 1848 and already extended to the Kingdom of Italy in 1861 came under revision, immunity was considered to consist of four elements: inviolability following opinions expressed and votes cast in the Chamber (Art. 51); sole jurisdiction of the Chamber to assess the validity of elections and credentials (Art. 60); authority to pass its own Rules of procedure (Art. 61); restriction of the judiciary's power to prosecute and detain members and senators (Articles 37 and 45).

These elements were regulated also by the Constitution of the Republic of Italy in 1948. Immunity is a form of privilege which the Constitution sets as a cornerstone to the freedom and independence of Parliament. It applies both to the premises of Parliament (where law enforcement officers may not enter unless duly authorised by the Presiding Officer) and its members. An *ad-hoc* body, the Committee on Elections and Parliamentary Immunity, was established in the Senate to deal with such sensitive issues, but final decisions are made by the whole Senate.

Parliamentary immunity is regulated by Art. 68 of the Constitution. Its present wording was introduced by Constitutional Amendment Act no. 3 of 1993. Under that amendment, which was passed when many Italian political leaders came to be indicted by prosecutors, preventive authorisation to prosecute members was repealed (before then, the judiciary was required to request Parliament for such authorisation).

The immunity of members of Parliament is twofold: 1) non-liability of members for opinions expressed and votes cast in the exercise of their duties; 2) in default of an authorisation issued by such member's House, exclusion of personal and house searches, custody or other freedom-restricting measures, unless such measures are taken to enforce a final sentence or the member is caught while committing a crime for which immediate arrest is mandated by the criminal code.

Following the re-wording of Art. 68 of the Constitution through Constitutional Amendment Act no. 3 of 1993, a number of implementing measures were issued, which were passed after lively debates in Parliament fuelled by sharply contrasting views. Ten years later, Act 20 June 2003 no. 140 was passed.

Because prosecution of members was permitted following the Constitutional Amendment Act of 1993, attention and debates focused on other elements, especially non-liability and intercepting of conversations.

Non-liability

The wording on non-liability introduced by Constitution Amendment Act no. 3 of 1993 into Art. 68(1) of the Constitution establishes that members "may not be taken to account" for opinions

expressed and votes cast in the exercise of their official duties. In its earlier wording, the article established that MPs "may not be prosecuted". It is commonly held that non-liability applies not merely to criminal procedure, but also to civil, administrative and disciplinary laws and regulations. The prevailing view among lawyers is that non-liability is absolute and everlasting (*i.e.*, it lasts also after the end of the parliamentary term). Art. 3 of Act 20 June 2003, no. 140, details all the areas covered by the constitutional guarantee of non-liability: namely, all actions "connected to the parliamentary function" even when such actions are performed "outside Parliament".

Non-liability may be appealed to in any court or disciplinary action, also during preliminary investigation.

Members of Parliament may resort to their privilege both in courts and before their House of Parliament, which shall proceed according to its own rules. A judge may, in turn, either accept the exclusion under art. 68 of the Constitution or disagree and send the file to the appropriate House of Parliament. Should different assessments emerge between parliament and the judiciary – as has often been the case – on the applicability of immunity[1], a judge who is unwilling to accept the decision of parliament may – as per a general rule enshrined in the Constitution – appeal to the Constitutional court.

In its latest rulings, the Court has gradually affirmed an approach whereby non-liability covers the office, rather than its holder[2]. It has repeatedly overruled decisions of the Chamber upholding immunity, therefore considering acts like resisting and contempt of police, when committed outside Parliament, substantively unrelated to parliamentary activity.

In other words, the Court has seized itself of the power to judge on the way in which the Chamber exerts its authority. In doing so, it has come to deal with acts which were considered reserved for parliamentary assessment and thus under the exclusive jurisdiction of Parliament.

Authorisation to intercept conversations involving Members of Parliament

As a tool to gather evidence, eavesdropping should be used without the person intercepted being aware of it (its use is regulated by article 266 and following of the Code of Criminal Procedure). Because Art. 68(3) of the Constitution envisages that prior authorisation is required to intercept conversations, messages, or telephone calls "in whatsoever form", a number of interpretative and practical problems have arisen.

Article 4 of the above-mentioned Act 20 June 2003, no. 140, stipulates that when eavesdropping involves a Member of Parliament, the competent authority is required to request prior authorisation directly to the House of Parliament to which the member belongs. The measure is withheld until a positive reply is issued. By analogy with Constitutional Amendment Act no. 3 of 1993, no authorisation is required in the case of crimes for which the Code envisages immediate arrest *in flagrante delicto*, or when a final sentence has been passed.

[1] A study on cases in the years 1996 to 2002 has shown that 67 such cases have been filed. Of these, 29 upheld the position of Parliament, 14 in favour of the Judiciary and 24 are still outstanding.
[2] Rulings 379/1996, 375/1997 and 52/2002 are important steps in this direction

Art. 6 of Law 20 June 2003, no. 140 regulates preliminary investigations relating to third parties, in the framework of which conversations are intercepted "of which members of Parliament are part". Reports and recordings shall be destroyed, if determined to be irrelevant, otherwise the pre-trial judge may request the appropriate House of Parliament for an authorisation to use them. If such authorisation is rejected, the material shall be destroyed. Any document obtained in violation of the rules above may not be used in any phase of the proceedings.

Rules on – especially indirect – wiretapping are quite controversial. The Constitutional Court has recently passed a ruling (n. 63 of 2005) on the legitimacy of its ban. However, the ruling has not examined the merits of the matter, since the case was dismissed for procedural reasons."

Mr Aleksandar NOVAKOSKI (Macedonia) gave the following presentation entitled "Parliamentary Privileges and Immunities: The case of the Republic of Macedonia":

The Assembly of the Republic of Macedonia is a representative body of the citizens and bearer of the Legislative in the state. It is consisted of 120 MPs elected on general, direct and free elections by secret ballot. In this mandate, for the first time by law the position of an MP is regulated as incompatible with any other office or profession in the Assembly.

The specific obligations of MPs as representatives of the citizens and bearers of the Legislative impose the need for protection in the performance of their office. The parliamentary privilege protects the MPs from criminal prosecution as a result of the publicly stated opinion or vote. The parliamentary immunity protects the MPs from criminal prosecution for acts done outside parliamentary office.

These specific rights and immunities of MPs are necessary in order for the MPs to be able to debate freely on importance issues and to decide upon their own belief and without any pressures.

The privilege of freedom of speech is widely known as one of the most important parliamentary privileges. However, the privilege does not mean that the members of parliament can abuse this right of freedom of speech in a negative connotation or for their own personal benefit. Although they will not be legally held accountable for the speech delivered in the Assembly, there are yet other mechanisms which imply this privilege to be taken seriously. That surely is the criticism by other members of parliament, by members of a political party to which that MP belongs as well as by the public and the media.

The concept of parliamentary privilege "freedom of speech" is mainly regulated by the Constitution, but in some countries it is regulated in accordance with other legal acts, such as the Rules of Procedure, Statutes, etc. This privilege in the Republic of Macedonia is guaranteed with the Constitution of the Republic of Macedonia (Article 62, paragraph 2), which states:

> "A Representative cannot be held to have committed a criminal offence or be detained owing to views he/she has expressed or to the way he/she has voted in the Assembly."

The MPs in the Macedonian Parliament start enjoying this privilege of "freedom of speech" after the constitutive session of the Assembly, which denotes the start of their mandate in a

term of four years. The constitutive session is convened by the President of the Assembly from the pervious mandate, 20 days at the latest after the elections.

The mandate of the MPs in the Assembly can be prolonged only in case of state of war or emergency.

In this context, I would like to emphasize that unlike many states where freedom of speech is guaranteed by the mandate of the MPs without space limitations where they present their opinion, in the Republic of Macedonia the MPs are protected only when they express their opinion at Assembly sessions. This privilege does not protect them for that stated outside the parliamentary stand, that is for statements in the media, participation on public debates, etc.

Freedom of speech ends up with the end of the mandate or by dissolution of the Assembly. The Assembly is dissolved if a majority of the total number of MPs vote for it.

The immunity of MPs is stipulated by the Constitution and the Rules of Procedure of the Assembly.

The MP enjoys immunity from the day of verification until the day of cease of his or her mandate. "A Representative cannot be detained without the approval of the Assembly unless found committing a criminal offence for which a prison sentence of at least five years is prescribed." (Article 64, paragraph 3 from the Constitution.)

The request for approval of detention for a Member of Parliament, i.e. the information that a Member of Parliament has been detained is submitted to the President of the Assembly (Article 50, paragraph 2 from the Rules of Procedure). The body competent for detention is obliged to notify the President, even in case when the MP did not refer to her or his immunity. The President of the Assembly shall submit the request i.e. information to the Commission on Rules of Procedure and Mandate and Immunity Issues. The Commission shall be obliged to submit a report to the Assembly at the first consecutive session. The Member of Parliament to whom the request i.e. the information refers shall also be informed about the session of the Commission. The Assembly, on the basis of the Report of the Commission on Rules of Procedure and Mandate and Immunity Issues, shall decide whether to give approval for the detention of the MP.

After the information on the detention of Member of Parliament that did not refer to his/her immunity, the Assembly can decide to apply the immunity over the Member of Parliament, if that is deemed necessary for the performing of the function Member of Parliament. If the Assembly does not approve the detention, the Member of Parliament shall be released immediately. If the Assembly does not convene a session, i.e. if there is no session planned in the next 15 days, the Commission on Rules of Procedure and Mandate and Immunity Issues shall decide upon the request for approval of detention, with obligation to inform the Assembly thereof. On the first consecutive session, the Assembly shall decide whether to confirm or cancel the decision of the Commission.

Pursuant to the Constitution, the immunity may apply only if the MP has referred to it. In practice, this provision showed some weaknesses because relevant court act upon cases, as there is no obligatory provision in the Constitution that the MP cannot be held criminally accountable. For example, in some states the court must ask for deprivation of immunity by the Assembly in order for the MP to appear before court, which is not the case in our country.

In accordance with our existing legislation, criminal charges may be brought against an MP if he or she did not refer to his or her immunity. However, if the MP is sentenced to imprisonment by final verdict, the verdict cannot be in force until the Assembly deprives the immunity from the MP for that particular act.

With the amendments proposed to the Rules of Procedure of the Assembly of the Republic of Macedonia, the manner of parliamentary decision-making shall be clarified for approval of detention for an MP, and whether in urgent cases the MP can be detained without a committee decision, regardless of the fact that at the first following session the decision would be examined by the Assembly at a plenary session.

At the same time, certain problems with interpretation of terms occurred which caused legal dilemmas like "Whether the word Assembly in the Rules of Procedure refers to the Assembly as a whole at plenary sessions or whether it refers also to the working bodies"

Having in mind that we are talking about important issues and that in the law theory there are more dilemmas and types of immunities, there is an ongoing procedure in our parliament to precise this matter."

Mr George PETRICU (Romania) gave the following presentation entitled: "Parliamentary Immunity and Privileges":

"**1. Historical Background**

As the 1866 Constitution of Romania enshrines, the need to grant parliamentarians special protection - designed to safeguard the people's representatives against interferences of any arbitrary power -, was acknowledged in our country from the very beginning of its parliamentary life. After the First World War One (1923 Constitution) and during the Inter-War period, the Romanian Doctrine on Constitutional law attached an even greater importance to the parliamentary immunity comprising its dual aspect of non-liability and inviolability – based on the French model, the very first and the most successful in Europe.

Over four decades of communism (1948-1989) the parliamentary life was a strictly formal one, taking into account that both the legislative and executive powers were totally subordinated to the ideological commandments of the unique party. As a result, immunity was abolished.

2. Constitution of 1991

The Revolution of December 1989 has opened the way for Romania's return to a democratic and parliamentary regime, with freely elected representative institutions. The new Parliament, established in May 1990, based on freedom of expression and of political pluralism, functioned both as a legislative forum and also as a Constituent Assembly, having the historic mission of elaborating a new fundamental law of the country, the most advanced constitutions of the European countries being taken into consideration. As a result, according to the provisions of the Constitution of Romania, adopted in 1991, the need for the protection of the parliamentary mandate derives from the very constitutional role of the Parliament – *as the supreme representative body of the Romanian people and the sole legislative authority of the State* (Constitution of Romania, 1991, Article 58, paragraph1). At the same time, according to Article 66 of the Constitution, in the exercise of their mandate, *Deputies and Senators are in the service of the people*, and *any imperative mandate is avoid*.

As most national legal systems, the 1991 Constitution of Romania recognized the two categories of immunity for parliamentarians:

- Firstly, the *non-liability* or *freedom of speech* of parliamentarians in respect of judicial proceedings over opinions expressed and votes casts in the exercise of their parliamentary duties.[3] Non –liability is perpetual in the sense that the protection enjoyed by parliamentarian regarding the opinion stated in the performance of an electoral mandate lasts after the mandate ends.
- Secondly, the *inviolability* or *immunity in the strict sense,* shielding the MPs from arrest, detention or prosecution without the consent of the Chamber they belong[4], with the exception of *flagrante delicto*.

Therefore, by safeguarding the people representatives against any arbitrary power, parliamentary immunity ensures both collective protection for the parliament as a body, for its operations and its acts, and individual protection, for each of its members.

3. Standing Orders of the Senate and binding opinion by the Constitutional Court

These rules were supplemented by provisions of the Standing Orders of the Senate, governing the procedure of waiving parliamentary immunity. Synthesizing:

Legal basis	Constitution (Art. 69, 70); Standing Orders of the Senate (1990), art. 125-127		Constitution (Art. 69, 70); Standing Orders of the Senate (1993), art. 149-152)	
Persons covered	Categories of parliamentary immunity			
	Non-liability	Inviolability	Non-liability	Inviolability
	Senators	Senators and members of their family - wife/husband/children	Senators	Senators and members of their family - wife/husband/children
Scope of immunity	A senator cannot be prosecuted for his political opinions or his votes in course of exercising his parliamentary duties.		Extra-parliamentary immunity, - against personal search, search of his property, arrest, detention, criminal or administrative proceedings,	

[3] No Deputy or Senator shall be liable to judicial proceedings for the votes cast, or political opinions expressed in the exercise of his mandate (Art.70, Freedom of opinions, Constitution of Romania, 1991).

[4] No Deputy or Senator shall be detained, arrested, searched or prosecuted for a criminal or minor offence without authorization of the Chamber he is a member of, after being given a hearing, the case being in the competence of the Supreme Court of Justice. (2) In the case of a MP being caught in *flagrate delicto*, he may be detained and searched. The Minister of Justice shall promptly inform the President of the respective Chamber about the detention and search. In case the Chamber thus notified finds no grounds for his detention, it shall immediately order that this detainment be repealed. (Art.69, Parliamentary Immunity)

		- except in the case of *flagrante delicto.*
Acts covered by immunity	Opinions expressed and votes in the course of exercising his parliamentary duties.	Acts which may lead to arrest, detention, criminal or administrative proceedings. - except in the case of *flagrante delicto.*
Duration of immunity	Permanent	A senator is considered being in the exercise of his duties in all circumstances over the duration of his mandate.
Can immunity be lifted? By whom?	Yes, by the Senate	Yes, by the Senate
Procedure for lifting immunity	The proposal to lift immunity is submitted to the Senate by the General Prosecutor. The President of the Senate informs the senators. The proposal is transmitted to the Committee on legal affairs, appointments, discipline, immunities and validations which gives an opinion by majority. The General Prosecutor shall forward to the Committee all requested related documents. The report of the Committee is debated in the Plenary Sitting which decides on waiving parliamentary immunity by secret ballot with a two-thirds majority of the Senators presents.	The proposal to lift immunity is submitted to the Senate by the Minister of Justice. The President of the Senate informs the senators. The proposal is transmitted to the Committee on legal affairs, appointments, discipline, immunities and validations which gives an opinion by majority. The Minster of Justice shall forward to the Committee all requested related documents. The report of the Committee is debated in the Plenary Sitting which decides on waiving parliamentary immunity by secret ballot with a two-thirds majority of the Senators presents.
Conditions attached to lifting immunity	In case of *flagrante delicto* the senator may be arrested to this domicile with preliminary consent of the General Prosecutor who will immediately inform the President of the Senate. In case the Senate considers there is no reason for detainment, it shall dispose the revoking of this measure.	In case of *flagrante delicto* the senator may be detained and searched. The Minister of Justice will immediately inform the President of the Senate. In case the Senate considers there is no reason for detainment, it shall dispose the revoking of this measure. The disposition shall be urgently carry out through the Minister of Justice.

Referring to the Senate, in clarifying the theoretical and practical issues of the parliamentary immunity a special importance was attached to the opinions expressed by the Constitutional Court. As for example:

- The 1993 Standing Orders of the Senate (art.150) stipulates that during his mandate the Senator is considered as being in the exercise of his duties, therefore any aggression is assimilated and sanctioned according to the law as outrage. The family of the senator (wife/husband /childrens) benefits of the same protection in the case the aggression has as scope the putting under pressure of the MP for issues related to the fulfillment his mandate. The Constitutional Court (Decision 46/ 2004) declared this provision as unconstitutional.
- The Decision 46/1994 also refers to the provisions of the art.149 paragraphs 2, 5 and 8 of the Rules of the Senate, amended by Decision of the Senate 11/29.03.1994.
    - According to the art. 149, paragraph 2, the senators benefit by parliamentary immunity which purpose is "to ensure their protection against judicial prosecutions and the guarantee of their freedom of expression". The Constitutional Court appreciated this provision as unconstitutional taking into account the missing of any mention on duration of the immunity and the extension of the immunity to all sort of judicial prosecutions, contrary to the constitutional provisions.
    - Art 149, paragraphs 5 and 8, introduces a new procedure of waiving parliamentary immunity following a *request of suspending* submitted to the President of the Senate by a senator/deputy, a parliamentary Group of the Senate/Chamber of Deputies or by the Committee on legal affairs, appointments, discipline, immunities and validations. The report adopted by the Legal Committee by simple majority is submitted to the debate and approval by the plenum of the Senate with a two-thirds majority of the Senators presents. The Constitutional Court appreciated that this procedure, unusual in democratic states, allows instauration of a discriminatory regime for political undesirable minorities. At the same time, the Decision by the Court appreciated that the Rules of the Senate should not change in substance the regime of waiving parliamentary immunity as stipulated by the Constitution.
- The Decision 63/April 1997 refers to an important legal issue: the decision by the Senate on waiving the parliamentary immunity of a senator pronounced during a mandate should or should not produce its effects during a new mandate of the respective senator? The opinion formulated by the Constitutional Court was that the end of the parliamentary mandate implies the end of the immunity protecting it and, consequently, the new immunity corresponding to the new mandate has to be waived according to the legal procedures and not considered as waived during the anterior mandate.

At the same time, taking into account that the constitutional text does not stipulate the procedure of vote for the adoption by the Parliament of its decision on waiving the immunity, another frequently debated issue - subject of successive amendments of the Standing Orders -, referred to the necessary majority for the adoption of this decision. According to the 1993 Rules of the Senate (Art. 169- 8) the Senate decides on lifting the parliamentary immunity of a senator in Plenary Sitting by secret vote of a two-thirds majority of senators presents. The Romanian specialists in Parliamentary Law appreciated that in no country in the world the waiving of the parliamentary immunity was not conditioned by a parliamentary majority much severe than for the adoption of an organic law. As a result, by Decision of the Senate No. 6/1999 the respective provision was amended consecrating the simple majority.

As a prove of the constant concern of the Romanian parliamentarians to optimize the legislative process and to improve the institutional efficiency of the Parliament, from 1993 to 2003 the Standing Orders of the two Chambers suffered multiple revisions, in order to adapt themselves to the challenges and to the realities of an increasingly complex society and to the correspond to the European standards.

4. Constitution of 2003

As far as the subject under discussion is concerned, the most striking development occurred after the revision of the Constitution in 2003, when the provisions referring to the parliamentary immunity have been amended restricting the parliamentary immunity exclusively to the votes or political opinions expressed by the parliamentarians in exercising of their office. The new text eliminates any possible misinterpretation of the institution of the parliamentary immunity. Consequently, the Standing Orders of the Senate were amended in order to reflect the constitutional changes. The acting provisions of the Chapter on Statute of the Senator stipulate that Senators benefit by parliamentary immunity over the whole duration of their parliamentary mandate which purpose is to ensure their protection against abusive judicial prosecution and the guarantee of their freedom of speech.

No Senator shall be held judicially accountable for the votes cast or the political opinions expressed while exercising their office but a senator may be subject to criminal investigation, or criminally prosecuted for acts that are not connected with their votes or their political opinions expressed in the exercise of their office, but shall not be searched, detained or arrested without the consent of the Chamber he belongs to, after being heard. The investigation and prosecution shall only be carried out by the Public Prosecutor's Office attached to the High Court of Cassation and Justice. The High Court of Cassation and Justice shall have jurisdiction over this case. A Senator can be detained or searched without a previous approval by the Senate, only in case of a flagrant offence. In this situation, the Minister of Justice is compelled to inform without delay the president of the Senate on the detention or search.

On receiving the request, the President of the Senate immediately informs the Senators in a public sitting, and sends it thereafter to the Legal Committee. The Committee adopts a decision by secret ballot, establishing if there are serious grounds to approve the request formulated by the Minister of Justice, drawing up a report to this purpose. The report drawn up is submitted to the debate and approval of the Senate. Requests for lifting of the parliamentary immunity are placed with priority on the agenda. The decision of the Senate is adopted by secret ballot, by majority of votes from the number of Senators. In the case the Senate finds that there is no reason for the detention, it orders the immediate revocation of the measure. Further criminal acts done by the respective senator or following information in the same case, are subject to a new request by the Minster of Justice for detainment, arrest or search.

According to the Decision of the Parliament no 17/March 2005, a Special Joint Committee of the Chamber of Deputies and of the Senate for the Statute of Deputies and Senators (composed by 7 deputies and 4 senators) was set up in order to elaborate the respective legislative proposal. The draft was advised by the Legislative Council. The draft is registered as an urgent subject for the agenda of the Chamber of Deputies. Then it is going to be considered by the Senate.
In order to have a very clear definition of the parliamentary immunity, so often debated over the last years, the Legislative proposal on the Statute of Deputies and Senators (252/ 2005), fully respecting the provision of the Art. 72 of the Constitution and the Standing Orders of each Chamber, clearly stipulates that:

- MPs shall enjoy parliamentary immunity from the date of the issuing of the proving certificate of election, under the condition of validation until the end of the mandate, in conditions stipulated by the Constitution and by the Law on the Statute.
- Parliamentary immunity is imperative and of public order and is not subject to suspension, interruption or linkage between many legislative mandates."

Mr Ian HARRIS, President, thanked Mme PONCEAU and the other members who had contributed and invited questions from members.

Mr Marc BOSC (Canada) asked whether it was possible for the police to carry out a search of the precincts of Parliament, if, for example, a Member of Parliament was suspected of having broken the law (whether involving a serious criminal breach or otherwise).

Mrs Hélène PONCEAU replied that it was impossible for the police to enter and proceed to a search of the precincts of one of the Chambers without the express permission of the Speaker.

Mr Yogendra NARAIN (India) said that privileges and immunities of legislatures and their members are fundamental prerequisites not only for the efficient and effective functioning of their duties but also for safeguarding their prestige, authority and esteem. An eminent authority on parliamentary procedure and practice Erskine May has defined the parliamentary privileges as "the sum of the peculiar rights enjoyed by each House collectively ... and by Members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals".[6] Though the privileges of Parliament had their origin in England as the British Parliament made efforts to protect its liberties against the Crown, they are necessary prerequisites for every legislature today.

In India, the privileges enjoyed by Parliament, State Legislature, their members and the Committees thereof have been specified under the provisions of the Constitution, certain Statutes, the Rules of Procedure and Conduct of Business and other precedents and conventions. The powers, privileges and immunities of each House of Parliament, its members and committees are specified in the provisions made in Article 105 of the Constitution. Clause (1) of Article 105 confers the freedom of speech in Parliament, subject to the provisions of the Constitution and to the rules and standing orders of Parliament. Clause (2) confers immunity to a member from any proceedings in any court in respect of anything said or any voted given by him in Parliament or any committee thereof. It also says that 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. The underlying principle has been that the members as representatives of the people should be free to express themselves without fear of legal consequences. Clause (4) extends the privileges contained in Article 105 to persons who "have the right to speak in, and otherwise to take part in the proceedings of a House of Parliament or any Committee thereof" even though they may not be members of that House. It may be mentioned that as per Article 88 of the Constitution, "Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any Committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote". Similarly, the provisions contained in Article 194 of the Constitution are identical to Article 105, which specify the powers, privileges and immunities of the Legislature of a State.

The privileges contained in the Rules of Procedure and Conduct of Business and the precedents include the right of the House to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member on a criminal charge or for a criminal offence.[7] The Code of Civil Procedure, 1908 provides for the freedom from arrest of members in civil cases during the continuance of the session of the House and forty days before its commencement and forty days after its conclusion. No arrest can be made within

[6] Erskine May, "The Law, Privileges, Proceedings and Usage of Parliament, Twenty-second edition, p.65
[7] Rules 22A and 222B of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

the precincts of the House nor a legal process, civil or criminal, served without obtaining the permission of the Chairman, and this permission is necessary whether the House is in session or not. Precincts of the House have been defined in the rule.[8]

Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of law relating to the proceedings of the House without the permission of the House.[9] Members or officers of the House cannot be compelled to attend as witnesses before the other House or a House of a State Legislature or a committee thereof without the permission of the House and without the consent of the member whose attendance is required.[10] All Parliamentary Committees are empowered to send for persons, papers and records relevant for the purpose of the enquiry being made by a 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. 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.

It may also be mentioned that under Article 122 of the Constitution, the courts are prohibited from inquiring into the validity of any proceedings of Parliament on the ground of any "alleged irregularity of procedure". No officer or member of Parliament empowered to regulate procedure or the conduct of business or to maintain order in Parliament can be subject to the jurisdiction of any court in respect of the exercise by him of those powers. Similar provision exists under Article 212 of the Constitution regarding the procedure followed in the State Legislatures.

The privileges and immunities available to Houses, members and Committees would be meaningless if the legislature are not given powers to punish for breach of their privileges. In fact, it has been recognised that that power of the House to punish for contempt of the House or breach of privilege "is the keystone of parliamentary privilege". Each House of Parliament has the power to determine as to what constitutes breach of privilege and contempt of the House. The penal jurisdiction of the House in this regard covers its members as well as strangers and every act of violation of privileges, whether committed in the immediate presence of the House or outside of it. The House may punish a person found guilty of breach of privilege or contempt of the House either by reprimand or admonition or by imprisonment for a specified period. In the case of its own members, two other punishments can be awarded by the House, namely suspension from the service of the House or expulsion. The power of the House to punish for its contempt has been upheld by the courts of law in India.

Parliamentary privileges and freedom of the Press

Under the Constitution, absolute immunity from proceedings in any court of law has been conferred on all persons connected with the publication of proceedings of either House of Parliament, if such publication is made by or under the authority of House Statutory protection relating to the publication of proceedings of either House of Parliament has been provided to the Press and media by the Parliamentary Proceedings (Protection of Publication) Act 1977, which states that newspapers and radio broadcasts would be immune from any civil or criminal liability for publishing any proceedings of either House of Parliament provided it is a

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[8] *Rajya Sabha at Work*, V.S. Rama Devi and B.G. Gujar, Rajya Sabha Secretariat, New Delhi, 1996, p.208

[9] First Report of the Committee of Privileges, Rajya Sabha presented to the House of 1 May 1958

[10] Sixth Report of the Committee of Privileges of Second Lok Sabha adopted by Lok Sabha on 17 December 1958 and Thirty-third Report of the Committee of Privileges, Rajya Sabha adopted by the House of 30 March 1993

substantially true report of such proceedings; it is not actuated by malice; and it is for public good. To further protect the Press and media from being proceeded against for the publication of proceedings of Parliament and also the State Legislatures, Article 361A was inserted in the Constitution by the Constitution (44th Amendment) Act 1978. This protection has been given to the Press and media subject to the overall limitation that Parliament or the State Legislature has the power to control and prohibit publication of its proceedings and punish persons for the violation of its orders.

When the proceedings of the House or the committees are wilfully misreported or speeches of members are distorted or suppressed, it is a breach of privilege and the contempt of the House and the offender is liable to punishment. The Press is not permitted to publish the proceedings or any document before they have been reported to the House. Similarly, any word expunged from the debates of the House of the Legislature does not form part of the proceedings and any person who publishes such expunged portion if guilty of a breach of privilege of the House. To publish any question, resolution or motion before the Chair admits them also amounts to contempt of the House. The Rules also prohibit publication of answers to parliamentary questions to be answered in the House before they have actually been given on the floor of the House. The modes of punishment that are available to Parliament and State Legislatures with regard to outsider are admonition, reprimand, imprisonment or exclusion from the Press Gallery.

Despite the existence of the provisions mentioned above, Parliament and the Press have sometimes found themselves in situation of conflict with each other in their attempt to zealously guard their independence. There have been instances of misreporting and contempt of Parliament/State Legislatures by the Press. On many occasions, the editors and correspondents or newspapers have tendered apologies after the Committee of Privileges pointed out that their reports were false and defamatory to Parliament and their members. In some cases, the Presiding Officers after examining the contents of the highly motivated comments on Parliament, published in the newspapers have ignored them on the ground that it is not worthy of the honour and prestige of the House to take cognizance of such reports. The Press, on the other hand, has argued that the Legislature has absolute discretionary powers in defining what constitutes the breach of privilege and contempt of the House.

The judiciary while protecting individual freedom has upheld in a number of judgements, the right of the Legislature to control its proceedings and the absolute freedom of speech by members on the floor of the House. However, it has also observed that the decision taken by the Legislature on the issue of privileges would be subject to the scrutiny of the judiciary under Article 21 of the Constitution.

The issue of codification of the privileges has also engaged the attention of the Presiding Officers from time to time. Their considered view has been that the codification is more likely to harm the prestige and sovereignty of Parliament, State Legislatures without any benefit being conferred on the Press and that in the present circumstances, codification of Parliamentary privileges is neither necessary nor desirable.

It may be mentioned that as per Article 105(3) of the Constitution, the privileges and immunities of each House of Parliament, and of the members and the Committees of each House shall be such as may be defined by Parliament by law. Since no law has been enacted so far by Parliament in pursuance of this provision to define the privileges, they continue to be the same as they existed at the commencement of the Constitution. The reference to the

House of Commons in Article 105 was omitted by the Constitution (Forty-fourth) Amendment Act 1978.

It is therefore essential that the parliamentary privileges and the freedom of Press have to be exercised with due consideration, care and caution. Privileges and immunities of the House and those of the members individually, are made available only to facilitate the discharge of their duties without any let or hindrance. These are considered essential for the purpose of carrying out its responsibilities efficiently and for preserving its esteem, dignity and privileges. However, they do not exempt the members from their obligations towards the society. In fact there is a growing perception, especially in nations where the privileges and the immunities have not been expressly stated, that these ought to be in tune with the overall interests and rights of other sections of society.

Annex

Cases where persons were reprimanded or given punishment by the House for committing breach of privilege and / or contempt of the House

Reprimand:

(i) **Describing Finance (No. 2) Bill 1980 as Finance (No. 2) Act in a book before the Bill was passed by the Parliament.** S/Shri Dinesh Chandra Garg, Vishnu Kumar Garg and Anil Kumar Garg, authors and publishers of "Garg's Income Tax Ready Reconer 1980-81 and 1981-82" of Ghaziabad (U.P.) were reprimanded by the Chairman at the Bar of the House on 24.12.1980. A motion to this effect was adopted by the House on 22.12.1980, in pursuance of the recommendations of the Privileges Committee contained in their 20th Report.

(ii) **Alleged casting of reflections on the Chairman by an Ex-MP (Shri K.K. Tewary's case)** Shri K.K. Tewary, Ex-Member, Rajya Sabha was reprimanded by the Chairman at the Bar of the House on 1.6.1990 in pursuance of a resolution adopted by the House on 24.5.1990.

(iii) Shri Sanjay Nirupam, the then Member, Rajya Sabha was reprimanded by the Chairman on 23.12.1999 (188th Session) for his unbecoming behaviour on a Special Mention by him regarding murder of a Hindu in Rajasthan.

Expulsion:

Shri Subramanian Swamy, the then Member, Rajya Sabha was expelled from the membership of the Rajya Sabha for misconduct and activities within and outside the country. A Committee of the House was constituted to investigate and report on the conduct and activities of Shi Subramanian Swamy on a Motion adopted by the House on 2.9.1976. On the basis of the recommendations of the Committee contained in their report which was presented to the House on 12.11.1976, the House adopted a Motion on 15.11.1976 whereby Shri Subramanian Swamy was expelled from the membership of the Rajya Sabha.

Suspension:

(i) Shri Godey Murahari was suspended for the remainder of the session on 3 September 1962. He was removed by the Marshal of the House.

(ii) Shri Bhupesh Gupta and Shri Godey Murahari were suspended for the rest of the day on 10 September 1966 which was the last day of the 57th session of the Rajya Sabha. Two separate motions were moved by the Chief Government Whip (Shri R.S. Doogar).

(iii) Shri Raj Narain and Shi Godey Murahari were suspended for one week by two separate motions moved on 25 July 1966, by the Leader of the House (Shri M.C. Chagla) and adopted by the House. After they refused to withdraw they were removed by the Marshal of the House.

(iv) Shri Raj Narain, the then Member of the Rajya Sabha was named by the Chairman on 12.8.1971 for his disorderly conduct in the House. Thereafter, the Minister of Parliamentary Affairs moved a Motion that Shri Raj Narain be suspended from the services of the House for the remainder of the Session which was adopted.

(v) The Minister of State in the Department of Parliamentary Affairs moved a motion for the suspension of Shri Raj Narain on 24.7.1974, for the remainder of the session. The motion was adopted. He refused to leave the House. The Marshal of the House was called and the member was removed. Thereafter, the House discussed the matter and at the end, the Minister in the Department of Parliamentary Affairs moved the following motion which was adopted:

> "That Shri Raj Narain be suspended from the service of the House for the rest of the day and his suspension for the remainder of the session as resolved earlier by the House, be terminated".

Next day, Shri Raj Narain was permitted to make a statement on the incident.

(vi) The Minister of State in the Ministry of Parliamentary Affairs (Shri M.M. Jacob) moved the following motion on 29.7.1987:

> "The Honorable Member Shri Puttapaga Radhakrishna has violated the rules of this House by exhibiting derogatory remarks written on a piece of paper which is contempt of this House and the House unanimously resolves that he may be suspended for a week from the House".

The motion was adopted. The member, however, continued to sit. The House was, therefore, adjourned for an hour and then for the rest of the day.

Eviction:

On 28.8.1972 Shri Sita Ram Singh, a Member who was on a hunger strike within the Parliament House Estate was evicted after 2200 hoursz by the Watch & Ward Staff of the Rajya Sabha Secretariat under the orders of the Chairman.

Imprisonment:

For disturbances from the Visitor's Gallery e.g. throwing of leaflets, shouting of slogans etc. following instances of punishment to offenders are available:

(i) On 21.12.1967 – two offenders were given imprisonment (in Tihar Jail) till the conclusion of the Session (Adjournment *sine die*)

(ii) On 3.0.3.1973 – two offenders were kept in the custody of the Watch & Ward Staff till the rising of the House on that day

(iii) On 18.3.1982 – 14 persons were sentenced to 7 days simple imprisonment and detained in the Tihar Jail

(iv) On 21.11.1983 – one offender was sentenced for simple imprisonment till the conclusion of the Session (i.e. till 22.12.1983) on a resolution adopted by the House to this effect.

It may be mentioned that out of the instances referred to above, the punishment was given through the involvement of the Privileges Committee in only one case as mentioned at Sr. No. (i) under Reprimand.

Mr Yogendra NARAIN then put three questions: in member states of the European Union (like in France) could a Member of Parliament who had been arrested appeal against his arrest to a European Judge? In addition, if a request for someone's arrest was made by the judicial authorities following a crime or breach of the law, which Parliamentary body was responsible for dealing with this? Was there a specific procedure to deal with urgent cases?

Mr Hans BRATTESTÅ (Norway) thought it was necessary to limit immunities and privileges to the minimum needed in order to avoid exposure to public criticism. In Norway, only two provision is in the Constitution dealt with this, which laid down: (i) that a Member of Parliament was protected from arrest when he was present in Parliament, except when in the act of crime; (ii) that opinions expressed within the precincts of Parliament or published in a Report benefited from Parliamentary immunity except when they were of a defamatory nature.

If a Member of Parliament committed a crime or breach of the law during the execution of his duty the guilty Member appeared before a special court.

To sum up, it was necessary to find a balance between the minimum amount of rules which provided exceptions from the ordinary law and creating a situation which protected those who were elected to carry out their duties without disruption.

Mr Anders Forsberg, a Vice-President, took the chair.

Mr Hafnaoui AMRANI (Algeria) thought that the subject of privileges and immunities was a delicate subject and look that differently according to whether one was a Member of Parliament or not – always insufficient for the point of view of Members of Parliament, always excessive from the point of view of everybody else. The Algerian Constitution was not very precise, on the question of immunities which was covered by a specific law which covered the relationship between the two Chambers.

In Algeria, member of Parliament could be prosecuted if the judicial authorities had not previously obtained the removal of his Parliamentary immunity. The Minister of Justice, the "Garde des sceaux", informs the Bureau of Parliament which agreed to or refused removal of the immunity. If the Bureau agreed to the request then the matter was referred to the

Committee on Administrative and Legal Matters and Freedoms, which heard the Member of Parliament, could be assisted if he wished to by a lawyer or another Member. The Committee reported to the Chamber and the final decisions relating to removal of immunity was taken in the plenary sitting by a majority of two thirds of the members – this meant that such a removal in the course of period of service was almost impossible having regard to the traditional solidarity between elected Members. However, after his period of election, the Member of Parliament had no particular privileges.

He thought that the French system gave a very important role to the Bureau, perhaps, an excessive one having regard to the risk of a difference of opinion between the Bureau and majority opinion in the Chamber.

Mr Malcolm JACK (United Kingdom) underlined the importance of the technical terms relating to such subjects. The translation of the term "irresponsabilité" by "irresponsibility" in English was not perhaps quite appropriate. In the same way, the term "privilege" in modern language had an elitist and often resented overtone.

It seemed that safaris privilege and immunity was concerned, the United Kingdom nowadays tended to adopt the "minimalist" approach which also was followed in Norway as Mr Hans BRATTESTÅ had indicated.

Mrs Stavroula VASSILOUNI (Greece) said that the freedom of speech and legal protection for Members of Parliament were provided for specifically in the Greek Constitution. Article 6, which had not been amended since 1975, laid down in that Members of Parliament had absolute freedom of speech and voting – not only during their period of service but also afterwards.

As far as legal protection was concerned, article 61 laid down that during their period of service a Member of Parliament could not be prosecuted or arrested without the express authority of Parliament. This decision fell to the Bureau of the Chamber. These provisions nonetheless not apply in the case of someone arrested in the course of commission of the crime.

Mrs Claressa SURTEES (Australia) said that a law had been passed in 1997 in Australia relating to the privileges and immunities of Members of Parliament – this was in addition to those inherited from the United Kingdom in 1901.

The legislation followed criminal case in which a former senator had been questioned about matters relating to a period when he had been a Supreme Court judge. The law was aimed at preventing a repeat of similar cases. The law did not set out all the privileges that existed, but did include a list of those which were recognised as affecting members of either House Parliament. Recently an agreement had been signed with the police relating to search warrants.

Mr Pitoon PUMHIRAN (Thailand) said that members of the Thai parliament benefited from certain privileges: that of being able to vote in an independent way (without being blind eye the position of their party); freedom of expression during debates and committee meetings; and immunity relating to official records and minutes of speeches.

Further privileges related to guaranteeing the exercise of their duties and enabling them to take part in the work of Parliament: during sessions Member of Parliament, except where they

were caught in the act, could be arrested or brought before the courts without the permission of the Chamber.

Mr Abdeljalil ZERHOUNI (Morocco) said that the Moroccan Constitution had established a clear distinction between, on the one hand, opinions and votes and, on the other hand, breaches of the law. This laid down that Members of Parliament had immunity relating to opinions and votes, as long as they had not called into question the monarchical regime or showed disrespect for religion or the King.

During Parliamentary sessions, a Member of Parliament could not be prosecuted or arrested for a crime or breach of the law except with the authority of the Chamber to which he belonged, unless he had been caught red-handed.

Requests for removal of immunity should be made by the minister of justice to the President of the Chamber. Such requests were examined by an ad hoc Committee, known as the Committee on Parliamentary Immunity, and this was composed of members proportionate to the party groups in the Chamber. The Committee heard the Member who was accused and reported to the Chamber which took a decision in the course of the same sitting.

In between sittings, the Bureau of the Chamber substituted for the Committee on Parliamentary Immunity. In practice, it nonetheless preferred to avoid taking a decision itself and left this matter to the Committee.

Mr Samuel Waweru NDINDIRI (Kenya) said that in Kenya the law protected Members of Parliament against arrest for remarks made in public within the precincts of the Assembly or in respect of breaches of the law committed in relation to events linked to their duties.

Mr Xavier ROQUES (France) so France in a sect which had been criticised in a Parliamentary Report to which privilege attached had decided to carry out its attack against the Secretary General – as editor of the document – and the printer of the Report. Luckily the judge had considered that the privilege which covered Members of Parliament included those who had given them material assistance.

Mr Mohammed Lutfar Rahman TALUKDER (Bangladesh) said that in Bangladesh a Member of Parliament could not be brought before the courts for any votes or opinions that he had expressed in Parliament.

As far as criminal prosecutions were concerned, Members of Parliament were protected by the law during sittings; outside the sittings, any criminal actions were regulated by the common law – all Bangladeshi citizens were equal before the Constitution, which was the solemn expression of the will of people – but the President of the Chamber had to be informed within a reasonable time.

Mr Robert MYTTENAERE (Belgium) said that freedom of speech was the kernel of the Parliamentary system.

For the first time since the country's independence (1830) the Belgian Parliament had been criticised by an appeal court for having expressed opinions which were "lacking in wisdom" in relation to a group which was recognised as a religious sect.

During the work of a committee of inquiry a witness had referred to a particular association as being “criminal”, financed in an obscure way and given up to reprehensible activities. These views had been reported in the committee of inquiry’s Report, with the explicit note that they were the views of the witness.

The association, which had lost at first instance, won on appeal because the Chamber had not been sufficiently “ wise” in the manner in which it had reproduced the witness’s words. If the Cour de Cassation to which the Chamber had appealed followed the reasoning of the Court of Appeal then no Member of Parliament could challenge a minister, put a question or accuse a third party without avoiding being sued.

This was the culmination of a process which had begun a century previously. 100 years ago, the State could not be held responsible for any fault. In 1919, for the first time, the Government had had to pay damages for action by the State. 10 years ago, a judge had been successfully sued. The concept of thought therefore had not stopped spreading: the situation had been arrived at air fault had been imputed to a Parliamentary assembly as a result of application of the provisions of the civil Code.

Shri P.D.T. ACHARY (India) said that Indian law conferred no immunity on Members of Parliament in respect of criminal or civil prosecution. The only restriction operated during sittings in the course of which civil suit against Members of Parliament were suspended.

As far as the “privileges” of Members of Parliament was concerned, the Constitution laid down that these were subordinate to other provisions of the Constitution – which included, for example, equality of all Indian citizens before the law. It was a matter for the courts to ensure that these two principles were reconciled. The result of this complex situation was that Members of Parliament claimed that citizens were violating their own privileges every day!

Members of Parliament in India could, of course, not be disadvantaged for any ideas which they had expressed or votes which they had made within Parliament. This had led to a surprising to court decision, in a case where a political grouping had been accused of having accepted money from the party in power in order that members of that group might have their votes “bought”: the Supreme Court thought that the constitutional immunity which attached to the way in which elected Members voted prevented them from being prosecuted individually but that once the corruption had been established this could give rise to prosecutions.

The idea of a codification of Parliamentary privilege was regularly put forward. Up till now this had not been done: it would lead to a definition – and therefore limitation – of such privileges and elected Members refused to engage in this, preferring to rely instead on decisions on a case-by-case basis before the courts.

Mrs Marie-Josée BOUCHER-CAMARA (Senegal) thought that the idea of a codification off privileges was a good idea, because a Member of Parliament who was insufficiently protected was indirectly prevented from carrying out his duties to the full extent. But on the other hand, if elected Members were protected too much this created a difficulty in their relationship with electors, who might criticise a situation which was excessively advantageous for their representatives.

Parliamentary “privilege” was both legal and practical. In Africa, the practical type of privilege was not highly regarded, because those who as a result of an election succeeded in

changing their condition of life and obtained advantages which would otherwise be inaccessible to them were reproached by people for having been motivated by selfish interest.

Codification of the privileges of Members was a good idea, because it allowed limits to be set on the claims of Members of Parliament and also because it allowed them to be protected, on the other hand, from changes of mood among the public.

Mr John CLERC (Switzerland) said that he was surprised by the judgement of the Cour de Cassation of the 7th March 1988 mentioned in the contribution of Mrs Helene Ponceau which had the effect that a broadcast over the radio of words spoken within the Chamber and therefore covered by immunity was able to be punished by the courts. How could it be that statements which had already been made and which were protected could afterwards become the subject of a court judgement?

Mrs Marie-Françoise PUCETTI (Gabon) said that in Gabon Members of Parliament had protection which was comparable to that which prevailed in numerous countries.

Mr Luc BLONDEEL (Belgium) said that the Senate in Belgium included among its members a senator who was also a famous footballer. This person, who was bored by his senatorial duties, asked the Speaker of the Senate if his pay might no longer be given to him. He received the answer that the position of a Member of Parliament was not like that of a contract governed by private law which was able to be modified by the parties but was a status based on public law: a member could not renounce his immunity and in the same way could not renounce his salary. The senator therefore continued to be paid, despite his own wishes.

Mrs Priyanee WIJESEKERA (Sri Lanka) exclude from the Official Report statements which were excessive, defamatory or vulgar.

Mrs Hélène PONCEAU praised the quality and number of the different interventions, which were too numerous to allow her unfortunately to reply to individually.

She agreed with Mr Malcolm JACK that the English expression “freedom of speech” was as much preferable to the French term “irresponsabilité” which was more ambiguous.

The discussion showed that there was a strong link between freedom of speech and the rules which covered internal discipline which allowed the Speaker of the Chamber to avoid (or to control) possible breaches: the freedom of speech was absolute apart from the power of the Speaker to place limit on excess. She referred to the judgement of the European Court of Human Rights of the 17th of December 2002 which laid down that the rule relating to Parliamentary immunity “in principle should not be considered as if it were a disproportionate restriction to the right of access to the courts as laid down by article six of the Convention”.

As a consequence, statements or written material which were outside the direct area of Parliamentary proceedings were no longer covered by the principle of immunity. The French example relating to the action taken against religious movements showed this: a report which was published by a Parliamentary committee of inquiry had benefited from complete immunity but when the Chairman of the Committee had spoken on the radio or television he was able to be subject to court action – even if his comments had been limited to the contents of the Committee’s report. The dividing line was therefore unclear; it depended on whether the President of the Chamber had a right to be consulted.

As far the judgement of the Cour de Cassation of 7th March 1988 was concerned Mr Raymond Forni, then Chairman of the Legal Affairs Committee (commission des lois) of the National Assembly and rapporteur on a Bill relating to New Caledonia, was interviewed on radio on the contents of his Report. The Cour de Cassation relied on a fundamental distinction between what related to the constitutional duties of Members of Parliament and those things which were not so covered in order to decide that the remarks complained of came into the second category and therefore did not attract any protection.

As far freedom from arrest was concerned, there were two major schools of thought: the Anglo-Saxon, which said that Members of Parliament was ordinary citizens and only had minimal protection; and the French school which thought that as soon as judicial inquiries had an impact on the liberty of an elected Member further proceedings needed the authority of the Assembly itself.

In response to Mr Yogendra NARAIN, the Bureau of the relevant Assembly decided on requests presented by the judicial authorities, upon notification of the President of the Assembly by the Garde des Sceaux. There was no special urgent procedure: only the Bureau could decide on such matters. There was no appeal against a decision of the Bureau: the Assembly had sovereign power in this matter.

Mr Ian HARRIS, President, said that the two secretaries had received two nominations for the post of President of the ASGP: the candidates were Mr Anders FORSBERG and Mr Carlos HOFFMANN CONTRERAS.

Mr Mohammed RAFIQ (Pakistan) wished to draw the attention of Members of the ASGP to the crisis affecting Pakistan as result of the earthquake of the 8th of October 2005.

Pakistan had raised this as a matter of urgent debate in the 113th meeting of the IPU.

The current situation in Pakistan had made it necessary to ask the support of the IPU. Assistance from all parliamentarians was necessary.

Pakistan requested help from the entire world in the face of the catastrophe even greater than

that of the tsunami which had struck South East Asia.

The sitting rose at 1.10 p.m.

FOURTH SITTING
Tuesday 18 October 2005 (Afternoon)

Mr Ian HARRIS, President, in the Chair

The sitting was opened at 3.00 pm

1. Introductory Remarks

Mr Ian HARRIS, President, welcomed members to the fourth sitting of the Geneva meeting of the ASGP.

2. New Members

Mr Ian HARRIS, President, said that the Bureau of the Executive Committee had met in special session to enable late applications for membership to be put before the plenary. This should not be regarded as a precedent.

The following candidates for membership of the Association had been considered and did not to his knowledge pose any difficulties.

Dr John Argudo PESÁNTEZ	Secretary General of the National Congress of Ecuador (replacing Dr Guillermo H. ASTUDILLO IBARRA)
Mr Suek NAMGOONG	Secretary General of the National Assembly of the Republic of Korea (replacing Mr. Yong Sik KANG)
Mr Carlos José SMITH	Secretary General of the National Assembly of Panama (replacing Mr. José Gomez NUNEZ)

The new members were *agreed* to.

3. Election to the post of President of the Asgp

Mr Ian HARRIS, President, invited Mr Carlos HOFFMANN CONTRERAS to speak.

Mr Carlos HOFFMANN CONTRERAS said that he withdrew his candidacy for election as President of the ASGP and supported the candidacy of Mr Anders FORSBERG. He thanked those who had supported him.

Mr Ian HARRIS, President, declared that Anders FORSBERG as the only remaining candidate was therefore elected as President of the ASGP by acclamation.

There would be a consequential election for Vice-President of the ASGP tomorrow at 11:45 a.m. Mr HARRIS said that he would nominate Mr HOFFMANN CONTRERAS as Vice-President, although it was open to anyone to nominate a candidate for election to that office until the deadline for nominations, which was 9 a.m. the following day.

4. Communication from Dr Yogendra Narain, Secretary General of the Rajya Sabha Of India, on Relations between Parliament and the Judiciary

Mr Ian HARRIS, President, welcomed to the platform Dr Yogendra NARAIN, Secretary General of the Rajya Sabha of India, to present his communication.

Dr Yogendra NARAIN, Secretary General of the Rajya Sabha of India, spoke as follows:

"In a modern State, while the legislature gives shape and direction to national policies and programmes and formulates laws, the executive implements laws, policies and programmes. The judiciary, on the other hand, has the responsibility of ensuring that the laws brought forth by the legislature at the behest of the executive is in tune with the Constitution. Judiciary has to prevent the excess of the executive and the legislature and protect the rights of the citizens. Each of the three organs of the state, namely, legislature, executive and judiciary are required to perform a specific function under the principle of separation of powers. The relationship between Parliament and Judiciary, the two important pillars of the state is an interesting subject of study in a modern democracy.

In India, Parliament is the supreme legislative body of the country, and this pre-eminent position is reflected in several of the Constitutional provisions relating to its legislative powers, control over the nation's budget, accountability of the executive and administration to it, its participation in the election and impeachment of the Head of the State as well as in the removal of the incumbents of other high offices including Judges, the requirement of its approval for the President's Rule in a State, proclamation of Emergency and, above all, its amending powers of the Constitution - to mention only a few important ones.

The framers of the Constitution have also taken measures to ensure that the Judiciary remains independent of the influence of the other organs. An independent and impartial Judiciary as the custodian of the rights of the citizens, they felt, was the first and foremost guarantee of individual liberty. Consequently, the method of appointment of the Judges, their tenure in office, their salary, their staff, etc. were provided in the Constitution itself to ensure this independence. These cannot be varied during their tenure to their disadvantage. Parliament cannot discuss the conduct of any judge of the Supreme Court or High Court in the discharge of his duties. However, if there are any charges of misbehaviour and incapacity against any Judge, the President has the power to remove a Judge if a joint address passed by both Houses of Parliament with a special majority is presented to him. The Courts are empowered to examine a state action which has been challenged as to whether the action is in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court has the authority to strike it down.

The Indian Constitution has wonderfully adopted a via media between the American system of Judicial Supremacy and the English principle of Parliamentary Supremacy. The harmonization has been largely achieved by the conscious nurturing of the image of the judiciary as the custodian and protector of the rights of citizens and that of Parliament as an institution consisting of the elected representatives of the people imbued with dynamism and a vision about the future of India. The Judiciary is endowed with the power of declaring a law as unconstitutional if it is beyond the competence of the legislature according to the elaborate distribution of powers provided by the Constitution, or if it is in contravention of the fundamental rights guaranteed by the Constitution or of any other mandatory provision of the Constitution. However, at the same time, the power of Judiciary is restrained as the major portion of the Constitution is liable to be amended by the Union Parliament by a special majority. The theory underlying the Indian Constitution in this respect can hardly be better expressed than in the words of the first Prime Minister of India Jawaharlal Nehru:

No Supreme Court, no judiciary, can stand in judgement over the sovereign will of Parliament, representing the will of the entire community. It can pull up that sovereign will if it goes wrong, but, in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way… Ultimately, the fact remains that the legislature must be supreme and must not be interfered with by the Courts of Law in such measures as social reform.

Notwithstanding the role assigned to the Parliament and the Judiciary under the constitutional framework, there have been several instances involving the interpretation of constitutional provisions which have had their implications on the relations between these two vital institutions. In one of the most important cases dealing with such issues, namely, *Keshavananda Bharti vs. State of Kerala* **, a Special Bench of the Supreme Court, evolved the concept of "basic structure" and ruled that article 368 which relates to the amendment procedure, does not enable Parliament to alter the "basic structure" of the Constitution. This, in effect, implied that Parliament has power to amend any part of the Constitution, but cannot alter its "basic structure".**

Following the decision in *Kesavanand Bharti's case,* **the Constitution Forty-second (Amendment) Act was passed by Parliament in 1976 wherein new clauses were added to article 368 which provided that a Constitution Amendment Act would not be subject to judicial review, on any ground, and that there were no limitations, expressed or implied, upon the amending power of Parliament under article 368 (1) which was a constituent power. However, yet again the applicability of the doctrine of 'basic structure' was reaffirmed by the Supreme Court in the** *Minerva Mills Ltd. v. Union of India case,* **1980 by holding amendment to the relevant article as** *void***, on the ground that this amendment sought to totally exclude judicial review, which was a basic feature of the Constitution. Thus today the judicial review is an essential basic feature of the Indian Constitution which cannot be abrogated by Parliament.**

The question of Parliamentary privileges and the power of legislature to punish for its contempt is another important dimension where the Parliament and the Courts often disagree. In India, the powers, privileges and immunities of the Houses of Parliament and the State Legislatures, its members and Committees are enshrined in article 105 and 194 of the Constitution. Since no legislature in India has so far defined the privileges, they in effect remain the same as they existed at the commencement of the Constitution.

Each House of Parliament and the State Legislature has a power to punish a person for committing breach of its privilege and for its contempt. However, the question as to whether such an award of punishment is immune from judicial scrutiny, is a subject of debate. In the famous *Keshav Singh case,* the question regarding the powers and jurisdiction of the High Court and its Judges in relation to the powers, privileges and immunities of the State Legislature and its members was raised. The Court, *inter alia,* held that no legislature has power to take action against a Judge for its contempt alleged to have been committed in discharge of his duties. The matter being of great constitutional significance was referred by the President of India to the Supreme Court for its opinion under article 143 of the Constitution.

In *P.V Narasimha Rao v. State* case also known as the *Jharkhand Mukti Morcha* case, one of the main issues involved was whether article 105 of the Constitution confers any immunity on a Member of Parliament from being prosecuted in a criminal court for an offence involving offer or acceptance of bribe. The Supreme Court observed that the liability for which immunity can be claimed under article 105(2) is the liability that has arisen as a consequence of the speech that has been made or the vote that has been given in Parliament. However, the immunity granted under this article would not be available in a case where a Member agrees not to speak or vote in Parliament, and he would be liable to be prosecuted on the charge of bribery in a criminal court.

About two years ago, in the Legislative Assembly of the state of Tamil Nadu a resolution was adopted sentencing six journalists to fifteen days imprisonment for committing breach of privilege of the House by writing and publishing articles derogatory to dignity of the House in *The Hindu,* a leading English newspaper of our country. A petition was filed in the Supreme Court challenging the decision of the Tamil Nadu Assembly for imposing prison sentences on the Journalists for breach of privilege seeking stay on their arrest. The Supreme Court after hearing the petition stayed the arrest warrant.

Another issue in which some points of tension have arisen over the years relates to the function of the Secretariats of the two Houses of Parliament and the State Legislatures. In India, the Secretariats of the two Houses function as independent entities under the ultimate guidance and control of their respective Presiding Officers. The Constitution of India under articles 98 and 187, specifically provides for separate Secretariats in case of the two Houses of Parliament and that of the State Legislatures, respectively. The decisions given by the Presiding Officers in administrative matters of the Legislature Secretariats have, in some cases, been challenged in the courts.

In India, the legislatures have been given special powers in matters relating to their proceedings and their privileges. Subject to the provisions of the Constitution of India, the two Houses of Parliament have been empowered to regulate their own proceedings. Article 122 of the Constitution of India provides that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure and no officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Thus, under Article 122 and Article 212 in case of State Legislatures, the courts have been specifically debarred from enquiring into the alleged irregularity of proceedings of Parliament. The Presiding Officers have been given power to regulate and control the conduct of business, maintain order and adopt appropriate procedure in the Houses. However, if the procedure is beyond the competence of the legislature, the courts may have jurisdiction in the matter.

At the same time, the Presiding Officer is also not subject to the jurisdiction of any court for failure to exercise his power to regulate the proceedings of the House.

By and large, the courts in India have recognized the immunity of parliamentary/legislative proceedings from being called in question in the court on the ground of alleged irregularity of procedure. However, if the procedure is beyond the competence of the legislature, the courts may have jurisdiction in the matter.

It is also worth mentioning that in a famous case the Judiciary had itself stated categorically the sovereignty of the legislature in matters pertaining to the power to conduct its own business. The Supreme Court said:

The validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. No Court can go into those questions, which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business.

Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for interference by the Supreme Court under Article 32 of the Constitution. Mere non-compliance with rules of procedure cannot be a ground for issuing a writ under Article 32 of the Constitution.

In spite of constant deliberations on the necessity of having harmonious relationship between Parliament and Judiciary there are occasions when the judiciary is perceived as overstepping its limits. In the state of Jharkhand, after the recent Assembly elections, the Governor invited the leader of the United Progressive Alliance who was sworn-in as the Chief Minister and was given three weeks time to prove his majority in the House. However, the leader of the other group of parties, namely, the National Democratic Alliance, who claimed more number of members on his side, was ignored. He petitioned to the Supreme Court stating that the appointment of the Chief Minister of the State was unconstitutional and without authority of law. Reacting on the petition, the Supreme Court issued certain directions on the 9th March, 2005 in regard to Jharkhand Assembly which was perceived in some circles as interference in the internal affairs of the State Assembly. The crisis in the Jharkhand Legislative Assembly was sorted out with the leader commanding the majority being appointed as the Chief Minister of the State and the matter settled as per the constitutional provisions.

At the same time, the Court's directions, howsoever well-intentioned raised certain apprehensions *vis-a-vis* legislatures' powers to regulate their proceedings as provided under articles 122/212 of the Constitution. It was viewed as having the potential to disturb the delicate balance of power in our Constitution, which was a cause of concern for all those who are closely associated with the functioning of parliamentary democracy such as Presiding Officers. The Speaker, Lok Sabha subsequently decided to convene an Emergent Conference of the Presiding Officers of the Legislative Bodies in India in March, 2005 for discussing the implications of the order of the Supreme Court as mentioned above. The Speaker in his address cautioned about the possible larger impact on the proceedings of Parliament. In the Conference, a Resolution was passed unanimously by the Presiding Officers stating that the Constitution has allotted specific duties and responsibilities to the legislature and the judiciary and their roles are intended to be complementary to each other. It would, therefore, be in the best interest of democracy in the country if both function with mutual trust and respect, each recognizing the independence, dignity and jurisdiction of the other.

The functioning of Parliament and of the Judiciary ultimately aims at the betterment and improvement of the common man. In fact, a Chief Justice of a State High Court had recently stated, and quite rightly so, at a function that "it is a fundamental principle in democracy that people are supreme, and all authorities, namely, judges, legislators, ministers, bureaucrats, etc. are servants of the people and should be proud to be servants of the people... Our authority rests on public confidence..."

The legislature and the judiciary both have functioned always to accomplish a common purpose, namely, the public welfare. We may say, for good measure, that both these institutions have been, by and large, successfully sustaining the colossal structure of Indian democracy. Understanding and appreciation of each other's domain of work and the adoption of the rule of harmony and mutual trust will go a long way in the healthy growth of democracy."

Mr Ian HARRIS, President, thanked Dr NARAIN and invited questions. He regretted that he had not been present that morning when Ms SURTEES had been explaining parliamentary privilege. In Australia there had been a case of two journalists jailed for 3 months by Parliament; the High Court had upheld the imprisonment.

A later Act had been passed to cover Parliament's powers to punish. Some commentators who spoke slightingly of Parliaments powers might consider their own powers to punish contempt of court.

Mr Brendan KEITH (United Kingdom) said that the Paper might not be up to date about the United Kingdom system because of the Human Rights Act which gave effect to the European Convention on Human Rights. There was now a superior authority to Parliament in the form of the judges who could declare an Act of Parliament incompatible with the International Convention on Human Rights. In order to preserve the supremacy of Parliament the Act said that the judges could not strike down an Act of Parliament. The Act said that judges could declare provisions of an Act unlawful but had to look to Parliament to strike down the incompatible provisions.

The Courts had been very careful traditionally not to interfere with Parliament but now there was a new situation. People had no idea how this would turn out. The old fashioned text book view was no longer completely true.

Mr Md Lutfar Rahman TALUKDER (Bangladesh) congratulated Dr NARAIN on his contribution. In India there was a clear line of difference between the jurisdiction of Parliament and the courts. He asked whether Parliament had ever amended a fundamental component of the Constitution?

There were certain examples in developing nations where Parliament and the judiciary had conflicting roles. In Bangladesh Constitution had assured a multi-party system with a parliamentary system of Government. The 4th Amendment had created only one party. Later the Constitution had again been amended to allow many parties. The Supreme Court was the guardian of Constitution. How did this work in India?

Shri P.D.T. ACHARY (India) said that the fundamental reason for conflict between the Parliament and the judiciary was that there was no supremacy in the State but there was balance of powers. No organ of the State had supremacy. Therefore there was conflict between them. India was therefore different from the United Kingdom. There was a new

situation in the United Kingdom. Where there was no supremacy this conflict arose. Dr NARAIN had referred to a case where the Governor of a State had called parties to form a Government ignoring the group which was in the majority. The matter went to the courts. The final resolution was that the Governor called the leader of the largest group to make a Government. Without the courts this would not have ended properly.

In India the judiciary was proactive, more than in other parts of the State. Public opinion was divided on this as to whether they should be so proactive. He gave as an example that of Delhi, which was a very polluted city. The courts instructed the Government to do something. Nothing had been done. So the courts took over and instructed buses not to use diesel but to use gas or less polluting agents. This had caused consternation but it had worked.

Ms Claressa SURTEES (Australia) said that Australia had a lot in common with India, including having a written Constitution. There had been some conflict between the States. The High Court (i.e. the Supreme Court) was reluctant to get involved in disputes between the two Houses. There was a further consideration: should Parliament have a role in appointing judges? Was this an issue in India?

Mr Ian HARRIS, President, asked whether judicial activism had been seen elsewhere in non-Westminster jurisdictions?

Mr Xavier ROQUES (France) wanted to ask a fresh question. The principle that Parliament could not change the basic structure of the constitution raised the question of who could? Was a revolution needed?

Mr Kenneth E.K. TACHIE (Ghana) noted that Parliament could not change the Constitution in Ghana This had to be by two thirds of the public voting by referendum.

Dr Yogendra NARAIN in reply said that he was grateful to his British colleague for clarifying the UK position following UK entry into Europe. It was interesting that judges left the change of a law to Parliament. The colleague from Bangladesh had asked about changes to fundamental rights and what the courts had done about it. This had not yet happened apart from legislation on landlordism. The courts said that property was a fundamental right. But when Parliament put all the laws into the Constitution and said that they could not be examined in court the courts did not intervene. Possibly this was because that they were social reforms. The courts took a view on the basis of current thinking.

Although the Supreme Court had the power of final interpretation of the Constitution there was no supreme power. In highest level it had been thought that there would be harmony between the three highest powers; in fact courts had been exercising powers which made them supreme.

It had been asked whether Parliament had a role in the appointment of Judges; no, it had not. But it could impeach Judges which could lead to the removal of a Judge.

The colleague from Ghana had said that two thirds of the population could amend the Constitution. India was too large for referenda so it had been thought better to provide for amendment of the Constitution by Parliament.

Mr Ian HARRIS, President, asked whether any judges had been impeached.

Dr Yogendra NARAIN replied that a Judge of the High Court had been impeached. An Inquiry Report had been presented against the judge to Parliament. A vote had been taken and the decision had been taken not to impeach him.

Mr Ian HARRIS, President thanked Dr Yogendra NARAIN.

5. Concluding Remarks

Mr Ian HARRIS, President said that the observers from Afghanistan would give a presentation on the development of a Parliament in Afghanistan the following day.

The Plenary would resume the next day at 10.00 a.m.

The sitting rose at 4.15 pm.

FIFTH SITTING
Wednesday 19 October 2005 (Morning)

Mr Ian HARRIS, President, in the Chair

The sitting was opened at 10.00 am

1. Introductory Remarks

Mr Ian HARRIS, President, welcomed members to the fifth sitting of the Geneva meeting of the ASGP.

He reminded members that the deadline for nominations for the vacant posts on the Executive Committee was 12 noon that day.

2. Election to the vacant post of Vice-President of the ASGP

Mr Ian Harris, President, said that there was only one candidate who had been put forward for election to the post of Vice-President of the ASGP: Mr Carlos HOFFMANN CONTRERAS.

Accordingly, he declared Mr Carlos HOFFMANN CONTRERAS elected as a Vice-President of the ASGP by acclamation.

There would be a consequential election for an ordinary member of the Executive Committee at the Nairobi session.

3. General debate on Management issues relating to staff attached to the Speaker/President, Members of Parliament and political groups

Mr Ian HARRIS, President, invited Mr Xavier ROQUES, Secretary General of the Questure of the National Assembly of France, to open the debate.

Mr Xavier ROQUES thought that the question relating to Members' staff, party officials and the staff of the Presidents of the Assembly required to be defined. Each country had its own traditions which had historical origins and it would be suitable to know what concepts hid behind the terms used—problems of translation did not make this task easier.

He thought that it was possible to distinguish seven categories of person under the term "Members' staff".

- First of all, civil servants: namely, staff with a particular status guaranteeing tenure, who were recruited and employed in the name of the State and who served the

institution as a whole and not a particular Member of Parliament. These civil servants were divided into two subgroups: they might be staff who spent their entire career only in Parliament – this was the system in France which took to the fullest extent the logic behind the principle of the separation of powers – or civil servants who served the organs of the State more widely, and who were in other words from time to time attached either to Parliament or to a ministry and passed from one to the other in the course of their career which was often the case in younger parliaments in which it was necessary to constitute from the beginning the network of staff who were taken from ministerial staff.

- In place of or side-by-side with civil servants—the two approaches could co-exist—might be staff covered by a different legal system, for example private law governing employment relations between employees and a business, linked by contract with Parliament and who, for a certain time, worked for Parliament. This arrangement was very flexible and could involve very different types of examples: experts; specialist professions (doctors, press attaches, security staff, and technical staff such as electricians), temporary staff et cetera. This might also be the case in new parliaments in order to create an administration not yet in existence.
- The third category related to party workers. Nowadays, Members of Parliament were also members of Parliamentary groups and these had an administrative structure which might be quite well developed. This structure might or might not have organisational links with political parties since Parliamentary groups often corresponded to the particular parties. There all kinds of organisational structure were possible: complete osmosis between the group secretariat and political parties or complete separation, with varying degrees between these two. The secretariat of groups might be overstaffed all very few in number. The staff employed might come from partisan organisations or be recruited directly by the group. It might be made up of civil servants –on loan from the Parliamentary administration or some other official organisation, whether a State organisation (a ministry, for example) or local—or by people employed ad hoc governed by normal employment law. It was easy to suppose that the more important the group became as an organisational basis for Members of Parliament, the more likely it would be that the secretariat of the group would involve a large staff. The experience in France at the start of the Fifth Republic had shown that there had been a noticeable increase throughout the years in the structure of Parliamentary groups even if this seemed to have steadied the last 20 years.

Another area in which there was variety was the permanence of those working in the secretariat of groups. The problem only arose obviously in those groups which had some kind of permanence and that were present for various legislative periods. In such cases, staff working for these groups might spend their entire career there. They were the permanent staff who might spend decades carrying out the same type of jobs. In such cases their careers might continue for quite a long time – even longer perhaps and those of Parliamentary officials themselves.

It was also possible that there may be quite changeover among such staff and staff of ministerial offices. If a particular Parliamentary group is part of the Government majority then maybe a haemorrhage from the secretariat of the group towards the ministers' private offices and a return to the staff of the Parliamentary group when the group goes into opposition.

- The fourth category of worker (and not the least) was that of the staff of individual Members of Parliament. The time had long gone when a Member of parliament work alone or with very few people. Members' staff had become much more numerous and

was often doubled – one secretariat in Parliament and another secretariat in the constituency. Parliaments had established systems which allowed each Member of Parliament to recruit their own staff. In such cases, the Member of Parliament recruited himself, because of the need for confidentiality. The Member could recruit anyone he wished or, in other systems, the rules might limit the choice of staff – for example, family members might be excluded. This kind of staff had a precarious status: on the one hand, the time period of their employment was linked to the mandate of their Parliamentary employer; on the other hand, their employer in the course of his mandate could easily dismiss the employee within the limits set down by employment law.

The staff in this category was very diverse: according to the working practices of the relevant Member of Parliament, the nature of the tasks carried out by workers in this category were very different and extended from being a driver or gardener to being a graduate employed as an expert.

The Member of Parliament might himself fix the level of pay for his staff, probably within the limit set by the internal rules of the Assembly to which he belonged. Such rules might in some cases establish a salarial scale which the Member employing staff had to observe.

It was easy to understand the desire by such staff to try to compensate themselves for the precarious nature of their employment. In some cases they might work for several Members of Parliament so that if any one of them were not re-elected they still had a job. Others might go from one Member of Parliament to another on the basis of the personal recommendation of a former Member of Parliament (who might have retired or not been re-elected) to a colleague of the same political colour. Finally, others might struggle for pure and simple integration with the Parliamentary staff on the basis that as they were an employee of a Member of Parliament paid by Parliament, they were in effect employed by Parliament and not by the Member of Parliament. Their employment might be either full-time or part-time. The most difficult example was where they were also paid by an organisation or institution outside Parliament. It might be asked in some cases whether they were not in fact “lobbying” on behalf of outside employer (for example, an insurance company or pharmaceutical federation) the Member that they were supposed to be assisting.

- The fifth category was also different. This included staff of Members who had particular duties within Parliament and for this reason had more power and than an ordinary Member. For example, Committee Chairman, Chairman of an internal body within Parliament, Vice-Presidents of the Assembly etc. In different parliaments the situation was certainly very variable.

In this fifth category might be placed an example which is probably general, namely that of the President’s office. Each President of an Assembly had a circle of staff around him which might belong to the permanent staff of the Parliament, or to other categories working in Parliament or to the “outside world”. This staff, recruited by him, was organised within his office and had a hierarchical structure of its own at the head of which was his Principal Secretary. It might happen that the relations between this official and the Secretary General might raise problems because of a rivalry between the two most important advisers to the President. In such cases, practice and personal chemistry led at counted a lot more than official rules.

- There was a hesitation about making the sixth category a separate class. This related to people who were responsible for public relations. Very often this activity was attached to – or at least placed under the direct authority of – the President's office. This might involve specialist staff (journalists, press attaches) who were recruited specifically for that job. But in addition to the President of the Assembly, other Parliamentary organisations (Committee Chairman, for example, might also wish to have their own arrangements for public relations.

Moreover, the relationship with the administrative staff in charge of public relations from the point of view of the organisation as a whole might be quite difficult: what was limit between the two activities and "who did what"?

- The seventh category was a catch-all category which included all the staff of institutions which the Constitution, law or tradition attached to Parliament, even though they were not "legislative" institutions properly speaking. In certain countries, the Cour des Comptes all the authority in charge of ensuring the regularity of elections were attached to Parliament. There might also be an ombudsman and the case in Germany came to mind where there was an ombudsman for military affairs. The staff of such institutions – which might in addition come from Parliamentary officials – was not properly speaking Parliamentary staff. Nonetheless, there was a link with the other categories defined above.

This scale of classification of staff working in Parliament should contribute to an understanding of diversity and should enable a proper comprehension of the different descriptions within the various contributions to the debate.

He gave the following written presentation entitled "Staffers of French Speaking Parliamentary Assemblies – An overview":

"**INTRODUCTION**

This paper sets out to present the situation of the staffers of deputies at the French National Assembly. It also draws, during its development, on the answers given by members of the Association des secrétaires généraux des Parlements francophones (ASGPF – Association of secretaries general of French-speaking Parliaments) to the questionnaire sent to them in December 2004. May they be thanked!

The French National Assembly groups what can be called several 'populations' serving the parliamentary institution:

- First, to begin with, even if the administration is sometimes accused of forgetting the fact (!), the **577 deputies** elected for 5 years.

- Then, the **1,280 parliamentary officials** working for the institution and who are tasked with serving – in the first sense of the word – all of the deputies, whatever their political membership, by providing them with all the services necessary for them to exercise their mandate (intellectual contribution in legislative departments and logistic support in administrative departments, to simplify...). These officials are recruited exclusively by competitive examination; they are State officials whose service regulations and pension scheme are laid down by the Bureau of the Assembly.

This reminder is necessary for the rest of our presentation so as to clearly distinguish straightaway between parliamentary officials and the staffers of deputies who were created thirty years ago.

- The **2,200 staffers of deputies**.
- The **90 (approximation) employees of the 4 political groups** (UMP, UDF, Socialist, Communists and Republicans).
- The **members of the President's Office** whose number varies depending on Presidents and of which there are today some fifteen.

I. — DEPUTIES' STAFFERS

The post of a deputy's staffer dates back to the year 1975 following **a long process** to meet the desires of deputies to avail of human and material means in addition to their sessional indemnity received as a 'salary'. These means would allow them to cope with the various responsibilities of their mandate and strengthen those granted collectively to the political groups.

Several steps have marked this process:

— **1953**: Creation of an allowance paying for the secretarial costs incurred by deputies. This was abolished in 1958.

— **1970**: Creation of the typing assistance allowance which replaced the arrangements introduced in **1968** under which deputies had the possibility of setting up a private secretariat or using the services of a collective secretariat organised within the political groups. The aim and management conditions of this secretarial allowance were amended on several occasions until **1997** when it was replaced by the **indemnité représentative de frais de mandat** (IRFM – allowance covering mandate costs) aimed at covering the expenditure related to the exercise of a deputy's mandate which is not covered or reimbursed by the National Assembly. This allowance amounts to 6,112 euros per month.

Deputies could no longer be satisfied with support limited to mere typing assistance at a time when their work pressure required the presence of staffers such as those at some foreign parliaments like the American Congress.

For this purpose the deputy receives an allocation allowing him to recruit progressively up to five staffers. This monthly allocation today amounts to 8,553 euros, employers' contributions being paid by the National Assembly budget.

The basic principle, in a way the linchpin of the system, is that of the **employer deputy**. The staffer is the employer deputy's employee, not the National Assembly's employee. This principle is behind all the rules and mechanisms organising the relation between the deputy and his staffer(s). We will see further on that the temptation, and even the demand, of some staffer organisations would be to substitute imperceptibly the National Assembly for the employer deputy.

This principle of the employer deputy is chosen by most members of the Association of secretaries general of French-speaking Parliaments and particularly by the Canadian House of Commons which sets forth in its rules of procedure that 'senior officials of the House' — in other words, the Speaker of the House and other holders of chairs such as committee chairs — 'can recruit employees to assist them in their duties.'

This is also the situation at the Parliament of the French Community of Belgium whose members can recruit a full-time administrative staffer or two part-time staffers.

The scope of this principle was strengthened in 2002 by the possibility given to French deputies to manage directly their staffer allocation.

This fundamental principle operates as follows:

— **The deputy has the capacity of an employer**. He freely recruits his staffer, dismisses, and lays down their work and pay conditions while complying with the Labour Code provisions.

— Staffers are recruited by the employer deputy on the basis of a **private law employment contract**. As a general rule, they are **indefinite** employment contracts but the deputy can recruit staffers on **fixed-term** contracts, in the manner laid down by the Labour Code, or conclude specific contracts when an official is seconded to him pursuant to the Acts on service regulations for officials. The indefinite employment contract continues if the employer deputy is re-elected; on the other hand, it is broken at the end of a deputy's mandate or if Parliament is dissolved.

— Standard contracts whose clauses are approved by the College of Questors are made available to deputies by the Financial Affairs Department. They comprise two stipulations directly related to the method of managing the staffer allocation: the first relating to the **subject of the** contract sets forth that *'the employer, acting on his own account, hires the employee, who is legally subordinate to him and has his full confidence, to assist him in the exercise of his mandate as a deputy'*; the second specifies that *'termination for whatever reason of the employer deputy's mandate forms a just cause for cancelling a contract'.*

Standard contracts that are highly comparable in their provisions are concluded by the members of the Parliament of the French Community of **Belgium** with their so-called secretarial administrative staffers.

In many parliaments, the employer deputy is free to fix the pay of his staffer within the framework of the allocated funding envelope. Some assemblies, such as that of **Ontario,** go further by fixing a ceiling for the pay of each category of employment (typist clerk, special assistant, political assistant, constituency deputy, executive assistant).

On the other hand, some assemblies, such as that of **Congo-Brazzaville**, grant their members an allocation allowing them to recruit several staffers but do not provide a standard contract. A specificity must be underscored: this allocation is granted only to deputies who are neither members of the bureau of the assembly, nor Chairman of a standing committee who, for their part, are entitled to an Office.

In the event of a dispute between the employer deputy and his staffer, the Labour Court alone has jurisdiction, as is the case with any dispute opposing an employee and employer. Over the past few years there has been a considerable increase in disputes brought before

the Labour Court and which naturally attract the attention of the media, only too happy to send to the stake a deputy pursued by a staffer.

The National Assembly Financial Affairs Department is tasked with managing the staffer allocation of each deputy who signs for this purpose a **management mandate**. **In accordance with the instructions** of each deputy, it sets off the pay of the staffers against the staffer allocation and performs, **on behalf of** deputies, management acts such as the establishment of pay slips, the payment of salaries and of the related contributions, and the elaboration and transmission to the competent bodies of social and fiscal declarations. It acts merely as a service provider. This is an option offered to the deputy. Some deputies (twelve) prefer to dispense with the Assembly's services and manage directly their staffer allocation. They then receive the equivalent of one and a half times the basic allocation to cover employers' contributions.

Salaried staffers are covered by: the salaried workers' general social security scheme for health, maternity, invalidity, death, occupational injuries, and old age risks; a private law employees' complementary retirement scheme; and the unemployment insurance scheme.

In a nutshell, these are the rules governing the situation of staffers.

Since 1975, several measures have been adopted **to improve the situation of staffers**.

Staffer pay is revalued to meet the change in public pay.

Various contributions due by the employer are **funded outside the staffer allocation**, such as:

- From the outset, the mandatory social and fiscal **employers' contributions** which represent 53 % of the gross salaried pay set off against the staffer allocation;

- As of 1978, **the severance pay paid to staffers in the event of the termination of the employer deputy's mandate**. This pay amounted to six million euros at the last renewal;

- Various expenditures related to: specific **training courses** given to staffers (training given by the Ecole nationale d'administration [French National School of Public Administrations] since 1986; the Centre national de la fonction publique territoriale [National Centre for the Training of Devolved Administrative Staffers] since 1991; and English lessons since 1992); occupational medicine; and staffer transport costs for journeys decided by employer deputies between Paris and the constituency.

Staffers also receive various perks:

- The 13th month allowance, introduced in 1982, amounting to a month of additional pay;

- The day care expense allowance for children aged under three, introduced in 1988;

- The welfare premium, equal to 238 euros per year for a full-time job, which replaced in 1998 the capped reimbursement of mutual insurance costs;

- The meal advantage (meal allowance or meal tickets) introduced in May 2000.

These advantages were initially covered directly by the Assembly budget and the employer deputy could oppose their payment. Since 2002, and to the exclusion of the day care expense allowance (for which this cover remains), they are set off against the staffer allocation which has been revalued to that extent.

Nevertheless, it must be acknowledged that despite the improvements to the situation of staffers, some organisations, of which it is very difficult to measure the representativity of a population of approximately 2,200 persons, not only want the 'social progress' to be pursued but also want staffer service regulations to be recognised, involving the National Assembly itself.

New improvements concerning the situation of staffers are currently being **analysed by the College of Questors;** they mainly concern three topics:

— Attribution of **executive status** to staffers meeting certain criteria of seniority or professional qualifications;

— **Revaluation of the welfare premium;**

— **Taking account of seniority** in pay.

As for the demand for service regulations, **a judgment of the social division of the Court of Cassation of 18 February 2004** rejected an appeal from a staffer organisation on the grounds that 'there is no unity of management over parliamentary staffers' and considered that '**the deputies composing the National Assembly do not form an economic and social unit**.'

This decision confirmed the judgment of the district court of the VIIth arrondissement of Paris of 21 May 2002 which laid down that the social advantages and, more generally, the work conditions of staffers are similar to 'a mutualisation of means, customary within one and the same profession' and concluded that 'the absence of a real community of workers and of economic unity prevent acknowledging the existence of an economic and social unit between National Assembly deputies.'

This judgment by the highest court with jurisdiction in this field marks a halt, at least legally, to the demand aimed at involving the National Assembly as such in the personal relation between the deputy and the staffer.

Thirty years after the creation of the post, the staffer plays the role each employer deputy sets for him within the team he has recruited. Some deputies concentrate their team in their constituency, others in Paris; some spread their staffers between the Assembly and the province. It can be considered that approximately two thirds of staffers are attached to the deputy's constituency, while a third work at the Palais Bourbon.

The length of the relation between the deputy and his staffers is also highly variable. While, since 1997, (date of the last dissolution which terminated all employment contracts), nearly 20% of staffers have more then 7 years seniority with the same deputy, on the other hand, nearly 15% of them have been hired for under one year.

These few indications show the diversity of the staffer population who cannot be said to form any specific body in the sense of the public service, even if they share the same concerns regarding the improvement of their material situation.

II. — GROUPS' STAFFERS

To ensure their operation, Assembly groups receive a subsidy proportional to the number of their members. This subsidy is to allow them in particular to recruit the personnel they need and was introduced in 1954, i.e. more than 20 years before the staffer allocation was created.

This approach is adopted, with a few differences, in many assemblies, which allocate a subsidy to parliamentary groups allowing them to recruit staffers. Most subsidies are calculated in proportion to the number of group members, except for in Quebec which allocates a form of premium to the majority group.

The workforce stands at approximately 90 who are employed as follows:

— UMP	35
— Socialist	37
— UDF	10
— Communists and Republicans	8

Each group is fully responsible for its personnel: for recruitments, setting pay, work conditions or dismissals.

An Association, created in 1961, groups the Chairmen of political groups; it assumes with regard to social agencies the obligations of an employer regarding pay statements and the payment of contributions.

In practice, the responsibilities of the Association are largely formal. Nevertheless, **the Association intervenes as follows**:

— It alone is registered at the URSSAF as an employer, to the exclusion of the groups, some of which moreover do not have legal personality;

— All group employees come under the same complementary retirement and welfare scheme.

This situation is that of several assemblies and in particular that of the Parliament of the French Community of Belgium, where each recognised political group — i.e. comprising at least 8 members (the Assembly has 94) — receives, in addition to an operating subsidy, a subsidy aimed at covering group pay. A specific characteristic must however be noted: while staffers are employed by the chairman of the political group, the group secretary is, for his part, employed by Parliament. In Quebec, group staffers are tied to the group chairman by an employment contract.

This post, as at the French National Assembly, is incompatible with that of parliamentarian.

III. — OFFICE OF THE PRESIDENT OF THE NATIONAL ASSEMBLY

Like a member of the Government, the President of the National Assembly can recruit staffers to form his Office. In doing so he is totally free to call on: National Assembly officials who are made available to him (this is quite a rare case); officials from other administrations; even

personnel from public companies; and persons recruited under contract by the National Assembly on behalf of the President.

These latter two categories of personnel are paid from a specific account allocated to the President's Office.

While there is no maximum workforce, it can be observed that the average stands at fifteen or so members. The basic principle is that of the Office, in other words **the situation of the members – whatever their origin – is tied to the post of President of the National Assembly.**

Referring to officials made available to the President by State administrations or seconded by local administrations, the National Assembly is not a signatory to the agreement for the provision or secondment of officials. Officials made available to the President by a State administration are always paid by the latter. However, the National Assembly pays them a complementary allowance, the amount of which is defined freely by the President.

On this point, certain differences can be seen in the rules and practices. For instance, the Speaker of the Canadian House of Commons is the employer of his staffers.

The same applies in Quebec, which has very precise regulations on the pay and work conditions of the personnel of the Office of the Speaker of the Assembly. These regulations set forth in particular a ceiling on staffer pay.

CONCLUSION

At the end of this paper, several remarks can be made thirty years after the creation of the post of a deputy's staffer. These remarks perhaps have some usefulness for members of our association contemplating the creation in their Assembly of a similar system.

- In 1975, **some may well have feared a form of competition** between parliamentary staffers and officials, or even a threat for the parliamentary public service itself. It today appears that this fear was largely unjustified. First, because **deputies have identified the difference** between the 'service' provided by a body of officials serving the parliamentary institution — and not a majority, a group, or even a man — and the directly political or militant support of a staffer employed by themselves. And also because of the number of **officials**, particularly of administrators or deputy administrators, **recruited since 1975** and assigned mainly to Committee secretariats.

- **The financial cost** — what could be called the National Assembly 'overheads' — has considerably increased. Today, staffer pay stands at approximately **90 million euros per year**, i.e. the equivalent of all sessional indemnities (sessional indemnity strictly speaking and IRFM [allowance covering mandate costs]). Therefore the attitude of some members of our Association who have not adopted this system is understandable. This is the case of Burkina Faso, Tunisia, Morocco and Niger. For probably different reasons, the deputy staffer system does not exist in the Lebanon or in Monaco.

On the other hand, on reading their answers to the questionnaire, it appears that Tchad and Senegal intend to provide each deputy with a staffer this year. The National Assembly is most willing to share the lessons it can draw from its own experience.

- The **management** of this heterogeneous population has become imperceptibly but finally highly complex owing to the successive addition of new measures aimed at improving the material situation of staffers (13th month, meal allowance, precarity allowance, etc...). The temptation is then great to transform the Assembly Financial Affairs Department into a 'Personnel Department' for the 2,200 staffers.

- Despite these categorial measures, the **frustration of some staffers has not disappeared**, even if it appears to concern above all the youngest, most qualified, and most 'political' who would like to see their situation — *per se* precarious because tied to the mandate of the employer deputy who is himself in a precarious situation — stabilised by a kind of professionalisation or a form of service regulations of which the glorification would be integration in the parliamentary public service. Hence the demand for the establishment of 'bridges' between the situation of staffer and that of official.

- The relation between the employer deputy and the salaried staffer falls in line with the general trend affecting the work relation as a whole and which is leading in particular to a **multiplication of conflicts**, a judiciarisation of the settlement of disputes, and a mediatisation promoted by the public nature of the protagonists; in this sense, the conflict of a deputy with one of his staffers becomes an argument which his opponents or competitors are tempted to use in the political fight."

Mr Ulrich SCHÖLER (Germany) gave the following presentation entitled "Management issues relating to staff attached to the President, Members of Parliament and Political Groups":

"Distinguished members of the Association of Secretaries General of Parliaments of the IPU, Ladies and Gentlemen, let me begin by passing on the best wishes of the Secretary-General of the German Bundestag, Professor Wolfgang ZEH. He very much regrets that he is unable to take part in today's event.

The topic which we are going to discuss is likely to be of significance in practical terms to all parliaments. I have divided up my comments on this topic into three parts. First of all, I will say something about those staff who assist the President in his role as President of the Bundestag. I shall then move on to say a few words about the staff of the Members of the German Bundestag, before finally examining issues concerning the staff of the parliamentary groups, i.e. the political groups, at the Bundestag.

1. Staff working for the President

In examining the staff of the President of the German Bundestag, a distinction should be made between two groups:

- In his position as head of the parliament he naturally has the entire staff of the parliamentary administration at his disposal to support him in his work, including, within this administration, a smaller group of high-level management staff who work more closely with him.
- In addition, as an elected Member of the Bundestag, he has charge of a personal office, with a smaller number of staff, as does every Member of the Parliament; these staff deal, amongst other things, with constituency work.

Let us begin by looking at the members of staff on whom the President can rely in performing his duties as the head of the Parliament; I will move on to talk about his personal Member's office in the next section of my talk.

All 2500 staff working for the **parliamentary administration** are subject to the supreme authority of the President. They are all public sector employees; this means that their pay and conditions for promotion are determined by the relevant collective bargaining agreements and by legislative provisions. The Secretary-General of the German Bundestag heads the administration on behalf of the President. Within the frameworks of the resources assigned, the staff of the Administration lay the foundation for parliamentary work as a whole in terms of organisational, human, technical and other resources. In other words they not only serve the President alone, but also Parliament as a whole.

The Administration is basically divided up into the Office of the Parliamentary Commissioner for the Armed Forces and the following three directorates-general:

- The Parliamentary Services Directorate-General is responsible for supporting the parliamentary work of the Bundestag in the narrower sense, e.g. for the preparation, follow-up and smooth running of plenary sittings, as well as for assisting in the work of specific committees and other bodies, for fostering links with parliaments in other countries and with supranational parliamentary bodies, and includes the language services and public relations staff.
- The staff of the Reference and Research Services, which is divided up into specialist subject areas and manages the third-largest parliamentary library in the world, provide the back-up Members require in terms of specialised information and documentation when involved in legislative projects and other political issues. The specialised committees, which perform the bulk of the Bundestag's legislative work, are also attached to this Directorate-General.
- The Central Services Directorate-General provides auxiliary services for Parliament as a whole which are essential for its functioning: with regard to personnel recruitment and management, the preparation of the budget and management of resources, as well as ensuring smooth running on the technical side.

The group of the President's closest staff is formed by around 70 members of staff who work within the Administration and form the **top level of management** and are not attached to any of the directorates-general. This includes the Office of the President, with around 15 staff members, and the Press Centre, with around 40 staff in total, who are directly responsible to the President. The Office of the President advises the President, and coordinates his work, in particular his appointments, and prepares these appointments in substantive terms. The Press Centre fosters contacts with the media and makes information on the work of the parliament available in journalistic form. The President's speech writers are also part of this organisational unit and the correspondence addressed to the President from citizens is also dealt with here. The top level of management also includes the Protocol Division, with around 10 staff, and the Office of the Secretary-General, with a staff of around 5, who are directly responsible to the Secretary-General. The Protocol Division accompanies the President, as well as the four Vice-Presidents, to official appointments and on trips within Germany and abroad and carries out the protocol work necessary for the preparation and follow-up to these visits. The Office of the Secretary-General provides the interface between the President and the three directorates-general described.

Bearing in mind the diverse nature of the substantive and organisational tasks to be performed in connection with the work of Parliament, the Bundestag Administration employs people with very different backgrounds in terms of training, ranging from university graduates from various fields, to executive officers, secretarial and typing staff, technical support staff, IT specialists, police officers and heavy-goods drivers. Amongst the graduates, the law graduates probably make up the largest group, although they are increasingly being joined by political science graduates.

The demands placed on the Administration by the tasks of the Bundestag require a high degree of qualification, flexibility, capacity for independent work, commitment and ability to work under stress from its staff. In this context, the selection and management of staff is a particularly responsible task. The personnel divisions are responsible for this area of work. Staff are recruited to vacant posts through external advertisement. Selection of staff takes place on the basis of performance, in other words on the basis of aptitude, ability and performance in his or her field. To this end, applicants take part in an in-depth interview which includes a test of suitability for the tasks concerned. In view of the fact that parliamentary business is becoming increasingly international, graduate applicants must often also complete a language test. As the Bundestag is committed to the professional advancement of women, attention is paid in recruiting new personnel to ensure the best balance of men and women possible. The vast majority of staff in the Administration have permanent posts. The German Bundestag only uses temporary contracts for the staff of special bodies set up for the duration of an electoral term, for instance.

With the exception of specialists, such as IT experts or architects, who are restricted to a certain part of the Administration, the German Bundestag's personnel development strategy is aimed at encouraging staff to move around between different positions in order for them to gain experience in a number of areas. This is made possible by the fact that vacant positions are, in the first instance, advertised internally, allowing staff with the necessary qualifications to apply. Selection is based on an interview and a decision based on aptitude, ability and candidates' performance in their specialist fields.

The principles set out here apply to all staff working for the President, i.e. to the Administration in general, as well as to the top level of management. This means that it is also possible to move from one of the three directorates-general or from the Office of the Parliamentary Commissioner for the Armed Forces to the top level of management and indeed this does frequently happen. Equally though, vacant positions in the top level of management may be filled by external applicants. It is today quite common for some of the staff recruited to the President's inner circle of staff, i.e. staff recruited to the Office of the President or to the position of head of the Press Centre, to come from outside. In these cases too, though, procedures for the employment of staff are dealt with by the personnel divisions and the members of staff concerned are also employed on the basis of permanent contracts. Should a new President take up office they are still entitled to a job within the Administration.

2. Staff working directly for Members of the Bundestag

The Members of the German Bundestag – of whom there were 601 at the end of the 15th electoral term – are entitled to have reimbursed expenses incurred in connection with the employment of staff to assist them in their parliamentary work, on submission of the relevant documents. This allows them to employ staff in their personal offices. This can take place either at the seat of the German Bundestag or in the constituencies.

Members select their staff themselves. They conclude individual employment contracts with their staff, in other words these staff are directly employed by the Members themselves. The contracts terminate at the latest at the end of the electoral term. If Members are re-elected to the Bundestag they are free to conclude new employment contracts with the same members of staff or to look for new staff. The costs of employing staff are reimbursed within the framework of an allowance to which Members of the Bundestag are entitled. Accounts in connection with salaries

and other staff expenses – such as the employer's contributions to social security for staff members - are settled by the Administration of the Bundestag, however.

It is up to the Members themselves to select the staff they wish to employ and to decide on the number of staff. Regulations issued by the Bundestag's Council of Elders exist, however, which lay down the details of the reimbursement of expenses for staff and help to ensure that there are no major discrepancies in this respect and that staff enjoy a minimum level of protection. For instance, salaries are only reimbursed up to a maximum amount, which is currently set at € 10,660. A Christmas bonus and holiday bonus are paid on top of this. There is also a salary framework which lays down, for instance, the minimum and maximum gross salaries permitted for typists, secretaries, executive officers and research assistants. In addition, the Members are provided with a standard employment contract, which includes provisions on periods of notice, holiday entitlements and working hours. On the basis of this framework, Members generally tend to have about two to three personal staff who are directly responsible to them.

In addition, each individual Member can make use of the specialist staff in the Reference and Research Services of the Administration mentioned earlier, in order to receive support for their parliamentary work whenever they require studies, compilations, documentation or rapid brief information on a certain matter. Members also have access to the library, the press documentation files, and the archives. Finally, Members receive organisational support from the Bundestag Administration, in particular with regard to communications technology and office accommodation.

3. Members of staff working for the parliamentary groups

The work of the parliamentary groups also requires support staff. In total, the four parliamentary groups in the German Bundestag during the 15th Electoral Term employed more than 800 staff. Most of these staff members were specialist advisers and administrative support staff, such as secretaries, executive officers and IT specialists.

A large proportion of staff working for the parliamentary groups have been granted leave of absence from authorities at federal or Land level; they may, for instance come from specialist ministries or from the Administration of the Bundestag. This system of staff being given leave of absence to work for parliamentary groups means, on the one hand, that use can be made of specialist knowledge available; on the other hand it means that networks are created. In addition, the parliamentary groups recruit their staff from lobby groups and associations or on the normal employment market. Due to the broad spectrum of policy areas to be covered, the subject specialists employed by the parliamentary groups come from a wide variety of training backgrounds. As in the Bundestag Administration, however, law graduates probably form the largest group.

The parliamentary groups receive the resources needed to employ staff from the funds allocated to the parliamentary groups as part of the federal budget. Each parliamentary group has its own personnel section which deals with questions of recruitment, pay, promotion etc. As a rule, employment contracts are concluded with the group's first parliamentary secretary (chief whip), who is also in overall charge of the staff. Within the parliamentary groups, the staff are divided up into working units which fall under the responsibility of individual members of the political leadership. Staff are directly responsible to these individuals. This means that the chairs and vice-chairs of the parliamentary groups, along with the parliamentary secretaries and the chairs

of the numerous specialist working groups have their own teams of staff. The number of staff depends on the importance of the individual or the subject matter concerned.

Each parliamentary group is responsible for recruiting its own staff. Subject specialists sometimes go through a selection procedure involving interviews with a number of different persons who then decide unanimously on the result.

The majority of staff at this level work for the parliamentary groups for around five to ten years. The employment contracts which they have are fixed for the length of an electoral term, but can be extended as often as necessary. At the end of this time in particular those who were "borrowed" from ministries usually return to their original employers or look for other employment in the wider political sphere. Those staff working at secretarial or executive officer level, on the other hand, tend to work for the political groups for much longer, thus ensuring a certain continuity within the individual units of the parliamentary groups."

Mr Yuriy BEZVERKHOV (Russia), said that under article 78 of the Code of Procedure of the State Duma the management of the Administrative Office was under the President of the State Duma, deputies and political groups.

The management of the Administrative Office included General Services and the specialised divisions in the service of the President and his Vice Presidents. The 450 deputies had up to five assistants.

The General Services of the Administrative Office included, among other things, the service for organisational assistance, the legal service, the inter-parliamentary relations service and the administration and personnel service. All these services represented the State Duma as a law-making body.

The specialist divisions, which included the secretariats of the President and the Vice Presidents of the Chamber as well as the staff of the political groups, only had duties relating to the work of the Cabinet of the President or the political groups. For this reason, staff employed in these divisions were on fixed term contracts.

The tasks carried out by those offices under the President and his Vice-Presidents directly related to their constitutional duties.

The staff attached to the political groups provided them with assistance relating to organisation and research as well as expert advice on Bills which had been put before the bureau of the Duma.

The Members of the Duma, as had already been indicated, had assistants. Two of them had office space within the precincts of the Duma at Moscow and the three others worked in the Member's constituency. In accordance with federal law, Members of the Duma permitted to see the assistance of tens of voluntary workers and political supporters.

More generally, over a qualified civil servants who worked for the State Duma, its President, political groups and Members. The work of the various offices within the Administrative Office was coordinated and guided by the Director General and his assistants.

The administrative management of the fourth State Duma worked effectively and carried out its duties relating to the work of the supreme legislative authority of Russia.

Mr Jun HA SUNG (Korea) said that in Korea the secretariat, the library and the financial section of the National Assembly were the responsibility of the President. The President of the Assembly hired and fired the employees of these organisations and supervised their activities. The secretariat of the National Assembly was responsible for legislative and administrative questions within Parliament, under the authority and supervision of the President of the Assembly, while the Library of the Assembly dealt with legal research and other work in Parliament in order to assist members in carrying out their duties. The short section dealt with budgetary, financial and accounting matters.

In addition, there were various officials in the Office of the President of the Assembly in order to give the President immediate assistance, and these were placed under the responsibility of the Director of Personnel.

A Member of the National Assembly was permitted to recruit up to six assistants to assist him in his duties as a legislator. Unlike other public servants, assistants in the office of an elected Member were able to engage in political campaigns.

A political party which had 20 Members or more in the National Assembly could form a "negotiating group". Members of a negotiating group which had already been established could create a separate group as long as there were 20 or more of them. These negotiating groups had been created to organise different opinions and positions within the political parties and therefore to facilitate the work of Parliament.

The National Assembly Act allowed each negotiating group to recruit researchers to assist its members in legislative activities. These researchers were appointed by the President, on the recommendation of the Chairman of the relevant negotiating group. The researchers, who acted under the management and supervision of the chief representative of the group, among other things collected and analysed information relating to legislative work and prepared bills and motions which the group wished to present.

Mr Marc BOSC (Canada) asked two questions: was it possible, in France, for Parliamentary officials temporarily to leave the Assembly to which they belonged to join a minister's office? In the French Parliament were the political assistants of elected Members a separate group within the Parliamentary administration – which was, to a certain extent, the case in Canada?

Mrs Doris Katai Katebe MWINGA (Zambia) said that the Zambian Parliament was currently establishing constituency offices, which assumed the recruitment of various assistance. She wanted to know whether, in France, such workers belonged to the party of the elected Member for whom they worked and if, in other countries, conditions were attached (or not attached) relating to membership of political parties.

Mr Brendan KEITH (United Kingdom) referring to the French practice of recruiting assistance for the President of the Assembly outside the Parliamentary staff, wanted to know if this practice raised experience of particular difficulties having regard to the fact that such assistants were not necessarily familiar with the working of Parliament.

Mrs Judy MIDDLEBROOK (Australia) said that the Australian system was very different from the French system. Australia today was confronted with the change in the attitude towards work; the young generation did not want to spend a whole career with one organisation only. She asked whether that phenomenon had been observed in France, whether it represented a

problem for the Parliamentary service – with, example, the risk of losing very qualified staff – and whether a specific strategy had been developed in response to this?

Mr Hans BRATTESTÅ (Norway) said that in Norway, unlike France, there were two categories of staff member: members of the Parliamentary staff in the strict sense of the word and those who belonged to political groups.

The administrative staff of the Chamber was not attached to the Executive: it was directly recruited by Parliament following procedures which Parliament controlled and on the basis of employment contracts of indeterminate length (with some particular exceptions like, for example, the Secretary General himself who was recruited for a period of six years).

The staff of the Parliamentary groups were recruited by the groups themselves. Members of Parliament did not have assistants who belonged to them alone and the personnel recruited by the groups corresponded almost exactly to the number of Members of Parliament (169). Each group received budgetary support according to its size. This system sometimes raised some gnashing of teeth because backbenchers in practice often felt that they had received less help than better-known political personalities.

In addition, Members of Parliament did not have any assistance in their constituencies: any help given to them at the local level was provided where needed by party staff.

Mr Mohammed Lutfar Rahman TALUKDER (Bangladesh) said that in Bangladesh Members of Parliament and political groups did not have the right to have staff attached to them. The Speaker and Deputy Speakers on the other hand had members of staff attached to them, as well as having employees on limited term contracts (paid out of the budget for Parliament).

The Secretary General Parliament was, by law, a member of staff who came from the Parliamentary service.

Mrs Keorapetse BOEPETSWE (Botswana) asked for more details on the employment contracts relating to assistance for Members of Parliament: what would happen if a Member of Parliament stopped serving, whether because he had died or resigned, and what would happen to his assistants whom he had recruited? In Botswana, such assistants lost their employment contracts, which could have important personal consequences for those involved.

Mr Ian HARRIS, President, asked what happened to those assistants who became Members of Parliament themselves.

Shri P.D.T. ACHARY (India) referring to the Indian system said that the Constitution of the Union laid down that the secretariat of Parliament should be independent of the Executive. In the Lok Sabha there were 2500 permanent staff in the service of Members of Parliament.

The Secretary General could be appointed by way of promotion from within the secretariat (which was usually the case) or recruited from outside on a contractual basis. The secretariat of the House, which included 13 ranks, was divided into services (administration, a research, interpretation, etc) at the disposal of Parliament and the elected Members.

As far as assistants for Members of Parliament were concerned, the recent change in the law had made it possible to pay such assistants through the secretariat, leaving the Member of Parliament himself responsible for recruitment.

Permanent Committee Chairman could recruit an assistant from outside the secretariat but he would be paid as a staff member. In the same way, the staff of the office of the Speaker was recruited by the Speaker but paid by the secretariat.

He asked whether, in France, there was any difference between the pay structure for Parliamentary staff and civil servants.

Mr Yogendra NARAIN (India) said that the principle of independence of the Indian Parliament and its administration dated back to the Constitution of 1921.

Recruitment to the service of the Lok Sabha or the Rajya Sabha was the responsibility of a joint authority which was independent of the Executive. There were four categories of Parliamentary staff:

- Permanent staff of the secretariat of the two Houses, made up of about 1300 people;
- Staff recruited (for the length of the relevant elected period) to the office of the Speaker or the Leader of the Opposition;
- Personal assistants of Members of Parliament – Members of Parliament received reasonable financial assistance, about 10,000 rupees, to allow them to recruit assistance (up to about three or four generally);
- Additional staff, recruited on a daily basis when needed during sessions.

Mr Mamadou SANTARA (Mali) wanted to know more about the relationship between the Secretary General, as head of the administration, and staff of Members of Parliament, in particular where such staff members broke the rules of the House or even where they escaped being under the authority of the Secretary General.

He also wanted more details about the responsibility for payment of staff assisting the Speaker of the Assembly.

More generally, he wanted an account of the French practice on the basis of 30 years experience: did the staff assisting the Member devote themselves essentially to supporting him in exercising his local mandate or in respect of duties which devolved to him as a national legislator?

Mr Umaru SANI (Nigeria) said that in Nigeria the staff of the House was divided into two categories, neither of which was accountable to the Executive. There were three distinct commissions which were charged with recruiting staff today three branches of the State: to the Federal Civil Service; to the Judicial branch; and to the Legislative branch.

In the Assembly staff had limited term contracts and were entitled to a retirement pension. Political assistants were recruited on the basis of a personal recommendation by Members of Parliament – the problem was that the best qualified people were reluctant to link their career to those of a Member of Parliament whose mandate was, naturally, uncertain. For this reason the question had been raised of attaching staff members to particular Members of Parliament.

Mrs Hélène PONCEAU (France) referred to the relations between the current President of the Senate and the Secretaries General and services placed under the orders. She said that the office of the President had considerably expanded in the course of recent years to the point where it had taken over direct control of a number of communication functions or matters

relating to cultural events. A parallel process had been established with decision making processes and independent spheres of action. Often the Secretaries General were only informed of matters after the event and the Quaestors themselves found that they were dispossessed in practice of part of their powers for making decisions relating to budgetary matters.

Mr Anders FORSBERG (Sweden) said that the system operating in Sweden, as in the rest of northern Europe, was very simple. The Secretary General of the House was elected every four years by the Assembly. As far as Members of Parliament were concerned, they were free to recruit their secretaries and assistants as they wished. In a background of increased concern about security matters he asked what solution the National Assembly had adopted to control the transient population of assistants.

Mr Ibrahim Mohammed IBRAHIM (Sudan) said that the situation in the Sudan was that the permanent staff were recruited by open competition. As an exception, the Secretary General was named on the recommendation of the Speaker and confirmed by Parliament. The chief officials were nominated by the Speaker and the others were appointed by the Secretary General – who was also responsible generally for the management of the staff.

Members of Parliament in the Sudan did not have their own assistants but the Speaker and the Deputy Speakers could choose their own staff.

Mr Ulrich SCHÖLER (Germany) commenting on the simple system which was in place in Norway, thought that it could be very attractive. In Germany, although 80% of Bills were produced by the Government, it seemed that it was necessary to have many staff working for the political groups in order to balance the administrative and technical advantages at the disposal of the Government.

Referring to his own experience as a former director of the office of the Speaker of the Bundestag, he underlined the importance of a trusted permanent staff working between the political and administrative spheres.

Mr Abdeljalil ZERHOUNI (Morocco) said that in Morocco the possibility of having a Secretary General who was common to the House of Representatives and to the State Council was being discussed. He wondered if it was possible on the basis of different national experiences for anybody to speak in favour of (or against) this solution.

Turning to the question of staff pay, he said that it was only at the end of very long negotiations between the Speaker of the House and the Prime Minister that an increase, justified by the difficulty of their work and on average being about 28%, had been given to the Parliamentary staff in comparison to the State civil service. But this differential payment tended to be less than it seemed, either because the State had a system of allowances and bonuses or because it gave way to particular claims. He wondered how this question was dealt with in different countries.

Mr Xavier ROQUES, responding to the debate, first of all said he was struck by the clear similarity between countries, which had nonetheless very different cultures (Korea, Germany, Russia, India).

As Mrs Judy MIDDLEBROOK had properly observed, the younger generation thought it was very difficult to spend all their career in the same job and were tempted to go and look for

other professional experience. For that reason the rules relating to the Parliamentary civil service in France allowed staff members to go and work for several years in foreign parliaments, international organisations, independent administrative authorities, in the Constitutional Council, in the Council of State, at the Court of accounts, but not in Government organisations.

In response to the question from Mr Marc BOSC relating to ministerial offices, the National Assembly – in distinction to the Senate – refused to send staff to the ministerial offices. Staff members naturally were able to leave the Parliamentary administration on a temporary basis, as a secondee or on attachment.

Turning to the question from Shri P.D.T. ACHARY, he said that the French Parliamentary staff were noticeably better paid than the state civil servants – which made any departure to a ministerial office much less attractive.

It was not desirable for the Speaker's office to be made up by the whole or in part of Parliamentary staff – although nothing forbid this in legal terms in the National Assembly and the practice was well established in the Senate. The "mixture of types" could only create difficulties and ambiguities.

Turning to Mrs Keorapetse BOEPETSWE, he admitted that assistants to Members of Parliament who were recruited on a personal basis had their careers linked to the chance events affecting their employers and they had no guarantee of employment. He thought it was difficult proceed in any other way.

An examination of the experience of the assistants to Members of Parliament repaid research. For most of these staff, working for a Member of Parliament was short experience (less than three years); for between 5% to 10% of them the experience lasted between three and seven years; for 20%, the experience lasted for 7 years or more. The people in this last group – often graduates to whom the Member of Parliament had given tasks of responsibility – created the most difficulties, because they hoped for an (impossible) integration into the Parliamentary civil service after several years of service with a Member of Parliament (naturally, if this last person was beaten in election or abandoned the political life).

Finally turning to the question from Mr Anders FORSBERG, he indicated that the French Parliament had for long time been a place of easy access, open to the public. Following various events, security measures had noticeably been improved and it had been decided that Members of Parliament, staff and assistants henceforth had to carry an electronic badge which identified them and which opened, without making contact, various locked entries.

Security inside Parliament was provided by its own staff recruited for the task and security outside the buildings was given to the public security services.

The sitting rose at 12:15 p.m.

SIXTH SITTING
Wednesday 19 October 2005 (Afternoon)

Mr Ian Harris, President, in the Chair

The sitting was opened at 3.00 pm

1. Introductory Remarks

Mr Ian Harris, President, reminded members that the election for the vacant posts on the Executive Committee would be at 4.00 p.m.

2. Communication From Mr Pitoon Pumhiran, Secretary General of the House of Representatives of Thailand, on the right of voters to introduce bills: public participation under the Constitution of the Kingdom of Thailand

Mr Ian Harris, President, welcomed to the platform Mr Pitoon PUMHIRAN, Secretary General of the House of Representatives of Thailand, to present his communication the title of which has been changed to: " Right of voters to introduce Bills: public participation under the constitution of the Kingdom of Thailand".

Mr Pitoon PUMHIRAN, Secretary General of the House of Representatives of Thailand, spoke as follows:

Introduction

Since the present Constitution of the Kingdom of Thailand has been promulgated in B.E. 2540 (1997), a number of new provisions are included in order to reach the main goal of political reform. Participatory Democracy is one of the significant objectives intended to be a part of the Thai society. The main modification is to promote the right of people to introduce the law directly in comparison with the former political procedure which the law shall be introduced by Members of the House of Representatives or the Council of Ministers.

To fulfil the democratic system, the provisions in the Constitution of the Kingdom of Thailand and related organic laws were prescribed in order to provide such right to Thai people. The law, which is undoubtedly accepted to be mechanism used to solve problems in society, would be imposed in line of people's needs.

The main provisions

Two principle laws, the Constitution of the Kingdom of Thailand and the Petitioning for Legislative Proposal Act B.E. 2542 (1999), lay down the right of Thai people to propose a bill to be considered in the Parliament.

Under the Constitution:

> **Section 170** The persons having the right to vote of not less than fifty thousand in number shall have a right to submit a petition to the President of the National Assembly to consider such law as prescribed in Chapter 3 and Chapter 5 of this Constitution
>
> A bill must be attached to the petition referred to in paragraph one.
>
> The rules and procedure for the petition and the examination thereof shall be in accordance with the provisions of the law.

This provision stated in the supreme law of the country should be in fact the promotion of Participatory Democracy.

It indicates that the eligible voters in an amount of not less than fifty thousand could introduce a bill by submitting the petition which include a draft bill to the President of the Assembly.

Such proposed bill must be related to the "Rights and Liberties of the Thai People" and the "Directive Principles of Fundamental State Policies" as declared in Chapter 3 and Chapter 5 of the Constitution otherwise shall be rejected.

Under the Petitioning for Legislative Proposal Act B.E. 2542 (1999):

Two ways are opened for the public to submit the petition for legislative proposal:

1. Direct submission by voters

In this way, the voters themselves could introduce a bill in accordance with Section 170 of the Constitution as mentioned above. The Secretariat of the House of Representatives has its duty in examined the completion of the petition in which includes related documents as follows:

- a petition to introduce the law
- a draft bill
- names, addresses, signatures and copies of the official identification cards and the house certificates of the eligible voters.

Then the namelist declaration shall be done at the City Hall and other governmental offices in order to be opposed by involuntarily voters whose names are reported in the list. After the aforesaid process is completed, such bill is ready to be submitted to Parliament.

2. Submission through the procedure of the Election Commission

The other way, not less than one hundred voters could submit the petition including a draft bill to the Chairman of the Election Commission. Then a number of fifty thousand eligible voters should declare themselves as co-signed for such petition through the process of the Election Commission.

If the process is completed, the Chairman of the Election Commission would submit a draft bill and related documents to the President of the Parliament. Such bill is ready to be submitted to the Parliament.

Eligible voters

Voters who have the right to submit the petition for legislative proposal have to be the eligible voters on the day of the submission and must not lose their right in accordance with the Organic Law on the Election of the Members of the House of Representatives and the Members of the Senate B.E. 2542 (1999).

A bill consideration procedure

A bill proposed by eligible voters shall be first submitted to the House of Representatives. The report of the petitioning process shall also be handed to Members of the House of Representatives. The Secretary General of the House of Representatives is authorised to introduce the bill to the First Reading of the House. In such process, the bill might be explicated by the petitioning representatives allowed by the President of the House. In case that the bill is approved by the resolution of the House in adopting the principle of the law at the First Reading, the House shall appoint the Ad-hoc Committee to scrutinize the law in the Second Reading. Such Ad-hoc Committee must comprise of the petitioning representatives in an amount of that to be considered by the President of the House of Representatives.

Bills under the petitioning process

According to the petitioning process has been introduced, a total of 16 bills have been proposed – 10 bills submitted by eligible voters and 6 bills submitted through the process of the Election Commission.

Annex A

Constitution of the Kingdom of Thailand B.E.2540 (1997)

Section 170.

The persons having the right to vote of not less than fifty thousand in number shall have a right to submit a petition to the President of the National Assembly to consider such law as prescribed in Chapter 3 and Chapter 5 of this Constitution.

A bill must be attached to the petition referred to in paragraph one.

The rules and procedure for the petition and the examination thereof shall be in accordance with the provisions of the law.

Section 68

Every person shall have a duty to exercise his or her right to vote at an election

The person who fails to attend an election for voting without notifying the appropriate cause of such failure shall lose such rights as provide by law.

The notification of the cause of failure to attend an election and the provision of facilities for attendance thereat shall be in accordance with the provisions of the law.

The Organic Act on the Election of Members of the House of Representatives and Senators

Section 23

In the case where a voter fails to exercise the right to vote in an election without notifying the appropriate cause of such failure under section 21 or section 22 or has notified the cause but it is not reasonable, such person shall be deemed to be a person failing to exercise the right to vote who does not notify the appropriate cause of such failure under section 68 paragraph two of the Constitution and shall lose the rights as follows:

(1) the right to petition an election of members of the House of Representatives, senators, local administrators or members of the local assembly;
(2) the right to petition and election of Khamnan or Phu-Yai Ban under the law on local administration;
(3) the right to be a candidate in an election of members of the House of Representatives, senators, local administrators or members of the local assembly;
(4) the right to be a candidate in an election of Khamnan or Phu-Yai Ban under the law on local administration;
(5) **the right to request the National Assembly to consider law under the law on enlistment to request for the introduction of bills;**
(6) the right to request the local assembly for the issuance of local ordinances under the law on enlistment to request for the proposal of local ordinances;
(7) the right to enlistment to request the Senate for the resolution to remove a person under the organic law on counter corruption;
(8) the right to enlistment to request for the removal from office of a member of the local assembly or a local administrator under the law on voting for the removal of a member of the local assembly or a local administrator.

The loss of rights under paragraph one shall be for a period as from the election day on which such voter fails to exercise the right to vote to the election day on which such voter attends therefore

ANNEX B

CHAPTER III
Rights and Liberties of the Thai People

Section 26. In exercising powers of all State authorities, regard shall be had to human dignity, rights and liberties in accordance with the provisions of this Constitution.

Section 27. Rights and liberties recognised by this Constitution expressly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, Courts and other State organs in enacting, applying and interpreting laws.

Section 28. A person can invoke human dignity or exercise his or her rights and liberties in so far as it is not in violation of rights and liberties of other persons or contrary to this

Constitution or good morals. A person whose rights and liberties recognised by this Constitution are violated can invoke the provisions of this Constitution to bring a lawsuit or to defend himself or herself in the court.

Section 29. The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties. The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorising its enactment shall also be mentioned therein. The provisions of paragraph one and paragraph two shall apply mutatis mutandis to rules or regulations issued by virtue of the provisions of the law.

Section 30. All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted. Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.

Section 31. A person shall enjoy the right and liberty in his or her life and person. A torture, brutal act, or punishment by a cruel or inhumane means shall not be permitted; provided, however, that punishment by death penalty as provided by law shall not be deemed the punishment by a cruel or inhumane means under this paragraph. No arrest, detention or search of person or act affecting the right and liberty under paragraph one shall not be made except by virtue of the law.

Section 32. No person shall be inflicted with a criminal punishment unless he or she has committed an act which the law in force at the time of commission provides to be an offence and imposes a punishment therefore, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at the time of the commission of the offence.

Section 33. The suspect or the accused in a criminal case shall be presumed innocent. Before the passing of a final judgement convicting a person of having committed an offence, such person shall not be treated as a convict.

Section 34. A person’s family rights, dignity, reputation or the right of privacy shall be protected.
The assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall not be made except for the case which is beneficial to the public.

Section 35. A person shall enjoy the liberty of dwelling. A person is protected for his or her peaceful habitation in and for possession of his or her dwelling place. The entry into a dwelling place without consent of its possessor or the search thereof shall not be made except by virtue of the law.

Section 36. A person shall enjoy the liberty of travelling and the liberty of making the choice

of his or her residence within the Kingdom. The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security of the State, public order, public welfare, town and country planing or welfare of the youth. No person of Thai nationality shall be deported or prohibited from entering the Kingdom.

Section 37. A person shall enjoy the liberty of communication by lawful means. The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the State or maintaining public order or good morals.

Section 38. A person shall enjoy full liberty to profess a religion, a religious sect or creed, and observe religious precepts or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or good morals. In exercising the liberty referred to in paragraph one, a person is protected from any act of the State, which is derogatory to his or her rights or detrimental to his or her due benefits on the grounds of professing a religion, a religious sect or creed or observing religious precepts or exercising a form of worship in accordance with his or her different belief from that of others.

Section 39. A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means. The restriction on liberty under paragraph hone shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public. The closure of a pressing house or a radio or television station in deprivation of the liberty under this section shall not be made. The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict; provided that it must be made by virtue of the law enacted under the provisions of paragraph two. The owner of a newspaper or other mass media business shall be a Thai national as provided by law. No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media.

Section 40. Transmission frequencies for radio or television broadcasting and radio telecommunication are national communication resources for public interest. There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by law. In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, and other public interests including fair and free competition.

Section 41. Officials or employees in a private sector undertaking newspaper or radio or television broadcasting businesses shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without the mandate of any State agency, State enterprise or the owner of such businesses; provided that it is not contrary to their professional ethics. Government officials, officials or employees of a State agency or State enterprise engaging in the radio or television broadcasting business enjoy the same liberties as those enjoyed by officials or employees under paragraph one.

Section 42. A person shall enjoy an academic freedom. Education, training, learning, teaching, researching and disseminating such research according to academic principles shall be protected; provided that it is not contrary to his or her civic duties or good morals.

Section 43. A person shall enjoy an equal right to receive the fundamental education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge. In providing education by the State, regard shall be had to participation of local government organisations and the private sector as provided by law. The provision of education by professional organisations and the private sector under the supervision of the State shall be protected as provided by law.

Section 44. A person shall enjoy the liberty to assemble peacefully and without arms. he restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the case of public assembling and for securing public convenience in the use of public places or for maintaining public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared.

Section 45. A person shall enjoy the liberty to unite and form an association, a union, league, co-operative, farmer group, private organisation or any other group. The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly.

Section 46. Persons so assembling as to be a traditional community shall have the right to conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources and the environment in a balanced fashion and persistently as provided by law.

Section 47. A person shall enjoy the liberty to unite and form a political party for the purpose of making political will of the people and carrying out political activities in fulfilment of such will through the democratic regime of government with the King as Head of the State as provided in this Constitution. The internal organisation, management and regulations of a political party shall be consistent with fundamental principles of the democratic regime of government with the King as Head of the State. Members of the House of Representatives who are members of a political party, members of the Executive Committee of a political party, or members of a political party, of not less than the number prescribed by the organic law on political parties shall, if of the opinion that their political party's resolution or regulation on any matter is contrary to the status and performance of duties of a member of the House of Representatives under this Constitution or contrary to or inconsistent with fundamental principles of the democratic regime of government with the King as Head of the State, have the right to refer it to the Constitutional Court for decision thereon. In the case where the Constitutional Court decides that such resolution or regulation is contrary to or inconsistent with fundamental principles of the democratic regime of government with the King as Head of the State, such resolution or regulation shall lapse.

Section 48. The property right of a person is protected. The extent and the restriction of such right shall be in accordance with the provisions of the law. The succession is protected. The right of succession of a person shall be in accordance with the provisions of the law.

Section 49. The expropriation of immovable property shall not be made except by virtue of the law specifically enacted for the purpose of public utilities, necessary national defence, exploitation of national resources, town and country planning, promotion and preservation of the quality of the environment, agricultural or industrial development, land reform, or other public interests, and fair compensation shall be paid in due time to the owner thereof as well as to all persons having the rights thereto, who suffer loss by such expropriation, as provided by law. The amount of compensation under paragraph one shall be fairly assessed with due regard to the normal purchase price, mode of acquisition, nature and situation of the immovable property, and loss of the person whose property or right thereto is expropriated. The law on expropriation of immovable property shall specify the purpose of the expropriation and shall clearly determine the period of time to fulfil that purpose. If the immovable property is not used to fulfil such purpose within such period of time, it shall be returned to the original owner or his or her heir. The return of immovable property to the original owner or his or her heir under paragraph three and the claim of compensation paid shall be in accordance with the provisions of the law.

Section 50. A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition. The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security and safety of the State or economy of the country, protecting the public in regard to public utilities, maintaining public order and good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition.

Section 51. Forced labour shall not be imposed except by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of war or armed conflict, or when a state of emergency or martial law is declared.

Section 52. A person shall enjoy an equal right to receive standard public health service, and the indigent shall have the right to receive free medical treatment from public health centres of the State, as provided by law. The public health service by the State shall be provided thoroughly and efficiently and, for this purpose, participation by local government organisations and the private sector shall also be promoted insofar as it is possible . The State shall prevent and eradicate harmful contagious diseases for the public without charge, as provided by law.

Section 53. Children, youth and family members shall have the right to be protected by the State against violence and unfair treatment. Children and youth with no guardian shall have the right to receive care and education from the State, as provided by law.

Section 54. A person who is over sixty years of age and has insufficient income shall have the right to receive aids from the State, as provided by law.

Section 55. The disabled or handicapped shall have the right to receive public conveniences and other aids from the State, as provided by law.

Section 56. The right of a person to give to the State and communities participation in the preservation and exploitation of natural resources and biological diversity and in the

protection, promotion and preservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his or her health and sanitary condition, welfare or quality of life, shall be protected, as provided by law. Any project or activity which may seriously affect the quality of the environment shall not be permitted, unless its impacts on the quality of the environment have been studied and evaluated and opinions of an independent organisation, consisting of representatives from private environmental organisations and from higher education institutions providing studies in the environmental field, have been obtained prior to the operation of such project or activity, as provided by law. The right of a person to sue a State agency, State enterprise, local government organisation or other State authority to perform the duties as provided by law under paragraph one and paragraph two shall be protected.

Section 57. The right of a person as a consumer shall be protected as provided by law. The law under paragraph one shall provide for an independent organisation consisting of representatives of consumers for giving opinions on the enactment and issuance of law, rules and regulations and on the determination of various measures for consumer protection.

Section 58. A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organisation, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law.

Section 59. A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organisation before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinions on such matters in accordance with the public hearing procedure, as provided by law.

Section 60. A person shall have the right to participate in the decision-making process of State officials in the performance of administrative functions which affect or may affect his or her rights and liberties, as provided by law.

Section 61. A person shall have the right to present a petition and to be informed of the result of its consideration within the appropriate time, as provided by law.

Section 62. The right of a person to sue a State agency, State enterprise, local government organisation or other State authority which is a juristic person to be liable for an act or omission done by its Government official, official or employee shall be protected, as provided by law.

Section 63. No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of the State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution. In the case where a person or a

political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court for ordering cessation of such act without, however, prejudice to the institution of a criminal action against such person. In the case where the Constitutional Court makes a decision compelling the political party to cease to commit the act under paragraph two, the Constitutional Court may order the dissolution of such political party.

Section 64. Members of the armed forces or the police force, Government officials, officials or employees of State agencies, State enterprises or local government organisations shall enjoy the same rights and liberties under the Constitution as those enjoyed by other persons, unless such enjoyment is restricted by law, by-law or regulation issued by virtue of the law specifically enacted in regard to politics, efficiency, disciplines or ethics.

Section 65. A person shall have the right to resist peacefully any act committed for the acquisition of the power to rule the country by a means which is not in accordance with the modes provided in this Constitution.

ANNEX C

CHAPTER V
Directive Principles of Fundamental State Policies

Section 71. The State shall protect and uphold the institution of kingship and the independence and integrity of its territories.

Section 72. The State shall arrange for the maintenance of the armed forces for the protection and upholding of its independence, security of the State, institution of kingship, national interests and the democratic regime of government with the King as Head of the State, and for national development.

Section 73. The State shall patronise and protect Buddhism and other religions, promote good understanding and harmony among followers of all religions as well as encourage the application of religious principles to create virtue and develop the quality of life.

Section 74. The State shall promote friendly relations with other countries and adopt the principle of non-discrimination.

Section 75. The State shall ensure the compliance with the law, protect the rights and liberties of a person, provide efficient administration of justice and serve justice to the people expediently and equally and organise an efficient system of public administration and other State affairs to meet people's demand. The State shall allocate adequate budgets for the independent administration of the Election Commission, the Ombudsmen, the National Human Rights Commission, the Constitutional Court, the Courts of Justice, the Administrative Courts, the National Counter Corruption Commission and the State Audit Commission Readiness.

Section 76. The State shall promote and encourage public participation in laying down policies, making decision on political issues, preparing economic, social and political development plans, and inspecting the exercise of State power at all levels.

Section 77. The State shall prepare a political development plan, moral and ethical standard of holders of political positions, Government officials, officials and other employees of the State in order to prevent corruption and create efficiency of the performance of duties.

Section 78. The State shall decentralise powers to localities for the purpose of independence and self-determination of local affairs, develop local economics, public utilities and facilities systems and information infrastructure in the locality thoroughly and equally throughout the country as well as develop into a large-sized local government organisation a province ready for such purpose, having regard to the will of the people in that province.

Section 79. The State shall promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity and in the promotion, maintenance and protection of the quality of the environment in accordance with the persistent development principle as well as the control and elimination of pollution affecting public health, sanitary conditions, welfare and quality of life.

Section 80. The State shall protect and develop children and the youth, promote the equality between women and men, and create, reinforce and develop family integrity and the strength of communities. The State shall provide aids to the elderly, the indigent, the disabled or handicapped and the underprivileged for their good quality of life and ability to depend on themselves.

Section 81. The State shall provide and promote the private sector to provide education to achieve knowledge alongside morality, provide law relating to national education, improve education in harmony with economic and social change, create and strengthen knowledge and instil right awareness with regard to politics and a democratic regime of government with the King as Head of the State, support researches in various sciences, accelerate the development of science and technology for national development, develop the teaching profession, and promote local knowledge and national arts and culture.

Section 82. The State shall thoroughly provide and promote standard and efficient public health service.

Section 83. The State shall implement fair distribution of incomes.

Section 84. The State shall organise the appropriate system of the holding and use of land, provide sufficient water resources for farmers and protect the interests of farmers in the production and marketing of agricultural products to achieve maximum benefits, and promote the assembling of farmers with a view to laying down agricultural plans and protecting their mutual interests.

Section 85. The State shall promote, encourage and protect the co-operatives system.

Section 86. The State shall promote people of working age to obtain employment, protect labour, especially child and woman labour, and provide for the system of labour relations , social security and fair wages.

Section 87. The State shall encourage a free economic system through market force, ensure and supervise fair competition, protect consumers, and prevent direct and indirect monopolies, repeal and refrain from enacting laws and regulations controlling businesses which do not correspond with the economic necessity, and shall not engage in an enterprise in competition with the private sector unless it is necessary for the purpose of maintaining the security of the State, preserving the common interest, or providing public utilities.

Section 88. The provisions of this Chapter are intended to serve as directive principles for legislating and determining policies for the administration of the State affairs. In stating its policies to the National Assembly under section 211, the Council of Ministers which will assume the administration of the State affairs shall clearly state to the National Assembly the activities intended to be carried out for the administration of the State affairs in implementation of the directive principles of fundamental State policies provided in this Chapter and shall prepare and submit to the National Assembly an annual report on the result of the implementation, including problems and obstacles encountered.

Section 89. For the purpose of the implementation of this Chapter, the State shall establish the National Economic and Social Council to be charged with the duty to give advice and recommendations to the Council of Ministers on economic and social problems. A national economic and social development plan and other plans as provided by law shall obtain opinions of the National Economic and Social Council before they can be adopted and published. The composition, source, powers and duties and the operation of the National Economic and Social Council shall be in accordance with the provision of law.

ANNEX D

(Informal Translation)

The bills proposed by people themselves (The first method)

1. Establishment of the Institute for the Protection of Health, Safety and Environment in the Workplace Bill.

2. National Farmers Council Bill.

3. National Community Forest Bill.

4. National Village Fund Bill.

5. National Public Health Insurance Bill.

6. Bankruptcy (Vol ...) Bill.

7. Salary of Government Teachers and Education Officials Bill.

8. National Health Bill.

9. Control of Securities Registration and Securities Exchanges for Alcoholic Drinks and Cigarette Business Bill.

10. Community Public Health Profession Bill.

The bills proposed by people trough the management of the Election Commission (The second method)

National Council of Agriculture Bill.

Village Bank Bill.

Establishment of Changwat Bungkan Bill.

Registration of Production and Sale of Traditional Spirits Bill.

Establishment of Changwat Chumpae Bill

Establishment of Changwat Phuviang Bill.

Mr Ian Harris, President, thanked Mr PUMHIRAN and invited questions.

Mr Malcolm JACK (United Kingdom) asked what assistance people got with drafting the Bills.

Ms Judy MIDDLEBROOK (Australia) asked where this initiative came from. Was participatory democracy embedded in Thai culture?

The President said that he had hoped that Mr CLERC of Switzerland might have been here because of his country's experience of direct votes. He asked whether any other countries' representatives could report on similar experience?

[*There was no response*]

Mr Pitoon PUMHIRAN said that help in drafting was given by Parliament. The main idea for reform came from the Assembly.

Mr Umar SANI (Nigeria): asked for clarification regarding the petition and the law. He noted that a person shall have right to present such a Bill if there is a petition with not fewer than 50,000 names. He did not understand this.

Mr Pitoon PUMHIRAN replied that this meant that a voter can introduce a Bill by petition but this must be with the support of 50,000 voters who have signed the petition.

Mr Brendan KEITH (United Kingdom) asked about philosophy underpinning the right to introduce such Bills. He noted that under the Constitution there was an obligation to vote. If a person failed to vote then the right to petition for a Bill was lost. In addition, the voter cannot take part in a move to remove a Member. How did Members react to these possibilities for their removal and what impact did this have on representative democracy.

Mr Ibrahim Mohamed IBRAHIM (Sudan) asked whether it was possible for national interest groups to sponsor a Bill under this procedure and how many Bills had resulted?

Mr Pitoon PUMHIRAN said that 16 Bills had been introduced under this procedure since 1999. Every Bill must be properly signed either by the Government Agent in each province or the Election Commission.

As far as this procedure's impact on representative democracy was concerned, he thought that the people needed this kind of right to influence events.

The President noted that some countries had e-democracy such as e-petitions.

Mr Oscar YABES (Philippines) said that in the Philippines there was no electronic democracy but there was a similar provision in the Constitution to allow for direct democracy in the introduction of Bills. No such Bill yet been filed. It was easy for a Bill to be drafted and for a Member of the Senate or House of Representatives to be persuaded to introduce the Bill instead. This was usually the mechanism used to introduce Bills which reflected particular interest groups' wishes.

The President noted that some politicians disliked this kind of device, but the bottom line was that elected Members made the final decision on a Bill. He said that the Association would like to hear more about this system in the future.

Mr Pitoon PUMHIRAN referred to Annex D of his Paper which showed that it was possible that elected Members were behind a particular Bill for political reasons.

Mr Malcom JACK (United Kingdom) noted that the Private Bill system in the United Kingdom had always allowed Bills to arise by Petition.

Mr Pitoon PUMHIRAN said that this was a new provision in Thailand, unknown before 1999.

The President wondered whether preparation of such a Bill would be covered by Parliamentary Privilege. He thought that it certainly would be in Australia, but asked whether this was a consideration in Thailand?

Mr Pitoon PUMHIRAN indicated that this was the same in Thailand.

The President thanked Mr PUMHIRAN and asked for the Association to be kept informed about developments with this interesting new system.

3. Intervention by Dr LODIN of Afghanistan

Mr Ian Harris, President, said that in a change to the advertised Orders of the Day, Dr Lodin of Afghanistan would give a brief description of the progress towards establishing a Parliament.

He welcomed Dr Lodin to the platform. He noted that Dr Lodin had been educated at Kabul University in Law and Political Science. He then had taken a Diploma and Ph.D in Economics in Germany. 1976-78 he had been an Economics lecturer in Kabul University. From 1978-80 he had been held as a political prisoner as a result of his anti-Communist activities. He joined the Mujahideen as a Political adviser. He worked as Vice Chairman (Political Department) of Islamic Unity of Afghanistan and was a member of the Supreme Council 1983-85. He also founded a high school for girls in Pakistan in 1983. He was attached to the Anti-Taliban

resistance movement from 1995 to 2001. He was the founder of the Cyprus Peace Conference.

Dr Lodin (Afghanistan) thanked the President for the opportunity to speak. He wanted to report progress on the democratization of Afghanistan which had been set in motion as a result of the Bonn Agreement in 2001, which he had been a signatory to. The past 30 years had been very difficult in Afghanistan as a result of the Communist government, the civil war which had lasted for five years and then the Taliban regime. At the end of that everything that had been built up in the years between 1970 and 1978 had been destroyed. This terrible period had been ended by the Bonn Agreement, which aimed to rebuild all aspects of life in Afghanistan.

For the first time in Afghanistan's history a President had been elected with over 55% of the vote. Everyone was very happy that his had happened. There was now a Parliament in Afghanistan. This had to be made up of freely elected Members. The votes were now being counted and a Parliament would meet later in the year. He had been appointed provisional Secretary General of the Parliament.

He had to create a structure for the secretariat in Parliament as well as organizing a Budget. This had not been done before in Afghanistan. There had been a recruitment problem because the was a shortage of qualified people. Many educated Afghans were refugees abroad.

There had been a French sponsored programme to train Parliamentary staff.

He now had a large number of applications from university educated people who wish to work in Parliament. He now had a complete staff with a wide range of qualifications and all of the staff members had at least one foreign language. The top priority was to train his new staff members. He had sent staff members to Turkey, Italy, Indonesia, France, Sri Lanka, the Netherlands, Germany and Morocco. As a result of the past 30 years the civil service in Afghanistan had lost all its staff. He wanted to make the Parliamentary staff an example for the rest of the public service in Afghanistan. He was keen to learn about recruitment from international examples.

Another of his early tasks had been to draft the Standing Orders of Parliament. He also had had to draft the Rules relating to recruitment to posts in Parliament. This included preparing a wide range of job descriptions. All of this was part of the Support for the Establishment of a Parliament in Afghanistan project. France had taken the leading role in this project.

The Parliamentary building had largely been destroyed during civil war ended a continuing task was to reconstruct it. Considerable progress had made with this. The Indian Government was giving assistance with building a new Parliament. The President of India had come to lay the foundation stone.

He expected that the new Members of Parliament would be able to gather in the middle of December. That would be a period of great challenge but he hoped that it would lead to Afghanistan taking its place in the international community of democratic countries.

Mr Ian Harris, President, thanked Dr LODIN and invited questions.

Mr Xavier ROQUES (France) simply wished them Good Luck!

4. Honorary Membership

Mr Ian Harris, President, noted the retirement of Mr G.C. MALHOTRA: in the light of the criteria for honorary membership set out in the Annex to the Rules of the Association Executive Committee he proposed him as an honorary member of the ASGP.

This was *agreed* to.

5. Presentation from Mr Samuel Waweru Ndindiri, Secretary General of the National Assembly of Kenya, on the organisation of the Nairobi session

Mr Ian Harris, President, called Mr Samuel Waweru NDINDIRI to speak about the organisation of the Nairobi Session.

Mr Samuel Waweru NDINDIRI (Kenya) noted that the 114th Meeting of the IPU would be held in Nairobi.

He noted the geographical position of Kenya and how to get there. There were many flights to Kenya via various points.

The Meeting would be held from 7th-12th May 2006 at the Kenyatta International Conference Centre. A pamphlet and CD were available in English and French.

Arrangements were in progress and the staff for the conference in place in the KICC. There was a website for the conference: www.ipukenya.org.

Hotels had been identified; all were within 3 kilometres of the KICC. There was a range of prices for rooms.

Transport to the hotels would be arranged between KICC and the hotels. There would also be security. Delegates would be met at the airport by conference staff. Information on events would be provided when delegates arrived. Information on registration would be sent out shortly.

He looked forward to seeing delegates in Nairobi.

Mr Ian Harris, President, thanked Mr NDINDIRI.

6. Election of Members of the Executive Committee

Mr Ian Harris, President, said that the election of ordinary members of the Executive Committee would now take place. Three posts were open for election. The Joint Secretaries had received the following nominations for candidates for election as ordinary members:

- **Mr Marc BOSC**, Deputy Clerk of the House of Commons, Canada
- **Mr Brissi Lucas GUEHI**, Secretary General of the National Assembly, Cote d'Ivoire
- **Dr Yogendra NARAIN**, Secretary General of the Rajya Sabha, India
- **Mr Abdeljalil ZERHOUNI**, Secretary General of the House of Representatives, Morocco
- **Mr José Pedro MONTERO**, Second Secretary of the House of Representatives, Uruguay

The Rules relating to elections and a list of candidates were on the tables at the entrance to the Plenary Hall.

The President suspended the sitting to allow for preparations for the election.

Mr Zerhouni: withdrew his candidacy.

(Suspension)

Mr Ian Harris, President, invited those entitled to vote to collect a voting paper from in front of the platform and to take the paper back to their seats and fill them in by ticking the box next to the names for which they wished to vote, up to a maximum of the number of vacancies for which elections were being held (i.e. three). Each member or substitute might vote only once. They could indicate abstention. He invited the Vice-Presidents to come to the platform to assist in the electoral process.

Mr Ian Harris, President, invited those able to vote to approach the platform and cast their vote, giving their names to the Joint Secretaries as they did so.

Results of the vote

Number of voters:	60
Number of votes cast:	58

Marc BOSC	41
José Petro MONTERO	39
Ibrissi Lucas GUEHI	37
Yogendra NARAIN	32

3 invalid votes.

Mr Ian Harris, President, congratulated the candidates elected.

7. Budget for 2006

Mr Ian Harris, President, introduced the budget for 2006.

There were no comments.

The Budget was *adopted*.

8. Draft Agenda for Spring 2006

Mr Ian Harris, President, said that the Executive Committee proposed the following draft agenda for the next session:

1. Communication by Mr. Prosper VOKOUMA, Secretary General of the National Assembly of the Burkina Faso : « A presentation of the Strategic Development Plan of the Parliament of Burkina Faso 2004 – 2014 »

2. Communication from Mr Mr Suek NAMGOONG, Secretary General of the National Assembly of the Republic of Korea on « The Establishment of a Digital Chamber »

3. Communication from Mr Marc BOSC, Deputy Clerk of the House of Commons of Canada on « Parliamentary Codes of Ethics: Recent developments in Canada »

4. Intervention of the President of the Inter-Parliamentary Union

5. Possible subjects for general debate:

   - Office and powers of the Speaker/President (Moderator: Mr Ian HARRIS, House of Representatives, Australia)

   - Providing a parliamentary dimension to the UN: the contribution of Secretary Generals to developments following the Declaration of Speakers in New York in September 2005 (Moderator: Mr Anders FORSBERG, Riksdagen, Sweden)

   - The role of Parliaments and parliamentarians in promoting reconciliation in society after civil strife (Moderator: Mr Hafnaoui AMRANI, Council of the Nation, Algeria)

6. Discussion of supplementary items (to be selected by the Executive Committee at the Spring Session)

7. Election

8. Administration and financial questions

9. New subjects for discussion and draft agenda for the next meeting in Geneva (Autumn 2006)

10. Presentation by Mr Pitoon PUMHIRAN, Secretary General of the House of Representatives of Thailand, on the organisation of the Bangkok Session

The draft agenda was accepted.

The President invited members who wished to add any further subjects to the agenda to contact the Joint Secretaries.

9. Closure of the Session

Mr Anders FORSBERG, President elect, thanked the Association for the confidence which they had shown in him.

Mr Ian Harris, President, in reply, thanked the interpreters, the conference management facility, the Executive Committee.

He also thanked the secretariat staff as well as Judy Middlebrook for her work on the back capture of the last 20 years of the Constitutional and Parliamentary Review and for her work on developing a parliamentary curriculum.

He thanked the new President and Mme PONCEAU for their support when they served as Vice-Presidents of the Association.

He expressed special thanks to his wife Erika.

He thanked the general membership of ASGP for their help during his period of office and indicated that he thought that as a former President he would take an interested but quieter role in the proceedings of the Association.

The sitting rose at 5.10 pm.