UNION INTERPARLEMENTAIRE

INTER-PARLIAMENTARY UNION

Constitutional & Parliamentary Information

Half-yearly Review of the Association of Secretaries General of Parliaments

Review of the ASGP / 66th year / Nº 211 / Lusaka, 20 – 23 March 2016

ASSOCIATION DES SECRETAIRES GENERAUX DES PARLEMENTS

UNION INTERPARLEMENTAIRE

ASSOCIATION OF SECRETARIES-GENERAL OF PARLIAMENTS

INTER-PARLIAMENTARY UNION

MINUTES OF THE SPRING SESSION

LUSAKA

20 – 23 MARCH 2016

INTER-PARLIAMENTARY UNION

Aims

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

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

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

Membership of the Union

Please refer to IPU site (http://www.ipu.org).

Structure

The organs of the Union are:

1. The Inter-Parliamentary Conference, which meets twice a year;
2. The Inter-Parliamentary Council, composed of two members of each affiliated Group;
3. The Executive Committee, composed of twelve members elected by the Conference, as well as of the Council President acting as *ex officio* President;
4. Secretariat of the Union, which is the international secretariat of the Organisation, the headquarters being located at:

Inter-Parliamentary Union
5, chemin du Pommier
Case postale 330
CH-1218 Le Grand Saconnex
Genève (Suisse)

Official Publication

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

ASSOCIATION OF SECRETARIES GENERAL OF PARLIAMENTS

Minutes of the Spring Session 2016

Lusaka
20 – 23 March 2016

List of attendance

MEMBERS PRESENT

NAME	COUNTRY
Mr. Sayed Hafizullah HASHIMI	Afghanistan
Mr. Khudai Nazar NASRAT	Afghanistan
Mr. Rahimullah GHALIB	Afghanistan
Mr. Bachir SLIMANI	Algeria
Ms. Claressa SURTEES	Australia
Mr. Abdulla ALDOSERI	Bahrain
Dr. Md. Abdur Rob HOWLADER	Bangladesh
Mr. Hugo HONDEQUIN	Belgium
Mr. Sangay DUBA	Bhutan
Mr. Ivan SLAVCHOV	Bulgaria
Mr. Renovat NIYONZIMA	Burundi
Mr. Marc RWABAHUNGU	Burundi
Mr. OUM Sarith	Cambodia
Mr. SRUN Dara	Cambodia
Mr. Marc BOSC	Canada

NAME	COUNTRY
Mr. Mario LABBE	Chile
Mr. David BYAZA-SANDA LUTALA	Congo (Democratic Republic of)
Mr. Jean NGUVULU KHOJI	Congo (Democratic Republic of)
Ms. Vassiliki ANASTASSIADOU	Cyprus
Mr. Jiři UKLEIN	Czech Republic
Mr. Petr KYNŠTETR	Czech Republic
Mr. Ahmad Saad EL-DIN	Egypt
Mr. Victorino Nka OBIANG MAYE	Equatorial Guinea
Ms. Maria ALAJÕE	Estonia
Mr. Debebe BARUD	Ethiopia
Mr. Negus LEMMA GEBRE	Ethiopia
Ms. Namosimalua VENIANA	Fiji
Ms. Maija-Leena PAAVOLA	Finland
Mr. Arsène RISSONGA	Gabon
Dr. Horst RISSE	Germany
Dr. Ulrich SCHÖLER	Germany
Dr. Georg KLEEMANN	Germany
Mr. Helgi BERNÓDUSSON	Iceland
Mr. Anoop MISHRA	India
Mr. Shumsher K. SHERIFF	India
Dr. Winantuningtyas Titi SWASANANY	Indonesia
Mrs. Damayanti HARRIS	Indonesia
Mr. Hossein SKEIKHOLESLAM	Iran

NAME	COUNTRY
Mr. Hamad GHRAIR	Jordan
Mr. Jeremiah M. NYEGENYE	Kenya
Mr. PARK Heong-Joon	Korea (Republic of)
Mr. Allam Ali Jaafer AL-KANDARI	Kuwait
Mr. Lebohang Fine MAEMA	Lesotho
Mrs. Suzan Matsotetsi MPESI	Lesotho
Mr. Wiiliam BEFOUROUACH	Madagascar
Mr. Henry H. NJOLOMOLE	Malawi
Mr. Modibo SIDIBE	Mali
Mr. Najib EL KHADI	Morocco
Mr. Manohar Prasad BHATTARAI	Nepal
Mr. Geert Jan A. HAMILTON	Netherlands
Mr. Harke HEIDA	Netherlands
Mr. Salisu Abubakar MAIKASUWA	Nigeria
Mr. Mohammed Ataba SANI-OMOLORI	Nigeria
Mr. Sheikh Ali bin Nasir bin Hamed AL-MAHROOQI	Oman
Mr. Amjed Pervez MALIK	Pakistan
Mr. Abdul Jabbar ALI	Pakistan
Mr. Ibrahim KHRISHI	Palestine
Mr. Franz WEVER	Panama
Mrs. Ewa POLKOWSKA	Poland
Mr. Lech CZAPLA	Poland

NAME	COUNTRY
Mr. José Manuel ARAÚJO	Portugal
Mr. Sergey MARTYNOV	Russian Federation
Mr. Sosthène CYITATIRE	Rwanda
Mr. Domingos José TRINDADE BOA MORTE	Sao Tomé and Principe
Dr. Mohammed Abdullah AL-AMR	Saudi Arabia
Ms. Shelda COMMETTANT	Seychelles
Mr. Gengezi MGIDLANA	South Africa
Mr. Masibulele XASO	South Africa
Mr. Manuel CAVERO	Spain
Mr. Abdelgadir ABDALLA KHALAFALLA	Sudan
Mr. Mohamed YAGOUB	Sudan
Mr. Alalla Said LORO	South Sudan
Mr. Dhammika DASANAYAKE	Sri Lanka
Mr. Philippe SCHWAB	Switzerland
Ms. Agatha RAMDASS	Suriname
Mrs. La-Or PUTORNJAI	Thailand
Mrs. Saithip CHAOWALITTAWIL	Thailand
Mrs. Chollada KUNKLOY	Thailand
Mrs. Atibaedya WARARAT	Thailand
Mr. Mateus XIMENES BELO	Timor Leste
Mr Fademba Madakowe WAGUENA	Togo
Dr. İrfan NEZİROĞLU	Turkey
Ms. Jane LUBOWA KIBIRIGE	Uganda

NAME	COUNTRY
Mr. Paul GAMUSI WABWIRE	Uganda
Mr. Edward OLLARD	United Kingdom
Dr. José Pedro MONTERO	Uruguay
Mrs. Virginia ORTIZ	Uruguay
Mrs. Doris Katai Katebe MWINGA	Zambia
Mrs. Cecelia MBEWE	Zambia
Mr. Kennedy Mugove CHOKUDA	Zimbabwe

ASSOCIATE MEMBERS

Mr. Parfait ETOUNG ABENA	CEMAC, Parliament of the Commission of the Economic and Monetary Community of Central Africa
Mr. Kenneth MADETE	East African Legislative Assembly (EALA)
Dr. Nelson MAGBAGBEOLA	ECOWAS Parliament
Mr. Said MOKADEM	Maghreb Consultative Council

SUBSTITUTES

Dr. Raphael D. DINGALO (for Mrs. Barbara DITHAPO)	Botswana
Mrs. Françoise MEFFRE (for Mr. Michel MOREAU)	France
Mr. Ronen PLOT (for Mrs. Yardena MELLER-HOROVITZ)	Israel
Mr. Yasuo KURATA (for Mr. Takeshi NAKAMURA)	Japan
Mrs. Juliet MUPURUA (for Mrs. Emilia MKUSA)	Namibia
Mr. Issa ALIO (for Mr. Boubacar TIEMOGO)	Niger

Mr. Jossey Stephen MWAKASYUKA (for Dr. Thomas D. KASHILILAH)	Tanzania
Mr. Andrew KENNON (for Mr. David NATZLER)	United Kingdom

ALSO PRESENT

Mr. Barthelemy BOTON	Benin
Mr. Oscar NONDO PONGO	Congo (Democratic Republic of)
Ms. Warsiti ALFIAH	Indonesia
Mr. Rahmad BUDIAJI	Indonesia
Mr. SULISTIYONO	Indonesia
Mr. Khlang OUDAM	Cambodia
Mr. HOK Bunly	Cambodia
Mr. Zakayo MOGERE	Kenya
Mr. Armando CORREA	Mozambique
Mrs. Agata KARWOWSKA-SOKOLOWSKA	Poland
Mr Sang-Soo JUN	South Korea
Mrs. Chanpen ANAMVAT	Thailand
Ms. Krisanee MASRICHAN	Thailand
Mrs. Phinissorn SIKKHABANDIT	Thailand
Ms. Somsakul LICKANAJULE	Thailand
Ms. Kanjanat SIRIWONG	Thailand
Mr. Nuthapoom PONSANA	Thailand

Mrs. Lilia MESQUITA	Timor Leste
Mr Ndamuka MARIMO	Zimbabwe

APOLOGIES

Mr. David ELDER	Australia
Mr. Romulo DE SOUSA MESQUITA	Brazil
Mr. Charles ROBERT	Canada
Mr. Michel MOREAU	France
Mr. Ali AFRASHTEH	Iran
Mr. Satoru GOHARA	Japan
Mr. Shinji MUKO-ONO	Japan
Ms. Karina PETERSONE	Latvia
Mrs. Ruth DE WINDT	Suriname
Mrs. Atibaedya WARARAT	Thailand
Mr. Eduardo CHILIQUINGA	Andean Parliament
Mr. Klaus WELLE	European Parliament

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FIRST SITTING

Sunday 20 March 2016 (morning)

Mrs Doris Katai Katebe MWINGA, President, was in the Chair

The sitting was opened at 11.15 am

1. Opening of the session

Mrs Doris Katai Katebe MWINGA, opened the session and welcomed members of the Association, particularly new members. She asked all those attending to check the attendance lists in the entry hall and to contact the staff if there were any discrepancies.

2. Members

Mrs Doris Katai Katebe MWINGA, President, said that the secretariat had received requests for membership which had been put before the Executive Committee and agreed to, as follows:

For membership:

1.	Dr Md. Abdur Rob HOWLADER	Secretary General of Parliament, Bangladesh (replacing Mr. Md. Ashraful MOQBUL)
2.	Mr Ismael Goulal BOUDINE	Secretary General of the National Assembly, Djibouti
3.	Mr Ahmad Saad EL-DIN	Secretary General of the House of Representatives, Egypt
4.	Ms Maija-Leena PAAVOLA	Secretary General of the National Assembly, Finland (replacing Mr. Seppo TIITINEN)
5.	Mr Michel MOREAU	Secretary General of the National Assembly and the Presidency, France (replacing Mrs. Corinne LUQUIENS)
6.	Mrs Damayanti HARRIS	Deputy Secretary General of the National Assembly, Indonesia (replacing Mr. Achmad DJUNED)
7.	, Mr Hiroshi BENITANI	Deputy Secretary General of the House of Representatives, Japan (replacing Mr. Shunsuke KISHIMOTO)
8.	Ms Karina PETERSONE	Secretary General of the Saeima, Latvia

9.	Mr Modibo SIDIBE	Secretary General of the National Assembly, Mali (replacing Dr. Madou DIALLO)
10.	Mr Abdul Jabbar ALI	Secretary General of the National Assembly, Pakistan (replacing Mr. Mohammad RIAZ)
11.	Mr Harke HEIDA	Deputy Secretary General of the House of Representatives, Netherlands (replacing Mr. Henk BAKKER)
12.	Mrs Chollada KUNKLOY	Deputy Secretary General of the National Assembly, Thailand (replacing Mr. Charae PANPRUANG)
13.	Mr Volodymyr SLYSHYNSKYI	Secretary General of the National Assembly, Ukraine (replacing Mr. Valentyn ZAICHUK)

For associate membership:

14.	Dr Nelson MAGBAGBEOLA	Secretary General of the ECOWAS Parliament (replacing Mr. John AZUMAH)
15.	Mr Eduardo CHILIQUINGA	Secretary General of the Andean Parliament

The new members were agreed to.

Mrs Doris Katai Katebe MWINGA, President, said that the Executive Committee had agreed to put forward the following ex-members of the Association for honorary membership:

Dr Hafnaoui AMRANI	Previously, Secretary General of the National Council, Algeria
Mrs Corinne LUQUIENS	Previously Secretary General of the National Assembly, France

The honorary members were agreed to.

3. Election to the Executive Committee

Mrs Doris Katai Katebe MWINGA, President, announced that, during the course of the Session, there would be an election for two ordinary members of the Executive Committee.

The deadline for the receipt of nominations was 4 pm that day. It was conventional only to accept nominations from experienced and active members of the Association. Women and francophones remained under-represented on the Committee.

If an election was needed, it would take place in the morning of Tuesday 22 March. If no more than two nominations were received, those members would be deemed to have been elected by acclamation.

If there were any questions about the procedure, the President advised the members to consult the guidance, or one of the joint secretaries.

4. Orders of the day

Mrs Doris Katai Katebe MWINGA, President, read the proposed orders of the day as follows:

Sunday 20 March (morning)

9.30 am

Meeting of the Executive Committee

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11.00 am

Opening of the session

Orders of the day of the Conference

New members

Welcome and presentation on the Zambian parliamentary system by Mrs Cecilia MBEWE, Deputy Clerk of the National Assembly of Zambia

Theme : The Powers and Procedures of Parliaments

Communication by Mr Philippe SCHWAB, Secretary General of the Federal Assembly of Switzerland: "The elective function and checks on nominations to Parliament"

Communication by Mr Gali Massa HAROU, Deputy Secretary General of the National Assembly of Chad: "The issue of quorum in relation to accusations made against members of the Government and the President of the Republic"

Communication by Mrs Jane L. KIBIRIGE, Clerk of the Parliament of Uganda: "Crossing the floor in Uganda"

Sunday 20 March (afternoon)

2.30 pm

Theme : The powers and procedures in Parliaments (continued)

Communication by Mr Manuel CAVERO, Secretary general of the Senate of Spain: "The powers of the Parliament of Spain vis-à-vis an acting Government following a general election"

Communication by Mrs Claressa SURTEES, Deputy Clerk of the House of representatives of Australia : "Parliamentary Privilege and Citizen's Right of Reply"

Communication by Mr Helgi BERNODUSSON, Secretary General of Althingi of Iceland: "The leaven that leaveneth the whole lump: Filibuster in the Icelandic Parliament, Althingi"

Communication by Mr Marc BOSC, Acting Clerk of the House of Commons of Canada: "The election of the Speaker by preferential ballot"

General debate: Overburdening the statute book in response to current events?
Moderator: Mr Philippe SCHWAB, Secretary General of the Federal Assembly of Switzerland

Note on the general debate: The purpose of the law is to ensure good order in society. It is general in nature and is the response of the legislation to a clearly identified societal need. It arises by means of a painstaking and rigorous process. The legislative process is, however, called into question in the context of extraordinary events, or occurrences which give rise to forceful public opinion. In such cases, it is not unusual for the Government to seek to legislate, if only to demonstrate that they are taking action. The need for legislation in these cases is taken for granted, and the speed of the process is dictated by the urgency of the situation, which reduces the time for both analysis and reflection. To put it more succinctly, it is not the law which generates the situation, but the situation which shapes the law.

The general debate seeks to explore the phenomenon of laws passed in light of current events; to identify its origins; and to discuss the consequences for the quality of the legislative output. More generally, its purpose is also to identify the role of Parliaments in extraordinary situations.

4 pm: Deadline for nominations for two or more vacant posts of ordinary member of the Executive Committee

Monday 21 March: all day

EXCURSION TO KARIBA DAM

Hydroelectric dam in the Kariba Gorge of the Zambezi river basin between Zambia and Zimbabwe.

Depart hotels 6:00hrs
Arrival at ZESCO Kariba dam 09:00hrs
Dam visit 09:15 to 11:30hrs
Lunch 12:00-13:30hrs
Boat cruise 14:00-16:00hrs
Depart for Lusaka 16:30hrs

Arrival in Lusaka 20:30hrs

Tuesday 22 March (morning)

9.30 am

Meeting of the Executive Committee

***

10 am

If necessary, the election of two or more ordinary members of the Executive Committee

General debate with informal discussion groups: The budget of the Parliament
Moderator: Mr Najib EL KHADI, Secretary General of the House of Representatives of Morocco

- Group A (English-speaking): The decision-making process: who sets the budget for Parliament? What is the procedure? How is the Government implicated in the process?

- Group B (English-speaking): Implementation: who is charged with managing the budget? How is it managed?

- Group C (French-speaking): Scrutiny: Is the management of the budget subject to scrutiny (either internal, or by an independent, outside body)?

- Group D (Spanish-speaking): Transparency: what degree of transparency applies to the management of Parliament's budget and its accounts?

- Group E (Arab-speaking): Response to crisis situations: how are crisis situations managed in budgetary terms? Do secret reserve funds exist?

12:00 am
Visit to, and lunch at, the Zambian Parliament

Tuesday 22 March (afternoon)

3.00 pm

Presentations by rapporteurs and general debate (continued).

Theme : Communication

Communication by Mr Ali AL MAHROUQI, Secretary General of the Consultative Council of Oman: "The role of social media in spreading awareness about Parliament"

Communication by Dr Ulrich SCHÖLER, Deputy Secretary General of the German Bundestag: "Training ambassadors for parliamentarianism - the German Bundestag's International Parliamentary Scholarship Programme"

Communication by Mr Geert Jan A. HAMILTON, Clerk of the Senate of the States General of Netherlands: "Taking pride in Parliament: reflections after the 200th anniversary of the Parliament of the Netherlands"

Wednesday 23 March (morning)

9,30 am

Meeting of the Executive Committee

***

10.00 am

Communication by Mr Gengezi MGIDLANA, Secretary to Parliament of the Republic of South Africa: "Separation of powers: Relationship between Parliament and the Judiciary, with a focus on the internal arrangements of Parliament"

Theme : A Parliament for tomorrow

Communication by Mr Najib EL KHADI, Secretary General of the House of Representatives of Morocco " The House of Representatives of the Kingdom of Morocco : toward an electronic Parliament"

Communication by Mr Anoop MISHRA, Secretary General of the Lok Sabha of India: "'The Lok Sabha Secretariat and its journey towards a paperless office"

Communication by Mr Ronen PLOT, Director general of the Knesset of Israel: "An environmentally-friendly Parliament"

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- Presentation on recent developments in the IPU
- Administrative questions
- Draft agenda for the next meeting in Geneva (Switzerland), 24 – 27 October 2016

Wednesday 23 March (afternoon)

2.30 – 4.30 pm

Room 2, Old Wing

Panel discussion on

"Leading by example on Climate Change:
a lighter carbon footprint for parliaments"

Co-organized by the IPU and the ASGP

The panel aims to examine how parliaments and parliamentarians can significantly improve environmental performance and reduce the emissions associated with their institutions, as well as discuss what an environmentally sustainable parliament should aspire to look like, both now and in the future. It will provide an opportunity for parliamentarians to share their views on the subject and identify good practices that could help improve their environmental performance.

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The agenda for the Session was agreed to.

The President announced that time limits would apply to speeches: ten minutes for moderators opening a general a debate, with a further ten minutes for summing up; ten minutes for communications; and five minutes for other contributions.

There would be short coffee breaks whenever time permitted, except on the first morning.

The President thanked all those who were making communications and moderating general debates.

She asked members to start thinking about topics for discussion for the next session, to be held in Geneva in October 2016. Titles could be taken by the secretariat from that point onwards. She reminded members that all texts should be submitted three weeks in advance of the session in order to allow for translation into other languages.

She reminded members that they should try, wherever possible, to access their documents via electronic means.

5. Official languages

The President announced that the Executive Committee had agreed that it would seek to accommodate additional languages at the ASGP in line with practice at the IPU. At the moment this concerned Arabic and Spanish.

In order to do this, there was a need to increase the number of French and English interpreters from two to four. There would be a cost involved, of 30,000 CHF per year, which could be reduced to 15,000 CHF per year if the Association was willing to reduce its working days from four to three at each conference (excluding excursions).

The funds would be raised by means of a 9% increase in member subscriptions and the President would be writing to the IPU to request their contribution of 50% of the cost.

The measure was agreed to.

The President encouraged members to consult the Association's website, much of which had already been translated into Arabic and Spanish with the cooperation of the Association of Secretaries General of Arab Parliaments and the Spanish Senate.

6. Welcome and presentation on the Zambian parliamentary system by Mrs Cecilia MBEWE, Deputy Clerk of the National Assembly of Zambia

Mrs Doris Katai Katebe MWINGA, President, invited Mrs Celia MBEWE, Deputy Clerk of the National Assembly of Zambia, to make her communication.

Mrs Celia MBEWE (Zambia) spoke as follows:

INTRODUCTION

The 134th Inter-Parliamentary Union (IPU) and Related Meetings scheduled for 19th to 23rd March, 2016 in Lusaka, Zambia provides an opportunity for the National Assembly of Zambia to share its experiences and best practices in parliamentary practice and procedure with other Parliaments of the world. In this regard, the Clerk of the National Assembly of Zambia and President of the Association of Secretaries General of Parliaments (ASGP) would like to take advantage of the event to give a brief overview of the Zambian Parliament.

This paper discusses the Zambian Parliament in the context of its history, composition, parliamentary reforms as well as the ramifications of the provisions of the amended Constitution on the operations of the Institution.

BRIEF BACKGROUND OF THE ZAMBIAN PARLIAMENT

The historical development of the Zambian Parliament dates back to the advent of colonial rule spearheaded by the British South African Company (BSAC) between 1890 and 1924, and from 1924 to-date. During the company rule, demands for the Advisory Council to govern Northern Rhodesia led to its establishment in 1918. When Northern Rhodesia was handed over to the British Government in 1924, the European settlers agitated for more political control over the territory. The British Government conceded and replaced the Advisory Council with the Legislative Council. After Northern Rhodesia attained self-rule on 24th October 1964, the Legislative Council was renamed the National Assembly of Zambia with full legislative powers.

At Independence, the Zambian Constitution provided for the National Assembly to consist of seventy-five (75) elective seats for Members and five (5) seats for presidential nominees bringing the total number to eighty (80) members. The Constitution (Amendment) Act No. 2 of 1968 raised the membership of the Assembly to 110, of which 105 were elected and five (5) nominated. This remained the composition of the House until 1972, when the First Republic came to an end. The ushering in of the Second Republic and the One-Party State by Act No.27 of 1973 increased the membership of the National Assembly from 110 to 135. Of these, 125 were elected and 10 nominated.

The Third Republic was ushered in following the repeal of Article 4 of the 1973 Constitution, in 1990. The new Constitution increased the number of elected

members from 135 to 150 and provided for the Speaker, and eight members to be nominated by the President, bringing the total number of MPs to 159.

In January, 2016, the Constitution was amended to provide for 156 elected Members while the number of nominated Members remained at 8.

COMPOSITION OF THE PARLIAMENT OF ZAMBIA

The Parliament of Zambia is a hybrid of the Westminster System and the Presidential System. One of the key features similar to the Westminster System is the appointment of cabinet ministers from among elected Members of Parliament. The element of Presidential System is attributed to the fact that the President is both the Head of State and Government. Further, the National Assembly of Zambia is a unicameral Parliament.

From the last tripartite elections held in September 2011 to date, the composition of the House has changed from time to time. This is due to nullification of parliamentary seats by the Supreme Court on account of electoral malpractices, death of some Members of Parliament as well as the Presidential by-election, which was held on 20th January, 2015 after the death of the late Republican President, Mr Michael Chilufya Sata.

Currently, the composition of and party representation in the House stands as follows.

Patriotic Front (PF) - Elected	78
Nominated (PF)	8
Total PF	**86**
Movement for Multi-party Democracy (MMD)	34
United Party for National Development (UPND)	33
Independents (IND.)	1
Forum for Democracy and Development (FDD)	1
Alliance for Democracy and Development (ADD)	1
Vacant	2
Total	**158**

With regard to gender representation, the House has 23 female and 133 male Members.

THE ZAMBIAN PARLIAMENTARY COMMITTEE SYSTEM

The Zambian Parliament has a hybrid Committee system in that it is a convention of various parliamentary committee structures and settings from the Commonwealth Parliaments and the United States of America. The committee system ensures that every aspect of the Executive's operations or activities fall under the purview of one or more of the committee.

The authority to establish parliamentary committees in the Zambian Parliament is derived from Article 80(1) of the Constitution. In addition, Article 80(3) requires an equitable representation of political parties and independent Members on

committees. Article 80(4) also makes provision for the Standing Orders to provide the categories, functions and procedures of parliamentary committees.

The National Assembly Standing Orders (2005) provide for four types of Committees namely, House-keeping, General Purposes, Portfolio and Select. A Select Committee is an ad-hoc committee appointed to look into a specific matter, and after concluding its work with the adoption of its Report by the House, it stand dissolved. The other Committees, meanwhile, are Sessional Committees whose mandate is for a year or more, as the Speaker may decide.

With the amendment of the Constitution, Article 89(2) of the Constitution provides for parliamentary committee sittings to be open to the public and the media unless there are justifiable reasons to exclude them and, where it is so, the Speaker is required to inform the public or media of the reasons for the exclusion. Prior to the amendment, Committee proceedings of the House Keeping and Select committees were not open to the public.

(i) General Purpose Committees

General Purpose Committees are so named because their mandates encompass all the government ministries and departments and all the statutory institutions, corporations and authorities. The watchdog or investigatory committees falling under this category include:

(a) Public Accounts Committee;
(b) Estimates Committee;
(c) Committee on Delegated Legislation; and
(d) Committee on Government Assurances.

(ii) House-Keeping Committees

The House Keeping Committees only deal with internal parliamentary matters that deal with the proper functioning of the House, and as such, these committees are not likely to be open to public participation. The Committees under this category are the Standing Orders Committee, the Committee on Privileges, Absence and Support Services and the Reforms and Modernisation Committee.

(iii) Portfolio Committees

There are eleven (11) Portfolio Committees which are responsible for scrutinising various sector ministries and departments and these are as follows:

1. Committee on Agriculture;
2. Committee on Economic Affairs, Energy and Labour;
3. Committee on Communications, Transport, Works and Supply;
4. Committee on Lands, Environment and Tourism;
5. Committee on Health, Community Development and Social Services;
6. Committee on Information and Broadcasting Services;

7. Committee on National Security and Foreign Affairs;
8. Committee on Education, Science and Technology;
9. Committee on Local Governance, Housing and Chief's Affairs ;
10. Committee on Legal Affairs, Governance, Human Rights and Gender Matters, and Child Affairs; and
11. Committee on Youth and Sport.

Members of the House-keeping Committees are drawn from both the front and backbenches. On the other hand, the General Purpose and Portfolio Committees only draw their membership from the backbench. Furthermore, factors such as party representation, gender sensitivity, Members' qualifications, experiences and preferences are taken into account when selecting or nominating Members to various committees. Some of the aspects of committee procedures are that they may, *inter alia*,

a) sit in public with the proviso that, where there are justifiable reasons to exclude the public and the Speaker has notified the public of the reasons, a committee may decide to conduct its business in-camera;
b) Invite submissions on any matter from the public within their terms of reference;
c) sit whilst the House is sitting, but provided that on a division being called in the House the Chairperson of the committee shall suspend the proceedings in the committee for such time as, will in his opinion, enable the Members to vote in a division; and
d) During periods coinciding with the hours of sittings of the House, priority shall be given to meetings of committees dealing with legislation; and
e) Legislative procedure provides for committees to consider Bills after first reading by the relevant departmentally related committee, before general debate and final passage on the floor of the House.

These committees are intended to be more effective by enabling them to fulfil far more specialist roles as might be delegated to them by the House under the Standing Orders or their order of appointment by the Speaker.

PARLIAMENTARY REFORMS IN THE ZAMBIAN PARLIAMENT

Reforms in the Parliament of Zambia have been in progress since the 1990s when the country reverted to multi-party politics from the one-party system of governance. The reforms are intended to, among other things, enhance parliamentary oversight of the Executive and also provide for increased public participation in parliamentary processes. In addition, the reforms are aimed at enabling the Zambian Parliament achieve the goals of attaining greater accountability, transparency and democratic governance. The focus of the Parliamentary Reform Programme (PRP) has been on five key areas, namely*:*

(i) the Committee System;
(ii) the Legislative Process;
(iii) the Administration of the National Assembly;
(iv) Support Services to Parliament and its Members; and
(v) the Member-Constituency Relations.

A number of successes have been scored under the Parliamentary Reform Programme. These include the following:

(i) establishment of Parliament Radio;
(ii) establishment of Constituency Offices in 150 Constituencies of which twenty three (23) have been constructed;
(iii) construction of the new Committee Building;
(iv) Construction of a Media and Visitors Centre;
(v) enhanced public participation in the legislative process;
(vi) enhanced public participation including that of Civil Society Organisations (CSOs) in the Parliamentary committee system;
(vii) revision of Standing Orders;
(viii) increase in the number of portfolio committees;
(ix) amendment of the Republican Constitution (Amendment No. 20 of 2009) to change the Parliamentary calendar which has provided for the national budget to be approved by Parliament before the start of the year; and
(x) capacity building programmes for MPs and staff in budget analysis, policy formulation and analysis, report writing, research methodology and analysis, and parliamentary procedure.

Further, the Institution has developed and is implementing the 2015–2019 National Assembly of Zambia Strategic Plan whose goal is to improve institutional capacity to enable the National Assembly effectively perform its functions, meet the aspirations of the Zambian people and contribute to national development. The Strategic Plan is expected to be basis of programming for the Institution for a period of five (5) years, running from 2015 to 2019.

RAMIFICATIONS OF THE PROVISIONS OF THE AMENDED CONSTITUTION ON THE OPERATIONS OF THE INSTITUTION

Following the amendment of the Republican Constitution, the Parliament of Zambia has had its composition, structure and functions changed as outlined below.

1. Composition and Structure

Article 68(2) has increased the number of elected MPs from 150 to 156. It has, however, maintained the number of nominated MPs at not more than 8.

The Vice-President, who is the running mate to the President, is also a Member of Parliament. Article 74(1) mandates the President to appoint the Vice-President as Leader of Government Business in the House.

Article 74(2) allows the Opposition Party with the most seats in the House to elect a Leader of the Opposition from members of the Opposition.

Article 82(1) provides for MPs to elect the Speaker from among persons outside the House. However, once elected, the Speaker becomes a Member of Parliament. Article 82(3) provides for two Deputy Speakers of different gender and from different political parties. The First Deputy Speaker, like the Speaker, is to be elected by MPs from among persons outside the House who

qualify to be elected as members while the Second Deputy Speaker is to be elected from among Members of the National Assembly.

Further, Articles 116 and 117 empower the President to appoint Ministers and Provincial Ministers respectively from among Members of Parliament. It may be noted that there is no provision for the appointment of Deputy Ministers as was the case previously.

2. Functions

The legislative and oversight powers have been enhanced as follows:

i. Article 63 2 (d) empowers the National Assembly to approve public debt before it is contracted. Previously the National Assembly only had power to approve an increase in the debt ceiling, while the contraction of debt was the prerogative of the Executive. It may be noted, however, that the nature and category of debt that requires approval by the National Assembly will be prescribed by an Act of Parliament in (Article 207(2)).

ii. Article 63(2)(e) gives the National Assembly power to approve international agreements and treaties before these are acceded to or ratified.

iii. Article 66 provides for Presidential assent to a Bill. Previously, where the President refused to assent to a Bill that had been presented twice for assent, the President had to either assent to the Bill or dissolve Parliament. In the current Constitution, where the President fails to assent to a Bill the second time and the period given to the President to assent to the Bill has elapsed, the Bill shall be considered as having been assented to.

iv. Article 87 allows the National Assembly to censure a Minister or Provincial Minister where the MPs are dissatisfied with the conduct or performance of the Minister. A motion of censure shall be moved where it has the support of one-third of the Members of the House.

3. Proceedings of the House

i. With regard to the proceedings of the House, according to Article 75, it is now the Speaker of the National Assembly who will appoint the dates for the sittings of the National Assembly instead of the President as was the case previously. Similarly, according to Article 81(3), Parliament will stand dissolved automatically 90 days before the holding of general elections. Previously, the President dissolved Parliament.

ii. Article 86(1) has increased the number of addresses the President should make to the House each year from one to two. Further, under Article 86(2) the President can send a message to the House at anytime. The Leader of Government Business in the House or a Minister reads the message on behalf of the President.

4. Administrative Structure

Article 218 establishes the Parliamentary Service Commission which, among other things, appoints the Clerk of the National Assembly and officers in the Parliamentary Service. Previously, the President appointed the Clerk subject to ratification by the National Assembly. The rest of the staff in the Office of the Clerk were appointed by the Speaker.

5. Other Important Changes

i. A notable change is the requirement under Article 70 (d) for MPs to possess a Grade 12 Certificate or its equivalent as a minimum academic qualification.

ii. Article 56 has set the date for the holding of general elections, including Parliamentary elections, as the 2nd Thursday of August every five years after the last elections. This means the President will no longer determine the election date.

iii. Under Article 60(4)(a), all political parties with representation in the House will receive financial support from the Political Parties' Fund.

CONCLUSION

In order to live up to its vision of becoming a model legislature for democracy and good governance, the Parliament of Zambia has over the years committed itself to effectively and efficiently carrying out its legislative, oversight, representative and budgetary functions. Further, it is hoped that through the support of its cooperating partners in implementing the Parliamentary Reform Programme and the National Assembly Strategic Plan 2015-2019, the Parliament of Zambia will continue to score successes.

Mrs Claressa SURTEES (Australia) asked about the establishment of constituency offices. She wanted to know why some of the constituencies would not have an office constructed, who paid for the programme of work, and whether the person paying had an impact on the time.

Mr Sayed Hafizullah HASHIMI (Afghanistan) asked how the external Deputy Speaker was selected.

Dr Ulrich SCHÖLER (Germany) said that he wanted to know about the selection of a Speaker from outside Parliament, and what impact having an outsider in the post had on the administration.

Mrs Doris Katai Katebe MWINGA, President, said that there were 150 constituency offices, most of which were rented. Only 23 were constructed by the National Assembly, and there was a budget line for that.

With respect to the external Speaker, she said that he was elected by Members of Parliament from amongst non-Members who would nonetheless be eligible to be Members. One of the reasons for this was that the Speaker had a national, rather than local, constituency. The measure was supposed to assist with his impartiality.

The current Speaker was from the judiciary. He had been nominated by MPs and then a vote took place.

The same principles and practices applied to the second Deputy Speaker. The former Speaker had been a Minister in the Government, but had to resign that post, as well as a post within the ruling party, as soon as he was elected.

Mr Amjed Pervez MALIK (Pakistan) wanted to know about the procedure for removing the Speaker and his deputies.

Mrs Doris Katai Katebe MWINGA, President, said that to remove a Speaker a motion had to be moved by an MP on certain grounds. The motion had to be moved by a third of MPs and have majority support.

The President thanked Mrs MBEWE for her presentation.

7. Communication by Mr Philippe SCHWAB, Secretary General of the Federal Assembly of Switzerland: "The elective function and checks on nominations to Parliament"

Mrs Doris Katai Katebe MWINGA, President, invited Mr Philippe SCHWAB, Secretary General of the Federal Assembly of Switzerland, to make his communication.

Mr Philippe SCHWAB (Switzerland) spoke as follows:

1. The elective function of Parliament and overall architecture of its institutions

Normally a parliament is identified by its legislative role, or sometimes its budgetary or supervisory function. However, another of its roles, updated and popularised in the second half of the 19th century by the journalist Walter Bagehot (1826-1877), is perhaps even more important: its elective function.

The first time that Bagehot spoke of this function, he observed that it was an 'occasional act', so much so that commentators had failed to count the elective function among those of parliament. For this reason, he titled his article 'the unseen work of parliament'.

Since then, this function has gained a high profile and today it seems obvious that the manner in which our parliaments exercise it has a fundamental impact on the overall architecture and workings of our political systems. Moreover, this mechanism operates in two directions: if it has a major influence on the workings of our institutions, those institutions have had and continue to have a major influence on it.

This is particularly true in Switzerland, where the elective function of Parliament is highly sophisticated. This can be explained by the respective structures of the three branches of state: the legislature, the executive and the judiciary. The Federal Constitution[1] ranks https://www.admin.ch/opc/fr/classified-

[1] Swiss Federal Constitution of 18.4.1999 (Federal Constitution).

compilation/19995395/index.html - a148Parliament (the Federal Assembly) first in the hierarchy of federal authorities, after the People and the cantons[2]. This primacy is expressed most evidently in Parliament's power to elect the members of the two other branches of state, i.e. the members of the government (the Federal Council) and the judges of the Federal Supreme Court. Thus, Parliament has greater democratic legitimacy than the other federal authorities, because it is the only institution that has obtained its powers through being elected by the People.

This system has been chosen to allow Parliament to 'fashion' an executive and a judiciary in its own image that are representative of Switzerland's diversity, not only in political terms, but also in institutional, cultural and religious terms.

Switzerland is not a homogeneous country. It has four national languages, twenty-six cantons, jealous of their idiosyncrasies, and two dominant religions that form a group that knows no ethnic, linguistic, cultural or religious unity. This peculiarity has naturally shaped the national institutions, competing to create an extensive system of representation based on a common concept of political partnership: the principle of consociationalism[3].

2. Elections by Parliament

2.1. Election of the members of the government and its president

In accordance to the Swiss Constitution[4], the Federal Council has seven members who are elected every four years following the general elections to the National Council. The Swiss government is a college of equals; there is no prime minister. The number of members is fixed by the Constitution and has not changed since 1848. In contrast to other parliamentary systems, Parliament elects all the members of the government and not simply the head of government, as in Germany for example[5]. The government's mandate is limited to a period of four years, the same as the term of office of the members of parliament[6]. This meyears that the elections to Parliament are synchronised with elections to the Federal Council, which brings a government in harmony with the majority of the members of parliament and of the electorate. The Federal Council thus represents a compromise between a directorial system and an assembly system.

The term of office cannot be reduced, unless a minister resigns during their term or becomes incapable of carrying out their duties, e.g. due to serious health problems[7].

The Federal Council cannot be dissolved during the legislature period. This feature gives the government a high degree of independence: once elected, the seven

[2] Art. 148, para. 1, Federal Constitution.
[3] According to Arend Lijphart, who developed this concept, consociationalism helps us to understand how small European countries characterised by deep cultural divides have been able to maintain peace between their different cultural communities. In consociational democracies, decisions are taken by seeking amicable, compromise agreements that are generally accepted. All the major parties are involved in the process and are assigned political duties and responsible positions in the administration, the armed forces and the judiciary, in proportion to their electoral strengths. Consociationalism thus allows peace to be maintained among the various communities in Switzerland (see AREND LIJPHART, « Consociational Democracy », in : *World Politics*, volume 21, n° 2, January 1969, pp. 207-225).
[4] Art. 175, para. 2, Federal Constitution.
[5] Art. 63 of the Basic Law for the Federal Republic of Germany of 23.5.1949.
[6] Art. 175, para. 3, Federal Constitution.
[7] Art. 140a Parliament Act of 13.12.2002.

ministers in the government are no longer dependent on Parliament. There are no votes of confidence, no motions of censure, and no opportunities to unseat a member of the government. Equally, the government has no power to dissolve Parliament. On the other hand, Parliament exercises strict supervision over the work of the members of government throughout the legislature period. Due to its constancy, parliamentary control compensates for the intermittency of elections and maintains a certain grip on the Federal Council.

Each year, Parliament also elects the president of the Swiss Confederation and the vice-president from among the members of the Federal Council. The president thus changes each year based on a succession rule established by custom. The president of the Swiss Confederation is neither the head of state nor the head of government, and has no authority over his or her colleagues in the Federal Council whom he or she has not chosen and to whom he or she may not give orders or instructions. The president of the Swiss Confederation is thus the '*primus inter pares*' and carries out special duties that are primarily ceremonial, as well as chairing meetings of the government. Essentially the Federal Council exercises governmental authority and acts as head of state as a body. This lack of hierarchy probably makes Switzerland the only country in the world with no head of government[8].

Parliament also elects, for a duration of four years, the Federal Council's chief of staff, who holds the title of Federal Chancellor.

Since 1959, the Federal Council has been a grand coalition of the four largest political parties sitting in Parliament. The coalition is broad and covers a wide political spectrum extending from the socialist left to the nationalist right, taking in the centre on the way. In contrast to other coalition governments, no political party takes precedence over the others and each party can have a maximum of two members in the Federal Council. These members are elected individually, one after the other: there is not an election, en bloc, of the seven members, but seven individual elections. The vote is a secret ballot, often comprising several rounds. To be elected, a candidate must receive more than half of the available votes (an absolute majority). To prevent the election process from taking too long, after the third round of voting, the candidate in last place is eliminated and may not stand again. Federal councillors who stand for a further four-year term – which is quite normal – are voted on in order of their seniority.

The Constitution requires the various regions and the language regions to be fairly represented in the Federal Council[9]. This means the parties should have candidates in their ranks who reflect the country's diversity. Currently, the Federal Council comprises three French-speaking and four German-speaking members. Until 1999, the Constitution forbade two federal councillors from the same canton. Even today, the Federal Assembly tries to adhere to this requirement.

The obligation that both the political parties and the different regions and languages of the country be fairly represented is a response to the concept of consociationalism,

[8] Strange though it may seem, Switzerland owes its collegial system to France, which imposed it on the Swiss during the Helvetian Republic in 1798. See JEAN-LUC PORTMANN, *Histoire du gouvernement fédéral suisse. Le Conseil fédéral des prémices de l'Ancien régime à 2009*, Edition Arttesia, Lausanne/Zurich/Lugano, 2009.
[9] Art. 175, para. 4, Federal Constitution.

which is so fundamental to maintaining harmony among the cultural communities in Switzerland.

During their term of office, the federal councillors must work in a collegial manner[10], which means that the ministers must work together to deal with government business and take strategic decisions. Although the Federal Council has seven members, it is regarded as a single body once constituted. Its members must present a united front in their external dealings. Each member must respect and support the decisions taken, and implement them dutifully, even if he or she originally took a different view.

The requirement of collegiality has certain very specific consequences: in 2007, a member of the government failed to secure re-election at the end of his term of office because he experienced some difficulty working in a collegial manner; this created a sensation. Thus, in order to be re-elected, a federal councillor may have to pursue a policy that does not accord with that of his or her own party, but which is likely to achieve consensus. This is all the more the case because the members of the college are elected individually: in a parliament where no single party has an absolute majority, each candidate must find a majority among the political groups that support them. The principle of collegiality thus requires majority parties to refrain from exploiting their dominance.

The principle of collegiality and the term of office have consequences for the way in which federal councillors work: rather than seeking the approval of those on the outside, they must find common ground with their colleagues; rather than giving priority to their own political views, they must learn to defend those of the Federal Council. This system encourages moderation and restraint, acting as a strong cohesive force within the government.

Both in its composition and in its operation, the Swiss government must therefore meet two requirements: that of representing the diversity of the country, while at the same time presenting a united front. The Federal Council is thus a precise reflection of what the Swiss Constitution demands that Switzerland be: united in its diversity[11].

2.2 Election of the judges of the Federal Courts

The Federal Assembly is also responsible for electing the judges of the federal courts[12]. These elections take place every six years[13] with a few exceptions. Each judge is elected by an absolute majority of members of parliament.

Since 2003, the Judiciary Committee, comprising twelve members from the National Council and five members from the Council of States, has been responsible for inviting applications for vacant positions and preparing for the elections. The committee ensures that the various political forces are equally represented within the

[10] Art. 177, para. 1, Federal Constitution.
[11] Art. 2 para. 2, Federal Constitution.
[12] The federal courts are composed of the Federal Supreme Court, the Federal Administrative Court, the Federal Criminal Court, the Federal Patent Court and the Military Court of Cassation.
[13] Art. 145, Federal Constitution.

federal courts. Generally, it only submits candidacies to the vote if they have the full support of at least one political group. This recruitment method results in a close correlation between the relative strengths of the parties in Parliament and the composition of the supreme judicial authority – although there is a certain misalignment due to the judges having a longer term of office.

Under the Federal Constitution, any citizen who is eligible to vote may become a judge in the Federal Supreme Court[14]. In practice, however, only candidates with complete legal qualifications and broad experience are elected. In addition, the candidates' first language and the regions that they come from are also taken into consideration.

In the election of judges, the requirements of consociationalism also dominate the process, and it is exceptional for judges once elected not to be reappointed to their positions. Indeed, there have been only three cases of judges not being re-elected; in two of these cases, the age of the candidates was the issue, while the third case was due to an error – the judge in question was re-elected the following week through the replacement procedure.

In practice, the choices that Parliament makes aim to bring continuity. Although a desire for party representation plays a key role in the election of judges, once elected, they remain in place. For the Federal Assembly, this is a way of maintaining stability throughout the structure. A decision not to re-elect a judge or a federal councillor would be liable to upset this balance. In the courts as in government, there is therefore a high level of stability and, generally speaking, persons elected to office tend to serve for longer than they might personally wish.

2.3. Other elections: the Attorney General and the Commander in Chief of the Armed Forces

Since 2011, the Attorney General of the Confederation and his two deputies have also been elected by the Federal Assembly, together with the Attorney General's supervisory body. The Federal Assembly regarded this procedure as the best way of preventing any form of political or governmental influence over the work of the federal prosecution service. Once again, the Judiciary Committee prepares these elections.

Parliament is also responsible for electing a general to act as the supreme military commander. This is not a permanent position and an election is only held when a major mobilisation of troops is expected. Since 1848, Parliament has elected a general on five occasions, the last time in 1939.

3. Confirmation of nominations

The Federal Assembly is not only responsible for the election of the members of the government and Federal Supreme Court judges. In certain cases, it is also required to confirm nominations proposed by the government[15]. These include the Federal Data Protection and Information Commissioner and for the Director of the Swiss Federal

[14] Art. 143 Federal Constitution.
[15] Art. 168, para. 2, Federal Constitution.

Audit Office. The first named has the task of applying the legislation on data protection and ensuring that citizens can access public documents. The Swiss Federal Audit Office is the supreme financial supervision body in the Confederation and has a function similar to a court of auditors.

The heads of these two offices are chosen by the Federal Council, but they cannot begin their work until Parliament has confirmed their nomination by a vote. Parliament can accept or refuse the government's proposal, but it cannot propose its own candidate. This derogation from the principle of the separation of powers requires an explanation: the appointment of these two senior officials by Parliament gives them a high degree of legitimacy and independence, which is reinforced by distancing them from the hierarchical powers: they do not receive instructions from the government and cannot be removed from office unless it is proven that they are unable to carry out their duties.

Here again it is the Judiciary Committee that interviews the proposed candidates, gathers the information required and makes recommendations to the Federal Assembly before a confirmation vote is held.

A similar procedure applies for the Secretary General of the Federal Assembly whose election is also confirmed by a vote in Parliament. In contrast to the Data Protection Commissioner and the Director of the Swiss Federal Audit Office, the Secretary General is appointed by the Conference for Coordination, which is formed from the two offices of the chambers, and thus comprises in which the presidents and vice presidents from the two chambers and heads of all the political groups represented in Parliament. The Secretary General is the sole parliamentary official elected by the Federal Assembly by secret ballot. This method of selection is justified by the fact that the person exercises the highest office in parliamentary administration. It gives the Secretary General a large degree of legitimacy in the eyes of the parliamentary bodies and Council members and thus a broad scope for action within the administration. The Secretary General cannot be removed during the four-year legislature period. Unless he or she stands down, the Secretary General is reappointed automatically[16]. This has always been the case so far.

4. Conclusion

As we have seen, the elective powers granted to the Federal Assembly are very important. It appoints the members of the executive and the judiciary at federal level; since 2011, it has also appointed the Attorney General of the Confederation and the related supervisory body. The Federal Assembly also elects the Commander in Chief of the Armed Forces in times of war. Finally, it is responsible for confirming certain nominations.

The representation of the main political parties in Parliament, the government and the Federal Supreme Court and the effort made to ensure representation for Switzerland's regions and linguistic communities is a response to the concept of proportionality and fair representation contained in our democratic principles. The

[16] Art. 26 Parliamentary Administration Ordinance of 3.10.2003.

elective function of Parliament thus plays an essential balancing role by supporting or restraining certain trends.

Consociationalism is not simply an obligation. It is also a tool and a means of expression for the Federal Assembly. It allows all the forces in the country to have a voice, and if used properly it is the key to maintaining Switzerland's national unity.

M. José Manuel ARAUJO (Portugal) wanted to know if there were nominees for the posts of federal judge and whether appointment or confirmation hearings were held. He asked how nominations were made and said that the same system existed in Portugal.

Mme Jane KIBIRIGE (Ouganda) asked how Parliament obtained the names of candidates – whether a committee dealt with the matter or whether the names arose from constituency MPs.

M. Geert Jan A. HAMILTON (Pays-Bas) said that the system in Switzerland gave rise to a stability of which other countries were envious. He asked if ministers were deemed to be untouchable, or whether there were situations in which ministers were criticised and forced to resign.

Mr Gengezi MGIDLANA (South Africa) asked about the issue of party representation in the appointment of judges.

Dr Horst RISSE (Germany) asked whether there were some features in Swiss society that made it possible to have a less-confrontational political system.

Mr SCHWAB said that candidates went before a committee. The recommendation to appoint was either adopted or rejected. This became the subject of a report and a recommendation to the chamber, which would take the final decision.

In response to Uganda, he said that there were many ways in which nominations could arise. Nominees could be proposed by a party or by civil society. All available posts were subject to open competition. Candidates could propose themselves.

In response to the question from Mr HAMILTON he said that saints had also been martyrs, and that ministers were subject to constant criticism. The available checks and balances were numerous. Once elected, a minister had four years of work, if he could withstand the pressure. Resignations did not take place after the rejection of a law by referendum. Ministers aged quickly under fierce pressure.

At the moment of a hearing in Committee, judges had to renounce their political affiliations. Judges did not resign and they had a mandate of six years with automatic renewal. Historically only two judges had not continued in post because they had reached 70 years of age and had not resigned spontaneously.

It was difficult to talk about what was expressed in front of an assembly. Switzerland was surrounded by powerful neighbours, which had le dit to seek the force to resist the pressures they imposted. One does not form nations because everyone is the same, but because everyone is different. Switzerland was a nation formed by the will

of its people to work together. Thus it preferred dialogue and collaboration in order to resolve conflict. The system worked well.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr SCHWAB for his communication.

8. Communication by Mrs Jane L. KIBIRIGE, Clerk of the Parliament of Uganda: "Crossing the floor in Uganda"

Mrs Doris Katai Katebe MWINGA, President, announced that, as Mr HAROU was not yet present, his communication would be postponed. She invited Mrs Jane L. KIBIRIGE, Clerk of the Parliament of Uganda, to make her communication.

Mrs Jane L. KIBIRIGE (Uganda) spoke as follows:

1. Introduction

According to the UK Parliament glossary listing Parliamentary terms and their definitions[i] to cross the floor in Parliament means to change sides: to leave one political party and join another. The expression "floor crossing" comes from the sitting arrangements in the Chamber (Parliament) where the party in Government sits together on the right and the Opposition sits together to the left. A change of party allegiance can literally mean crossing the floor of the House from one side of the Chamber to the other.

The term floor-crossing was first used to describe the process when Members of the British House of Commons crossed the floor to join members of another political party that was seated on the opposite side of the floor. An MP who switched parties would literally need to cross the floor. A notable example of the latter is Winston Churchill, who crossed the floor from the Conservatives to the Liberals in 1904, before later crossing back in 1924.[ii] Today, the process whereby one Member of Parliament (or Council) ultimately leaves his or her political party in order to join another party or become an independent member is often referred to as floor-crossing.

Voting against party lines

The term has passed into general use in other Westminster parliamentary democracies (such as Canada, Australia, New Zealand and South Africa) even if many of these countries have semicircular or horseshoe-shaped debating chambers and mechanisms for voting without Members of Parliament leaving their seats. In most countries, it is most often used to describe members of the government party or parties who defect and vote with the opposition against some piece of government-sponsored legislation, but that usage is not widespread in Canada, where the term's usage is restricted to the original definition. Most political parties let their members have a free vote on some matters of personal conscience.
In Australia, one of the major parties, the Australian Labor Party requires its members to pledge their support for the collective decisions of the Caucus,[iii] which theoretically prohibits them from crossing the floor; however, in practice, some Labor members disregard this pledge despite the disciplinary action which may

result. Among other parties, crossing the floor is rare although Senator Barnaby Joyce of the National Party of Australia crossed the floor 19 times under the Howard coalition government.[iv] Nonetheless, the record for crossing the floor in the Australian Parliament goes to Tasmanian Senator Sir Reg Wright, who voted against his own party the Liberal Party of Australia on 150 occasions.

Changing parties

In the United Kingdom, Canada, and other countries, the term is also used to describe leaving one's party entirely and joining another party, such as leaving an opposition party to support the government (or vice versa), or even leaving one opposition party to join another. In both Canada and the United Kingdom, the term carries only this meaning and is not used for a simple vote against the party line on a bill.
In April 2006, the premier of Manitoba, Canada, Gary Doer of the New Democratic Party of Manitoba, proposed a ban on crossing the floor of the Manitoba legislature in response to "the concern some voters have expressed over the high-profile defections of three federal MPs from their parties in just over two years.[v] The resulting legislation, which amended the provincial *Legislative Assembly Act*, mandated that Members of the Legislature who quit their political party to serve out the remainder of their term as independents.[vi]

Considering the usage of floor-crossing where Members of Parliament leave their political party, the question is what then happens to the seat? To whom does the seat belong? There are three main ways that legislation can deal with this:

I. The seat belongs to the political party

If this is the case, the person who leaves (or is expelled from) his/her political party will lose their seat, and the party can decide whom they want to give it to. This strengthens the party organisation and keeps the political balance that voters decided on in the last election. This system is most common in countries with Party List Proportional Representation electoral systems for example South Africa and Rwanda.

II. The seat belongs to the individual Member of Parliament, and he or she can keep the seat regardless of their stay in the same political party

This strengthens the role of the individual and also his or her links to the constituency. In this case, party discipline may be weakened, and some argue that individual Members of Parliament are less likely to seek consensus with party members and in the parliamentary group if they have the option to leave the party but to keep their seat at the same time. Floor-crossing is also seen by some as a justified way to respond to a changing political context and something that should be part of a dynamic and vivid party democracy.

III. The seat belongs neither to the party nor to the individual Member of Parliament.

A by-election must be held to fill the seat. This system is used in countries with majority/plurality electoral systems. A by-election offers the opportunity to fill the vacant seat with a fresh candidate, and it allows the voters to express their will again. Voters may vote differently and thereby express discontent with the ruling parties.

2. History of Multi Party Political System in Uganda

Uganda gained her independence on October 9th 1962. Since 1894 she was a British protectorate that was put together from some very organized kingdoms and chieftaincies that inhabited the lake regions of central Africa. At independence, Dr. Milton Apollo Obote, also leader of the Uganda People's Congress (UPC) became the first Prime Minister and head of the government. According to the **Encyclopedia of the Nations** on Africa particularly on Uganda, The Uganda People's Congress (UPC) led by Milton Obote's was founded in 1959. UPC was a small party though it had a few prominent politicians such as Grace Ibingira, Felix Onama, Mathias Ngobi and Edward Rurangaranga, who were representing their own regional interests. Two other parties - the Catholic-leaning Democratic Party (DP) and the Buganda-sponsored Kabaka Yekka (KY) contested for the pre-independence elections in April 1962. DP won the most seats, but not a majority that would enable it to form a government. Milton Obote saw an opportunity there and maneuvered a UPC/KY alliance. This enabled him to have a majority in Parliament and an appointment as the first Prime Minister. The so-called 'unholy alliance' or 'marriage of convenience' would finally end in 1964.

The advancement of Buganda interests in independent Uganda was one of the key reasons for the alliance and indeed the formation of KY. However, a coalition government involving an executive Prime Minister and the Kabaka as president was bound to run into rough waters. As much as Obote proved adept at meeting the diverse demands of his allies including Buganda's claim for special treatment, he found the going difficult when faced with similar demands from other kingdoms. As the man entrusted with running the whole country, he knew that the 12-month honeymoon with Buganda would have to come to an end sooner or later. The Idi Amin factor would prove to be crucial. Obote saw in Amin, a loyal soldier he would groom as a protégé for his own political survival. It was after appointing Idi Amin as deputy commander in 1964 that the military began to assume a more prominent role in Ugandan politics and become an important tool for winning political contests. With the army under his control, Obote felt it was the right time to address the potentially explosive issue of the "lost counties," (Buyaga and Bugangaizi), which the colonial government had conveniently postponed for the post-independence government to address.[vii] This was also made possible because his UPC party had managed to acquire a majority in Parliament following the crossing of DP members to his UPC. But the real turning point came when several DP members of Parliament from Bunyoro agreed to join the government side if Obote would carry out the referendum on the "lost counties," which they were sure would succeed. Amidst opposition from Buganda and the threat of civil war, the referendum was held on November 4, 1964 with an overwhelming desire by residents in the lost counties annexed to Buganda in 1900 to be restored to Bunyoro.

This triumph for Obote and the UPC strengthened the central government and threw Buganda and its KY into confusion with the result that many KY MPs "crossed the floor" to join Obote's UPC.

Naturally, Obote knew that his support in the Buganda region was gone. In response, he ordered the security forces to react with maximum force to any perceived sign of opposition instigated by Mengo(Buganda Kingdom Headquarters). This new policy, which was unprecedented, was starkly demonstrated on November 10, 1964 when the security forces descended on Nankulabye and shot dead six people in what has been referred to as the 'Nankulabye massacre.[viii]' This was to mark a major turning point in Buganda's relations with UPC." But with its majority in Parliament, the UPC government was able to have its way. The ruling party thrived but not for long because Idi Amin, Obote's military protégé, became the ultimate source of disharmony.

The 1995 Constitution of Uganda

On the 22nd day of September, 1995, the people of the Republic of Uganda through the Constituent Assembly, enacted and gave themselves the Constitution of the Republic of Uganda. The Constitution enjoins any person applying or interpreting it to be guided by the objectives and principles amongst which are the democratic principles. The fundamental democratic principles being:

(a) That the state shall be based on democratic principles which empower the active participation of citizens at all levels in their governance; and

(b) All the people of Uganda shall have access to leadership positions at all levels, subject to the Constitution.

Article 69 of the Constitution of the Republic of Uganda gives the people of Uganda the right to choose and adopt a political system of their choice through free and fair elections or referenda. The people of Uganda exercised that right on the 28th day July, 2005 through a referendum where they chose multiparty political system. The right to associate and belong to an organisation is guaranteed under 29(e) of the Constitution.
Article 77 and 78 of the Constitution establishes Parliament and its composition. Article 83 provides for the Tenure of office for Members of Parliament. One of the grounds under which a Member of Parliament shall vacate his or her sit in Parliament is where that person leaves the political party for which he or she stood as a candidate for election to Parliament. It provides-

i. *A member of Parliament shall vacate his or her seat in Parliament:-*
ii. *if that person leaves the political party for which he or she stood as candidate for election to Parliament to join another party, or to remain in Parliament as an independent member;*
iii. if, having been elected to Parliament as an independent candidate, that person joins a political party -----."

The Court of Appeal of Uganda sitting as a Constitutional Court had the occasion to interpret Article 83(1) (g), in the case of Attorney General vs. George

Owor, Constitutional Appeal No. 1 of 2011. The brief background facts leading to this appeal are Mr. William Oketcho joined the 8th Parliament as an independent. That in August 2010, without resigning his seat in Parliament, Mr. William Oketcho offered himself on the National Resistance Movement (NRM) party ticked to contest as a Member of Parliament in the 9th Parliament. Mr. George Owor petitioned the Constitutional Court, contesting the constitutionality of Mr. Oketcho's nomination under article 137(3) of the Constitution of the Republic of Uganda for declaration, (1) that the acts of William Oketcho to seek nomination for election as NRM Party flag bearer when he was an independent Member of Parliament for West Budama North Constituency, and, (2) continuing to sit in Parliament and enjoying the privileges as such an MP when he has joined the NRM Party, were inconsistent with and or in contravention of the various named articles of the Constitution of the Republic of Uganda. The petition was successful and the Attorney General and Mr. Goege Owor appealed to the Supreme Court.

The Supreme Court held that the right to associate is a matter of an individual's choice. In the instant case, Mr. William Oketcho had made his choice the moment he offered himself for nomination as a flag bearer of NRM party and the Constitutional Court had found, rightly that: "*when he clearly joined NRM and was accepted as its flag bearer. He is deemed to have vacated his seat in Parliament from the date of his purported nomination as a flag bearer of NRM*". The Court further held that

Article 83(1) (g) (h) is very clear as to the sanction or punishment for its violation. It prescribes automatic loss by the offending MP of his or her seat in Parliament. The intention behind this sanction was to instil in the MPs integrity, accountability and a sense of respect for the wishes of the electorate, by subjecting the offending MP to a fresh election, if he or she wishes to regain his or her seat in Parliament, or to seek election to the next Parliament.

3. Recent developments on floor crossing in Uganda

On 14th April 2013, the Central Executive Committee (CEC) of the National Resistance Movement party which is the ruling party in Uganda expelled four Members of Parliament from the party on grounds that they had acted/behaved in a manner that contravened various provisions of the Party Constitution. The Appellants challenged their expulsion in the High Court.

Following the expulsion of the said four MPs from the NRM Party, the Secretary General of NRM wrote to the Speaker of Parliament informing her of the party's decision and requesting her to direct the Clerk to Parliament to declare the seats of four Members of Parliament in Parliament vacant to enable the Electoral Commission conduct by-elections in their constituencies.

On the 2nd of May 2013, the Speaker in her ruling in Parliament declined to declare the seats vacant and upon that refusal, Hon. Lt. (Rtd.) Saleh Kamba (2nd respondent) and Ms. Agasha Mary filed Constitutional Petition No. 16 of 2013 in the Constitutional Court challenging the constitutionality of the Speaker's decision.

The Constitutional Court made a declaration among others that *the expulsion from a political party is a ground for a Member of Parliament to lose his/her seat in Parliament under Article 83(1) (g) of the Constitution. Thus the said expelled*

Members of Parliament who left and or ceased being members of the National Resistance movement vacated their respective seats in Parliament and were no longer Members of Parliament as contemplated by the Constitution.

The four Members of Parliament appealed against the decision of the Constitutional Court to the Supreme Court.

I. Government tables Constitutional Amendment Bill 2015

Before the Supreme Court could make a decision on the appeal case, the Government tabled the Constitution Amendment Bill, 2015 seeking to amend Article 83 amongst other provisions of the Constitution. The Amendment Bill sought to introduce another ground on which a Member of Parliament loses his or her seat under Article 83(1) (g).

The amendment sought to widen the scope to include situations where a Member of Parliament ceases to be a Member of the political party or political organization (as a result of expulsion from the party) for which he or she stood as a candidate for election to Parliament. The argument put up by the proponents was that for a multiparty political dispensation to work, the political parties must of necessity be able to discipline and call to account all their members - including those who are elected to be representative state organs like Parliament. Most critical in the case of Uganda, would be for internal disciplinary processes to be democratic, allow for fair hearing and natural justice to play out - as demanded by Article 71 of the Constitution of Uganda.

A look at the practice in other Commonwealth democracies is instructive. In the UK, a noteworthy case is that which involved George Galloway (originally Labour MP from Glasgow) who was expelled from the Labour Party in 2003, for fighting his own government (Tony Blair's) ferociously over its policy in Iraq.

After a two-day hearing by the National Constitutional Committee of the Labour Party (the equivalent of the NRM's National Disciplinary Committee), Mr Galloway was expelled from the party, and promptly announced his intention to fight in a by-election, possibly as an Independent.

When he later changed his mind about forcing a by-election, he remained in Parliament for the remainder of his term up to 2005, but never contributed again on any motion or asked an oral question.

The lesson here is that without a by-election, an expelled Galloway could not purport, in a multiparty dispensation, to be "representing the people" in Parliament - a fiction some people had wanted to see being enacted in Uganda! In that multiparty dispensation he could only "represent the people", as a member of a political party or as an independent.
This particular proposal was never passed by the House. This proposal was rejected by the House after the Speakers ruling that it was *sub judice*.

The bill also sought to introduce an exception that allowed a Member to cross to another party twelve months before election without losing their seat. This in effect allowed Members of Parliament who would wish to stand on different party ticket to

join another political party and participate in the party primaries without losing their seats in Parliament.
Indeed, after gazetting the Constitution Amendment Act 2015, a number of Members of Parliament who joined Parliament as independent candidates joined the Movement Party and participated in the party primaries in preparation for the forthcoming general elections in Uganda.

II. The Supreme Court Judgement

On 30th October, 2015 the Supreme Court delivered a landmark judgment in *Constitutional Appeal No. 01 of 2015* and held that the Constitutional Court erred when they interpreted Article83(1)(g) to mean that Members of Parliament who are expelled from their political parties have to vacate their seats in Parliament by virtue of that Article. It was, therefore, wrong for the Constitutional Court to order the 1st, 2nd, 3rd, and 4th appellants to vacate their seats in Parliament.

Mr Najib EL KHADI (Morocco) said that, in Morocco, he Constitutional Court had drawn a distinction between leaving a seat, and therefore quitting a party, and being expelled from membership of the Parliament.

Mr Willian BEFOUROUACK (Madagascar) said that they had a similar constitutional and legal framework. The National Assembly treated the matter in three ways: MPs and senators who did not belong to a political party had the opportunity to choose a group affiliation; MPs elected as representatives of a party could not choose their group affiliation; and finally, any change of affiliation could bring the Constitutional Court into play.

Mr Fademba Madakome WAGUENA (Togo) said that the phenomenon described had been described as “political transhumance”.within his country. An MP elected under one political banner could at any moment change his affiliation. The most recent example was of an MP joining the opposition, but usually changes were from the opposition to the majority party. The nature of the mandate in Togo meant that, once elected, the MP became an MP for the entire nation.

Mr Marc BOSC (Canada) said that the issue of the expulsion of Members from Parliament had not yet taken hold in the House of Commons in Canada, probably because of the self-interest of Members. The view was that Members would be sanctioned at the time of election if the voting public was not happy with the decision they had taken to cross the floor.

In 2006, a Member who had just been elected as a liberal was convinced to change party allegiance by the incoming Prime Minister and, at the moment of swearing became a conservative, and later a Minister in the Government. The electorate was not very happy with his decision but there was no parliamentary sanction applied.

Mrs Doris Katai Katebe MWINGA, President, thanked Mrs KIBIRIGE for her communication and members for the questions she had asked.

9. Concluding remarks

Mrs Doris Katai Katebe MWINGA, President, closed the sitting and requested that members proceed to have a group photograph taken.

The sitting ended at 12.40 pm.

SECOND SITTING

Sunday 20 March 2016 (afternoon)

Mrs Doris Katai Katebe MWINGA, President, was in the Chair

The sitting was opened at 2.35 pm

1. Introductory remarks

Mrs Doris Katai Katebe MWINGA, President, opened the sitting. She reminded members that the deadline for the receipt of nominations for the two available posts of ordinary member of the Executive Committee was 4pm on that day. Members were encouraged to approach the joint secretaries if they wanted a nomination form.

2. Communication by Mr Manuel CAVERO, Secretary General of the Senate of Spain: "The powers of the Parliament of Spain vis-à-vis an acting government following a general election"

Mrs Doris Katai Katebe MWINGA, President, invited Mr Manuel CAVERO, Secretary General of the Senate of Spain, to make his communication.

Mr Manuel CAVERO (Spain) spoke as follows:

1. General elections, the convening of the Houses of Parliament and the process for forming the Government.

A general election was held in Spain on December 20th, 2015. Citizens voted for the 350 members of the Lower House ("Congreso") and for 208 of the 266 senators in the Upper House (the remaining 58 members of the "Senado" are elected by the Regional Parliaments).

The Congress and the Senate held their respective opening sessions on January 13th, 2016.

The expression of Parliament's confidence in the new Government is the sole responsibility of the Congress (the Senate does not intervene), through the election of the Prime Minister (article 99.3 of the Constitution) in a process known as "investiture".

The latest election has brought about a novel large-scale fragmentation of the political representatives present in the Congress with the result that, unlike what has happened since 1978 when the Constitution was approved, no single political party can form a Government except with the explicit support or abstention of two or more parties.

Pursuant to article 99.1 of the Constitution, following a general election the King will confer with the designated representatives of the political groups with representation in parliament and will put forward the name of a candidate for Prime Minister. The Constitution does not impose any deadline that the King must respect although, due to the importance of such actions, it is logical for such consultations to take place without delay, as has been the case. After conducting two rounds of consultations and in view of the opinions expressed by the parties' leaders, the King proposed the candidate of the PSOE party, which, with 90 MPs, is the second most numerous in the Congress.

Neither the Constitution nor the Regulation of the Congress stipulates any deadline for submitting the King's proposal to the House. It is left up to the Speaker of the Lower House to decide to call the investiture session whenever this is deemed appropriate. In order to obtain the confidence of the Congress, the candidate must obtain an absolute majority at the first vote or, if this is not achieved, the same proposal is put to the vote again forty-eight hours later, at which time a simple majority is sufficient. Since 1978, the Prime Minister has always been designated in either the first or second of these investiture votes.

However, in the voting that took place in Congress on March 3rd and 5th, the candidate proposed failed to achieve a sufficient majority, a situation never before seen in Spanish political life under the 1978 Constitution.

According to the Constitution, if both these ballots fail to succeed, subsequent proposals (there is no indication of how many and it would seem that these could be with the same candidate or others, presumably following further consultation with the King) will be considered and voted on using the same double ballot procedure.
The only deadline defined in the Constitution begins to run from the moment the first vote is taken in Congress on whether or not to place its confidence in the candidate proposed by the King. Starting from that date (March 3rd), if no candidate obtains the confidence of Parliament within the term of two months (concluding on May 3rd), then the King dissolves both Houses (curiously the Senate is "penalized" even though it has no responsibility for the failed investiture) and convenes a new general election. Bearing in mind that a term of fifty-four days must elapse between the dissolution of parliament and the election date, this will foreseeably be June 26th.

On Monday, March 7th, the King informed the Speaker of Congress that, for the time being, no further consultations will be held with the representatives of the political parties pending any actions that may be taken in the interim.
The fact that the formation of a new Government is taking longer than has been usual, or may even not be achieved, in which case another general election will have to be called, requires an examination of the situation the previous Government is in and the powers of the Spanish Parliament vis-à-vis the Acting Government. This is not a question that has to date been raised in any formal setting insofar as the election result provided a certainty that the formation of a new Government was practically imminent. The novelty in this 11th Legislature is precisely the possibility that the transitional period may last for a considerable amount of time.

2. The Acting Government

In its article 101, the Spanish Constitution foresees that the Government in power ceases its mandate following the holding of general elections (as well as in certain other scenarios) and that the outgoing executive will continue as the "Acting Government" until the next Government is voted into power. This provision has been developed in the Government Act (Law 50/1997), in which article 21 regulates what the Acting Government is and is not allowed to do. Thus, among other matters, an Acting Government:

- must limit its activities to the ordinary processing of public affairs and refrain from adopting other measures unless such actions are warranted due to reasons of urgency or the general interest.
- cannot dissolve Parliament, nor call for any vote of confidence.
- cannot submit draft bills to either House.
- cannot bring a Budget before Parliament for approval.

While the last three prohibitions are clear, the issue most difficult to define is what "the ordinary processing of public affairs" consists in and what other measures of major significance outside this scope an Acting Government can adopt should the circumstances so require.

When examining this matter, legal thinking has referred to the need for the Government to restrict itself with regard to its activities. For its part, the Supreme Court indicated in a 2005 judgment that the Acting Government may not take decisions implying the adoption of guidelines in any political direction. This requires a case by case examination of each action, with the difficulties inherent to casuistry.

3. The powers of the Spanish Parliament vis-à-vis an Acting Government.

The question is: what are the powers of the Congress and the Senate, once fully operational after the general election, vis-à-vis an Acting Government?

The Spanish system involves a parliamentary government (article 1.3 of the Constitution) and is framed in the model of "rationalized parliamentary system". Furthermore, the Constitution acknowledges major competencies for the Executive. For the parliamentary system to operate fully, it is necessary for both pillars (Parliament and Government) to enjoy the full use of all their powers. If either one of them (in this case, the Government) has its powers diminished (because it is only an "Acting Government"), then the powers of the other pillar (Parliament) must be moderated to safeguard the balance of power. An Acting Government lacks the political confidence of Parliament (specifically of the Lower House) and the principles of collaboration and balance of power inherent to the parliamentary system are seriously affected by this circumstance.

3.1. Legislative function. The question that must be asked is whether or not Parliament can enact laws when there is only an Acting Government.

It is evident that there is no possibility of laws being approved at the Government's initiative as article 21 of the Government Act cited above prohibits an Acting Government from submitting bills to the House.

But can both Houses of Parliament, in such circumstances, approve laws stemming from the initiative of MPs or senators themselves (or even from the regional authorities or popular initiatives)?

There is no express prohibition in the Constitution. Nonetheless, it is necessary to have a systematic interpretation of the set of constitutional precepts regulating the parliamentary form of government.

From such a perspective, serious doubts are raised as to whether or not the Government, which is responsible under article 97 of the Constitution for guiding the country's policies (mostly by passing laws), is unable to exercise legislative initiatives because it is "acting" yet would be obliged to execute the laws "imposed" on it by a parliament that has not granted it its political confidence. On the one hand, in such a situation the system of parliamentary government would seem to be giving way to an assembly-based system that is not foreseen in the Constitution. On the other hand, it does not seem possible for an Acting Government, which must limit itself to the "ordinary processing of public affairs", to be able to apply new laws implying a different political alignment. For this reason, it would also seem suitable to apply self-restriction, in this case by the Houses themselves.

Were the Congress and Senate to process legislative initiative despite the fact that there was only an Acting Government in place, it would seem, at the very least, that the Government would be able to exercise its power to oppose the legislative initiatives of MPs and senators that imply an increase in budgeted expenses or a reduction in revenue, as this power is a general one foreseen in article 134.6 of the Constitution.

3.2. Oversight function. The first doubt is one of principle: it is possible for Parliament to oversee a Government that has not emerged from a relationship of political confidence granted by the Houses voted into power at the general election (but rather one carried forward from a previous election)? From a theoretical standpoint, parliamentary oversight is a consequence, in the parliamentary government regime, of the confidence placed by parliament in the executive and thus, in theory, an Acting Government is not the intended object of the oversight function characteristic of this system. The Constitution does not however establish an express prohibition in this case either. It is once more necessary to advocate the systematic interpretation of the Constitution.

In this line, parliament's ordinary oversight of an Acting Government through the classical instruments of parliamentary question time, summoning ministers or formal appearances would not be possible in connection with "the ordinary processing of public affairs" if the government is merely limited to pure and simple management of day-to-day business.

On the other hand, whenever the actions involve the adoption, by the Acting Government, of measures that exceed what is ordinary and are required for reasons of urgency or in the general interest, it does seem possible for Parliament to be able to exercise oversight, albeit only exceptionally, and in the knowledge that its oversight cannot extend to any demand for political responsibility through a no-confidence motion. Thus it is possible, for example, to summon a particular member of the Government whose department is responsible for adopting the measures in

question. In such scenarios, a case by case analysis of the circumstances must be made in order to implement the oversight instrument.

A different matter is a request for information or documents on record with the public administrations: only the Government is "acting", not the Administration, which must furnish any and all information requested.

3.3. Political alignment function. Whenever a motion before Parliament involves a political declaration setting out its will on a particular matter, there seems to be no obstacle to processing such a motion. If the motion is aimed at having the Government act in a particular direction, however, it would not seem to be possible to address it to the Acting Government because, as the Supreme Court declared, an Acting Government is unable to carry out actions implying the adoption of guidelines on political alignment. The only exception would be for situations exceeding the ordinary processing of public affairs but requiring that the Government deal with them.

3.4. Other functions of Parliament. These cover a number of scenarios.
Insofar as they do not affect the relations between Parliament and the Government:

- There is no impediment for those functions pertaining to the appointment of members to constitutional bodies of the State: the Constitutional Tribunal, the General Council of the Judiciary, ...
- Nor for the granting of judicial petitions for the investigation of MPs.
- Similarly, it is possible to authorize agreements between Regions.
- The Houses are able to exercise self-organization powers, for example, by amending their standing orders.

On the other hand, doubts arise regarding the authorization of international treaties: it is up to the Government to refer these to Parliament for authorization, but it is not easy to imagine such an act being classed as the processing of ordinary affairs. If it were a matter of urgency for the treaty in question to come into force, however, its referral to Parliament might be justified.

In the case of the Senate, particular attention must be paid to its actions in the case of article 155.1 of the Constitution. This deals with a scenario in which a Regional Government fails to comply with constitutional or statutory obligations, or where it acts to the detriment of the general interests of Spain. In such cases, the Government is allowed to adopt measures for the mandatory fulfilment of the obligations by the Regional Government or for the protection of the general interest in question, provided that such acts are authorized by the Senate with an absolute majority. As such a scenario would be a constitutional anomaly of the greatest severity, it seems reasonable for the Acting Government to be able to bring such a proceeding (it is not prohibited in article 21 of the Government Act) and in that case the Senate would have to express its opinion.

4. Final considerations.

As time continues to march on since the date of the elections and the country continues to have only an Acting Government, there is an evident difficulty in reaching a clear definition of Parliament's powers vis-à-vis the Acting Government.

It is obvious that the situation could be resolved through the formation of a new Government derived from the outcome of the last election, a constitutional duty falling to the members of the Lower House and a priority on their agenda.

Secondly, it is necessary to insist on the Government's self-managed limitation to the ordinary processing of affairs, as well as applying a restrictive interpretation on what constitutes day-to-day activities. Nonetheless, the task of government is particularly complex nowadays and often requires the adoption of decisions that cannot be deferred and that exceed the scope of ordinary management. The Government's obligation, at the very least, to report to Parliament on these decisions and to hold debates with MPs seems inescapable. A more difficult question is whether the Acting Government, in addition, must submit or not to the political alignments of current MPs.

In the same way, both Houses of Parliament will have to assess to what extent it is possible for them to exercise their legislative powers in the situation described above.

Mr Geert Jan A. HAMILTON (Netherlands) said in both the Netherlands and Belgium the situation being described was relatively commonplace.

In a multi-party democracy, more parties were needed for a majority, and so there was a negotiating phase after every election. That could take weeks, or even months. There was a record of seven months in the Netherlands.

During the negotiating phase, it was conventional that the outgoing government was not overly active. However, sometimes a strong government was needed. So it was possible for an outgoing government to pass a budget that was amended shortly afterwards, once a new government had been formed.

He said that the rules in Spain may become problematic if the situation continued.

Mr Najib EL KHADI (Morocco) indicated that this system responded well to intellectual curiosity. He asked if, after the elections, the Parliament had constituted its committees, the bureau, and the managerial structure of Parliament. If yes, he asked why the political map was not yet clear.

Mr CAVERO said that he agreed with Mr HAMILTON that in Spain it was more normal to have a one-party victory and that the country lacked experience when it came to such negotiations. There were indeed some rules in Spain that were a handicap in the pursuit of a solution.

In response to Mr EL KHADI he said that the Parliament had been formed since 13 January. The bureau and the President had been elected. The committees had been formed. Usually, the internal workings adapted themselves to the Government, but this time parliamentarians had wished to form committees anyway. Parliament was

ready to get to work with all its powers, but there was only a Government in terms of its functions.

Mr Ed Ollard (United Kingdom) said that the situation in Spain seemed to derive from the Constitution which said that such a thing as an "acting government" existed. He asked what prevented Congress from doing what it wanted. He asked if there was an appetite in Parliament for grabbing the initiative whilst there was no government in place.

Mrs Jane KIBIRIGE (Uganda) asked why the acting government could not pass a budget, and asked how the public finances handled in such circumstances.

Mr Hugo HONDEQUIN (Belgium) said that such situations were common in Belgium. The record there was at least double that of the Netherlands. After the penultimate elections, the situation had lasted for two years. At that time the convention was that the Government and Parliament both had to restrict themselves to dealing with ongoing affairs. This protected the Parliament from the Government.

The Parliament did not have the ability to sanction the Government but, on the other hand, the Parliament had the initiative. The new understanding was that when the Parliament wanted something done, the Government consulted it before introducing a bill. In the situation, there had been no political majority in the Parliament, so it was a mathematical majority that needed convincing.

Mr CAVERO said that he could not predict what the Constitution would say on the subject of bills passed under during such periods of uncertainty. He agreed that the Parliament could use the time to try to destabilise the balance of power between Parliament and government.

He said that there would be a problem with the budget. The Constitution stated that if a budget had not been adopted before 31 December, the budget for the previous year would be carried over to the coming year. This was not ideal, but it was better than having no budget at all. The difficulty was that only the Government could initiate a draft budget: the Parliament had no initiative, instead only having the right to reject a proposal.

Spain lacked experience in such negotiations. In future there would need to be more flexibility. For him the first duty of the Congress was to form a new government.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr CAVERO for his communication and thanked members for the questions they had asked.

3. Communication by Mrs Claressa SURTEES, Deputy Clerk of the House of Representatives of Australia: "Parliamentary Privilege and Citizen's Right of Reply"

Mrs Doris Katai Katebe MWINGA, President, invited Mrs Claressa SURTEES, Deputy Clerk of the House of Representatives of Australia, to make her communication.

Mrs Claressa SURTEES (Australia) spoke as follows:

'The privilege of freedom of speech has been described as a 'privilege of necessity'. It enables Members to raise in the House matters they would not otherwise be able to bring forward (at least not without fear of the legal consequences). The privilege is thus a very great one, and it is recognised that it carries with it a corresponding obligation that it should always be used responsibly.'

People criticised in parliamentary debate

Sometimes individuals are offended by remarks Members of the House have made about them during parliamentary debate. The right of reply procedure, established by resolution of the House on 27 August 1997 (as amended 13 February 2008), gives people the opportunity to respond to such remarks and to ask for their responses to be published in the parliamentary record.

The procedure is intended for use by individuals, not by or on behalf of corporations or other organisations.

Submitting a complaint

The procedure may be used by a person named in the House or referred to in such a way as to be readily identified.

A person who feels aggrieved by something that has been said about him or her in the House may make a written submission to the Speaker:

claiming that he or she has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that his or her privacy has been unreasonably invaded by that reference; and asking to be able to incorporate an appropriate response in the parliamentary record.

Role of the Speaker

The Speaker must refer a submission to the Committee of Privileges and Members' Interests if he or she is satisfied that:

- the subject is not obviously trivial or that the submission is not frivolous, vexatious or offensive; and
- it is practicable for the Committee of Privileges and Members' Interests to consider it.

Role of the Committee of Privileges and Members' Interests

The Committee of Privileges and Members' Interests is a committee of the House of Representatives. Government and non-government Members form the Committee's membership of 11. The committee investigates alleged breaches of parliamentary privilege, considers complaints from people who claim to have been unfairly criticised in debate in the House and oversees the register of Members' interests (amongst other things). In considering a submission relating to a citizen's complaint, the Committee:

- must meet in private;
- may confer with
  - the person who has made the submission; and/or
  - the Member who made the statement in the House;

- may not consider or judge the truth of the statements in the submission or in the House;
- may not itself publish either the submission or its proceedings, but may present minutes, and all or part of the submission, to the House.

If it believes the submission is frivolous, vexatious or offensive, or not sufficiently serious, the committee must report its opinion to the House.

Report from Committee of Privileges and Members' Interests

The Committee of Privileges and Members' Interests can make a recommendation:

- that a response by the person, in terms specified in the report and agreed by the person and the committee, be published by the House or incorporated in Hansard; or
- that no further action be taken by the House.

No other recommendation can be made.

Terms of response

Responses must:

- be succinct and strictly relevant to the questions in issue, and must not contain anything offensive in character;
- not contain any matter the publication of which would have the effect of unreasonably adversely affecting or injuring a person or unreasonably invading a person's privacy, or unreasonably adding to or aggravating such an adverse effect.

Committee's guidelines for the consideration of submissions

The resolution of the House establishing the right of reply procedure allows the Committee of Privileges and Members' Interests to agree to guidelines and procedures to apply to the committee's consideration of submissions. The following guidelines, presented by the committee, are supplementary to the resolutions of the House and spell out how the committee applies the procedure:

(1) an application must be received within 3 months of the making of the statement to which the person wishes to respond unless, because of exceptional circumstances, the committee agrees to consider an application received later;

(2) applications should only be considered from natural persons, they should not be considered if lodged by or on behalf of corporations, businesses, firms, organisations or institutions;

(3) applications should only be considered from persons who are Australian citizens or residents;

(4) an application must demonstrate that a person, who is named, or readily identified, has been subject to clear, direct and personal attack or criticism;

(5) applications must be concise, must be confined to showing the statement complained of and the person's response and must not contain any offensive material;

(6) applications concerning statements made in the Federation Chamber may be considered;

(7) applications should not be considered from persons who wish to respond to a statement or remarks made in connection with the proceedings of a standing or select committee—such persons should contact the committee direct on the matter; and

(8) in considering applications, the committee will have regard to the existence of other remedies that may be available to a person referred to in the House—for example, a Member of any Parliament in Australia would be considered to have a forum within which he or she could respond to remarks; media personnel similarly have means by which to make a response to any remarks about them.

Mrs Emilia Ndinelao MKUSA (Namibia) said that the workings of the two chambers prohibited all naming of individuals who were not in a position to defend themselves. She asked about the rules for naming different divisions or departments.

Mr José Manuel ARAÚJO (Portugal) said that the situation described was not one which his country was familiar with. He wanted to know what sort of remark was concerned. He asked if the response could be a collective one. He also asked if the unions had a right to reply.

Mr Gengezi MGIDLANA (South Africa) said that in South Africa there was a similar arrangement, under which a member of the public who felt aggrieved could write to the Speaker, who would then refer the matter to the Committee. Since 2004, this procedure had only been used once. In that case, the member of the public wrote to the Speaker, who referred the matter to the Committee, which upheld the matter. However, the matter lapsed because the member of the public took it no further.

Dr Winantuningtyas Titi SWASANANY (Indonesia) said that Indonesian members of public enjoyed the privilege of impunity, which meant that they could not be charged for any statement in their capacity as a Member. She asked whether there was an institution that had the authority to investigate breaches of conduct.

Mr CAVERO (Spain) said that he did not understand the need to treat different categories of people differently from each other.

Mr Jeremiah M. NYEGENYE (Kenya) asked whether the gravity of any remarks which generated a response put the presiding officer at risk of indictment. He asked whether it was possible to require the remarks to be expunged, or an apology to be made.

Mrs SURTEES said that remarks made about government departments could be pursued by ministers, who had plenty of opportunity to speak in Parliament.

There had been a case a few years previously where a Member had referred to a legal matter involving several individuals. Three of them applied for a right of reply. They were undergoing a court case and were being held in Dubai, which they would not be allowed to leave before their case was resolved. One of them were allowed to come back and he applied for a right of reply, which was granted. This was a situation where the Member had referred collectively to a group of people, but they had made separate individual applications for redress.

There had not yet been a request from a trade union. The purpose of the mechanism was really to protect individuals.

In respect of the impunity of Members of Parliament. parliamentary privilege applied to proceedings in Parliament. The House of Representatives had no Code of Conduct. The mechanism for dealing with matters of conduct would be the Committee of Privileges and Members' Interests, when appropriate.

The Chair was supposed to facilitate proceedings and, if a Member was acting in breach of the Standing Orders, the Chair would deal with the matter. However, simple adverse remarks were not prohibited under Standing Order. Expunging remarks for the record would be an exceptional circumstance, made more difficult by dissemination of the remarks on the internet, which happened almost instantaneously.

Mr Henry H. NJOLOMOLE (Malawi) said that he wanted to deal with insults against Clerks at the Table. This was a serious issue in Malawi. The National Assembly Powers and Privileges Act prohibited such behaviour but it continued to such an extent that clerks no longer wanted to serve in the Chamber.

Mrs SURTEES said that this was an intriguing question. There was an example of a problem occurring in a committee, when a report had been released without authorisation. The Committee itself investigated by considering everyone involved. The investigation had found that one of the secretariat had contributed to the release of the information, perhaps inadvertently. The staff member involved was unhappy about what had been said about their conduct in the House, and made an application for a right of reply. The application was not granted, but that application predated the new mechanism, so the outcome might be different now.

She said that she was not sure that there was anything that could be done about Members insulting clerks, but that presumably the Speaker could be expected to give support. She did not believe that it would fall within the remit of a right of reply.

Mrs Doris Katai Katebe MWINGA, President, thanked Mrs SURTEES for her communication and thanked members for the questions they had asked.

4. Communication by Mr Helgi BERNODUSSON, Secretary General of Althingi of Iceland: "The leaven that leaveneth the whole lump: Filibuster in the Icelandic Parliament, Althingi"

Mrs Doris Katai Katebe MWINGA, President, invited Mr Helgi BERNODUSSON, Secretary General of Althingi of Iceland, to make his communication.

Mr Helgi BERNODUSSON (Iceland) spoke as follows:

Synopsis:

In my contribution I intend to discuss the subject of filibustering, a prominent feature of the work of the Althingi, Iceland's national parliament, and highlight its

impact on both the activities of the Althingi and its public image. I will divide the discussion into four sections:

(1) First, I will briefly describe the Althingi, the Icelandic form of government and the political landscape.

(2) This will be followed by a general discussion of filibustering, its origins and development in the Althingi, its current levels and significance, for instance whether it is successful.

(3) Next, as the main substance of my presentation, I will discuss the principal consequences of unrestrained filibustering on the work of the Althingi, on legislation, debate, administration, public image etc.

(4) Finally, I will discuss attempts to restrict filibustering, including the methods available, followed by a conclusion.

1.0. Iceland and the Althingi

Brief introduction to the Icelandic form of government and political culture.

1.1 Western parliamentary democracy

Iceland is a republic with a president who has limited powers. The form of government is parliamentary rule, similar to that of other Nordic countries and other countries in Western Europe.

There are 63 Members of Parliament. The Althingi sits in a single chamber, with parliamentary sessions normally lasting from early September to the end of May.

The political landscape has generally been characterised by a large right-wing party (35%), a sizeable centrist party (25%) and two left-wing parties, social democrats and socialists/communists (15% each). The political situation has largely been stable, at least until the financial collapse of 2008.

The general rule is that Iceland is governed by majority governments. The political norm is coalition governments, and since the Second World War all the parties have worked together at one time or another. Party discipline is rather strict.

Over the last two or three decades a number of changes have occurred in the Althingi: from being bicameral the Althingi has now been unicameral since 1991, rights of the minority have been increased in various ways, the scope for general debate has been increased as well as debate on matters of urgency, and parliamentary supervision of Ministers and the executive branch has been increased.

There is little tradition of co-operation between the government and opposition in the preparation of parliamentary business. The opposition will sometimes first hear of important matters of government when they are introduced in parliament in the form of parliamentary documents.

1.2 Debate without structure

Legislative bills receive three readings: a general debate that precedes referral to committee, another general debate when the committee has returned its report, followed by a final reading. The discontinuity rule applies in the Althingi, so that all unfinished business at the end of a parliamentary session lapses in the autumn (at the beginning of a new legislative session).

Debate on legislative bills and parliamentary resolutions are “free”, in the sense that there are no restrictions on participation. Debate is not planned in advance and any Member may take the floor, subject to the rules of the Standing Orders. The debate may be brief or it may be lengthy. Sometimes Members from all parliamentary groups participate in the debate, sometimes from several and

sometimes from just one group. Interference by parliamentary groups in the course of debate is limited, except when a filibuster is in progress.

However, parliamentary business other than legislative bills and draft resolutions is subject to time frames, including questions, special, or topical, debates, the Prime Minister's policy speech etc., where filibustering cannot be applied. The division between these two categories is 80% (debate without time frames) and 20% (subject to time frames).

2.0 The culture of filibustering in the Althingi

The filibustering culture in the Althingi is deep-rooted and has long characterised the work and procedures of the Althingi.

2.1 What is the nature of filibustering and what is its purpose?

Filibustering is one of many devices that a minority can use, and has used, to delay – and preferably to obstruct entirely – matters that are proposed by the majority. Even though methods of this kind are undemocratic they are nevertheless well known common in national parliaments.

Everyone knows what "filibustering" means: a Member of Parliament exercises his or her right to debate an issue for the sole purpose of obstructing its progress and preventing the debate from being brought to a conclusion so that a vote can be taken.

Sometimes a distinction is drawn between tactical parliamentary obstruction (which includes filibusters) and categorical parliamentary obstruction, which applies to the work of parliament in general. However, perhaps these concepts could be regarded as forming a scale reflecting frequency and extent.

Filibustering is not illegal, nor are debates in filibusters invariably trifling, repetitive, unrelated to the matter at hand, boring etc. In fact they can be quite the opposite. It used to be the norm in the Althingi that Members who engaged in filibustering would not admit to doing so – the subject was taboo– but this has changed in recent years.

Filibustering usually has two aspects: on the one hand the purpose is to obstruct and on the other hand the purpose may be to create uncertainty. This is manifested in situations when an agreement is successfully negotiated to bring an ongoing debate to a conclusion. For instance, if an agreement is reached to bring a debate to a conclusion on the following day, the filibustering will continue, but the uncertainty is ended. This takes the tension out of the debate, which then often ends before the negotiated time, as there is little or no purpose in continued filibustering.

No methods of parliamentary obstruction are used to any extent by the minority in the Althingi apart from filibustering in the plenary chamber. There are instances of obstruction in some form in committees, but this is hardly a problem in the Althingi.

2.2 Scope of filibustering in the Althingi

Filibustering in the Althingi is manifested in its unusually long sitting times. If we take the session of 2014-2015, sittings lasted for 840 hours. The average for the Nordic parliaments is 460 hours, or slightly more than half, and the German Bundestag is at a similar level. The Althingi is closer to the British and French parliaments, although it does not quite match them.

If we divide the sitting hours of the Althingi by the number of seats, this translates into just over 13 hours per Member. The average is about 11 hours if only the debating hours are counted. In this regard the Althingi is quite unique. In the

Nordic parliaments the corresponding average is 1½-3 hours per Member and the corresponding figure for the German, British and French parliaments is 1-3 hours.

The total debating time on legislative bills and draft resolutions was 520 hours, just over 8 hours on average per Member. The division between government and opposition was approximately 3½ for the government against 15 hours for the opposition, i.e. 1:4. The opposition, with 40% of the membership, spends 80% of the total debating time on legislative bills and draft resolutions.

There are numerous instances of draft bills and resolutions which are subjected to filibusters being debated for a total of 50 hours or more. On one hotly disputed matter in 2009, after the financial collapse, the debate went on for about 135 hours.

Debate on a "point of order" is a common filibustering technique to obstruct; a total of 10% of the debating time on bills and resolutions is devoted to "debate" on this subject.

2.3 Reasonable debate – filibusters

What constitutes "reasonable" debate in a parliamentary chamber? That is a difficult question. It depends, among other things, on what people consider to be the general purpose of parliamentary debate. The original idea was that Members of Parliament would debate matters in the plenary chamber in an attempt to convince one another and thereby reach a sensible decision. The reality is quite different. The conclusion of a matter has normally been reached before the debate begins in the chamber. The authentic and honest debate takes place in the committees or in other political venues, in the parliamentary groups, ministries, other informal meetings etc., while the chamber has become a sort of stage, especially since the advent of the parliamentary groups. It is a stage in the sense that the debate in the chamber is (usually) the only part of parliamentary work on display to the public.

Bearing this in mind, it could be assumed that it would be "reasonable" at each debate for one Member to speak for each parliamentary group. Anything beyond that would then constitute filibustering by this standard.

2.4. Measurements of filibustering

If it is assumed that each parliamentary group should have the right to express its views in a single speech in each debate of a legislative bill or a proposed parliamentary resolution, measurements show that about 40-50% of all the debate in the Althingi on legislative bills and resolutions constitute filibustering by this definition. That figure corresponds to 250 hours last winter.

The measurements are taken from the Althingi's database for the session of 2014-2015. A measurement was also carried out in the month of November of 2015 using the same assumptions, but with a somewhat personal assessment of what each contributor to the debate in fact contributed. This gave the same result: 40-50%.

2.5 Long tradition of filibustering in the Althingi

There is a long tradition of filibustering in the Althingi. However, it hardly became a problem until after 1930, when class politics (right/left) became dominant in Icelandic politics, the first left-wing government having been formed in 1927. It is safe to say that the first serious filibustering in parliament originated in the response of right-wing parties when they took issue with certain proposals for radical social changes. Left-wing governments, which are not common in Iceland, have since then contended with more extensive filibustering in the Althingi than other governments.

Looking back over the period from 1952, when electronic recording of debates began, the duration of sittings has tripled, from less than 300 hours to just short of 900 hours. The increase occurred in stages and has always been related to political events, but the tide has never receded.

Filibustering at first targeted individual issues, and this, of course, remains the case, but then it became commonplace for the opposition, before Christmas and in the spring each year, to win for themselves a bargaining position in the process of business. The filibustering can in such circumstances target matters on which there is little disagreement, if any. In recent years filibustering may be said to have been in evidence throughout every sitting, even in first readings (before matters are referred to committee), bringing into effect a "cumulative filibuster" aimed at putting matters into jeopardy well in advance.

In the last week before Christmas, prior to the Christmas recess, the opposition may be said to hold all the cards in the session and its planning, and the minority can be a harsh dictator. Nevertheless, as a rule the major issues of the government will progress, but this takes time and can be costly in many ways.

2.6 Is filibustering successful?

Filibustering is used because it has been shown to be an effective device to achieve results that range from forcing the postponement of debates or voting to the following day to actually killing important measures proposed by the government and the parliamentary majority. Filibustering is most successful when the viewpoints of the filibusterers has a strong support of the public. Two recent examples: in the last electoral term attempts by the government to amend the Constitution were derailed through filibustering. However, it was clear that there were extensive doubts in the ranks of government regarding the matter and considerable public opposition. In the course of the present electoral term a prolonged filibuster (6 weeks) blocked an attempt by the government to have the Althingi approve by a resolution the withdrawal of Iceland's application for membership of the EU. The matter met with great public opposition and the government was accused of breaking promises made before the election of holding referendum on the issue.

Opposition Members have asked "if we do not have the filibuster as a weapon, then what are we here for?" This is an exaggeration, of course, as a great deal of compromising is done in the parliamentary committees, without any kind of filibustering. It is nevertheless clear that filibustering has been successful in killing government proposals and there are numerous instances of amendments to proposals resulting from filibustering. However, it cannot be stated that the hugely extensive filibustering has returned huge results, or that the success has always been worth the effort.

3.0 Impact of filibustering on the work of the Althingi

Filibustering has a significant impact on parliamentary work for the worse. It affects the quality of legislation and morale and it affects the conduct of Members of Parliament. Filibustering is like the "leaven that leavens the whole lump", a malignancy that corrupts the working procedures of parliament and impedes its positive development.

3.1. Organisation of parliamentary work

The culture of filibustering has the effect that there is no structure to the debate in the chamber on legislative bills and parliamentary resolutions. The floor is open to everyone. It is impossible to say beforehand how long a debate will last. It is

therefore often impossible to stick to the official agenda of a sitting, there is no way to know how long a sitting will last, the plan for the parliamentary work of the week is disrupted and the parliamentary schedule falls into disorder, the autumn session is extended until Christmas and the spring session into the summer.

Since the Althingi began working under a prepared schedule in 1988 the schedule has normally been extended by 3-4 days before Christmas (no disruption 5 times; greatest extension 13-14 days) and normally by 11-12 days in the spring (no disruption three times; greatest extension by 35 days; seven times by 20 days or more).

The disorganisation caused by filibustering is a great inconvenience to everyone who is affected: Members, Ministers and staff, and even external institutions and organisations that need to interact with the Althingi, the media and people who have an interest in following the work of the Althingi.

The leadership of the Althingi has over the past 25 years endeavoured to plan a framework for the parliamentary work, among other things by preparing a work schedule for the parliamentary session, weekly schedules for the agendas of sittings, provisions in the Standing Orders on the duration of sittings etc. Also, there are weekly consultation meetings of the Speaker and chairpersons of parliamentary groups regarding the agenda, sitting times and conclusion of matters. Everyone is in favour of this co-operation and attempt at organisation.

However, it is interesting that this consultation has not had the effect of reducing filibustering. On the contrary, the attempts at organisation through predetermined sitting days, sitting times etc. have in many ways increased the effectiveness of unchecked filibustering. The view has therefore been expressed that perhaps complete disorganisation of parliamentary work is the only realistic response to unchecked filibustering.

3.2 The demise of political discourse

The practice of filibustering has the effect of diluting the political discourse in the Althingi, it becomes devoid of merit and meaning, uninteresting and skewed. It receives little discussion in the news media and social media. The main issues and the arguments pro and contra are lost in the filibustering.

The culture of filibustering and the resulting disorganisation of debate has the effect that Members do not prepare well for debates; their role is no longer to express their own views and the views of their respective parliamentary groups in an organised manner, but to delay. Preparing for this requires no deep thought; it requires only access to the parliamentary document itself, external comments on the documents, newspaper articles, quotes from earlier speeches and so on.

The practice of filibustering and the disorganisation of the debate also causes a “dearth” of discussion. Without organisation of debate there is a risk that the actual views of the parties will not actually emerge in the course of debate. So we have a mixture of dearth and excess.

3.3 Impact of filibustering on committee work

There is a general satisfaction with the committee work of the Althingi. The working methods of the committees are effective, discussion is objective, there is a willingness to arrive at a consensus and all viewpoints are allowed to emerge. Nevertheless, when matters of dispute are being processed in committees the prospect of a looming filibustering in the chamber can cause disruptions in the procedure of the committees. A conclusion is then sometimes forced before the normal committee work is concluded in order to “start the debate”. There is a sense,

then, that the matter has not really been brought to a conclusion in the committee. It is anticipated that after a bout of filibustering the matter will be referred back to the committee or that the filibuster will force new compromises. The conclusion of the committee will therefore not stand. In this way, the practice of filibustering can taint the committee work.

3.4. Responsibility and participation by majority Members in the parliamentary work

As in the case of other parliaments, Members of the Icelandic Althingi can be divided into three groups: Ministers, government Members and opposition Members. Ministers submit their matters to the Althingi and are usually active participants in the debate in the early stages of process. In the filibustering tradition of the Althingi, opposition Members are extremely active in the debate and they keep the filibuster going. Government Members, on the other hand, simply carry out their duties: introduce committee reports, perhaps explain the position of their own parliamentary groups, but usually not much else. Exchanges of opinion are infrequent, because if government Members take the floor it only has the effect of "adding fuel to the fire", lengthening the debate and delaying it. They merely wait and then vote.

If we compare the speaking times of Minsters, government Members and opposition Members in debates on legislative bills, the result is 25%, 15% and 60%, respectively (4.5 hours, 2.4 hours and 11 hours, on average).

If a government Member has doubts regarding a matter the Member will often refrain from revealing such doubts in the course of debate and wait instead in the hope that the opposition will manage through their filibuster to force amendments or block the matter entirely. This is sometimes done informally by communicating to the opposition that there is split in the ranks of the government Members. It is then quite likely that the filibustering will gain increased force.

In the filibustering tradition of the Althingi government Members will not defend their views, as they should do, and do not protest if they are in doubt about a matter; instead, they rely on the filibustering against the matter, thereby avoiding responsibility.

3.5 Reputation and public image of the Althingi

The Althingi, like many national parliaments, scores low in surveys of confidence in public institutions, although it is not always clear how these figures should be interpreted. Without a doubt the portrayal of the parliamentary work in the Althingi, the filibustering, the disorganised and ineffective debate, is not likely to enhance public respect for the institution or its work. It is interesting that broadcasting of debate on television and on the Internet does not provide the discipline from the public that might be expected. The broadcasting does not seem to have a significant impact on Members' conduct in the chamber. The atmosphere in the chamber is very "*in camera*".

3.6 Relations between the Althingi and the executive branch

The disorganisation in the work of the Althingi caused by filibustering has the effect of empowering the executive branch at the expense of the Althingi. Participation by Ministers in the debate, and their attendance, is too limited and too haphazard; they can easily avoid the debate and the attendant scrutiny, using the disorganisation as an excuse. Also, it is hardly fair to expect Ministers to sit and endure lengthy filibusters. They can therefore prioritise other duties over their parliamentary duties.

No doubt, Ministers would benefit greatly from a more organised parliamentary agenda, and this would also give the Althingi a stronger claim for the presence and participation by Ministers in the debates.

3.7 Status and work of the Speaker of the Althingi

In most national parliaments the Speaker commands a great deal of respect and stands above all political disputes. This is not the case in Iceland where the Speaker is invariably elected from the ranks of government Members. In the Althingi, the Speaker is a target of the opposition's criticism of the disorder of the parliamentary process, which is not fair or the Speaker's fault. The purpose of the criticism is not, in fact, to attack the Speaker; it is just an avenue for the opposition to express its political discontent under the guise of discussing points of order.

The culture of filibustering has the effect that the Speaker is kept extremely occupied in organising the day-to-day work of the Althingi; he plays the role of conciliator and is dragged into the conflicts in the chamber. He therefore has less opportunity to exert his influence in other areas, such as the general development of parliament, international relations or public presentation of the Althingi and its work.

3.8 Impact of filibustering on the morale and working procedures of Members

The culture of filibustering increases the general indiscipline in the work of the Althingi; its work is not taken as seriously as the work of a legislature should be.

The culture of filibustering undermines respect among Members. The filibustering does not foster objective debate through reasoning, where Members can show their mettle; on the contrary, they need to resort to theatrics and bluster and sometimes cannot rightfully expect to be taken seriously. While a filibuster is raging, the chamber is empty, there is impatience and discord among Members and government Members feel that they are being bullied.

3.9 The form and the absurdity

One of the strangest aspects of the filibustering culture is the perception by many, Members themselves, staff and spectators, of its absurdity. Filibustering can have a strong effect on those who have had to endure it for a long time. Strongest is the sense of the interaction between the game and the form. In the heavy and stiff form, the Standing Orders, parliamentary traditions and the imposing framework of the parliamentary chamber a game is in progress which has no real meaning, a sort of pretend play. The Speaker sits in his grand chair and ceremoniously proclaims that this or that Member will take the floor. The Member walks in formal attire to the podium in the chamber and begins a speech which is not serious, but simply a delaying tactic. At the side of the Speaker sits a university trained staff member who observes the formal rules and makes a number of entries in his books. The speech is broadcast, both over a public network and on the Internet. A sound technician makes sure that the speech is preserved in the sound archives. Staff members transcribe the speech, edit it and post it on the website (previously in print). All these trappings and all this effort for a game.

It appears that Members of parliament do not quite grasp the process of work that their speeches entail and that they perceive the parliamentary sitting and debates as an informal political rally.

In general, absurdity of this kind has a bad effect on staff members, who experience disrespect for their work and lament its futility.

The absurdity of the filibustering culture takes on many aspects. One of these is that the media annually designates the “Speech King of the Althingi”, i.e. the Member with the greatest aggregate speaking time in terms of minutes. Earning that title is regarded as an honour and as evidence of influence in Parliament. The digitisation of speeches makes summaries of this kind easy. Members are conscious of this “competition”, because those Members are also highlighted who had the fewest minutes on the floor; they are portrayed as ineffectual Members.

The culture of filibustering is maintained by a certain form of “indoctrination”, provided by veteran Members to new Members. New Members have sometimes embarked on filibusters and arguments with the Speaker etc. within an incredibly short time. There are examples of a Member gaining the dubious title of “Speech King” in their first electoral term.

4.0 Attempts to restrict filibustering

Much has been said in recent decades about filibustering and the need to curb it. The position taken by the political parties has usually been determined by whether they support or oppose the sitting government. The political parties in government at any time may condemn filibustering, but then take it up themselves immediately when they are in opposition. Looking over a longer period of time, it appears that the political parties have been reluctant to curb filibustering whether they are typical “governing parties” or “opposition parties”. This must be due to mutual distrust. It appears that in this regard the parties are more eager to secure their position in opposition than their position in government.

4.1 Closure rule

In the last century certain attempts were made to curb filibustering. The closure rule has been present in the Icelandic Standing Orders since 1876. However, the rule was rarely invoked. When class politics and filibusters started to make their mark on the Althingi around 1930, the closure rule was reviewed in 1936 and broadened. However, it never achieved the status of being a general curb on filibusters. It has been invoked several times. It was invoked once to great effect (Iceland's membership of NATO), but this met with little appreciation. The rule was last invoked in 1959, and never since. There has been some discussion of applying the rule in recent years but this has always met with hesitation. The rule has been called “an act of brutality” and its invocation has been perceived as “restricting Members' freedom of speech”.

4.2 The change in 2007

In 2007 an attempt was made to address filibustering. Time limits were imposed on all Members' speeches, whereas previously Members were permitted to speak for as long as they wanted, although only 2-3 times in each debate. It was gradually revealed that this attempt to break off the shackles of the filibuster culture did not return the expected results.

The opposition began to make up for the restrictions on time with long sermons on “points of order”, by embarking on organised exchanges of responses and interventions with people from their own ranks, by providing numerous explanatory comments on their votes, etc. In other words, Members simply found new ways to filibuster. – It is possible that it was the unusual times and unusual conflicts relating to the financial collapse of 2008 that derailed this attempt.

4.3 Rules and attitude

It is now accepted that filibustering cannot be curbed, let alone abolished, through new rules on the duration of speeches. For example, the Standing Orders of the Icelandic parliament and the Danish parliament are identical in all principal respects, but filibustering is unknown in the Danish parliament. It is the attitude that needs to change, the political culture.

However, the idea of debate in the Althingi with "free participation" is deeply rooted in the Icelandic political culture. And political culture is difficult to change.

4.4 Possible actions against filibustering

There are three principal means that can be used to combat filibustering:

First, limits can be imposed on the length of each speech and the number of times that a Member may take the floor. This ensures that a filibuster will certainly end at some point, but it can take time to "exhaust all the possibilities".

Second, debates can be curtailed when they are excessively delayed. Debate is then concluded immediately after it is agreed to do so or within a specific deadline ("closure"). This is the general rule in the Commonwealth countries (the Westminster tradition), i.e. in the United Kingdom, Canada etc.

Third, the debating time for each item of business can be delimited in advance. This rule is applied, for instance, in the Norwegian Storting and the German Bundestag. The same apparently applies in the U.S. House of Representatives. The debating time is then allocated among the parties (normally proportionally).

In the Althingi attempts have been made to establish limits on the length of speeches, but to no avail. The Icelandic Standing Orders do include a closure rule, but there has been hesitation to apply it. There are now discussions of establishing a framework for debates in advance as a general rule, but a sufficient consensus has not been reached so far.

4.4 Conclusion

There are no indications at present that it will be possible to curb filibustering in the Althingi. In fact, it has a tendency to increase. The Speaker's hands are tied by the rules and the Members of Parliament have their way. The Althingi is stuck in the filibuster rut.

Initially, the filibustering was a means of resistance to individual matters, but it has subsequently become a certain pattern of the parliamentary work, in particular before Christmas and in the spring, and in recent years it has become a general tactic of the opposition. This means that the number of instances of filibustering is growing and filibusters are also growing in scale. Filibustering is changing, in fact, from being tactical to being categorical. If this trend continues, it could paralyse the work of the Althingi. There are signs of a trend by the government to bypass parliament as a result of the filibustering.

The filibustering tradition is pervasive; there are many who believe that its abolition would mean a curtailment of Members' "freedom of speech" and a deprivation of the opposition's "weapon". This reflects a view that it is impossible to maintain a strong government opposition without filibusters. However, society has changed rapidly in recent years; filibusters in the Althingi no longer arouse the interest that they did before; the media no longer regard filibusters as newsworthy, even when they are maintained for days on end. Objective opposition to the majority is increasingly taking place in the public media and in the social media.

It is sometimes said that Icelandic politics are confrontational. It is then said that the Icelandic culture of filibustering is a manifestation of this confrontation. This is not certain, however, as the reverse may well be true: that the filibustering

encourages confrontational politics, or at least that it lends to politics the appearance that instead of objective and organised debate comes conflict with unchecked filibustering which is designed to force one of the parties, the majority, to change its conclusions and decisions. The question is whether we have entered a vicious cycle, where the culture of filibustering itself has created conditions and an environment to which the only available response is further filibustering.

It is possible that new political circumstances may form in Iceland where filibustering will be addressed. Probably this will not happen except by radical measures, perhaps as a part of extensive reforms of the political environment, including constitutional amendments (on referenda, the rights of minorities etc.).

Why should the parliamentary traditions be so radically different in Iceland from its neighbouring countries, which have the same kind of society, culture and customs? This is a pressing question for Icelanders and one that is urgently in need of an answer.

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At 4 pm the Association took a short coffee break.

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Mrs Doris Katai Katebe MWINGA, President, gave Members information about the excursion to the Kariba Dam which would take place on the following day.

She also announced that only two nominations had been received for the two posts of ordinary member of the Executive Committee: from Ms Maria ALAJOE, Secretary General of the Riigikogu, Estonia, and Mr Manohar Prasad BHATTARAI, Secretary General of the Legislature-Parliament, Nepal. It then being past 4.00 pm, the two candidates were *deemed to have been elected by acclamation*. The President warmly congratulated them both.

Mr Harke HEIDA (Netherlands) said that he had received a warm welcome for his first session of the ASGP. He asked what the public thought of filibusters. He also wanted to know why no end had been put to such practices.

Mr Ed OLLARD (United Kingdom) said that in the UK both Houses used to have debates such as those described. In the House of Commons the Irish Unionists had put an end such practices, but in the House of Lords it persisted, on the understanding that the Government should be able to get its business through. He asked whether Parliament could not be bypassed. He asked why Members were more inclined to protect the interests of the Opposition than those of the Government.

Mrs Françoise MEFFRE (France) said that she was astonished that no decision had been come into force. In France, there had been a similar era of the filibuster. Measures had been taken to limit speaking and debate times. This system gave an advantage to minority parties. She asked why Iceland had not been driven to implementing measures to limit the potential for filibustering.

Mr BERNODUSSON said that, as filibustering became common practice, people ceased to care that much about it, though there was no question that it damaged the image of Parliament.

An amendment to the Constitution was being prepared for the following year to get rid of the offending rule, but he was not sure that it would get through.

The Government tended only to introduce bills when it was absolutely necessary. There had been a six-week filibuster the previous year in relation to a bill that proposed the Icelandic withdrawal from the European Union. The following year the Government did not attempt a further bill, instead simply drafting a letter of announcement directly to the European Union and bypassing legislation altogether.

In Iceland, the political system tended to be compared to those of the Nordic countries. Those countries had the same rules, but, for example, there was no occurrence of filibustering in the Danish Parliament. When he asked why, the response was always that, in those countries the opposition would not want to begin using a practice that would damage them when they were in government. Perhaps it was a question of culture.

He had read about the many obstructive tactics used in France, such as the tendency to table thousands of amendments. In Iceland, filibustering was the only example of obstruction.

It might be questioned why the closure was not used. There was a historical explanation. When Iceland joined NATO in 1949, there were two debates. At the start of the second, there were demonstrations outside and the closure was used for second reading. Consequently the closure had been stigmatised and it had not been used since.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr BERNODUSSON for his communication and thanked members for the questions they had asked.

5. Communication by Mr Marc BOSC, Acting Clerk of the House of Commons of Canada: "The election of the Speaker by preferential ballot"

Mrs Doris Katai Katebe MWINGA, President, invited Mr Marc BOSC, Acting Clerk of the House of Commons of Canada, to make his communication.

Mr Marc BOSC (Canada) spoke as follows:

Introduction

No other office or position is more closely linked to the history of the House of Commons than that of the Speaker. The office dates back more than 600 years to Great Britain, almost to the very beginnings of Parliament itself.

The rules around the election of the Speaker in Canada have evolved over time. Since 1985, the election of the Speaker of the House of Commons has been prescribed by various rules in the *Standing Orders of the House of Commons*. The appointment and role of the Speaker were first defined in the *Constitution Act, 1867* and subsequently in the *Parliament of Canada Act*. In particular, the *Constitution Act,*

1867 requires that the election of the Speaker must take place at the beginning of the first session of a Parliament, or during the session if the Speaker resigns or if a vacancy occurs for any other reason. The election takes precedence over all other business of the House. No business can come before the House until the election has taken place and the new Speaker has taken the Chair (Standing Order 2).

The Process Prior to 2015

Although the time at which a Speaker is to be elected is indicated in the Constitution, before 1985, no Standing Order prescribed the means by which this should be accomplished. In Canada, between 1867 and 1985, the Clerk of the House presided over the election of the Speaker, which was done by way of motion generally proposed by the Prime Minister and seconded, starting in 1953, by the Leader of the Opposition.

The changes adopted to the Standing Orders in 1985 required the election of the Speaker to proceed by secret ballot where several rounds of voting could be possible. The rules provided that, once the first ballot was completed and counted, if no Member had received an absolute majority of the votes cast, a second ballot was required, with the name of the candidate who received the least number of votes, together with the names of any candidate who received 5% or less of the ballots cast on the previous round, removed from the list. This process continued until a candidate had obtained a majority of the votes. On occasion, this could become a lengthy and time-consuming process for Members when many ballots were required.

The first Speaker of the House to be elected using the secret ballot was John A. Fraser in 1986. He was elected from among 39 candidates and after 11 rounds of voting. The entire day was dedicated to the election of the Speaker, as the House met at 3:00 p.m. and did not adjourn until 2:30 a.m. the following morning. However, in 1988, Speaker Fraser was re-elected on the first ballot. In comparison, in 1994, Speaker Parent was elected after six rounds of voting. In his first election in 2001, Speaker Milliken faced 31 other candidates and was elected after five rounds, and was subsequently re-elected three times, including by acclamation in 2004. Lastly, when Speaker Scheer was elected in 2011, there were eight candidates and six rounds of voting.

Motion M-489: Amendments to the Standing Orders for the Election of the Speaker

In 2014, Mr. Scott Reid, the Conservative Member for Lanark—Frontenac—Kingston, moved a private Member's motion (M-489) proposing that the Standing Committee on Procedure and House Affairs review and consider modifying the procedures that govern how the Speaker of the House of Commons is elected.

Mr. Reid appeared before the Committee on June 3, 2014. In his presentation, Mr. Reid insisted that his motion was mainly intended to encourage a nonpartisan voting process. The motion also sought to improve the efficiency of the procedures by adding a tie-breaking provision to the Standing Orders, which was not previously provided for, as well as to provide more confidentiality for candidates who received only a small share of the vote.

During Mr. Reid's appearance, some Committee members said that for Members, especially those who are new to Parliament, voting for a single candidate with multiple rounds of voting over several hours was a significant learning opportunity, as well as one of the few opportunities for Members to interact in a non-partisan way with the Members on the other side of the House.

Other members of the Committee pointed out that the gradual nature of multiple ballots allows Members to vote differently on each ballot, possibly changing their preference of candidates based on those who remained, whereas preferential voting would give only one chance to rank candidates in order of preference. Mr. Reid responded that one of the benefits of preferential voting was precisely to avoid strategic voting by forcing Members to rank candidates based on their own assessment of the merits of each candidate, regardless of the number of votes they obtained in the previous round.

Having studied the matter, the Committee reported back to the House that a decision to change the way its Speaker is elected rests with the House itself. On June 17, 2015, in a recorded division of 169 yeas to 97 nays, the House concurred in the Committee's report, thereby amending the Standing Orders concerning the election of the Speaker. On December 3, 2015, the rules were applied for the first time.

2015: New Method of Optional Preferential Voting by Secret Ballot

As was the case prior to 2015, all Members of the House, with the exception of Ministers and party leaders, are automatically candidates for the Speakership. Any eligible Member who does not wish to be considered has to inform the Clerk of the House in writing by 6:00 p.m. at the latest on the day before the election is to take place (Standing Order 4.(1)). The list of candidates, as well as the list of Members who are not eligible, is then given to the Member presiding over the election and posted on the website.

Campaigning for the Speakership

The rules for the election of the Speaker contain no provisions on the matter of campaigning for office or regarding how candidates may campaign, and often the campaign starts even before the opening of the first session of Parliament. Following the general election, some candidates choose to communicate directly with their new colleagues by email to introduce themselves and to express their vision of the Speakership. The media can also be solicited and candidates may publicly promote their candidacy.

On at least one occasion, some parties had invited the various candidates to a meeting of their caucus. All-candidate meetings have also been held. More recently, some candidates have organized receptions on the day of the Speaker's election. Members are then invited, between each ballot, to join a candidate's reception.

Election Day

At the start of the sitting, the Mace – the symbol of the authority of the House – rests under the Table as the Office of the Speaker is vacant. The Clerk of the House invites the Dean of the House to take the Chair to preside over the election.

The Dean of the House, the Member with the longest period of unbroken service who is neither a Minister of the Crown nor the holder of any office within the House, is vested with all the powers of the Chair, save that he or she is entitled to vote in the ensuing election, and is unable to cast a deciding vote in the event of a tie between two candidates (Standing Order 3).

The Chamber is set up with a ballot box at the foot of the Table and voting booths on either side of the Table. Before proceeding with the election, the Member presiding invites those Members whose names are on the ballot and who do not wish to be considered for election to kindly rise and inform the Chair accordingly. The Member presiding then calls upon, in alphabetical order, candidates for the office of Speaker to address the House for not more than five minutes each. When no further candidate rises to speak, the Member presiding leaves the Chair and the sitting is suspended for 30 minutes.
Voting begins when the Member presiding invites Members who wish to vote to come to the Table through the doorways to the left and right of the Chair.

New Preferential Voting System (Standing Order 4)
Under the new rules, when it is time for Members to vote, the Clerk of the House provides Members present in the Chamber with ballot papers, on which is listed, in alphabetical order, the names of all the Members who are candidates for Speaker (Standing Order 4.(2)). All Members must therefore fill out a ballot containing the names of all the candidates for Speaker.
This new system is called "optional preferential voting."
Members rank candidates by order of preference, and the counting of votes is based on their first choice. More specifically, Members rank each candidate listed on the ballot by marking the number "1" in the space adjacent to the name of the candidate who is the Member's first preference, the number "2" in the space adjacent to the name of the Member's second preference and so on until the Member has completed the ranking of the candidates for whom the Member wishes to vote (Standing Order 4(4)). Members are not required to mark all the boxes on the ballot for their vote to be considered.

When all Members have voted, the House suspends its business and the Clerk of the House withdraws to count the ballots in secret. The Clerk, with other Table Officers, counts the number of first preferences recorded on the ballots for each candidate. Candidates' representatives are not present for the count.

If a candidate receives a majority of first preferences, the Clerk provides the Member presiding with the name of that candidate. The bells are sounded to call the Members back to the House and the Member presiding announces the name of the new Speaker of the House (Standing Order 4(7)).

If no candidate receives an absolute majority, the ballots are then re-allocated. In all subsequent counts, ballots belonging to the candidate with the lowest number of votes are re-allocated to other candidates based on their subsequent preference. This process continues until a candidate receives an absolute majority of votes (Standing Order 4(8)). The Standing Orders provide that each ballot is considered in every count, unless it is exhausted (Standing Order 4(9)).

“Exhausted” ballots are those that can be considered in the first counts but that must be subsequently withdrawn – for example, if a Member marks only one choice on the ballot and their preferred candidate is eliminated, the ballot cannot be recounted.

In the first count, ballots can also be rejected if the intention of the voter is unclear and therefore cannot be considered. After each count, the removal of exhausted or rejected ballots necessarily require adjusting the number of votes required for an absolute majority.

If the process of vote counting results in an equality of two or more candidates, the Clerk of the House again provides Members with ballot papers on which are listed, in alphabetical order, the names of all Members who have not been eliminated. This same process is repeated until a candidate receives a majority of the votes cast. Thus, Members vote using the new ballot papers, and the votes are counted in the same way as the first vote.

When the counting of the ballots is completed and a candidate has received an absolute majority, the bells sound in the House to recall the Members. The Member presiding then announces the name of the successful candidate.

As usual, the Prime Minister and the Leader of the Opposition escort the Speaker-elect to the Chair. The Speaker offers a token show of resistance to show that he or she reluctantly accepts this responsibility.

After a Speaker is declared elected, all the ballots are destroyed. The Clerk of the House and the Table Officers who took part in the vote counting are instructed to in no way divulge the number of votes received for each candidate (Standing Order 4(12)).

First election of the Speaker by optional preferential ballot

Following changes to the *Standing Orders of the House of Commons* in June 2015, the first election of the Speaker by preferential ballot was held at the opening of the 42nd Parliament in December 2015. The House met at 1:00 p.m. and adjourned at 4:36 p.m. Four members presented themselves as candidates for Speaker and, when the time came, Members of Parliament took approximately 30 minutes to vote. The counting of the ballots took approximately an hour before a candidate received a majority of the votes. Mr. Geoff Regan, the Liberal Member for Halifax-West, became the 36th Speaker of the House of Commons of Canada and the first to be elected under the new rules.

Mr Philippe SCHWAB (Switzerland) asked if a candidate could withdraw during the boting process, particular in favour of another candidate. He found it surprising that the vote count was conducted exclusively by parliamentary staff.

Mr Andrew KENNON (United Kingdom) said that it had taken the UK fifteen years to follow the example the Canadian House of Commons. He asked if it was clear that there had to be a full election of a new Speaker after every general election. In the UK House of Commons, a straight yes or no question was asked if the sitting Speaker wished to stand again.

He asked whether there had been examples of candidates offering things in the course of their campaign that they would be in no position to grant.

In 2009, although there were ten candidates, there were only three ballots because some of the candidates withdrew early on when it became clear that they were unlikely to win.

Mr Helgi BERNODUSSON (Iceland) asked about the ideology behind the secrecy of the ballot.

Mr BOSC replied to Mr SCHWAB that, in the initial procedure for the secret vote, the committee had been of the opinion that only the clerks could count the vote in order to ensure that the numbers were not leaked. The MPs knew each other and none of them wanted the others to know if they had only received a few votes. It also helped to avoid vote trading.

If an MP changed his mind once the process had been engaged there was no option for him to withdraw as there was only a single vote. The only option would be to indicate that he refused the post once it was offered to him in the chamber.

He said that there was a full election after general election, ensuring that there were no free passes for returning speakers. There had been one case where a speaker had been re-elected having been the only candidate.

It was routine for candidates with a poor understanding of the House administration to make promises that they could not keep. However, they were not made deliberately in the knowledge that they could not be kept. Campaigning in private did occur though, for example by means of refreshments offered in their offices.

Some candidates preferred the multiple ballot systems because it was something that they were familiar with from their party structures. However, there had not been any complaints about moving to a single ballot.

Secrecy was deployed to prevent the political embarrassment of the candidates, particularly when they had a high profile but only low numbers of votes.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr BOSC for his communication and thanked members for the questions they had asked.

4. General debate: Overburdening the statute book in response to current events?

Mrs Doris Katai Katebe MWINGA, President, invited Mr Philippe SCHWAB, Secretary general of the Federal Assembly of Switzerland, to open the debate.

Mr Philippe SCHWAB (Switzerland) spoke as follows:

Event-related legislation: necessary or harmful?

The role of the law is to organise life in society. Generally speaking, parliament makes a law in response to a clearly defined social need.

The aim of legislative activity is thus to remedy a situation widely regarded as unsatisfactory, by finding a solution that is better, fairer and more suited to needs, normally by applying appropriate legal instruments (laws, programmes, public policy, etc.).

Before enacting legislation, it is important to assess whether a situation is so unsatisfactory as to make state intervention necessary. First, we must gather and study the relevant information, and then assess the situation, ideally with the help of the actors concerned. In sum, this phase must provide answers to the following questions:

- What is the nature of the problem and how serious is it?
- How big is the problem and who is affected?
- What are the causes of the problem?
- Does the problem affect other areas and if so, how?
- Is it a long-term problem?
- What ultimate goal do we want to achieve?
- What would be the consequences of doing nothing ('option zero')?

Having done all this, we should consider what courses of action are possible. Broadly speaking, two questions need to be asked:

- Does the state have to intervene or are there other ways to solve the problem concerned? There are many situations in society that are less than satisfactory and which would be worth improving but which do not require any intervention by the state.
- If we accept that the state has to intervene, we should ask the second question: does the state have to enact legislation? Legislating is the state's main method of influencing a situation, but there are other ways of dealing with social issues (incentives, self-regulation, information campaigns, etc.). The latter approach, though less formal, may prove more effective.

Once we have decided to legislate, we must choose the best way to achieve the intended objective, while respecting the following principles:

- The principle of appropriateness: the measure chosen must be suitable to achieve the intended objective with sufficient certainty. This presupposes making the correct choice of state intervention level (in particular in federal states) and of normative intervention level (constitution, act, decree, ordinance, regulations, etc.).
- The principle of proportionality: the measure proposed must be justified by the importance of the objective and pose the lowest possible threat to civil liberties.
- The principle of fairness and equality: the measure must treat identical cases in an identical way and different cases in a different way.
- Ease of implementation: it must be possible to implement the measure; if required, resources have to be made available.

- Respect for consistency in the legal order: the measure must fit into the existing legal framework and not contradict other legal texts.

It follows from the foregoing criteria that any decision to introduce new legislation involves a rigorous process that takes time and requires a precise understanding of the situation to be resolved.

This approach, however, is called into question not only when exceptional circumstances occur, but also following a variety of events that shake public opinion. In such situations, it is not uncommon for the authorities to seek to take advantage of the circumstances by legislating immediately, if only to demonstrate that they are doing something. This is what I call 'event-related legislation'. Some authors talk of 'instant legislation' or 'knee-jerk legislation'.

Definition

'Event-related legislation' means the result of a legislative process, often less than systematic, which has been triggered by a specific event that has influenced public opinion and which has been the subject of widespread media attention.

In these circumstances, the impetus overrides the need to define and analyse the problem. It is assumed that there is a need to legislate and urgency dictates the tempo of the debate, which at the same time reduces the time for analysis and reflection. In other words, it is no longer the law that dictates the event but the event that dictates the law.

Two factors with their own dynamics heavily influence the process: time and emotion.

Time has always been an essential factor in politics. It relies on a harmonious balance between the long term and the immediate: a long-term outlook is needed, for example, in order to carry out major infrastructure works or to implement large-scale projects; immediacy is the essence of action, for example, in reaction to a natural disaster.[17] New technologies and the real or supposed needs of society upset the time scales and rhythm of the parliament, which has to work in real time all the time. We may regret it, but it is a fact: the tempo of politics has increasingly become instantaneous, rapid, and ubiquitous. Urgency, as we see more and more often, has pervaded the work of parliament, at the same time reducing the time available for analysis and reflection. Like 'fast food', we now have 'fast law'.

Emotion is another factor that increasingly determines the relationship between governors and the governed. The reason for this is the spread of tools of communication and developments in the media world. Television, internet and social media have brought politics closer to the public. While positive in itself, this

[17] EDMUND HUSSERL (1859-1938) insists on a direct correlation between the three forms of time and three branches of the democratic state. In his view, the past is a matter for the judiciary, with its ability to judge what has already taken place; the present is matter for the executive, because it manages ongoing business and deals with emergencies; while the future is a matter for the legislature (see: *Leçons pour une phénoménologie de la conscience intime du temps*, Paris, 1991).

development has led to a tendency to favour appearances rather than content, to prefer form to substance. The complexity of the circumstances is then reduced to its most basic form and it is not uncommon for pictures and evocative headlines to obscure the real problems. The shock of images on the news or the buzz on the internet sometimes serve to exaggerate problems that may not even exist.

Law on dangerous dogs

In 2005, the death of a six-year-old boy, savaged by three pit bull terriers, caused a massive outcry in Switzerland. This tragic event gave rise to a major debate among politicians and the public on the subject of dangerous dogs. Six days after the incident, a member of the National Council submitted a parliamentary initiative demanding a ban on certain breeds of dog. At the same time, 180,000 people signed a petition launched by the tabloid press calling for an immediate ban on pit bull terriers in Switzerland. Parliament concluded that a ban on dangerous dogs could not be achieved by a law, but required a revision of the Constitution, because the Confederation had no power to enact legislation to protect people from animals. Parliament spent five years drafting a law only to realise that the cantons had already solved the problem. The proposed law was therefore rejected in an atmosphere of indifference that contrasted with the emotion initially felt.

The emphasis on urgency and emotion creates a permanent conflict that directly affects, indeed compromises the running of parliament, which is more used to working on a long-term, more reasoned basis.

It would however be wrong to ignore this phenomenon: the public expects their members of parliament to pay attention and react to their urgent needs and their emotions. Speed of intervention becomes a barometer for the importance given to issues that cause public concern. Often it is more effective – in electoral terms – to say that one is going to make a law to correct a problem than to determine the causes of the problem. The law then becomes a response without being a solution.

Certain areas are especially susceptible to this form of legislation:

- Security and combating violent crime (anti-terrorist legislation, day release for dangerous offenders, increased sentences for certain categories of offence, dealing with road rage offences, regulating the risks of certain sporting activities, dealing with football hooliganism, protecting victims of crime, etc.).

- Economic and financial matters (measures in response to the financial crisis, reform of international taxation, limiting the remuneration of executives of multinational companies, combating social benefits fraud, etc.).

- Issues relating to accountability in public life (combating corruption, prohibiting dual mandates, eliminating conflicts of interest, restricting employment opportunities in the private sector for former public officials and ministers, etc.).

Clearly there may be some cases where event-related legislation may prove necessary, if only to send a signal in a given situation which is seen as scandalous;

this applies in particular to legislation on rehabilitation (e.g. the rehabilitation of Swiss combatants in the Spanish Civil War who were convicted in Switzerland, recognition of the child victims of administrative detention, locating the unclaimed assets of the victims of the Nazi regime, etc.).

Such situations should however remain an exception. Most of the time, event-related legislation does not respond to a real problem, is ill conceived and cannot always be implemented. Generally, it creates special derogatory regimes that do not fit easily into the existing body of law and which undermine existing legislation. It is worth remembering the words of PORTALIS in his preliminary address on the draft of the French Civil Code: "There must be no unnecessary laws. They would weaken the necessary laws; they would compromise the certitude and majesty of legislation".

Legislation on hazardous activities

In June 2000, a member of the National Council submitted a parliamentary initiative to regulate the outdoor adventure activity business (canyoning, rafting and bungee jumping) and the mountain guide profession. The initiative closely followed a canyoning accident that had resulted in 21 deaths. Despite opposition from the government and the majority of cantons, Parliament adopted a law in 2010. Since coming into force on 1 January 2014, the Federal Act on High-Risk Activities has not had the anticipated effect. By finding specific solutions for the various associations active in this sector, it has been possible to introduce equivalent safety regulations that are arguably superior to those required by the new law. Recently, the government proposed to Parliament to repeal the law.

Several safeguards exist that restrict the volume of event-related legislation and prevent its excesses:

1. Bicameral parliaments: where a second chamber reviews draft legislation, flaws in legislation approved in haste by the first chamber can be rectified.[18]

2. The possibility of a referendum, which allows citizens to vote on the new legislation.

3. The review of the constitutionality of legislation by an independent authority (e.g. a constitutional court).

4. A system of decentralised state structures with several centres of power and expertise (a federal system).

5. The use of legislation that is subject to a time limit ('sunset legislation') or of less formal instruments than legislation (e.g. resolutions).

In any event, Parliament should demand the right to 'give time more time'. We should also remember that democracy is the instrument of a social group endowed with reason and not of an assortment of individuals buffeted by waves of emotion.

[18] This is the argument advanced by JAMES MADISON (1761-1836) at the Philadelphia Convention, according to which a Senate is required "to protect the people against their rulers (and) to protect the people against the transient impressions into which they themselves might be led."

"Urgent action, haphazard by its nature, has no time to take account of the fundamental values of general interests, sources of coherence and social cohesion."[19]

Experience shows that legislative action needs perspective, time for reflection and discussion: it is based on operational and procedural rules that should allow long-term interests to have priority over daily business. This requires patience, calmness and discipline, allowing us time to relax, soothe the emotions and apply reason.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr SCHWAB and opened the floor to the debate.

Mrs Françoise MEFFRE (France) said that there was not really a solution to this problem. Either the law came from an opposition MP, and she was thinking of a proposed law following the conviction of a battered wife for the murder of her spouse, having pleaded legitimate self-defence, or proposed laws followed horrible crimes. As the legislative process was long, it could be hoped that the urgency wouldl decrease in time. The problem was also linked to the increasing importance of the media.

Mr Sergey MARTYNOV (Russian Federation) spoke as follows:

1. On behalf of the Central Office of the Council of the Federation of the Federal Assembly of the Russian Federation I welcome the participants in the debate. As part of this discussion I would like to share some insight on the work of Russian lawmakers aimed to effectively address new challenges to lawmaking.

The evolution of the Russian legislation is heavily dependent on changes both inside the country and internationally.

The Constitution of the Russian Federation provides for powers of the Council of the Federation to be exercised in situations, when the state authorities are required to provide immediate response to a certain event. **The law identifies the parliament's special role in emergencies**.

2. **The Council of the Federation also enjoys broad powers that enable it to urgently respond to various events**, including those associated with changes in the international situation.

According to the law on special economic arrangements[20], the Council of the Federation, the State Duma and the Government are entitled to address to the President of Russia **proposals concerning the application of special economic measures with respect to specific foreign states, organizations, or individuals**.

3. **Economic challenges** and contraction in business conditions in the global market naturally produce an impact on the parliament's lawmaking activity. Based upon the previously elaborated **anti-crisis plan, the Council of the Federation approved a series of laws** last year. Amendments to the legislation targeted

[19] JEAN-MARIE COTTERET, *Parlement 2.0*, Fauves Editions, Paris, 2015, p. 41.
[20] Federal Law No. 281-FZ of 30 December 2006 "On Special Economic Measures."

promotion of entrepreneurship, support for business, and reduction in administrative barriers, as well as arrangements to restrain unfair competition. The laws adopted within the framework of the anti-crisis plan are of strategic importance for the development of the country.

The Council of the Federation has also achieved significant progress in the social sector. It has approved laws that ensure social protection of the population and disabled persons, improvements in the pension system and health insurance system, labor relations, protection of motherhood and childhood. Therefore, **the parliament exerts every effort to facilitate the economic development of the country and ensure high standards of living for its citizens**.

4. Naturally, contemporary legislation is developing at an astonishing pace. **The number of legal acts approved annually keeps increasing**, and interconnections between these acts are growing increasingly complex. This complicates the lawmaking practice of the state authorities.

In this context, **constant improvements have been made to the procedure for the development and approval of regulatory legal acts** over the last few years, with a focus on drafting methodology. **New technologies are being introduced to lawmaking**, facilitating sustainable development of legislation and preventing contextual ill-advised decisions. What is meant here is the **monitoring of legislation and assessment of the regulatory impact of regulatory legal acts**[21].

One of the Council of the Federation's focuses is the **monitoring of legislation and law enforcement practice**. Analytical reports are drawn on a regular basis, covering the monitoring of the Council's lawmaking activities[22]. The Committees of the Council of the Federation monitor the implementation of specific federal laws. The Council of the Federation, in association with the State Duma, prepares the annual **Report on the Status of Russian Legislation**.

Legal monitoring makes it possible to not only pinpoint current challenges, but also identify strategic development patterns for legislation. **Legal monitoring creates obstacles to contextual legal acts and prevents overburdening of legislation**.

5. An important area for improving legislation is the **introduction of the regulatory impact assessment (RIA) system in Russia starting 2010**[23]. The

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[21] European countries introduced the regulatory impact assessment (RIA) methodology back in the 1970s with a view to identifying the impact of legal regulation and establishing its quantitative equivalent. RIA methodologies are employed in more than 50 countries.

[22] For example, the Analytical Report "Performance of the Council of the Federation of the Federal Assembly of the Russian Federation during the Session", Analytical Report "Review of the Main Activities of the Council of the Federation of the Federal Assembly of the Russian Federation during the Session," etc.

[23] In Russia, prerequisites for the application of RIA technologies were introduced by Federal Law "On Technical Regulation," as well as the Concept of the Administrative Reform in 2006–2010 adopted by Executive Order of the Government of the Russian Federation No. 1789-p of 25 October 2005. The introduction of the RIA mechanism was underpinned by Resolution of the Government of the Russian

system aims at eliminating excessive state regulation in business and reducing administrative barriers in the national economy.

The main **function of the RIA system is to rule out unfeasible and ineffective initiatives during the phase when a specific bill is approved**. If the Economic Development Ministry of the Russian Federation provides a negative opinion regarding a bill developed by the Government, then such a bill shall be reviewed before it is submitted to the State Duma.

On the one hand, this will create barriers to poor-quality legislation. On the other hand, it will allow engaging experts and market professionals to elaborate effective management solutions.

6. **Russian legislation therefore provides a fast and timely response to emerging challenges associated with changes in the social, economic, and international situation**. At the same time, **legislation remains stable**. The lawmaking system has developed reliable mechanisms ensuring the consistent and sustainable legislative development process.

Mr Najib EL KHADI (Morocco) said that laws were made in response to a demand from society, but that other responses were possible too. He cited culture, morals, education. For this reason, moral dilemmas were always the same. Laws could also be a response to events.

He gave as an example violence associated with football. Such problems did not necessarily entail the enactment of laws, of which the results would be uncertain. In other cases, an immediate judicial response was demanded: for example, on questions of security, or the fight against terrorism. Every day new dysfunctions were discovered, and the system needed to evolve constantly for the security of citizens.

Mr Fademba Madakome WAGUENA (Togo) gave the example of the increasing number of laws which modified the electoral codes, particularly in Africa, where they were often enacted in response to a specific set of demands. For the states of the Economic Community of West African States, there could be no modifications made in the six months preceding an election. He asked into which category legislative modifications would fall.

Mr Kennedy Mugove CHOKUDA (Zimbabwe) said that in Zimbabwe the Standing Orders provided for the legislative procedure to take a certain time. However, the previous year, a court ruling allowed companies to lay workers off with only three months' notice and without giving them any severance pay. There was a huge public outcry. This generated a need for emergency legislation to stem the tide of redundancies. The resulting bill was passed in just three days.

However, subsequently, there had been complaints that the bill, however necessary, had not addressed the fundamental issues which would have been addressed had the legislative process followed its normal course.

Federation No. 336 of 15 May 2010 "On Amendments to Certain Acts of the Government of the Russian Federation."

Mr William BEFOUROUACK (Madagascar) said that the situation had been well set out. He believed that such legislation resulted from social events, whoever the executive authorities or the MPs were. It could equally arise from the general population. There were important impacts on that quality of legislation, and it was the role of Parliament to ensure that this was properly managed.

Mr Jean NGUVULU KHOJI (Democratic Republic of Congo) said that the debate was very timely. Sometimes it was possible to deal with a situation using subordinate measures, and in such cases it could not be said that legislation was a necessary evil. Each case had to be taken on its merits.

Mr Manuel CAVERO (Spain) said that he could not find any Spanish case in the last three years which fell into the category of legislation in response to current events. He believed that was because law was still held to have a prestigious role in society and was therefore not to be rushed.

Mr Said MOKADEM (Maghreb Consultative Council) said that the issue reminded him of the time when he was a student at the University of Algeria, when he had reflected on the need to have a strong legal basis for society. Legislating in response to current events risked degrading the quality of the law.

Mr Geert Jan A. HAMILTON (Netherlands) said that the debate topic gave rise simultaneously to two contradictory conclusions: that some legislation was superfluous and that some emergency issues urgently needed a legal basis.

In the Netherlands, various questions were posed with respect to the necessity and proportionality of legislation. In 2008 and 2009 there were laws on the financial crisis and the recovery. These were not impulsive laws because they were carefully considered. Thus he made a distinction between timely but necessary law, and rushed and superfluous law.

Mr SCHWAB said that, in the ideal vision of a lawyer, one would proceed to an analysis of the problem and would ask oneself questions: what was the nature of the problem; was a law necessary etc? Very often, however, in crisis situations, these analytical tools disappeared and one arrived immediately at the solution: legislation.

It happened that legislation was not the best solution. To deal with football violence, for example, it was better to get supporter associations to deal with their own fans. There were few examples that could be given from the Swiss statute book: the will was there to do something, and then the problem was no longer there. Domestic violence was also a recurrent topic, but instruments already existed.

An awareness of the impact of the law was the only thing that could save it. It was necessary to protect parliamentarians from themselves, and this is what bicameralism was about.

Supreme and constitutional courts could call into questions certain legislative deficiencies. In Switzerland, direct democracy and the referendum permitted this to happen. Another solution would be to use sunset legislation – it was possible for a law to be effective and perennial, but this was not always the case.

Competition between different sources of power enabled a balance to be struck.

It was necessary to keep a sense of proportion. In resolving a problem it was important not to create ten further problems. Parliament should always take its time. Emotion was rarely a good counsellor.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr SCHWAB for his moderation and members for their contributions to the debate. She said that it was probably a topic that could be discussed further at a future date.

5. Concluding remarks

Mrs Doris Katai Katebe MWINGA, President, closed the sitting.

The sitting ended at 5.40 pm.

THIRD SITTING

Tuesday 22 March 2016 (morning)

Mrs Doris Katai Katebe MWINGA, President, was in the Chair

The sitting was opened at 9.15 am

1. Introductory remarks

Mrs Doris Katai Katebe MWINGA, President, welcomed everyone to the sitting and said that she hoped that everyone had enjoyed the previous day's excursion.

That morning's session would finish at 12 noon, when the Association would have a tour of, and lunch at, the Zambian Parliament. The afternoon's session would resume at 3 pm.

She drew the attention of members to two IPU documents which were circulating: one a reminder about the Global Parliamentary Report, and the other a questionnaire on violence against women, and asked for them to be completed as soon as possible.

2. Orders of the day

Mrs Doris Katai Katebe MWINGA, President, said that there were no changes to the orders of the day.

The orders of the day were agreed to.

3. New Member(s)

Mrs Doris Katai Katebe MWINGA, President, said that the secretariat had received requests for membership which had been put before the Executive Committee and agreed to, as follows:

For membership:

16. Mrs. Suzan Matsotets MPESI	Deputy Clerk of the Senate, Lesotho
17. Mrs. Veniana NAMOSIMALUA	Secretary General of the Parliament of Fiji Suva
3. Mr. Arsene RISSONGA	Secretary General of the Senate, Gabon

For associate membership:

Mr. Parfait ETOUNG ABENA	Secretary General of the CEMAC Parliament

The new members were agreed to.

4. General debate with informal discussion groups: The budget of the Parliament

Mrs Doris Katai Katebe MWINGA, President, informed the Association of the sad news about the terrorist attack that had just taken place in Brussels. She said that she was sure that everyone's thoughts would be with the victims of the attack.

She reminded members that the general debate that was due to take place that day would divide into informal discussion groups formed on a linguistic basis. Before that happened, Mr Najib EL KHADI would open the debate and the Association would hear from those who had made written contributions.

She invited Mr Najib EL KHADI, Secretary General of the House of Representatives of Morocco, to open the debate.

Mr Najib EL KHADI (Morocco) said that he wished to show his solidarity with Belgium and condemned the terrorist attacks that had occurred in Brussels, as elsewhere in the world.

He spoke as follows:

[The text of this contribution has not been provided to the Secretariat and is therefore not available here.]

Mr Ibrahim KHRISHI (Palestine) expressed his solidarity with all victims of terrorism in respect of the events in Brussels.

He said that budgets had to be spent by parliamentary administrations. Parliament had to remain independent both in spending budgets and in scrutinising expenditure. That facilitated the autonomy of Parliament and the separation of powers.

Mr Sergey MARTYNOV (Russia) spoke as follows:

1. On behalf of the Central Office of the Council of the Federation of the Federal Assembly of the Russian Federation I welcome the participants in the debate. As part of this discussion I would like to share some insight on the **financial support for Russian lawmakers**.

Russia is a federal state with a bicameral parliament. The Federal Assembly comprises the State Duma and the Council of the Federation. **Each chamber has its own budget financed from federal funds**.

2. All of the expenditures associated with the activity of lawmakers — members of the Council of the Federation and the State Duma, including Central Office expenses of both chambers — **are provided for in the law on the federal budget that is adopted annually**.

Preparation of a draft federal budget is **an exclusive prerogative of the Government of the Russian Federation**[24]. Nevertheless, the Government defers to the judgment of lawmakers when it comes to the expenditures of the two chambers of the Federal Assembly[25].

During the next phase, the parliament reviews the federal budget bill. This work involves the approval of the budgets for both chambers[26]. Once that is done, the bill is signed into law by the President of the Russian Federation.

3. **The budget of the State Duma for the year 2016 amounts to approximately RUB 10 billion, whereas the budget of the Council of the Federation stands at approximately RUB 5 billion,** an equivalent of USD 134 million and USD 70 million, respectively.

Therefore, expenditures of the Russian parliament account for **slightly less than one-tenth of a per cent of combined federal budget expenditures**. Dear colleagues, I think that you will all agree that this amount is quite meager.

I need to emphasize that **all of the expenditures of the Council of the Federation and the State Duma must strictly comply with respective budget estimates**. These estimates are approved by the chairmen of the Central Offices of the two chambers[27]. As head of the Central Office of the Council of the Federation I officially approve budget estimates[28].

4. **Both the federal budget and the budgets of the two chambers of the parliament are subject to tight control**[29]. The formation and implementation of the budget of the Council of the Federation are monitored by the Committee of the Council of the Federation on the House Rules and Parliamentary Performance Management in association with the Central Office of the chamber.

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[24] Article 171 of the Budget Code of the Russian Federation.

[25] When making a draft Federal Budget, the Ministry of Finance of the Russian Federation addresses respective budgetary appropriation proposals to the Council of the Federation and the State Duma. Since 1 January 2016, budgetary appropriation planning for the expenditures of the Council of the Federation and the State Duma is supposed to follow a special procedure adopted in Paragraph 4 of Article 174^2 of the Budget Code of the Russian Federation.

[26] A drafted federal budget bill is submitted to the State Duma, which is given 60 days to review the document and have three reads. The draft Federal Law on the Federal Budget approved by the State Duma is then submitted to the Council of the Federation within a five-day period. The Council of the Federation has another 14 days to further review the document. Once approved, the draft Federal Law is submitted to the President of the Russian Federation within a five-day period for approval and divulgation.

[27] Article 30 of the Regulation of the Council of the Federation; Article 222 of the Regulation of the State Duma.

[28] Budget estimates are then subject to approval by the Committee of the Council of the Federation on the House Rules and Parliamentary Performance Management.

[29] The Federal Assembly of the Russian Federation exercises parliamentary control of budget relationships, which incorporates preliminary, current, and follow-up parliamentary control. Article 11 of Federal Law No. 77-FZ of 7 May 2013 “On Parliamentary Control.”

It should be emphasized that at the **Council of the Federation**, the supreme legislative authority of the country that is vested with the power of parliamentary control, **budget is formed and implemented on an annual basis with no violations**.

Strict compliance is confirmed by inspections carried out by the **Accounts Chamber**, the permanent supreme state audit authority. Inspections are conducted within the framework of the control of the implementation of the federal budget[30].

5. **Budget legislation provides for a possibility to form special contingency funds for unforeseen circumstances**. At the federal level, there is the Reserve Fund and the National Welfare Fund[31].

Furthermore, there are reserve funds of executive authorities[32], including the Government. The law also provides for a possibility of creating reserve funds by Russian regions. There is also the Reserve Fund of the President of the Russian Federation[33]. These are contingency funds. However, **the parliament is not authorized to create such funds**[34].

The Russian budgetary process is built on the principles of transparency and publicity; therefore, Russian budget legislation does not provide for possibilities of establishing secret or hidden reserve funds.

6. Parliaments tend to play an increasingly important role in the modern world. Therefore, a regular international exchange of experience in the support for lawmaking activities acquires special importance.

In conclusion, I would like to confirm the commitment of the Central Office of the Council of the Federation to constructive engagement.

Mr Bachir SLIMANI (Algeria) spoke as follows:

Introduction:

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30 According to the Budget Code of the Russian Federation, the Accounts Chamber of the Russian Federation carried out inspections of the implementation of the Federal Law "On the Federal Budget for 2014 and Planning Period of 2015 and 2016" and budgetary reports on the implementation of the budget for 2014 at the Council of the Federation. The inspections discovered no violations throughout the reporting period pertaining to the performance, earmarking, and proper use of federal budget funds by the Council of the Federation.

31 The Reserve Fund is established for the purpose of maintaining the balance of the federal budget, and the National Welfare Fund's purpose is to co-finance pension savings of the population, as well as ensure the balance of the Pension Fund of the Russian Federation.

32 According to Article 81 of the Budget Code of the Russian Federation, it is planned to establish reserve funds of the executive authorities (local administrations) — the Reserve Fund of the Government of the Russian Federation, reserve funds of the supreme executive authorities of the constituents of the Russian Federation, and reserve funds of local administrations.

33 Articles 81^1 and 82 of the Budget Code of the Russian Federation.

34 It is not allowed to create reserve funds of legislative (representative) authorities and members of legislative (representative) authorities (Paragraph 2 of Article 81 of the Budget Code of the Russian Federation).

The rules applicable to the National People's Assembly budget are based on a core principle; financial self-sufficiency, this last gives effect to a more general principle which is the Separation of Powers.
The principle of financial self-sufficiency has been enshrined in legislation, in particular article 103 of the organic law n° 99-02 of 20 Dhou al-Qi'dah 1419 corresponding to March 8th, 1999 setting up the organization and functioning of the National People's Assembly and the Council of the Nation, as well as the functional relationships between the parliament Houses and the Government: «Each House of Parliament enjoys financial self-sufficiency »; and the article 80, sub-paragraph (1), of the National People's Assembly internal regulation : « the National People's Assembly enjoys financial self-sufficiency ».

Drawing up of the NPA budget: prerogative of the president:
The president of the NPA is empowered by the Assembly internal regulation (article 9 – ninth indent) to draw up the Assembly budget, this prerogative is exercised through administrative structures.

Preparation of the budget draft by the administrative structures:
The preparatory work of the budget draft for the year (N+1) begins by the end of the first quarter of year N. hence, the Assembly administration sets up the general guidelines by referring, for information only, to the budget framework letter (methodological note) prepared by the Ministry of Finance and submitted to the State budget authorizing officers. The office of budget and accounting services draw up a memorandum and address it, afterwards, via the General management of Finance and resources Administration, to the administrative and technical structures of the Assembly. This memo encloses the guidelines and recommendations witch should be respected by those structures during the expenditure forecasting. This forecasting which should be justified, is based on the following documents:

- Activities carried out from January to April of the year N;
- Activities to be carried out at December 31st of the year N;

An action plan of the following year (n+1), presented as a budget summary focused on intended goals and, more precisely, operations which should be prioritized including the financial package set to each of those operations and the completion deadlines.

It is also mentioned that the forecasts should be submitted by mid-May at the latest to allow the Assembly administration to schedule panel discussions on budgeting and pre-arbitration process.

The Office of Budget and Accounting should achieve the process of consolidating and synthesizing the documents transmitted by the recipient structures and develops thereafter a management chart recounting:

The budget requests of every structure;

- A comparative table between the budget for the year N and the budget draft of the following year (n+1);
- A table revealing the development of budget expenditures within the Assembly for the last five years.

- A comparative table between the funds allocated for the year N and forecasts for the following year (n+1), and introducing aside the best expenditure of the last five years.

This management chart is used as a working document during the first arbitration headed by the Secretary General of the National People's Assembly, in his capacity as the Chief administrative officer.
The arbitration session is attended by all recipient structures officers who shall each submit a leaflet illustrating their achievements and priority actions.
In this context, it is worth mentioning that dividing the budget by department makes those structures aware of their responsibilities regarding their action plan and their forecasts. Moreover, it represents for the Secretary General a tool for the performance review in purpose to rectify if the case arises and to get an idea about the potential of those structures officers, their ability to fulfill assigned tasks and achieve their goals.

Submission of the NPA budget draft to (quaestors):

The NPA budget draft for year n+1 thus prepared, including an analysis of revenue and expenditure forecast and amount of the State budget allocation witch will be laid down in the Finance Law, is then submitted to the opinion of quaestors who have been appointed under article 15 of the National People's Assembly internal regulation stipulating: «*The Bureau of the National People's Assembly may appoint, within its structures, three (03) members assigned to oversight the financial and administrative services of the Assembly and the MPs affaires*», their mission, inter alia, in accordance to article 16- first indent : «*is to issue an advisory opinion on the National People's Assembly draft budget before its submission to the Bureau for consideration and adoption*».

a. The role of the NPA bodies:

The permanent bodies of the NPA laid down in article 9 of the organic law n° 99-02 of 20 Dhou al-Qi'dah 1419 corresponding to March 8th, 1999 setting up the organization and functioning of the National People's Assembly and the Council of the Nation, as well as the functional relationships between the parliament Houses and the Government and article 7 of the National People's Assembly internal regulation, are:

- President;
- Bureau;
- Permanent committees.

The President of the NPA:
The President of the NPA is appealed to a final arbitration of the Assembly budget draft for the year n+1 supported by the quaestors opinion. By virtue of the article 9-ninth indent of the national People's Assembly internal regulation, it is up to the president to submit the budget to the Bureau of the Assembly.

b. The NPA Bureau:

The article 11 of the Assembly internal regulation sets up the composition of the National people's Assembly Bureau: « *The Bureau includes the president and nine vice-presidents*».
Among the numerous powers that are conferred to the Bureau by the internal regulation, the one promulgated in the article 14, sixth indent which stipulates: « *the Bureau of the Assembly considers, adopts and submits the budget draft to the finance and budget Committee* ».
The Secretary General presents the budget draft to the members of the Bureau, then a debate is opened, giving opportunity to the quaestors as well as to the other members of the Bureau to express their remarks and opinion about the budget draft, before its adoption.

c. The finance and budget Committee

By virtue of the article 80, paragraph 2 of the Assembly's internal regulation « *the budget draft of the National people's Assembly is adopted by the Bureau and then forwarded to the finance and budget committee which issues an opinion in the 10 days following the referral* » .
Then, the finance and budget Committee meets in 10 days following its referral addressed by the National people Assembly President and it is up to a quaestor, the Secretary General of the Assembly and representatives of the administration to present the budget draft to the Committee. Explanations and responses are given to the questions asked by the members of the committee to enable them to issue their opinion.
These opinions are included in a full report that contains all the recommendations and observations about the budget draft; the report is then transmitted to the Assembly President.
After receiving the opinion of the finance and budget Committee, « *the budget draft, which could be eventually reformed, taking into account the finance and the budget committee opinion, is transmitted to the Government to be laid down in the finance law* » (article 80, paragraph 3 of the NPA internal regulation).

The voting of NPA budget

In virtue of the article 103, paragraph 2 of the organic law n° 99-02 of 20 Dhou el Kaada 1419 corresponding to March 8th, 1999, setting up the organization and the functioning of the National People's Assembly and the Council of the Nation as well as the functional relations between the Parliament Houses and the Government: " Every year, during the autumn session, each Parliament House votes its budget on a Bureau proposal".
However, it should be mentioned that the allocation of State budget for the NPA, which is part of common charges, is voted during the finance law meanwhile.
That is what the NPA internal regulation article 80, paragraph 4 stipulates: "*the budget is set up by the NPA within the framework of the Finance Law".*
Finally, we should indicate that the NPA budget will be implemented as soon as the Finance Law enters into force because it does not require the setting up of credits by governmental decision; that is what makes the difference with budgets in other institutions and public administrations.

Those are succinctly the steps of the NPA budget drawing up.

Mr Gengezi MGIDLANA (South Africa) said that he wished to share the experience of his country. Accounts had to be prepared and presented to the Speaker of the Assembly. The proposal would be discussed with the Minister of Finance, and would then go on to the Committee on Finance, which would acted as an oversight mechanism. Any adjustments made would follow the same process.

The Executive Authority, in the person of the Speaker and the Chairperson, were accountable for the finances. The Accounting Officer and the Chief Financial Officer together managed the finances.

Scrutiny was conducted by means of standing committee.

The money used to pay Members' salaries appeared as a direct charge. Other funds that remained unspent were retained by Parliament and used the next financial year.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr EL KHADI and separated members into linguistic groups, to which she assigned the following topics:

> **Group A (English speaking group 1)**: The decision-making process: who sets the budget for Parliament? What is the procedure? How is the Government implicated in the process?
>
> **Group B (English speaking group 2)**: Implementation: who is charged with managing the budget? How is it managed?
>
> **Group C (French speaking):** Scrutiny: Is the management of the budget subject to scrutiny (either internal, or by an independent, outside body)?
>
> **Group D (Spanish speaking):** Transparency: what degree of transparency applies to the management of Parliament's budget and its accounts?
>
> **Group E (Arabic speaking)**: Response to crisis situations: how are crisis situations managed in budgetary terms? Do secret reserve funds exist?

She reminded the groups that their first task would be the election of a rapporteur capable of reporting back to the plenary in English, French or Arabic.

The sitting separated by informal discussion group at 10.50 am.

FOURTH SITTING

Tuesday 22 March 2016 (afternoon)

Mrs Doris Katai Katebe MWINGA, President, was in the Chair

The sitting was opened at 3.00 pm

1. Introductory remarks

Mrs Doris Katai Katebe MWINGA, President, welcomed everyone back

2. General debate with informal discussion groups: The budget of the Parliament

Mrs Doris Katai Katebe MWINGA, President, invited Mr Najib EL KHADI, Secretary General of the House of Representatives of Morocco, to moderate the debate.

Mrs Doris Katai Katebe MWINGA, President, invited the five rapporteurs to give their reports.

Mr Bachir SLIMANI (Algeria, representing the Arabic-speaking group) said that the group had discussed the resolution of financial issues during a time of economic crisis. At such a time, prioritisation was important, so that only urgent projects were attended to.

The countries comprising the group tried to postpone non-urgent matters in order to facilitate treatment of the crisis itself. Some governments had tried to reduce the salaries and privileges of officials during such periods.

A new budget was often adopted, and new regulations put in place.

Mr José-Manuel ARAÚJO (Portugal, representing the Spanish-speaking group) said that his group had discussed transparency and had divided the issue into two categories: the budget and the accounts.

All the parliaments concerned published their budget by a variety of means. Often the information provided was very detailed, although in some countries just the headline figures were given. Often the public asked questions because the figures were complicated.

The accounts were published some time later. In Portugal, for example, it was only after the Court of Audit had issued its report that the accounts could be published.

The other type of information that was frequently published was expenses-related. In many countries even the smallest details were made public.

Transparency was one of the most important principles in the administration of a democratic country and it was important to make the information available in a manner which was as accessible as possible.

The group thought that any sort of booklet that was produced would be more useful if the countries of the Association were divided into broad categories according to the key characteristics of their financial practices.

Mrs Françoise MEFFRE (France, jointly representing the French-speaking group): said that the scrutiny of expenditure was the corollary of the autonomy of the assemblies. It was entirely reasonable that control should be exercised.

Mr Arsene RISSONGA (Gabon, jointly representing the French-speaking group) spoke about budgetary autonomy and then the orders giving rise to expenditure. There was an autonomy of management and financial autonomy. The former required the intervention of the executive whilst the other was a complete autonomy. From that derived the right to spend the money.

There were three ways in which expenditure could me made:

- the President of the institution ordered funds to be spent, assisted by questeurs or delegated authorities;
- the President held all the power, he gave the orders and administered the expenditure;
- the decision-making power was shared between the President and the Secretary General.

Mrs MEFFRE said that the means of controlling the spending of assembly budgets were developed to differing degrees. There was internal control, external control, or a combination of the two.

Internal control took on numerous forms: there could be a special committee representing all parties, which was charged with verifying the assembly accounts. Often an opposition member presided in such committees. There could be an auditor general, a member of parliamentary staff, or it could be the bureau of the assembly that held the responsibility. As a complement to internal controls, the courts might sometimes certify the accounts.

In some cases, only an external control existed: this might take the form of a general financial controller, or an external audit company.

There was a wide variety of practices and degrees of control varied too. Controls were sometimes reactive, and sometimes regular. Mostly, controls were exercised on an annual basis, but sometimes controls could be exercised twice or three times during the year.

The degree to which controls were publicised also varied: sometimes MPs were informed, but sometimes there would be a public debate.

Mr Andrew KENNON (United Kingdom, representing the first English-speaking group) said the group was looking at who set the budget, what procedure was used, and to what extent the Government was involved.

The most usual practice was for the budget to be initiated within the administration of the Parliament then, often, for it to be taken for some level of political approval. Then usually it went to the government ministry concerned, and a process of negotiation began.

In some cases it was the Government that took the initiative. The group was only aware of the case of the US where the Parliament had complete control over its budget, and in most cases there was a lengthy process of negotiation.

In some cases it was for the Parliament to alter its budget; in others the Parliament would only ever vote to reduce its budget.

In times of crisis there was a general expectation that all budgets would be reduced.

There had been a discussion about bicameral parliaments, and the ways in which they handled their relative responsibilities.

The group had also discussed one-off large expenditure, such as the renewal of old buildings or the hosting of international conferences.

Mrs Claressa SURTEES (Australia, representing the second English-speaking group) said that her group had considered the implication and management of the budget.

Many common features had come to light: the secretary general seemed to have a pivotal role in developing the proposals and in taking responsibility for how the money was spent. They were assisted in this work by their staff. Most secretaries general had responsibility for the entire budget.

There were regular reviews of expenditure, which enabled a degree of control to be exercised.

There was usually a parliamentary committee which was involved at both proposal and implementation stage. It was generally agreed that the expenditure needed to be strongly linked to the implementation of the strategic plan.

Implementation was usually carried out in accordance with rules and guidelines to ensure that propriety was observed. Most parliaments followed rules that were applicable in the wider public sector.

Most of those in the group appreciated the high levels of public scrutiny which held the Parliament to a higher standard. One exception to this came from Malawi, where the budget was not always assured, which pointed to a significant need to attend to the resolution of any deficit.

Mrs Doris Katai Katebe MWINGA, President, thanked the spokespeople for their contributions and opened the floor to debate.

Mr Hossein SHEIKHOLESLAM (Iran) expressed his condolences to the people of Belgium. He said that it was an international problem and that everyone should stand together.

The role of parliament on fiscal and budgeting evolution

From a historical perspective, there are deep and causal relationships between government budgeting and parliament. One of the main motivations for parliament establishment is regulation of fiscal, financial and taxation arrangements of the government. So, budgeting is an outcome of parliament incentives for controlling taxes and justifying taxpayers for paying taxes. It took a long time to translate the mentioned arrangements to fiscal, financial and tax law as a branch of public law.

Currently, the parliament play two different functions in the process of budgeting: investigating the allocation of resources to the public expenses and defining the method of monitoring and evaluating the resources 'allocation.In other words, the main missions and functions of the parliament in the budgeting process is limited to, first, permitting the government to forecast the achievable resources and allocating them to the public spending and then supervising and evaluating the results. Legislative rights in many countries, in spite of the unique historical and political background of each, share the same features including:

1. The roots of parliament rights in the budgeting process go back to the constitution. The legislator plays an intermediary role between the government and taxpayers. It can justify them on the public expenditures.
2. The parliament is suitable place to assess the government performance on the resource distribution and its compatibility with public priorities and local and national preferences.
3. The parliament supervision and criticizing the government performance may enhance the budgeting transparency and thus can contribute to the realization of "good state".
4. The presence of the parliament in the budgeting process facilitates decision making on trade-offs and decreases executive tensions in the public sector.
5. The parliament supervision on the resource allocation and verification of the operations may be effective on attracting public satisfaction.

Parliament's Budget

As mentioned, the presence of the parliament in the budgeting process has been an outcome of historical and political events during a long period of time. At the beginning, the parliament role was to contribute in preparation of budget act, enactment and supervision. Then, complexity of budgeting and extension of government functions to target economic development, income distribution, achieving social justice and ... resulted in the reduction of parliament role to enactment and supervision in many countries. There are some exceptions to this including US parliament that is responsible for the preparation of budget act.

A brief review of the history of budgeting evolution with a focus on passing or reforming budget act reveals the importance of financial independence of the parliament. In some countries, the parliament, like other independent organizations, has the right to suggest its budget. Iran is one of these countries. Section 84 of the internal bylaw of the Iran's parliament says: "annual budget of the parliament must be defined by the board of parliament governors after consultations with the Planning and Budgeting Commission. Then, they must send it to the presidential

office during the defined period in order to be placed inside the annual budget of the whole country after checking its compatibility with section 52 of the constitution". The presidency normally inserts the suggested parliament budget into the budget act with the minimum needed reforms. If the suggested budget is faced with a significant change, the parliament will carefully consider it in the supervision stage. The financial independence of the parliament is mentioned in ordinary law, as well. Section 66 of the "Public Audit Act" says: "this act is not applicable to the budget of guardian council and parliament and their spending must be compatible with their own internal bylaw. The treasury must pay the relevant resources under the request of the secretary of guardian council and the parliament president or authorities introduced by them".

Technical concerns

Some technical concerns should be noted on the financial independence of the parliament. Principles like necessity of budget balance, necessity of budget unity, necessity of budget flexibility, priority of revenues over expenditures and ... prevent public sector organizations and agencies to define their budget and send it to the parliament by their own. So, the process of preparation of budget act is concentrated in professional organizations such as budgeting organization or ministry of finance. Thus, the parliament should pay attention to these technical concerns when define its budget and send it to the presidential office.

Conclusion

1. International experiences indicate the legitimacy of the parliament's financial independence. This is in force in Iran, as well.
2. According to the section 52 of the Iran's constitution, the presidency has exclusively the right to introduce the annual budget to the parliament and the parliament has exclusively the right to enact and supervise the budget. Moreover, based on section 126 of the constitution, the president is directly responsible for planning, budgeting, administration and employment affairs. However, ordinary laws and administrative procedures gives the parliament the right to suggest its budget to the presidency and require the presidency to insert the suggested budget inside the annual budget.

Some technical concerns (such as limited resources) will prevent the parliament to define its budget without regarding these concerns and consulting with the presidency.

Mr EL KHADI said that he thought that the rapporteurs had presented a very thought-provoking series of responses. He believed that the information underlined the importance of the ASGP as a singular place where discussions about parliamentary procedures and processes could take place.

He observed many differences in the procedures and mechanisms used in the preparation of the budget; in the role of the Parliament; and in the implementation of the budget. He believed that there was a wealth of good practice which could be extracted from the discussion.

He said that he felt that the reports presented would be good material for the production of a set of best practice guidance.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr EL KHADI for his moderation and members for their contributions to the debate.

3. Communication by Mr Ali AL MAHROUQI, Secretary General of the Consultative Council of Oman: "The role of social media in spreading awareness about Parliament"

Mrs Doris Katai Katebe MWINGA, President, invited Mr Ali AL MAHROUQI, Secretary General of the Consultative Council of Oman, to make his communication. She announced that she would be grouping questions on the remainder of the afternoon's business at the end.

Mr Ali AL MAHROUQI (Oman) spoke as follows:

[The communication made by Mr AL MAHROUQI from Oman was provided in PowerPoint form only. To read an online version of the presentation follow this link.]

Mrs Doris Katai Katebe MWINGA, President, thanked Mr AL MAHROUQI for his communication.

4. Communication by Dr Ulrich SCHÖLER, Deputy Secretary General of the German Bundestag: "Training ambassadors for parliamentarianism - the German Bundestag's International Parliamentary Scholarship Programme"

Mrs Doris Katai Katebe MWINGA, President, invited Dr Ulrich SCHÖLER, Deputy Secretary General of the German Bundestag, to make his communication.

Dr Ulrich SCHÖLER (Germany) spoke as follows:

In a democracy, controversy is the normal state of affairs. The struggle to determine the right way forward shapes the daily life of functioning parliamentary institutions. It is therefore by no means a matter of course for parliamentarians of all political colours to come together in overwhelming unanimity and give their backing to a political initiative, support it for years on end and jointly develop it further. It is now more than 30 years since the German Bundestag succeeded in breathing life into just such a project and establishing it as a permanent feature of the parliamentary calendar: The International Parliamentary Scholarship Programme – or IPS for short.

Each year, we invite up to 120 young graduates with good German language skills to Berlin for five months, during which we offer them profound insights into parliamentary life in Germany. It all began as a modest exchange with the USA in the 1980s. After the Iron Curtain that had divided Europe fell in 1989/90, we developed this into a programme that was intended to inspire young people to take part in

building democratic polities across Central and Eastern Europe. The programme grew rapidly, and the Americans were joined by Polish, Hungarian, Russian and Baltic scholarship-holders. In the first decade of the 21st century, we responded to political developments and the creation of nation states in the Balkans, opening up the IPS to the new democracies that had emerged out of the collapse of Yugoslavia. In recent times too, the German Bundestag has been seeking to use the IPS to encourage pioneering democratic reforms and has therefore extended the programme to the countries of the Arab world as well.

Today, the IPS brings together representatives from 41 nations in Eastern, Central and South Eastern Europe, the Arab world, France, the USA and Israel who are interested in politics and active in civil society. The programme's geographical range has expanded into Asia with countries such as Azerbaijan and Kazakhstan. Its patron is the President of the German Bundestag, Professor Norbert Lammert, who takes our programme very seriously and follows it with tremendous interest.

You will certainly appreciate that this colourful mixture of different origins, cultures, political identities, and religious and biographical backgrounds not only causes long queues in our canteens, but also enriches life in the German Bundestag in fascinating ways. That is why we are also prepared to devote a fair amount of money to the programme: The scholarship-holders receive a monthly grant of 500 euros, plus free accommodation. We also reimburse the costs of their health insurance and enrolment at the three major Berlin universities with whom we cooperate. All in all, the German Bundestag spends approximately 1.3 million euros a year on the programme.

Of the five months of their stay in Berlin, our guests spend three months working in the office of a Member of the German Bundestag. This constitutes the core of the programme. Apart from their experiences in Berlin, the trips they make to Members' constituencies also allow them to watch how the parliamentarians who are mentoring them interact with local citizens. Alongside this, our guests – two thirds of whom are female – learn a great deal about German history and culture at seminars held by the universities and the German political foundations. Conversely, there are plenty of events and discussions at which they are able to inform their fellow scholarship-holders and the participating Members of the German Bundestag about the influences that have shaped them and their homelands.

At the German Bundestag, we like to call our programme a 'workshop of democracy'. And it is true, just like a workshop, the IPS can get a bit noisy on occasion as well: our scholarship-holders look for the right tools, and sometimes have to ask their colleagues for advice if they are to present a finished piece of work at the end. This is exactly what we want to achieve with our programme. The participants should understand how politics functions in practice, how tough it is to develop an idea into a finished political product. We teach them that democracy may be complicated, but the reconciliation of opposing political interests is characteristic of strong societies.

At the same time, our Members benefit from their involvement in the programme too. It brings quite a few parliamentarians into contact for the first time with regions that they otherwise may not focus on very often. They learn at first-hand what kinds of challenges and problems many of the world's countries are facing. The IPS

therefore helps our Members to build up lasting contacts all over the world and consequently benefit from their commitment even after the programme has finished.

Ladies and gentlemen, colleagues,

You will certainly be able to imagine that it is not easy, even for a parliament as big as the German Bundestag, to identify 120 suitable scholarship-recipients each year, and arrange a five-month-long programme with numerous large and small events. Maybe you will be asking yourselves why our parliament carries on running the IPS with such unflagging enthusiasm in spite of the numerous other challenges we have to cope with. The answer is very simple: Because it is worth it! You will all be aware of the trouble spots and conflicts that have repeatedly dominated debates within the IPU in the past, of which I only wish to mention a few examples: Israel and Palestine, Serbia and Kosovo, Russia and Ukraine, Armenia and Azerbaijan, the list could go on. But anyone who has ever seen young people from countries caught up in such hostile confrontations encounter each other with respect and tolerance at the German Bundestag, seen them talk objectively about their standpoints, seen them stand together on a stage and celebrate, seen them put their heads together and discuss politics until late at night, will very soon be able to judge the value of such a programme.

The benefits of the programme are even more impressive if it is realised that the IPS does not end when our guests leave Berlin. Our alumni, of which there are now more than 2,200, continue to engage with the programme, set up NGOs and parties or work for civil society organisations. Almost all of them keep in touch with other past participants and the Bundestag through the most varied channels, as well as acting as mediators between Germany and their homelands. Of course, we are particularly proud of the former scholarship-holders who are themselves active politicians and renowned academics today or who represent their countries as ambassadors. Incidentally, you sometimes even bump into people who did the programme here at the ASGP, since numerous parliamentary administrations also employ former IPS scholarship-holders. This international, intergenerational network of alumni maintains close ties with Germany and shares memories of a programme that many of them look back on as the best time of their lives.

As you can see, it is with great excitement and pride that, as the official within the Bundestag Administration primarily responsible for this programme, I talk about the success of the IPS. However, I would also like to make use of this opportunity to thank all my colleagues from Poland, Romania, Hungary, France, Armenia, Serbia, Latvia, the Czech Republic and Israel who have taken up our idea, and offer programmes at their parliaments that enable German students and graduates too to gain insights into those countries' political systems. I know from my own experience what a difficult and sometimes laborious business it is translating projects of this kind into reality. However, I can assure you that all the effort that goes into such programmes is well worth while.

Ladies and gentlemen, colleagues, I would like to conclude this contribution by quoting one of our scholarship-holders from Tunisia, who summed up his view of our programme in the following words: 'In the Member's office, I learned how one works with heart and soul, following a set plan. And that is exactly what I have been

attempting to put into practice since then, as well as passing it on to other people who have not had the opportunity to visit the Bundestag.'

Mrs Doris Katai Katebe MWINGA, President, thanked Dr SCHÖLER for his communication.

5. Communication by Mr Geert Jan A. HAMILTON, Clerk of the Senate of the States General of Netherlands: "Taking pride in Parliament: reflections after the 200th anniversary of the Parliament of the Netherlands"

Mrs Doris Katai Katebe MWINGA, President, invited Mr Geert Jan A. HAMILTON, Clerk of the Senate of the States General of Netherlands, to make his communication.

Mr Geert Jan A. HAMILTON (Netherlands) spoke as follows:

In 2016 the Dutch celebrated 200 years of existence of the States-General as a bicameral parliament. The celebration of the bicentennial reached its peak on October 16, 2015 with a joint meeting of the Senate and the House of Representatives in the monumental Hall of Knights in the Hague.

The bicentennial of the Dutch parliament was a great opportunity to ask attention for the historical development of democracy and the rule of law in our country. Nowadays these are often taken for granted. Many people are not very much aware of the roots and development of their political institutions. So the celebration gave an important chance to freshen up collective memory.

A brief history

The bicameral parliament of the Netherlands is the oldest bicameral parliament in existence in Europe after the 'mother of all parliaments', the UK parliament of Westminster. Different from the UK parliament the Dutch bicameral parliament has always been based on a written constitution. The constitution of the Netherlands has changed over the years, but the original constitution that established the bicameral system was adopted in 1815. It reformed the constitution that was adopted on March 29, 1814 which indeed is the oldest written constitution in Europe still in place, although many times adapted.

The Dutch parliament is housed in the parliamentary complex called Binnenhof (the Inner Court). Many European parliaments are established in parliamentary palaces built in the 19th century, the "big century" of parliaments. But the creation of the complex that houses our parliament started as long ago as in 1250 with the building of the *Ridderzaal*, the Hall of Knights. It is still in place now . The *Binnenhof* has been the centre of political and administrative power in the Northern Netherlands since 1250. The peculiar thing is that The Hague has never become the capital city of the Netherlands. That is Amsterdam, formally. There is a royal palace in Amsterdam, it is true, which is mainly used for ceremonial purposes, but there are no parliamentary or government buildings there whatsoever.

The parliament of the Netherlands is called the States General. This name goes back far beyond 1815, namely to 1464, when the 17 provinces of the Netherlands were part of the larger Duchy of Burgundy. That year, de Duke of Burgundy, Philip the Good, inspired by the States of Holland, of Flanders, and of Brabant, conceived the idea of consulting with representatives from all the 17 provinces he ruled, together, particularly when he wanted to levy taxes. He had found out that it was better to involve the people before making a decision.

Later on, the Duchy of Burgundy became part of the German Empire and subsequently came under the power of the King of Spain. In 1581, the seven Northern provinces of the Netherlands abjured the King of Spain as their sovereign. In 1568, a war of independence had started that was to last 80 years, but in 1581 the then States General -- i.e. the representatives of the states provincial of the seven provinces -- declared the Dutch Republic independent. From 1581 until 1795 the States General exercised the highest authority in the country.

The Dutch Republic was followed by a period of French domination, during which the country was first called the Batavian Republic. Under the influence of the French Revolution, the National Assembly was created in the Batavian Republic. It was bicameral, but did not last very long. The Netherlands became a kingdom under the reign of a brother of Napoleon Bonaparte, and was made part of the Napoleonic empire in 1810.

In 1813, the country regained its independence. The son of the last Stadtholder of the Dutch Republic, prince William V of Orange Nassau, who had taken refuge in England in 1795, was invited to become sovereign of both the Northern and Southern provinces (the current states of Belgium and Luxembourg). At the Congress of Vienna the Great Powers that had defeated France, had decided to create a strong buffer state between France and Germany.

In 1815, after the final defeat of Napoleon, the United Kingdom of the Netherlands was created. The bicameral parliament of the newly created kingdom was called the States General, a name that was familiar to the public.

From the outset the newly created States General consisted of two Houses: the House of Representatives and the Senate. The members of the House were elected by the provinces, whereas the members of the Senate were appointed by the King. As early as in 1815 there was some discussion about the question whether it was necessary to create a Senate. The Belgian nobility in particular wanted to remain involved in politics. They advised their colleagues from the North to create a second chamber, apart from the House of Representatives. The Senate was a stronghold, so to say, against undesirable legislation adopted by the elected body, the House of Representatives. That was the justification for creating a bicameral system.

Although the Kingdom of the Netherlands was a constitutional monarchy, the King had much power. The ministers were his servants and they were accountable to him, not to parliament. The parliament had a say in certain decisions, but the real power was with the King. In 1830, following the Belgian revolt, the Northern and Southern

Netherlands became two separate kingdoms: the Netherlands and Belgium respectively. The Netherlands maintained its bicameral parliament, which was remarkable, since the Senate had been created at the initiative of the Belgians. In 1839 King Willem I eventually recognised Belgium as an independent state. I daresay that after those incidents the Netherlands and Belgium have been good neighbours ever since.

The year 1848 saw liberal revolutions throughout Europe. The absolute monarchy lost ground. King Willem II, the son of King Willem I, converted from conservatism to liberalism overnight. He lost all his powers. From then on, the King has been inviolable; the ministers are responsible for any actions of the monarch. The monarch mainly carries out ceremonial duties, whereas the ministers are accountable to parliament.
Another important amendment of the Dutch constitution at the time implied that henceforth the members of the House of Representatives were elected directly by the people, i.e. by the affluent male citizens, because in the beginning there was a system of census suffrage granting only a limited portion of the population the right to vote.

The members of the Senate were elected indirectly by the provincial councils, instead of being appointed by the King. This is still the case today. Every four years, general elections for the provincial councils are held. The provincial councils then set up a so-called electoral college, which elects the members of Senate. So, the outcome of the provincial elections determines the composition of the Senate. This system is subject to discussion about whether it is logical and legitimate Historically it is interesting that ever since 1464 there has been a link between the States General and the provinces. Those who oppose the current electoral system often forget this historical context. The historical relationship between the States General and the provinces is now reflected in the involvement of the provinces in the election of the Senate.

In 1917, universal suffrage was introduced for all men. In 1919 the right to vote was given to women as well. In 1956, the number of members of the House of Representatives was increased from 100 to 150 and the number of Senators from 50 to 75. The last major change to the constitution took place in 1983. Both houses now have a 4-year mandate. In principle, every four years elections are held. However, the fall of a Cabinet can lead to early elections for the House of Representatives.

Constitutional tasks and duties

The House of Representatives is the major chamber of the Dutch parliament and has the political 'primate'. Members of the House of Representatives are full-time politicians, whereas Senators are part-time politicians (one fourth of the week). The main duties of parliament are co-legislation and scrutinizing the work of the Government. The 150 members of the House each have an office in the parliamentary complex; the members of the Senate share the office of the group they belong to. The members of the House have the right to initiate and amend legislation.

The instruments that the House of Representatives uses to get information from the Government include written questions and oral questions: every Tuesday there is Question Hour in the House, which is televised. A majority of the House can decide to hold a debate, but a minority of 30 members can request a so-called 30 members debate. The Dutch are considerate of minorities. The Netherlands is a multi-party democracy. There are at the moment 16 political groups in the House of Representatives, five of which are split-offs of the eleven originally elected parties. All political parties know that they can be in power one day and end up in the opposition the next day, so it is better to have regard to the position of minorities, because tomorrow you yourself may very well be a member of the minority again.

The Senate has 75 members. Constitutionally, the Senate is equal to the House of Representatives. Senators have the same powers, with the exception of the right to initiate legislation and the right to amend bills. On the basis of unwritten constitutional law, however, the Senate exercises restraint, particularly when it comes to scrutinizing the work of the Government. The focus of the Senate is on legislation. Theoretically the Senate has the right to make inquiries into any subject, but in everyday politics this is left to the House of Representatives. Scrutinizing legislation is the main task of the Senate.

The Senate has quite a few powers, which are rather exceptional at the European level. The Senate has the right to vote on every bill and every budget proposition. It can either adopt or reject it. If the Senate rejects a bill, it is over and out for that bill, which will not be sent back to the House of Representatives. The government may, however, draft a new bill on the same subject and start the procedure all over again. So the power of the Dutch Senate is quite far-reaching.

The Senate focuses on scrutinizing on legality, practicality and enforceability of bills. The 75 members come to The Hague only once a week. As said, being a Senator is a part-time job in the Netherlands. Most parties nominate quite experienced people -- professors, doctors, entrepreneurs or trade union leaders, for instance -- who bring in a lot of knowledge and expertise from society when looking at new legislation. With the two chambers we have a system of scrutinizing all proposals for new legislation "through two pairs of eyes", so to say.

Most bills are introduced by the Government, but the members of the House of Representatives can also take the initiative to present a bill. The Council of State advises on a bill drafted by the Government. This can lead to the Government making changes to the bill. Subsequently, the bill is submitted to the House of Representatives. After a written procedure of comments and questions by the House and answers by the Cabinet, the bill is dealt with in a plenary sitting. During this process the House can amend the bill. The Cabinet may also feel inclined to make changes to the bill, having heard the opinion of the House. After conclusion of the debate the House will vote on the bill. If the bill is adopted by the House, the final draft is submitted to the Senate.

The first question the Senate will raise is: what was the problem that made the Government introduce this bill? Is this text, as we got it, the right answer to that problem? What does society think about it? Can the bill be easily implemented and enforced? In this phase there will usually be a lobby from stakeholders (like

municipalities, provinces, hospitals et cetera) who have to deal with the bill. The focus is on the question: can the bill be implemented as intended? In this phase, the Senate lends an ear to society, as it were, and scrutinizes the bill. The Senate can organize expert meetings, hearings, briefings et cetera. The Senate also asks written questions from the Government. The Senate's criteria for scrutiny are: constitutionality, conformity with international law et cetera. The Senate takes a rather legal approach, although it is a political body. For the interpretation of the law it is very important to clarify what is meant by it. Sometimes the Government is invited to make changes to the bill. The Senate does not have the right to amend the bill, but it can make clear to the Government that if the Government does not change the bill, it may not be adopted. The Government then finds itself invited to withdraw the proposal and to consider changes . If, after reconsideration, the Government decides to give in to the objections the Senate has made, it will submit a bill with adaptations (called a 'novelle') to the House of Representatives, in order for these changes to be adopted. The 'novelle', adopted by the House, is submitted to the Senate and if it meets the initial objections raised by the Senate, it can pass quite quickly, combined with the original proposal. The Senate often also incites promises about the way in which the bill will be implemented once it has been adopted.

Formation of a cabinet

Our Constitution does not lay down many rules concerning the formation of a Cabinet. According to our Constitution the King appoints the members of the Government. In the past, the King appointed a so-called informateur, who examined which parties, representing a majority in the House, were prepared to form a new Cabinet. These parties then started negotiations, leading to the formation of a new Cabinet. The King then formally appointed the members of the Cabinet.

After the last general elections (in 2012), however, the House of Representatives took the initiative to designate informateurs and formateurs itself. At first there was some hesitation about this procedure, but it worked out well. There are a lot of political parties in the Dutch parliament, but nevertheless in 2012 the two largest parties emerged with a majority: the liberal People's Party for Freedom and Democracy (VVD) and the social democrat Labour Party (PvdA). They are not natural friends all the time, but they were much bigger than all the other parties and so became dependent on each other. They knew: if we do not form a Cabinet, then the political situation will become very complicated. That is why it did not take them very long to form a Cabinet.

So, we have seen a change in the formation process of a Cabinet recently. It is unlikely that the House of Representatives will be ready to give up again the power it has taken. The role of the Senate in the formation of a Cabinet has always been modest. However, nowadays the Cabinet has a problem in the Senate as will be described in the next paragraph.

The Senate is not directly involved in the formation of a Cabinet and it is not inclined to bring down a Cabinet. If the House is no longer satisfied with the Cabinet, it can adopt a motion of no confidence. Theoretically, again, the Senate could do this as well, but it has not done so in more than 100 years. The Senate is aware of the fact that this is not its duty. The Senate concentrates on legislation, but its full right of veto and its theoretical right to bring down the Cabinet give the Senate the "power of

threat". The Senate can adopt a motion, requesting the Cabinet to implement a bill in a certain way.

Current political situation

There are at the moment 16 political groups represented in the House of Representatives and 12 political groups in the Senate. The Cabinet is based on a coalition of two parties: the liberal People's Party for Freedom and Democracy (*VVD*) and the social democrat Labour Party (*PvdA*), who have had only 21 of the 75 seats in the Senate since the general elections held in May this year. So, in the Senate the Cabinet has only a small minority.

There are many opposition parties, but they do not form a single block. There is a leftist Socialist Party, for instance, and a right-wing party (the Freedom Party). The Government has to be keen on getting a majority for each and every piece of legislation. They must be very convincing, which is not that bad for dualism between Government and parliament, and for the quality and the acceptance of draft legislation.

If the Government had a strong majority in both houses, it might be easier for the government to have a bill adopted. Majorities could be less critical to Government proposals which brings about the danger of "rubbish bills" being passed. In our system of checks and balances there is a lot of debate about legislation. The justification of the bicameral system in the Netherlands is that it brings about laws of a better quality than the majority in one House can bring about on its own. So far, we have not seen a dramatic increase in the rejection of bills in recent years. Some bills have been rejected, it is true, but one should realize that even coalition parties in the Senate can be very critical of draft proposals for new laws. The emphasis will always be on the legal approach and the quality of legislation. At the end of the day, a political decision will be made by a vote for or against the bill, but first of all the Senate has the habit of judging the quality of legislation.

Communications around the bicentennial

Communications around the bicentennial of the Dutch parliament have focused on the history and development of the parliamentary system and its functioning in our times.

A preparatory committee of civil servants of both Houses, chaired by the Secretary General of the Senate who is also the First Clerk of the Joint Session (of both Houses) of the States General, was set up in 2014 to develop a program of activities. This committee reported to the Speakers of parliament and they consulted with the presidia of the Chambers on the principal aspects of the program. Each Chamber had a project team for the aspects of the program that were concentrated in each of the Houses.

A **200 years website**[35] was developed which concentrated on the following themes:

[35] http://www.200jaarstaten-generaal.nl/#!/

People's work

Which people have become the representatives of the people of the country? Which developments have we seen in the electoral system and how did this affect the social composition of parliament? How has the relationship between the elected representatives and the Government on the one hand and the relationship between the elected representatives and the population on the other hand developed?

What development have we seen in the tasks, functions and composition of supporting staff, both to the Chambers, and to the political groups and the individual members of the House of Representatives?

Publicity

How open and accessible are the Chambers of Parliament?

The development of parliamentary press; the accessibility of the documents; access to public galleries; the entrance of radio and television; internet; websites; social media; live stream; public involvement through petitions, demonstrations; complaints procedures; citizens initiatives.

Housing of parliament

Parliamentary buildings comprise a series of large and small structures which have seen their start in the 13th century and have been further developed ever since.

How have these building been used through the ages? What were the major moments of change, renovation, expansion and renewal? The website offers a virtual tour through the buildings.

Ceremonial

What ceremonial events take place in parliament?

The Speech from the Throne at the beginning of each parliamentary year for the Joint Session of the States-General.

International relations: reception of high foreign visitors.

International relations and Europe

How did the international parliamentary activities develop; participation in international parliamentary assemblees; the development of the European Parliament and the role of the national parliaments within the EU.

The program further included the following elements:

- An outdoor and an indoor exhibition on 200 years of Dutch parliament;
- Digital lessons on 200 years of parliament for all elementary schools;
- A series of lectures on parliament and democracy, and the role of parliamentarians in the public arena of democracy;
- Special facebook and twitter pages on 200 years of parliament;
- Jubileebooks of both the House of Representatives and the Senate; the book of 200 years of the Senate was written by the staff of the Senate;
- Discussions on the basis of theses on the future of the States-General; the role of the House of Representatives and the role of the Senate; the influence of citizens and

the role of the European Union; how does the next generation see the future of our parliamentary system?;
- Educational 'role plays' ('rollenspellen') for students on taking political decisions;
- Open house in both chambers of parliament in the weekend of 9 and 10 October 2015; lots of manifestations in and around the parliament buildings;
- Guided tours; visits to places normally not open to the public, like the press tower and the internal TV-studio.

The pinnacle of the jubilee events was the **Special Joint Session of the Senate and House of Representatives of the States-General** on October 16, 2015, the day on which it was exactly 200 years ago that these Houses came together for the first time in the Hague. The Joint Session took place in the presence of the King of the Netherlands, the whole Government, the Council of States, judicial authorities, representatives of the provinces and municipalities, civil society, the diplomatic corps, and citizens from many segments of society. The Joint Session was broadcast on national television
Three short films had been prepared on the following aspects of 200 years of parliament:
- the constitutional aspects of the role of parliament;
- parliament and the citizens; how did democracy develop?
- what did parliament achieve; focus on the social legislation of the country.
Each film was followed by a short speech of, in succession, the President of the Senate, the Speaker of the House of Representatives and the Prime Minister;
The three segments were interrupted by artistic performances. At the end of the ceremony the newly composed Hymn of the States General was performed.

Some reflections on the celebration of 200 years of parliament

The 200th anniversary of the Dutch parliament took place in an era that there are more concerns about the functioning and future of democracy in the Netherlands and elsewhere. These have a variety of causes. For example, European integration and other international dependencies may be perceived as a threat, as may increasing administrative complexity or shortcomings of politicians and political organisations and procedures. There appear to be signs of growing political dissatisfaction and declining democratic engagement.

The Netherlands Institute for Social Research in 2015 published a study called 'Meer democratie, minder politiek?' (More democracy, less politics?)[36] Questions asked are: How future-proof is Dutch democracy, and what scope is there for improving it, in the light of the views and wishes of the populace?

The report presents a picture of public opinion in the Netherlands and looks briefly at ideas for democratic renewal and the desirability of new research.

[36] Josie den Ridder and Paul Dekker, Meer democratie, minder politiek? Een studie van de publieke opinie in Nederland,
http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2015/Meer_democratie_minder_politiek

The study places the present public mood and preferences in the Netherlands in a broader perspective and considers how attitudes to democracy and politics have developed since the 1970s and how public opinion in the Netherlands compares with other European countries.

What is important is that longterm survey research provides no indications of a fundamental decline in support for the idea of democracy, nor of reducing satisfaction with democratic practice or a major reduction in political trust. The degree of satisfaction with democracy, and above all trust in politics, is however highly volatile and dependent on political and economic developments. Nevertheless there are some constants in appreciations. The Dutch regard free elections and equal treatment before the courts as important characteristics of a democracy and, when asked to assess the degree to which these characteristics are present in the Netherlands, many believe that there are free elections in the Netherlands. Opinions are more divided on equal treatment by the courts. The Dutch public take a positive view on the presence of a free media and freedom of opposition. More than 90% support democracy as an idea, and more than 70% are sufficiently satisfied with its functioning. People are less satisfied with the way in which democracy is put into practice – with politics, in other words. A good deal of criticism is levelled at elected politicians, and there is wide support for citizens having a greater say and for more direct democracy (such as referenda on key issues).

The Dutch associate the word 'democracy' with freedom (including freedom of expression) and of democracy as a decision-making procedure (a system in which everyone has the right to vote or to express his or her opinion). People who associate democracy with 'freedom' are more often satisfied with the functioning of democracy than people with different associations. People were asked to explain in their own words why they were satisfied or dissatisfied with the functioning of democracy in the Netherlands. Most people tended to cite reasons for dissatisfaction; despite the relatively good overall assessment of democracy, arguments for being satisfied were less common.

The main reasons put forward for dissatisfaction were that politicians do not listen and simply do what they want, that citizens have too little say and that politicians talk too much and act too little; or else they were dissatisfied with current policy at the time of the survey. People who are satisfied mainly mention the right to vote. Where people spontaneously express their concerns about politics, those concerns are often directed at politicians who do not listen or who promise much but deliver little. People who feel that things are moving in the wrong direction in a societal policy domain (e.g. care, integration of minorities) hold politicians responsible for this. They have the idea that politicians pay too little attention to what citizens want and sometimes go against public opinion by pushing through their own personal agenda.

The outcomes of the survey can be summarized as follows:

- Support for the principle of democracy is and remains high; three quarters express satisfaction with the functioning of the political system.

- The norm of representation may still be deeply rooted in the Netherlands, but traditional forms of institutional representation appear to be becoming more fragile and disputed at the start of the 21st century.

- Political dissatisfaction is focused mainly on a lack of political responsiveness. There is support for more direct democracy, mainly as an addition to representative democracy.

- The public opinion is highly diverse; there are 'rejecters' and 'contented' for very different reasons.

The survey underlines how very important it is that public opinion is constantly well informed on the functioning of the democratic system. It is up to the politicians and the political parties to present there views and policies. Parliament as an institution should inform the public constantly on the functioning of parliamentary democracy, the present tasks and duties of parliament in our democratic system and the historical perspective of these.

The celebration of 200 years of parliament was a grand occasion to attract wide attention to the rich history of parliamentary democracy in the Netherlands. In colourful pictures it was demonstrated that the States General of 1815 bears little resemblance to States General as it is today.

As the President of the Senate, Ankie Broekers-Knol, stated in her speech to the Joint Session of the Houses of Parliament on October 16, 2015[37], for two centuries the Senate and House of Representatives of the States General have been an essential part of the system of checks and balances that constitutes the rule of law in our constitutional state. A system that has proved durable and of which we can be proud.

Under the rule of law the authorities are bound by rules and standards, and citizens trust they will be treated fairly. Under the rule of law everyone – without exception – is subject to the law. Under the rule of law fundamental human rights apply. This means that there must be sound legislation.

To achieve this, it is of the utmost importance to have an open debate on legislation in Parliament – in the Senate and the House of Representatives – in which the arguments of majorities and of minorities are heard and discussed. It is the responsibility of the members of parliament to weigh these arguments and to scrutinise draft legislation to ensure compliance with the principles of our constitutional democracy.

Over the past 200 years this task has been discharged by the two chambers of Parliament. While there have been some stumbles along the way, they have worked together in relative harmony and always in the interests of the people they represent. The two chambers are closely interwoven with each other and, as such, mutually complementary. So the Dutch Parliament is a stable, political institution that functions, under the separation of powers, alongside the executive and the judiciary.

[37] http://www.staten-generaal.nl/nieuws/20151016/200_jaar_eerste_en_tweede_kamer

However, the President said: "The rule of law is not some place of refuge that we own, it is not a home where we can go to sleep without worry. Parliament too cannot and must not sit back and be complacent."

"This means that we must also look forwards – certainly on such a memorable day as today. How will the States General evolve over the next 200 years? Will they still fulfil the same role as co-legislator and scrutiniser of the government? Or will 'Brussels' have overruled the national parliaments? Is our present system of representative democracy fit for purpose? And is there sufficient attention at national level for democracy at local level? These and other issues will require an answer in the future. This means that Parliament must keep its eyes and ears open for developments in society and must have the willingness to adapt and be flexible. After all, what doesn't bend will break!"

Looking back at the events around 200 years of Dutch parliament I think we succeeded in attracting attention to what it took to build a parliamentary system and a democracy. We did not reach the whole population, but particularly many schools and civil society picked up the historical importance of the anniversary. Awareness was sharpened that in view of the ups and downs in the past two centuries we should not take parliamentary democracy for granted. As a system it should be treasured and there is reason enough to take pride in what has been accomplished. The people that attended the events in the Hague expressed satisfaction on how things were organized and explained. Particularly young people expressed that they had learnt a lot from the programs that were offered.

Giving objective information on the role and functioning of the parliament is an important task of the parliamentary staff of parliament. Parliament should have a clear communications strategy. Modern ICT makes it possible to reach all interested citizens. What we have experienced is that a jubilee can give new impetus to the communications strategy. The communications instruments have been polished for the anniversary and the positive reactions from society demonstrate that a wide set of means of communication can contribute to education of citizenship. One of the goals of our communications strategy is to bring all young people of the Netherlands to the parliamentary complex in the Hague at least once in their school days. The visits to the Hague meet great enthusiasm and the jubilee has certainly contributed to the preparedness to participate to programs on parliament, democracy and the rule of law.

People are not always pleased with politics, but in the Netherlands through the celebration of 200 years of parliament we realized the more that there is enough reason to take pride in a parliamentary system that reflects the constitutional history and development of the country and its population.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr HAMILTON for his communication.

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At 4.30 pm the Association took a short coffee break.

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Mrs Doris Katai Katebe MWINGA, President, welcomed members back and opened the floor to questions on all three communications.

Dr Winuntuningtyas Titi SWASANANY (Indonesia) said that she had a question for Mr AL MAHROUQI and, to a certain extent for Mr HAMILTON.

In Indonesia, the Secretary General ensured that the Parliament had everything that it needed for successful interaction with the public, such as YouTube, Facebook and Twitter. However, the pace of Twitter was such that it was difficult to control.

She asked whether there were any measures in place to protect the Parliament and its Members from slanders and abuses whilst still facilitating contact with the public.

Mr Henry H. NJOLOMOLE (Malawi) asked whether the Bundestag paid for travel expenses, and whether it had any intention to extend the programme to Africa.

Mr Marc BOSC (Canada) said that he wanted to pick up on the communication from Oman. In Canada the Parliament had created a new mobile application which allowed users to get real-time information on the range of activities in which the House was engaged at any given time. The application was called "Our Commons".

The application had proved to be extremely popular. Members had access to the information when they were not in the precincts of Parliament, and they were happy with it.

Mr Najib EL KHADI (Morocco) said that the communication of the Council of the Shura, which dealt with the use of social media to disseminate the work of Parliament, could serve as an example for the entire region. As far as the communication from the Bundestag was concerned, it was a good example of international collaboration. He was sorry that the students who had benefited from the German programme could not receive other colleagues in their own countries. Such a scheme should be promoted.

He had listened to the Dutch communication with interest. He suggested collecting good practice in the area of celebration.

Mr William BEFOUROUACKS (Madagascar) asked the speaker from Oman what the cost was, and what the purpose of such tools were, in particular in terms of democracy and good governance. He asked what the effect on the population had been.

Mr Helgi BERNÓDUSSON (Iceland) said that 1.3 millon Euros was a lot of money and asked whether the German MPs appreciated or benefited from the Bundestag's programme.

Mr Gengezi MGIDLANA (South Africa) asked whether the Bundestag's programme focused on democracy or on parliamentary business. He asked whether

in Oman there was commentary that resulted from publication of parliamentary business on social media and, if so, who managed that.

Mr Kennedy Mugove CHOKUDA (Zimbabwe) said that in Zimbabwe various social media accounts were soon to be launched, but that there was concern about how to respond to comments and questions from the public. He wanted to know whether items were published in real time and what resources were dedicated to managing the response.

Mrs Jane KIBIRIGE (Uganda) asked about the capacity that there was in Oman to respond to enquires from citizens. She also asked about how they guarded against Members becoming addicted to social media.

Mr Mohammed Ali YAGOUB (Sudan) spoke about the Sudanese experience. He asked if the Bundestag programme was limited to European students, or whether it was open to students from around the world. He also asked for the procedures to be followed.

Mr AL MAHROUQI said that many of the Gulf countries had already created smart phone applications, which had been very successful and facilitated a free exchange.

The transparency that had been initiated in Oman had been greatly successful. Criticism was monitored but was nonetheless published and analysed, and then followed-up. No criticism was stifled.

Social media had a significant impact on politics because it enabled a greater exchange with the public. Citizens could freely present their opinion, without restriction.

The Parliament organised many symposia. The media could attend and could pose any questions they wanted.

He said that there had been no negative response from the public on the services provided.

Some Members did attempt to give clarification when they received criticisms, but on the whole they tried to see things from the perspective of their constituents.

Dr Ulrich SCHÖLER said that many of the questions had a common thread, which dealt with the limitations of programmes such as that run by the Bundestag. That programme had started very slowly and had only been slowly extended. He noted that it already took a lot of work to select young people for scholarships from 41 countries, and that this meant that he was cautious in relation any question of extending the programme further.

A group from Western Africa had recently asked the Bundestag to extend its programme to the whole of Africa, but the Bundestag had been obliged to respond that it simply did not have the capacity to administer a project on that scale. Such decisions were taken by the Council of Elders in the German Parliament.

The process for choosing those who were selected for a scholarship involved sending a delegation to each of the countries concerned. The delegation stayed for a week and conducted the selection. In Poland, for example, there were usually about 100 applicants for the programme. The Embassy in Warsaw did the first selection, and then about 12 of the best were seen by the delegation, which eventually selected three or four.

In response to the question from Morocco, it was expected that the delegation from the Bundestag would meet the senior officials in the partner Parliament. The intention was to hand some of the responsibility to that Parliament, particularly in terms of giving work experience to returning scholars.

There was broad support from Members for the programme. The Bundestag organised feedback from both scholars and Members.

The programme did concentrate on parliamentary business, which is why scholars were given so much experience in the parliamentary office. However, inevitably the German democratic model was also part of the programme.

The Bundestag did cover the travel expenses of the scholars.

Mr Geert Jan A. HAMILTON said that all parliaments faced the issue of how best to cope with the expansion of social media. The presentation from Oman demonstrated clearly that developments in IT had brought parliamentary democracy into a new phase, whereby all citizens could contribute directly to it.

In the Netherlands, everything that went on in Parliament could be followed by all citizens on the website at all times. Thus the citizens were better informed than they had ever been before.

In terms of reaction, the public had the opportunity to e-mail Parliament in respect of a specific piece of legislation. Such enquiries were sent to the relevant person and all enquires were answered. Sometimes answers were quite basic, but where the issue concerned was a fundamental one, sometimes a simple enquiry could bring about a significant change.

At the outset, he himself had doubted the wisdom of the Parliament using Twitter. However, Twitter could also be distributive and directive. It was accepted that messages disseminated on the platform would provoke reactions, in response to which in Germany nothing happened. Slander was a difficult issue. Most anonymous messages were simply archived. There were some technical solutions to those correspondents who were persistently a problem.

All anniversaries and historical figures were relative. In the Netherlands the decision had been taken to mark 200 years of a bicameral Parliament based on a written constitution. Such events provided a good opportunity to celebrate the development of democracy.

Mrs Doris Katai Katebe MWINGA, President, thanked all three presenters for their communications and members for the questions they had asked.

6. Concluding remarks

Mrs Doris Katai Katebe MWINGA, President, brought the sitting to a close and encouraged members to attend that evening's cultural evening.

The sitting ended at 5.30 pm.

FIFTH SITTING

Wednesday 23 March 2016 (morning)

Mrs Doris Katai Katebe MWINGA, President, was in the Chair

The sitting was opened at 10.15 am

1. Introductory remarks

Mrs Doris Katai Katebe MWINGA, President, welcomed everyone to the sitting.

2. Orders of the day

Mrs Doris Katai Katebe MWINGA, President, noted that Mr MISHRA had been called away and that, as a consequence, his communication would be carried over to the following session in Geneva.

The orders of the day were agreed to.

3. Communication by Mr Gengezi MGIDLANA, Secretary to Parliament of the Republic of South Africa: "Separation of powers: Relationship between Parliament and the Judiciary, with a focus on the internal arrangements of Parliament"

Mrs Doris Katai Katebe MWINGA, President, invited Mr Gengezi MGIDLANA, Secretary to Parliament of the Republic of South Africa, to make his communication.

Mr Gengezi MGIDLANA (South Africa) spoke as follows:

A. Introduction

The separation of powers principle refers to a doctrine or governance model in democratic systems of government in which checks and balances result in the imposition of restraints by one arm of state upon another. True to its original ancient Greek meaning and Baron de Montesquieu's prepositions, the modern day conception of separation of powers places high premium on clearly delineated roles for different arms of the state, each with separate and independent powers and areas of responsibility so as to avoid a situation wherein one arm of the state could usurp complete power.

Against this backdrop, this paper seeks to highlight the principle of separation of powers in general, and the relationship between Parliament and the Judiciary in particular with reference to the internal arrangements of Parliament. The paper has four parts, including this introduction. In particular, section B, focuses on the

separation of powers principle in the South African context; section C, deals with Parliamentary Privileges and Immunities, and related matters; and section D concludes the paper.

B. Separation of Powers Principle in South Africa

In South Africa, the separation of powers doctrine originates from Constitutional Principle VI of the Constitution of 1993 (also referred to as the Interim Constitution), which provided that 'there shall be separation of powers between the legislature, executive and judiciary with appropriate checks and balances to ensure accountability, responsiveness and openness (Constitution, 1993). The final Constitution adopted in 1996 had to give effect to this principle and make clear pronunciations on its praxis and/or application in practice.

The Constitution confers on the Executive the power to *prepare* and *initiate* legislation while Parliament is mandated to legislate, including initiating and preparing legislation. Similarly, the Constitution empowers the courts to develop the common law and customary laws, thus implying law making by the courts that are supposed only to interpret and apply the law (Seedat & Naidoo, 2015). Parliament also contributes to policy formulation, which in terms of the Constitution is developed and implemented by the Executive.

While the Constitution assigns specific powers and functions to the three arms of state, it also provides several checks and balances or accountability measures to curtail the exercise of that power. To this end, Chapter 1 entrenches the supremacy of the Constitution and rule of law as overarching values such that any law or conduct inconsistent with it is invalid and unlawful (Seedat & Naidoo, 2015). Section 165 of the Constitution vests judicial authority in the courts. This section stipulates that the judiciary is independent of the other arms of state. In this way, the judiciary may scrutinize the laws and conduct of the legislature and executive in order to determine compliance with the Constitution.

Although the Constitution does not explicitly refer to the doctrine of separation of powers or checks and balances, these are nevertheless built into it. In our South African context, checks and balances not only serve to accentuate rule of law and good governance, but also facilitate and harness a system-based regulation that enables one branch to limit another In *South African Association of Personal Injury Lawyers v Heath* the Constitutional Court held that there `can be no doubt that our Constitution provides for such a separation [of powers], and that laws inconsistent with what the Constitution requires in that regard, are invalid' (Curry et al, 2001). The court further held that the separation of powers is an unexpressed provision that is `implied' in or `implicit' to the Constitution, and that its presence is based on inferences drawn from the structure and provisions of the Constitution, rather than on an express entrenchment of the principle (Curry et al, 2001).

In *Tlouamma and Others v The Speaker of the National Assembly and Other*, a member from one of the opposition parties took the Speaker to court on the basis that the Speaker should cause voting on a motion of no confidence in the President to be held by secret ballot. Neither the Rules nor the Constitution provide for that. In dismissing the case, the High Court held that the separation of powers doctrine is premised on the principle that each arm of state is independent, has a separate function and unique powers that the others cannot infringe upon. Furthermore, that the doctrine recognises that there is a division of tasks between those institutions which make the law, those which implement the law and those which enforce the law. One arm of state should not usurp the functions and responsibilities of the other.

C. Parliamentary Privileges and Immunities

Erskine May (2011) defines privilege as "the sum of 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." Privilege is intended to protect both the House collectively and members individually. Where the House is of the view that there is an assault on its privilege, whether by members or outside bodies, including a court of law, it is entitled to assert its position or vindicate it.

The courts, more especially the Constitutional Court, have guardedly considered the nature of their duty in respect of interfering with the decisions or processes of Parliament and how to reconcile its judicial oversight function with the separation of powers doctrine.

In *Speaker of the National Assembly v De Lille and Another*, a membernamed during House proceedings 8 senior members of the ruling party as being spies for the apartheid government. She did this without substantiation as required by the Rules of Parliament. She was formally charged by Parliament for abusing her freedom of speech privilege and for contravening the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act. The matter was referred to a committee for consideration. The National Assembly adopted the committee's recommendation to suspend the member from the Assembly for 15 days. The member in question challenged the matter in the High Court on the grounds that the committee had tried to exclude her from deliberations, had prejudiced the issue, and had not seriously attempted to examine her conduct.

While the court found in her favour, it went on to make the following statement, that: There can be no doubt that this authority is wide enough to enable the Assembly to maintain internal order and discipline in its proceedings by means it considers appropriate for this purpose. This would, for example, include the power to exclude from the Assembly for temporary periods any member who is disrupting or obstructing its proceedings or impairing unreasonably its ability to conduct its business in an orderly or regular manner acceptable in a democratic society. Without some such internal mechanism of control and discipline, the Assembly would be impotent to maintain effective discipline and order during debates.

Other privileges and immunities for Members of Parliament are provided for in the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, (Act 4 of 2004) (the Act). In terms of the Act, the power to discipline members who breach or abuse those privileges or who act in contempt of its proceedings and processes rests with Parliament.

(1) Freedom of Speech and Contempt

The Parliamentary Rules, which are formulated in line with constitutional provisions, grant members a right to freedom of speech and debate. This freedom is considered to be the cornerstone of democracy because members must be free to discuss and say what they wish in the parliamentary chambers; they must be able to discuss contentious issues and to conduct investigations without interference. While freedom of speech is of utmost importance, it is nonetheless regulated by parliamentary Rules and practices. Thus, for example, we have Rules which prohibit the use of "offensive or unbecoming language" and which prohibit members from reflecting "upon the competence or honour of a judge of a superior court, or of the holders of an office (other than members of the Government) whose removal from such office is dependent upon decisions of this House". The latter Rule aims to protect the integrity and independence of judges, and other non-political office

bearers such as members of Institutions created in terms of the Constitution to support democracy. The purpose of the Rules regulating freedom of speech is to guide debate so that it happens in an orderly and respectful fashion.
A member who breaches or abuses parliamentary privilege or who willfully disregards the Rules and the Act, is in contempt of Parliament. Disrupting the proceedings of Parliament through frivolous points of order or speaking without being recognized by the presiding officer amounts to abuse of privilege. Refusing to obey the instruction or order of a presiding officer to withdraw from the House constitutes contempt. Other conduct that may amount to contempt include improperly interfering with the performance by a member of his or her functions; threatening or obstructing a member from attending a meeting; creating or taking part in any disturbance within the parliamentary precincts. In terms of the Act, our Parliament is authorized to inquire into and pronounce on conduct constituting contempt and to take disciplinary action against a member who is allegedly in contempt. It is the prerogative and responsibility of the House to punish members who breach parliamentary privilege or act in contempt of its authority. The House may impose any of or a combination of penalties provided for in the Act.

(2) Court Judgments and implications for Parliament

Unlike the first three democratic Parliaments, during the Fourth and Fifth Parliaments it appears many matters involving the internal functioning of Parliament have ended up in courts. Recently, for example, in *Economic Freedom Fighters (EFF) and Others v The Speaker of the National Assembly and Other,* the High Court interdicted the National Assembly from suspending its members despite the members being found guilty of contempt of the House in accordance with the Assembly Rules and the Act. Interestingly, the High Court arrived at its conclusion despite saying in a previous case (*Mazibuko v the Speaker of the National Assembly)* that:

There is a danger in South Africa, however, of the politicization of the judiciary, drawing the judiciary into every and all political disputes as if there is no other forum to deal with the political impasse relating to policy or disputes which clearly carry polycentric consequences beyond the scope of adjudication. In the context of this dispute judges cannot be expected to dictate to Parliament when and how it should arrange its precise order of business matters. What courts can do, however, is to say to Parliament: 'you must operate within a constitutionally compatible framework; you must give content to section 102 of the Constitution; cannot subvert this expressly formulated idea of a motion of no confidence. However, how you allow that right to be vindicated is for you to do, not the courts to determine.
In this case, the member sought an order to compel the Speaker to schedule a motion of no confidence in the President. She argued that where the Programme Committee of the National Assembly fails to reach consensus on the matter, the residual power to schedule that motion resided with the Speaker. The High Court had rejected this argument. Aggrieved by the decision of the High Court, the member concerned appealed to the Constitutional Court. Confirming the decision of the High Court on this point, the Constitutional court had this to say:

Section 57(1) of the Constitution vests in the Assembly the power to determine and control its internal arrangements. . . . Should the Speaker choose to make a ruling on the business of the Assembly, it would always be subject to the overriding authority

of the Assembly, which is the master of its own process (emphasis), subject to the usual caveat that its processes are consistent with the Constitution and the law.
In a split of six to four, the majority however proceeded to hold that "to the extent that the Rules regulating the business of the Programme Committee do not protect or advance or may frustrate the rights of the applicant and other members of the Assembly in relation to scheduling, debating and voting on a motion of no confidence, they are inconsistent with the Constitution and therefore invalid to that extent."
In the minority judgment, the judges held that "political issues must be resolved politically and that courts should not be drawn into political disputes, the resolution of which falls appropriately within the domain of other fora established in terms of the Constitution." The judgment further held that "the principle of separation of powers forbids the judiciary from intervening in matters that fall within the domain of Parliament except where the intervention is mandated by the Constitution."

D. Conclusion

This paper examined, in the South African context, the separation of powers principle in general, and the relationship between Parliament and the Judiciary in particular with reference to the internal arrangements, proceedings and processes of Parliament. Thus, the separation of powers principle needs to be understood as co-existing with power-sharing by the three arms of government.
The internal processes of the South African Parliament provide a mechanism for determining whether its Rules have been transgressed. In the case of members who abuse their privileges or who act in contempt of parliamentary proceedings and processes, Parliament has the right to impose disciplinary measures.
This paper has also shown that in recent times some Members of Parliament have approached the courts to rule on matters relating to the programming of motions, contempt, and the power to discipline and sanction them – all of which could be viewed as internal matters.
South Africa is a relatively new democracy. Some of the recent developments within Parliament have created an opportunity for a comprehensive review of the Rules, a process which is currently ongoing. We continue to draw from the experiences of other Parliaments, and we are keen to establish how other Parliaments have been able to strike the balance between the power of Parliament to control its internal arrangements and the right of Members to approach the courts on Parliamentary matters.

Mr Andrew KENNON (United Kingdom) said that, in the UK, clerks had become aware that, in a number of cases, parliamentary speeches had been cited in court. This was in breach of privilege, but the judges were often unaware that they ought to set those citations aside. On the other hand, judges were increasingly being asked to give evidence in committees.

A series of meetings had been set up with judges. One of their areas of concern was that, when things went wrong in the UK, there were calls for a committee of inquiry to be set up, and judges did not like being called to account by Parliament for what they said in their reports.

He said that it was very important to keep the informal channels of communication between the judiciary and Parliament to regulate such matters.

Mr Geert Jan A. HAMILTON (Netherlands) said that in the Netherlands there was a single principle, which was that courts should steer entirely clear of proceedings in Parliament.

He thought that the judiciary's competence to examine laws once they had been passed was less far reaching in the Netherlands than it was in South Africa. It was for the Parliament itself to scrutinise the constitutionality of the law once it had been passed.

There had nonetheless been discussions about whether or not there was a need for a Constitutional Court to scrutinise law. However, he felt that this might lead to lengthy periods of uncertainty and a distancing of Parliament from its role in relation to the Constitution.

Dr Horst RISSE (Germany) said that in Germany there had been a number of cases where the powerful Constitutional Court had engaged in judicial activism in the domain of parliamentary affairs. Although this should not happen, if the issue did arise, there needed to be a deep understanding between the judiciary and the Parliament. He felt that this understanding was lacking, and in that he identified with the remarks made by Mr KENNON.

He said it was important that Parliament became more effective in the way it drafted and adopted its own internal rules. Some of the older rules had been drafted in such a way that judicial interference had been facilitated. Parliament needed to use the rules more effectively to protect its own integrity.

Mr Manuel CAVERO (Spain) said that in Spain there had been difficulty when committees had attempted to summon members of the judiciary to give evidence on their judgements. This had been banned. On the other hand, the courts had attempted to oversee the work of the Parliament and its use of its powers.

In Spain there were 17 parliaments in the regions which could be called before the Constitutional Court as well as the national Parliament.

Mr Said MOKADEM (Maghreb Consultative Council) said that the separation of powers was an important one, notably the role of internal parliamentary rules. The constitution of South Africa did not specify the need for the separation of powers.

He asked if the authors of the constitution had bowed to the wishes of those who wanted less separation. He asked who had decided to refuse parliamentary privileges to MPs. He also asked why the Parliament had to apply to the constitutional court when problems arose.

Mr MGIDLANA said that the principle of the separation of powers was entrenched in the manner in which Parliament did its business even if this was not explicitly stated. The issue was how best to deal with the internal arrangements of Parliament.

In South Africa there had been no instances of judges being called to the House. There were, however, commissions of inquiry to which judges were appointed. The judges were not called to give evidence on their report which, once it had appeared, was deemed to be final.

He said that South Africa might prefer the situation that applied in the Netherlands. In South Africa, the Constitutional Court could examine a law that had been passed at the instigation of any party making such a request.

In South Africa it was clear that parliaments were not well understood by the judiciary. It was difficult for the courts to make pronouncements on aspects of parliamentary work when they did not have the necessary understanding.

When decisions had had to be taken about the death penalty, judicial activism had worked, but that set a precedent for the judiciary entering into the parliamentary domain, which created problems downstream.

In response to the question of who decided on parliamentary privilege, in instances where there had been a breach of privilege, the relevant parliamentary committee would intervene. Parliament could impose its own sanction, but difficulties arose when an appeal was made to the courts, which posed a challenge to the principle that Parliament established its own internal arrangements.

He looked forward to learning more from his colleagues on this matter.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr MGIDLANA for his communication and thanked members for the questions they had asked.

4. Communication by Mr Najib EL KHADI, Secretary General of the House of Representatives of Morocco: "The House of Representatives of the Kingdom of Morocco: toward an electronic Parliament"

Mrs Doris Katai Katebe MWINGA, President, invited Mr Najib EL KHADI, Secretary General of the House of Representatives of Morocco, to make his communication.

Mr Najib EL KHADI (Morocco) spoke as follows:

[The communication made by Mr EL KHADI from Morocco as provided in PowerPoint form only. To read an online version of the presentation follow this link.]

Mrs Doris Katai Katebe MWINGA, President, thanked Mr EL KHADI for his communication and said that members would be able to ask him questions after the communication from the Israeli Knesset.

5. Communication by Mr Ronen PLOT, Director General of the Knesset of Israel: "An environmentally-friendly Parliament"

Mrs Doris Katai Katebe MWINGA, President, invited Mr Ronen PLOT, Director General of the Knesset of Israel, to make his communication.

Mr Ronen PLOT and Dr Samuel CHAYEN (Israel) spoke as follows:

[The communication made by Mr PLOT and Dr CHAYEN from Israel as provided in PowerPoint form only. To read an online version of the presentation follow this link.]

Mrs Claressa SURTEES (Australia) said that there was a lot in common between the parliaments of the ASGP, which were all trying to make documents available to members in electronic form. In terms of buildings, she suggested that parliaments considering the construction of new buildings might consider following the Australian example of building into the side of a hill, because this improved insulation, amongst other benefits.

Mrs Françoise MEFFRE (France) said that she was impressed by the speed of the digitisation. She asked how the personnel had been trained in the use of new technologies.

Mr Philippe SCHWAB (Switzerland) was equally impressed by the measures taken. He had the same questions as France on e-parliament. To Israel, he asked what the reaction of parliamentarians had been to the environmental measures taken.

He added that, in Switzerland, measures had been taken to reduce the number of flights taken by parliamentarians, as well as to reduce the environmental impact of travel.

Mrs Jane KIBIRIGE (Urganda) said that in Uganda the library was making an effort to digitise its collection.

Mr Ed OLLARD (United Kingdom) asked about the extent to which such measures were mandated for Members. In the United Kingdom it had been found to be easier to introduce new policies than to withdraw services. In the House of Lords, neither turning off lights nor introducing sensors had been a great success. He asked whether there had been much resistance from Members to the measures taken in Israel.

Mr EL KHADI thanked his colleagues. He said that he agreed that the key to human progress lay in the reaction to what happened. It was necessary to facilitate progress and help those charged with this task. It would be utopian to say that from one day to the next parliaments would be without paper but the project had enabled remarkable advances to be made. There had been some resistance on the part of both MPs and staff.

As was said in China, a long journey always began with a first step.

Mr PLOT said that he knew that the Australian Parliament was relatively new and had many green elements. In Israel research had been conducted into other parliaments: and he was confident that the Knesset now set the standard internationally.

The Israeli Parliament had not been constructed as a green building and the current project involved retro-fitting. The best examples in the world were found in

Germany, Australia, Scotland and Israel. He was proud to be able to say that 1,500 solar panels had been installed. The solar field covered over half the roof.

Mrs Doris Katai Katebe MWINGA, President, thanked Mr EL KHADI and Mr PLOT for their communications and thanked members for the questions they had asked.

6. Presentation on recent developments in the Inter-Parliamentary Union (IPU)

Mrs Doris Katai Katebe MWINGA, President, invited Ms Kareen JABRE of the IPU, to make her presentation.

Ms Kareen JABRE (IPU) said that it was always very interesting to attend the meetings of the ASGP. She was going to talk about how the IPU was meeting some of its strategic objectives.

The first area of work she mentioned was the setting of standards and knowledge-generation. The Global Parliamentary Report was one of the biggest projects of the year. Mr SCHWAB had represented the ASGP at an expert meeting, and there had been survey responses, interviews and e-discussions. She requested that those parliaments which had not yet responded to the survey did so as soon as possible.

She mentioned the e-Parliament conference that would be held in Chile in June, and that it was open to secretaries general. More than 110 responses had been received to a survey that had been circulated on that subject.

There were two further projects on the parliamentary initiative in law-making, and violence against women in Parliament. There would be forthcoming work on indicators for democracy.

The second strategic area related to the building of institutional capacity. Work had been carried out in many countries, including Myanmar, Egypt, Afghanistan, Palestine and Sri Lanka. It took the form of the induction of MPs and support to parliamentary administrations.

She referred to the Common Principles of the IPU. Endorsement levels were currently at 105 and she hoped that more parliaments would consider endorsing this important work.

The IPU was also carrying out work on gender equality, for example on expanding female access to Parliament. The IPU had been supporting women MPs in a number of countries, such as Turkey and Ivory Coast. Future work would be carried out on the elimination of discrimination in law.

The Committee on the Human Rights of Parliamentarians were still extremely active, and was mapping violations across the world.

Work had begun on migration and statelessness.

She referred to the IPU's significant development goals, on which work was underway to raise awareness amongst MPs. The IPU was developing a tool kit for self-assessment and would appreciate any comments that members might wish to make.

Mr Abdelgadir ABDALLA KHALAFALLA (Sudan) said that he commended the quality of the work of the IPU. He said that the role of secretaries general in replying to surveys was very important. Arab parliaments had made a great deal of progress towards the goal of e-parliaments. He reminded the Association of a 2012 IPU publication on parliamentary websites, which had been a great support to the Parliament of Sudan, and which he felt could be enlarged upon.

Mr Jiři UKLEIN (Czech Republic) said that he had never had a request from the IPU for the Czech Republic to send an expert. He would like to receive an invitation to the e-parliament conference, without which his country could not take part.

Ms JABRE said that the IPU had a roster of experts, and countries could apply to send experts via the IPU website. She agreed that this portal was not very visible and consideration would be given to improving the system. She suggested that she might send the link to the roster via the ASGP.

The invitations to the June conference had not yet been sent, but secretaries general would be receiving them soon. She said that anyone who had not yet received their invitations could get in touch.

She said that e-parliament was a priority and subject to frequent requests in the IPU's capacity-building work. The IPU was also trying to go e-IPU.

Mrs Doris Katai Katebe MWINGA, President, thanked Ms JABRE for her interesting presentation and reminded members of the joint IPU-ASGP panel to be held that afternoon.

7. Draft agenda for the next meeting in Geneva (Switzerland), 24-27 October 2016

Mrs Doris Katai Katebe MWINGA, President, presented the draft agenda as follows:

Possible subjects for general debate

1. Training for participants in, and persons supporting, parliamentary proceedings
   Moderator: Mrs Claressa SURTEES, Deputy Clerk of the House of Representatives of Australia

2. The role of Parliament in international negotiations
   Moderator: to be confirmed

Communications

Theme: Powers and mechanisms in Parliaments

Mr Gali Massa HAROU, Deputy Secretary General of the National Assembly of Chad: "The issue of quorum in relation to accusations made against members of the Government and the President of the Republic"

Dr Winantuningtyastiti SWASANANY Secretary General of the House of Representatives of Indonesia: "The Role of the House Steering Committee in Managing the Order of Business in the Indonesian House of Representatives Sittings"

Mr Bachir SLIMANI, Secretary General of the Popular National Assembly of Algeria: "Constitutional reform and Parliament in Algeria"

Theme: Parliamentary staff

Dr. Mohamed Salem AL MAZRAOUI, Secretary General of the Federal National Council of the United Arab Emirates **:** "The creation of an international standard to measure the proficiency and quality of the performance of parliamentary secretariats (from both a technical and administrative perspective)"

Theme: A Parliament for tomorrow

Mr Anoop MISHRA, Secretary General of the Lok Sabha of India: "'The Lok Sabha Secretariat and its journey towards a paperless office"

Mrs La-Or PUTORNJAI, Deputy Secretary General of the Senate of Thailand: "The role of social media in spreading awareness about the National Legislative Assembly of the Kingdom of Thailand"

Mr José Manuel ARAÚJO, Deputy Secretary General of the Assembly of the Republic of Portugal: "WEB TV - improving the score on Parliamentary transparency"

*** * ***

Mr Philippe SCHWAB, Secretary General of the Federal Assembly of Switzerland: "Taking into account interest groups in the drafting of legislation: the consultation procedure"

Other business

1. Presentation on recent developments in the Inter-Parliamentary Union
2. Administrative questions
3. Draft agenda for the next meeting in Dhaka (Bangladesh) (2-5 April 2017)

The draft agenda was agreed to.

She asked members wishing to propose communications to try to group them under the themes selected by the Executive Committee, and above all to do it as soon as possible. The inclusion of late suggestions could not be guaranteed.

8. Closure

Mrs Doris Katai Katebe MWINGA, President, thanked members for their active participation in the meeting, and hoped that friendships had been forged during the course of the conference.

She thanked the interpreters and the secretariat.

Mr Willian BEFOUROUACK (Madagascar) asked about past members of the ASGP. He said that the secretaries general did not really have a mandate and could be removed at any moment. For the general interest of the Association, he said that it might be interesting to welcome past members.

Mr Ibrahim KHRISHI (Palestine) said that on behalf of the Association he wished to thank the President and the host Parliament for their warm welcome.

The next Session would begin on 24 October 2016 and would be held in Geneva, Switzerland. She looked forward to seeing everyone then.

The sitting ended at 12.25 pm.

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[i] The United Kingdom Parliament website www.Parliament.uk

[ii] Wikipedia, the free encyclopedia

[iii] Crossing the floor in the Federal Parliament 1950 – August 2004 Research

Note no. 11 2005–06. Australian Parliament. October 10, 2005).

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[v] Macafee, Michelle (April 11, 2006). "Proposed reforms would ban floor-crossing in Man.". Canadian Press, Archived from *the original* on March 23, 2007.

[vi] The elections Reform Act. Schedule E -Statutes of Manitoba, Manitoba Laws, 2006

[vii] Samwiri Karugire - Roots of Instability in Uganda, Fountain Publishers; 2nd edition (1996)

[viii] Samwiri. R Karugire -A Political History of Uganda, Heinemann (Txt); First Edition ,June 1980