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CONTENTS

THE MECHANISMS FOR TREATMENT OF HUMAN RIGHTS ISSUES IN NATIONAL PARLIAMENTS

Mr Ian HARRIS, President, *invited Dr Rhodri WALTERS, the moderator in that debate, from the House of Lords of the United Kingdom, to speak.*

Dr Rhodri WALTERS (United Kingdom) *spoke as follows*:

It is a great privilege for me to initiate this discussion today. As some of you will already know, Sir Michael Davies, formerly President of the ASGP, has just retired and has been succeeded by Paul Hayter as Clerk of the House of Lords. Unfortunately, Paul – whom you may remember from the Santiago meeting – cannot be here this week but he looks forward to greeting you in London next year.

I turn now to the subject matter of today's discussions. Respect for fundamental rights is the prerequisite of effective democracy. It follows therefore that in democracies, Parliaments are inevitably concerned with human rights in general terms whether as representative bodies exercising oversight or as legislatures. But in many instances – either in conformity with human rights principles enshrined in a written constitution or following the statutory incorporation of a code of human rights into domestic law – Parliaments now often have a much more specific role to play in human rights. The United Kingdom Parliament is no exception and I hope that a brief account of our relatively recent experiences may help to stimulate our debate.

Until the passing of the Human Rights Act 1998, the United Kingdom law did not contain any specific human rights provisions. This will perhaps surprise many of you. Although the United Kingdom took a leading role in drafting the European Convention of Human Rights and ratified it as early as 1951, successive Governments both Labour and Conservative did not incorporate it into domestic law. That is not to say that United Kingdom law was not respectful of human rights; nor that most of the "rights" enshrined in the ECHR or indeed any other code were entirely consistent with UK law. You do not necessarily have to incorporate such rights explicitly into law in order to have regard to them.

Ironically, the arguments which successive Governments both Labour and Conservative used against incorporation of a code of rights had a strong parliamentary and constitutional content. Any scheme at incorporation which might have allowed United Kingdom courts to strike down provisions in Acts of Parliament would have undermined the legislative supremacy of Parliament itself. And because of that legislative supremacy, it would in any event be impossible to "entrench" those rights permanently into United Kingdom law. All rather academic you might think, but arguments like these prevailed.

Although in 1966, the UK Government accepted the right of individuals to petition the European Court of Human Rights, and the jurisdiction of the Court in human rights cases, those rights still could not be tested in UK Courts.

This all changed following the 1997 general election when the new Labour Government carried through a commitment to incorporate the European Convention on Human Rights into UK Law and the Human Rights Act was passed in 1998. During the passage of the Bill, it was both suggested by the Government and widely accepted within Parliament that following the passing of the Act, a Joint Select Committee of both Houses might be set up to consider human rights issues. Such a Committee consisting of 6 members from each House (including several lawyers) was eventually set up early in 2001. So in the main our Parliament's involvement in human rights issues stems partly from provisions in the Human Rights Act and partly from the work of the Joint Committee. [Human rights issues are sometimes explored by other committees too, such as those on delegated legislation, or investigative committees on draft bills.] Our activities can be summarised briefly as follows:

Statements of Compatibility and Scrutiny of Bills by the Joint Committee

Under the terms of the Human Rights Act 1998, when any Bill is introduced by the Governments into either House of Parliament, the responsible Minister is obliged to state whether or not in his view the Bill is compatible with the rights set out in the European Convention. Indeed the statement is printed on the cover of the Bill. But such a statement is made wherever the balance of argument supports that view and every Bill introduced into Parliament since December 1998 has carried it. Indeed, in only one case – that of the Communications Bill of the present session – did the Government say that an affirmative statement could not be made. Another bill, the controversial Anti-terrorism, Crime and Security Bill in late 2001 was certified only because the Government gave notice of a derogation from Article 5 (right to liberty) in respect of its provisions to detain certain categories of terrorist indefinitely.

The Joint Committee has powers to consider the human rights aspects of every Bill and thus to explore in greater detail the validity of the minister's statement. With the assistance of its expert Legal Adviser (shortly to leave us to take up a Professorship at Cambridge University), the Committee reports to the two Houses on those aspects of each Bill which have human rights implications. The Government provides written responses to the points made by the Committee in particular where the Committee has questioned whether any provision is indeed compatible with Convention rights. These reports and the Government's responses are available to the members of the two Houses and to the public as the Bills go through the various legislative stages. Not all Bills raise major human rights issues. But the task of monitoring is nevertheless enormous. In the long 2001-02 session of Parliament the Committee examined 178 bills, 37 of which were government bills, many of which were of considerable length and complexity and on subjects with a considerable human rights dimension like criminal justice and immigration and asylum.

Remedial Orders

So much for scrutiny of bills. But the Human Rights Act 1998 also established a procedure to enable the law to amended quickly whenever a UK court found that some provision of an Act of Parliament was incompatible with Convention rights. Under this procedure, the responsible

Minister can make what is called a remedial order to amend the offending provisions in any Act. The Order is laid in draft before Parliament and the Joint Committee is empowered to consider it and report upon it. A final version of the order is then laid and approved by each House. In urgent cases, the Minister can lay an order within immediate effect and approval is retrospective. By this order making procedure, the legislative supremacy of Parliament is preserved.

In fact, only one such order has so far been made following an adverse judgement in the courts. In 2001 an amendment was made to the Mental Health Act 1983 in respect of the burden of proof for detaining someone under that Act. In that instance the Joint Committee recommended that the order be made so as to have immediate effect. The Government agreed.

It is perhaps interesting to note that so far only one remedial order has been necessary. Some other adverse findings in the United Kingdom courts or at the European Court of Human Rights have been or will be remedied in legislation rather than by order. But there has been no deluge of human rights inspired litigation, and little that has been brought successfully.

Scrutiny of Public Policy

The examination of bills and of draft remedial orders by the Joint Parliamentary Committee on human rights are very specific tasks arising out of the passage of the 1998 Human Rights Act. Although the two Houses of Parliament both in debate and through their Select Committees have long been able to consider public policy issues relating to human rights and still do, since the establishment of the Joint Select Committee, consideration of such policy issues has been given a new focus. In addition to performing its scrutiny role, the Joint Committee is also able to function as an investigative committee on public policy issues. Following programmes of public hearings, the receipt of evidence, and the commissioning of specialist advice, the Joint Committee has produced reports on such topical issues as the establishment of a human rights commission for England and Wales; the appointment of a Children's Commissioner for England; and the work of the Northern Ireland Human Rights Commission. These reports can be debated in either chamber of parliament on a motion in the name of a member of the Select Committee and the Government is expected to respond to the recommendations made.

Are these mechanisms successful?

As we all know from our many years experience of these matters, it is not too difficult to set up Parliamentary mechanisms and procedures, whether in the human rights field or any other. But it really is very difficult to gauge the efficacy and influence of those procedures with absolute accuracy. Such judgments are almost always subjective. In the United Kingdom Parliament, where the influence of the Executive (Government) is so strong, it is particularly difficult to influence legislative and policy outcomes. But so far, the signs are encouraging in a number of different ways.

First, some Government departments are now far more forthcoming in the information provided to Parliament on human rights issues in bills. This includes information provided in Explanatory Notes published on the introduction of a bill into either House; and the information provided in subsequent exchanges with the Joint Committee.

Secondly, it is the clear impression of the Joint Committee's Legal Adviser – Professor Feldman – that human rights are being more fully considered and provided for in legislation at an earlier

stage than was the case just over two years ago when the Joint Committee began its work of scrutiny. Thus the very existence of the Joint Committee seems to be having a salutary effect. There have even been occasions when officials have consulted Committee members and staff before a bill has been introduced into Parliament.

Thirdly, the Government has sometimes been willing to make changes to legislation during its passage through Parliament following an adverse report from the Joint Committee – the Anti-terrorism Bill in 2001 and the Employment Bill in 2002 are examples. The fact remains however that the government remains resistant to criticism on human rights grounds of the central aims of its policies while being more flexible on the more incidental aspects of implementation of those policies.

So far as concerns the impact on public policy of the investigative work of the Joint Committee, only time will tell. Even then, assuming for example that a Children's Commissioner is appointed or a Human Rights Commission is established, it will not be possible to say with certainty that these developments in government policy were necessarily inspired by the views of Parliament.

Themes for discussion

I hope that I have not spoken at too great a length about our experiences in the United Kingdom Parliament. But as I said when I began, they may help to stimulate our discussions by illustrating some useful themes. Here are some of them:

— To what extent are human rights issues capable of being tested in the courts (justiciable) in your country? In the United Kingdom before 1998 they were not. Now they are.

— How has that come about? In the United Kingdom the European Convention on Human Rights has been incorporated into UK law, but there are other ways of doing it and it would be nice to hear about them.

— Does your parliament have any special procedures for examining the impact of legislation on human rights? Does your parliament have a special committee to scrutinize draft legislation and how is it staffed? In the United Kingdom, the Joint Committee on Human Rights does this, with the benefit of specialist advice of the highest quality.

— To what extent do proposers of legislation take notice of the views of your parliament on human rights issues? Be honest! In the United Kingdom, sometimes they do and sometimes they don't.

— Are proposers of legislation – for example your government, or executive branch, or in some of your parliaments even individual members or committees – required to provide information on the likely impact of legislation on human rights? In the United Kingdom, since 1998, the government is under a statutory obligation to do so but private members are not.

— Do your courts of law have power to strike down legislation or, as in the United Kingdom, does your parliament alone retain the power to amend any law which is found incompatible with human rights?

— Do your parliaments have ways of considering how to extend or develop policy on human rights? How are lobby groups regarded and catered for? At Westminster, the investigative activities of the Joint Committee now offer a focus for these activities.

I look forward to listening to your contributions on these interesting and important themes.

Mr Ian HARRIS, President, *thanked Dr WALTERS for his extremely full introduction and invited participants to speak in the debate.*

Mr Shahid IQBAL (Pakistan) said that his Parliament started to deal with the question of human rights in 1993 when a senatorial committee was set up. It was worth noting that the mandate of senators was different from representatives. Furthermore the political balance in the Upper House was often different from that of the Government, as a result of which there were frequent political difficulties.

The Senate Committee on Human Rights carried out a permanent scrutiny function in this area and examined cases of possible violation of rights and set out various problems. It set up inquiries and studies as a result of which it made recommendations which sometimes took on the form of draft bills. The Committee had a large area of responsibility.

The Committee, since its establishment, had dealt with a wide range of important questions such as the conditions of provisional detention and penitentiary detention, extradition procedures or even child labour. It organised educational seminars relating to problems in the human rights area and maintained contact with organisations outside Government which were present in Pakistan.

The President of the Senate had particular power relating to the conduct of the activities of the Committee. In particular, it was for him to decide on the relevance of various documents which were put before the committee. He was the person who, at the last resort, decided whether particular papers might be published or whether they should be held for reasons of national security.

Mr Ibrahim SALIM (Nigeria) first of all put a question to the moderator. He wanted to know the extent to which members of the public could engage parliament in obtaining an abrogation of particular draft bills if they considered that the legislation violated their human rights.

In Nigeria, human rights were subject to three levels of intervention. First of all there were the rights which were in the Constitution. Secondly both Houses of Parliament had committees which dealt with the treatment of petitions and requests relating to human rights. These committees could deal with particular cases and their decisions were similar to those of a court of law. Finally there was a National Commission for Human Rights. All these levels allowed such questions to be treated efficiently. Furthermore, extra-governmental organisations were very vigilant in this area.

Dr Rhodri WALTERS said that it was not possible in the United Kingdom for a particular person to bring a case before Parliament. Nonetheless, nowadays it was possible for a course of action through the courts of the country. Since 1998 members of the public could use the European Court of Human Rights at Strasbourg.

Mr Sindiso MFENYANA (South Africa) said that the South African Constitution had several institutions which were designed to protect human rights. Parliament had a Committee on Human Rights, a Committee for the Promotion and Improvement of the Quality of Life and a Committee on the Parity between Men and Women. Furthermore, there was a particular institution called the 'Public Protector'. These bodies worked with non-governmental organisations and representatives of civil society. Even in its preliminary stages, debate on a

draft bill might be allowed for public intervention and for consultation. Once agreed to, a law had to conform with the rules relating to human rights.

The Committee on Human Rights in Parliament worked in co-operation with the Ministry of Justice.

It was interesting to note that in the United Kingdom there was no mechanism to allow for members of the public to take part in the preparation of laws. In South Africa, there were ways of engaging public opinion and that existed even under apartheid.

Dr Yogendra NARAIN (India) said that pre-occupation with the preservation and defence of human rights had been present in ancient times. The struggle for independence had been based on the struggle for recognition of human rights which had an essential place in the Constitution. This included a charter of socio-economic rights, social justice such as economic freedom, equalative opportunity, a ban on forced work and other basic freedoms which were referred to in its preamble.

A recent law had been agreed which provided for mandatory education for children up to the age of fourteen. It was more and more widely accepted that the right to information and freedom of information were basic rights which, in particular, allowed the public to scrutinise better government action.

Questions relating to human rights were treated within Parliament by way of various procedures at the disposal of its members. For example, special mention procedure, points of order, brief debates, motions and questions. All these mechanisms allowed the attention of the government to be drawn to particular cases with the aim of correcting any breaches.

Various committees in the Houses of Parliament dealt with specific human rights, such as ethnic rights, women's rights, those of disadvantaged castes. At the same time the Standing Committee on Internal Affairs, which dealt with the application of the law, also scrutinised possible violations of human rights. It examined draft bills dealing with human rights and its reports were presented to Parliament as a whole.

There were various independent institutions which had been set up by law which dealt with human rights, thus the Law on the Protection of Human Rights of 1993 opened the way to the establishment of a National Committee on Human Rights. There were similar commissions in the 29 states which constituted the Indian Union. Various institutions had been set up to promote the interests of disadvantaged groups and the weaker parts of society. For example, the National Committee on Castes and Tribes (1990), the National Committee for Women (1990), the National Committee for Minorities (1992) and the National Committee for Lower Classes (1993).

The Indian Parliament maintained and developed links with various organisations which defended human rights in many ways. The President and members of the National Committee of Human Rights (NHRC) were named by the President of the Republic on the recommendation of a commission which was made up, among others, of the Speaker of the Lok Sabha, the lower House of Parliament, the heads of opposition in the two Houses, and the Deputy President of the Rajya Sabha, the upper House of Parliament. Furthermore, any reports or special reports of the Commission were presented to the two Houses of Parliament. They included, in particular, an account of the actions undertaken at the request of that Commission or an explanation of the reasons which had led to its recommendations not being followed.

Non-governmental organisations and charitable organisations working in the area of human rights were invited, when necessary, to give their opinion to parliamentary committees when

they were examining questions which affected such rights. In the human rights area, non-governmental organisations played an essential role in India. Public interest litigation was one of the best ways of ensuring that the courts intervened when there was a violation of human rights. Since basic freedoms were part of the structural basis of the Constitution, courts were obliged to ensure that such rights were not violated. It was worth noting that the courts were, in general, very keen to take note of this question.

The Indian Parliament was not only in the forefront of the protection and defence of human rights but also anticipated risks to human rights and recommended corresponding measures to prevent any impact on human rights.

Mme Hélène PONCEAU (France) wished to respond to the intervention of Mr Ibrahim SALIM. In France, members of the public could bring individual cases to the notice of Parliament by way of petition. That right had existed since the birth of Parliament in France. It was a right enjoyed by citizens as well as by foreigners when they thought that their rights had been affected or if they had any other grievance. The procedure was that a petition would be registered, published in the parliamentary bulletin, known as the "feuilleton", and would be sent for examination to the Committee on Constitutional Law and General Administration of the Republic. The Committee would nominate a rapporteur who would propose a decision. The petition could be rejected if it appeared to have no basis. Otherwise a petition would be sent to the relevant minister with a request for an explanation or a rectification of any decision taken which was the basis of the complaint. It was possible to refer a question for public debate in the plenary session.

For the last thirty years furthermore, there had been the institution of the Médiateur of the Republic. Each citizen could refer a matter to the Médiateur through a member of parliament. Both methods therefore required the intervention of a member of parliament, or of parliament itself. As far as the procedure relating to petitions was concerned, the Committee could also refer the matter to the Médiateur of the Republic.

There was no specific committee on human rights. Nonetheless, the Constitutional Council, which had as its duty, to pronounce on the validity of laws with respect to the provisions of the Constitution, had extended its remit to include human rights as defined in the various preambles and in the Declaration of the Rights of Man of 1789.

Mr Marc BOSC (Canada) asked Dr Rhodri WALTERS about the extent to which law applied to Parliament itself within the United Kingdom. What was the position for members of parliament and the staff of parliament?

Dr Rhodri WALTERS (United Kingdom) said that he had expected this question. Without specific provision, the institute of Parliament was immune but this position was open to question still.

The European Convention on Human Rights provided for a right to property. Nonetheless, court actions in this area in the majority of cases were heard as civil cases rather than treated within the framework of human rights. In the same way, actions concerning employees' rights were treated as matters of employment law. As a whole the question remained to be decided relating to the how and the extent to which such law applied to Parliament itself.

Mr Everhard VOSS (Germany) *intervened as follows:*

1. The Basic Law of the Federal Republic of Germany acknowledges, in Article 1, paragraph 2, the "inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world". The respect and protection of the inviolability of human dignity, and the principle that the basic rights bind the legislature, i.e. the parliament, as well as the executive and the judiciary, as directly applicable law are thus fundamental elements of domestic German law. They play a significant role in shaping domestic and foreign policy. Their significance also results from the fact that the constitution does not allow these provisions to be amended (Article 79, paragraph 3 of the Basic Law).

2. Ever since the Federal Republic of Germany was founded, the German Bundestag and Germany as a whole have taken this constitutional guarantee seriously. Thus, Germany is embedded in a comprehensive framework for the protection of human rights under international law. The Federal Republic of Germany has been involved in the wide-reaching implementation of human rights, through international declarations and conventions, as well as through the work of the delegations of the German Bundestag to the IPU and other inter-parliamentary assemblies, such as the Parliamentary Assemblies of the OSCE and the Council of Europe.

3. At a meeting of the IPU's human rights committee, on the occasion of the 102nd Inter-parliamentary Conference in 1999 in Berlin, Wolfgang Thierse, President of the German Bundestag, pointed out that parliaments can only carry out the tasks assigned to them if their members are free and independent. This means working with vigour to ensure that the right of individuals to freely develop their personalities, which is guaranteed in democratic rule-of-law states, is established even in those places where its existence is called into question by an authoritarian leadership, resulting in human rights violations.

The Inter-Parliamentary Union has chosen the path of looking to the future, and endeavouring to uphold human rights through numerous resolutions, memorandums and other measures. I recall, in this context, the seven inter-parliamentary Conferences on Security and Cooperation in Europe (1972-1991). These conferences aimed, at a difficult time, to expand on, and provide impetus for the realisation of, the contents of Basket III of the Helsinki Accords, namely human rights. The untiring efforts of the parliamentarians from rule-of-law democracies finally succeeded in changing the minds of delegations determined to give no ground: on issues such as family reunification and the release of political prisoners, for example. The IPU played a major role in bringing about the collapse of the Communist regimes, which demonstrated contempt for human rights. Thus the decision to call off the VII CSCE-IPU parliamentarians' conference planned to take place in 1989 in Bucharest accelerated the fall of the dictator Ceaucescu. His regime of human rights infringements was criticised in the plenary debates at the IPU conferences, in particular by the Twelve Plus Group.

4. In 2000, two significant events for the safeguarding of human rights took place in Europe. On 4 November 2000, the Member States of the Council of Europe Parliamentary Assembly celebrated the 50th Anniversary of the European Convention on Human Rights. In December 2000 in Nice, the Charter of Fundamental Rights of the European Union was proclaimed. The Council of Europe has long advocated accession by the European Union to the European Convention on Human Rights and calls for amendments to the treaty text to ensure the necessary coherence between Convention law and Community law. Discussions on the necessity of effective protection for human rights are not only needed within Europe. Such discussions must be set in motion in representative bodies right across the world.

Together with the former President of the Italian Camera dei Deputati, Luciano Violante, and the then President of the Assemblée nationale, Raymond Forni, President of the Bundestag Wolfgang Thierse had taken up this discussion at the end of the summit meeting of parliamentary speakers from across the world which took place in August/September 2000 in New York and set in motion a corresponding initiative. The result is a " Charter of the Duties of States ", in which the three parliamentary presidents enshrine the view that the fundament of human rights is the heritage of all cultures and civilisations of the world. It is this universal character which makes fulfilment of the duties listed in the Charter a moral obligation for all states. For this reason, the Presidents appeal to all states to adopt the Charter, regardless of their cultural and legal traditions.

The Charter is intended to be a voluntary commitment by all states, with the aim of ensuring that those sentenced to death are not executed and that prisoners are neither tortured, nor treated in a cruel, inhuman or degrading manner. The Charter also calls for state authority to be enforced in an equitable and proportionate fashion. It stresses that slavery, trafficking in human beings and any type of discrimination must be abolished. Each country should earmark an appropriate share of its resources for the fight against poverty, and for health and education and training. The intention is that the Charter could be further developed, with the aim of sparking a broad discussion about the safeguarding of human rights and fundamental freedoms right across the world. The draft produced was forwarded to the IPU delegates at the 108th Inter-Parliamentary Conference in Santiago.

5. The Committee on Human Rights and Humanitarian Aid in the German Bundestag considers itself to be treading an uncomfortable path. In the 15th electoral term, a permanent committee dealing with human rights and humanitarian aid has once again been set up. The importance which the Bundestag places on human rights policy was recently underlined when, in the context of a debate on the key areas of German policymaking, the Bundestag adopted a motion defining respect of human rights as one of the guiding principles of German policy. Amongst other things, this motion highlighted the fact that the committee members' commitment to human rights applies to both domestic and foreign policy issues. This was not always the case; until 1998, the human rights committee was a subcommittee of the Committee on Foreign Affairs and dealt mainly with foreign policy matters.

The plenary of the German Bundestag has debated human rights issues on various other occasions. I wish to refer to the debate of 13 March 2003, during which the Bundestag dealt with:

— a motion tabled by the parliamentary groups of the SPD and Alliance 90/The Greens on the 59th session of the United Nations Commission on Human Rights;

— a recommendation and report of the Committee on Human Rights and Humanitarian Aid relating to the Federal Government’s communication on the 6th report of the Federal Government on its human rights policy in foreign relations and in other policy areas;

— a recommendation and report of the Committee on Human Rights and Humanitarian Aid relating to the motion tabled by the parliamentary groups of the SPD and Alliance 90/The Greens on human rights as a guideline of German policy;

— a recommendation and report of the Committee on Human Rights and Humanitarian Aid relating to the motion tabled by the FDP parliamentary group on not overlooking human rights violations in Chechnya;

— and a motion by the CDU/CSU parliamentary group on advocating human rights globally – strengthening the international instruments to protect human rights.

The Committee on Human Rights and Humanitarian Aid deals with a wide spectrum of issues. Subjects of key interest for the parliamentarians in the current electoral term include the safeguarding of human rights in the war on terrorism, the protection of defenders of human rights and the area of Islamic law and human rights.

The committee also concerns itself with the further development of national, European and international instruments to safeguard human rights, and with the legal and political scrutiny of human rights infringements. Human rights issues also often arise in foreign, development and security policy, in economic and external trade policy, and in asylum and refugee policy. Questions concerning policy on minorities and humanitarian aid are also amongst the issues routinely dealt with by the committee.

The committee keeps itself constantly informed on the human rights situation around the world. It achieves this by consulting the responsible ministries and experts from within Germany and abroad and by frequently exchanging opinions with diplomatic representatives and human rights organisations. This provides the Members with important background information. They are thus able to use their wide-ranging contacts to political institutions in Germany and abroad, to governments and to human rights groups and bring their influence to bear in a targeted manner.

From the outset, the Committee on Human Rights and Humanitarian Aid has met with a positive response from politicians at home and abroad, as well as from a wide range of national and international human rights groups.

The agenda is often shaped by current events. Reports by the Federal Government on the situation in Afghanistan, Chechnya, China, Columbia, Turkey, Africa or the Middle East, for example, are placed on the agenda at short notice. The members of the committee also inform themselves about the type and scope of humanitarian aid which may be necessary in countries suffering from the effects of natural disasters or military conflict.

The work of the Committee on Human Rights and Humanitarian Aid overlaps with numerous other areas of policy. This is also reflected in its parliamentary work. Increasingly, when the committee is asked for an opinion on items of business where other committees have overall responsibility, it does not merely state its support or rejection, but also makes concrete recommendations from a human rights viewpoint. One of the characteristics of committee work is the way in which all the parliamentary groups represented on the committee work together constructively. As a result of its persistent and sustained domestic and foreign policy work, the committee has established itself as an important and sometimes uncomfortable parliamentary voice.

The Chairwoman of the Committee, Ms Christa Nickels (Alliance 90/The Greens) made the following remarks: "It is important that we preserve the key objective of this committee: to take the side of human rights. In fulfilling this commitment we continue to tread an uncomfortable path, because credible human rights policy also begins at home: We must ensure, for example, that meticulous attention is paid to human rights in Germany and Europe in the fight against terrorism. "

The Administration of the German Bundestag provides the administrative, specialist, technical and organisational framework, as well as the necessary personnel, for the work of the Bundestag committees. The staff members working for the committee secretariats are recruited from amongst the staff of the Bundestag Administration.

Specially trained members of staff within the Administration also compile reports on particular questions and subject areas, thus providing additional input for the work of the committee. The Committee on Human Rights and Humanitarian Aid works together, for example, with Subject Area II (Foreign Affairs, International Law, Economic Cooperation and Development, Defence, Human Rights and Humanitarian Aid) and Subject Area XII (European Affairs).

Cooperation between the legislator and various national human rights bodies and extra-parliamentary interest groups operating independently takes place via the committees.

The work of the Committee on Human Rights and Humanitarian Aid is extremely varied. It involves:

— cooperation with international organisations (such as Amnesty International, Human Rights Watch, Reporters without Borders, Terre des Hommes, etc)

— visits by political representatives, religious leaders, heads of national human rights organisations

— particular concentration on the human rights situation in selected countries

— regular briefings to the committee by representatives of the Federal Government and experts

— consultations between various Bundestag committees, as well as joint sessions with the delegations of the German Bundestag to the IPU and the OSCE Parliamentary Assembly

— dialogue between the committee and representatives of the governments of, for example, Turkey and China

— trips by delegations, such as that to the 59th Session of the United Nations' Commission on Human Rights in April 2003 in Geneva, the trip to Turkey and Iran in May 2003 and the trip to Afghanistan and Egypt in September 2003.

— support for the work of human rights representatives.

6. The role of the courts in upholding human rights is also very important. Courts are bound by the law. Protection of human rights by courts is only as good as the contents of the laws by which the judges are bound. Human rights are enshrined in the constitution. Should a court believe that a particular law is not compatible with the Basic Law, it may request a ruling from the Federal Constitutional Court (Article 100 of the Basic Law, Compatibility of Laws with the Basic Law). The Federal Constitutional Court may then declare such a law unconstitutional.

A ruling of 27 August 2003 by Cologne Administrative Court makes clear the way in which human rights bind the judiciary as directly applicable law. The third chamber of Cologne Administrative Court issued a ruling on two actions brought by the Turkish national Muhammed Metin Kaplan against the Federal Republic of Germany/the Federal Agency for the Recognition of Foreign Refugees. The judges ruled that, although the Federal Agency for the Recognition of Foreign Refugees had been right in revoking Kaplan's right of asylum, he might not, at that point, be deported to Turkey.

The court rejected Kaplan's appeal against the revocation of his right of asylum. It ruled that the revocation of his right of asylum had been lawful, as Kaplan had been sentenced as the result of a serious criminal offence, by a final and binding court judgement, to a four-year custodial sentence and a danger existed that he would re-offend.

But the judges upheld Kaplan's appeal on another point. In December 2002, the Federal Agency for the Recognition of Foreign Refugees had issued an independent decision, allowing Kaplan

to be deported to Turkey on completion of his custodial sentence. The court disagreed and reversed this decision, citing the existence of an "obstacle to deportation". The judges concluded that the criminal proceedings awaiting Kaplan in Turkey were not compatible with the principles of the rule of law. They judged that a concrete danger existed that incriminating statements would be used in these proceedings which had been made by people who, it had been proven, had been tortured whilst in police custody and who had later retracted these statements. The fact that these statements were likely to be used as evidence constituted an infringement of the UN Anti-Torture Convention, which Turkey had also signed, and represented a particularly grave infringement of the core principles of the European Convention on Human Rights, which included the right to a fair trial.

Against the background of the comments by the President of the Federation of German Judges and the ensuing public discussion, the committee had, at its meeting on 12 March 2003, requested a briefing by the Federal Government on the ban on torture enshrined in the constitution and in international law.

7. One other example of the work of the Committee on Human Rights and Humanitarian Aid can be seen in the press release of 13 March 2003. This press release concerns the universal application of the ban on torture and refers to the current discussion in Germany concerning the ban on torture and to the debate on human rights in the German Bundestag. The Chairwoman of the committee had stressed that the ban on torture and inhumane or degrading treatment applied universally and without exceptions and that it constituted one of the elementary and inalienable fundamental and human rights in the international community of states. She stressed that the ban on torture was one of the core elements of the constitution, the Basic Law. It was recognised as binding law and anchored in numerous human rights conventions, which also applied to Germany. She emphasised that these provisions did not allow any leeway which would allow torture or the threat of torture to be used in exceptional cases. This belief was shared by all the members of the committee, she continued, and constituted a central element of the political work of the Committee on Human Rights and Humanitarian Aid.

When the Iraq war broke out on 20 March 2003, the Committee on Human Rights and Humanitarian Aid reacted immediately, calling for international humanitarian law of war to be applied. I should recall at this point that the IPU, at the 76th Inter-Parliamentary Conference in Buenos Aires in 1986, dealt with the topic of international humanitarian law in armed conflicts and that the Inter-parliamentary Council, at the 100th Inter-Parliamentary Conference in 1998 in Moscow, deliberated on the subject of international humanitarian law of war; both bodies adopted unanimous resolutions. At the meeting on 20 March, the members of the committee appealed for international humanitarian law of war and, in particular, the protocols to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to be strictly applied. They called on the national and international aid organisations to set in motion the necessary humanitarian aid measures. They stated the committee's support for all national and international humanitarian measures to assist the victims of the Iraq conflict.

8. I would now like to give a short overview of that part of the committee's work which concentrates in particular on the human rights situation in selected countries. On 24 November 1999 and 18 December 2002, for example, the committee was briefed by the Federal Government on the human rights aspects of the Federal Chancellor's trip to China, and on the human rights situation in China in general. On 17 May 2000, the committee forwarded a recommendation for a resolution on the human rights situation in China to the plenary of the German Bundestag (Printed Paper 14/3501). The human rights situation in Russia, Iraq, Afghanistan, Turkey, Iran, and in various African and Latin American states was also the subject

of deliberations by the committee. Topics included the recruitment of child soldiers in African states and the impunity of criminals in Latin American states. The human rights situation in those countries which had previously been discussed by the IPU's human rights committee was also deliberated on.

9. National parliaments, including the German Bundestag, can speak out whenever it is necessary to uphold human rights or to combat threats to human rights. During the summit meeting of parliamentary speakers from around the world in New York in August/September 2000, Secretary-General Kofi Annan stressed that the "voices of parliaments must be heard". This can be taken to include the right and duty of parliaments and their members to speak up whenever human rights are threatened anywhere in the world. The case of the Guinean politician Alfa Condé is one impressive example of parliaments refusing to remain silent. Admittedly, in view of the division of powers in a democratic parliamentary system of government, the possibilities of the German Bundestag to exert direct influence on human rights policy are limited, but they do exist. As experiences in the inter-parliamentary assemblies, in particular the IPU, have demonstrated, parliamentarians, who are not bound by the lines taken by governments and diplomats are able to speak more openly on human rights issues, without having to take into account the stance of their governments. Former IPU President Dr. Hans Stercken (1985-1988) and Dr. Heiner Geißler (CDU/CSU), both Members of the Bundestag for many years and exceptional defenders of human rights, have stressed that responsibility for upholding human rights around the world should not be sacrificed on the altar of diplomacy and profit. Treading the uncomfortable path can prove an arduous task. Choosing this path is a heavy responsibility which national parliaments and their members, all of us, must shoulder at the beginning of this century.

Mr Rauf BOZKURT (Turkey) said that the Turkish Parliament had as its policy the promotion of human rights by way of adopting laws in this area. He asked the moderator a question – whether the committees in the British Parliament had recourse to the services of experts, who nominated them and how were they paid.

Dr Rhodri WALTERS (United Kingdom) said that there was an important question here. As far as the Joint Committee was concerned, its twelve members were nominated by each of the Houses, half in half.

The staff who assisted them were provided by the House of Lords service and by the House of Commons service. The running costs were divided between the two Houses. The legal expert had a permanent job. He was nominated by a joint organisation at the end of a public recruitment procedure. It was particularly necessary to make sure the person chosen was impartial and at the same time not closely linked to a non-governmental organisation. For that reason a general lawyer had been recruited. He was a professor from the University of Birmingham.

Mr Willem DE BEAUFORT (Netherlands) said that the United Kingdom had gone further in giving a role to Parliament in the promotion of human rights than was the case in the Netherlands. A debate had taken place at the start of the 1980s on this question within the framework of reform of the Dutch Constitution. The question had been raised about the role of the courts and whether they should take primacy in this area and the decision at the end had been a negative one.

For the past 150 years, Parliament itself decided on the compatibility of laws with respect of human rights. In practice, there were several different lines which were followed. For example,

judges could decide on the compatibility of laws with the Treaty obligations. Within Parliament there was no special procedure, no joint committee between the two Houses. It was thought possible perhaps to put such structures into place, but in other areas.

Certain committees were often asked, as a result of their various responsibilities, to pronounce on the compatibility of laws with respect for human rights. Furthermore, the Council of State played an important role in this area since it gave an opinion on this point when it examined its drafts. In the preparatory documents connected with a draft bill there was, however, no obligation to put in a paragraph, or make any specific reference to human rights. Thus the study on the impact of the law only had to refer to the costs, the administrative basis and the compatibility with European law, rights or women or in respect of questions to do with the environment.

Nonetheless, the First Chamber (the Upper Chamber) had took it upon itself to deal with the impact of draft legislation on human rights even if no text was brought before it. So there was in practice an unwritten rule.

The speaker put the following question to Dr Rhodri WALTERS: what was the political balance of the Joint Committee of the British Parliament which he had referred to? Were its members essentially partisan or independent?

Dr Rhodri WALTERS (United Kingdom) replied that on the whole the members of the Committee behaved in a non-partisan way. For the most part, decisions were taken unanimously. It happened sometimes that individual members would express different opinions in the course of an inquiry but nonetheless the general rule was that when a report was prepared on a draft bill, a consensus would be reached.

Mr Claude DJANKAKI (Benin) *intervened as follows:*

Respect for the protection of human rights is fundamental principles of democracy. Various methods have been used in modern times, nationally or internationally, to guarantee such rights. These means include various mechanisms, such as a whole arsenal of laws, many organisations and pressure groups whether national or international, the objective of which was the promotion and defence of such rights.

In Benin, attachment to the principles of human rights is affirmed by the Constitution in its preamble and in its articles 3 and 23 which respectively lay down that “national sovereignty belongs to the people” and that “every person has the right to freedom of opinion and expression within the rules of public order laid down by law or other means”.

Nonetheless, there are no specific parliamentary organisations for controlling or promoting human rights. Since human rights are proclaimed constitutional rights, the National Assembly has an interest in them as a representative institution for the long-term aspirations of the people.

Apart from parliamentary opposition, civil society and leaders of opinion, promotion and control of human rights within the National Assembly take place through traditional means such as questions to the Government as well as the right to bring forward parliamentary bills which the Assembly shares with the Government.

In accordance with Article 114 of the Constitution of Benin, the Constitutional Court is the highest jurisdiction within the State in dealing with constitutional matters. It judges the constitutionality of laws and guarantees basic rights of the person and public liberty.

In this connection it would decide on cases of breaches of human rights.

In addition, it is the organisation which regulates the workings of institutions and the activities of public organisations.

Its decisions are without appeal and apply to public organisations. In order to protect human rights this Court is open to all citizens.

Parliamentary practice in Benin includes various procedures aimed at promotion and control of human rights.

I. MEANS OF PROTECTING AND CONTROLLING HUMAN RIGHTS IN PARLIAMENT

As referred to above, protection and control of human rights within the Benin Parliament take place within the context of a parliamentary opposition and a means of control of the application of laws by way of oral or written questions and urgent questions to the Government.

A. Parliamentary opposition

Since the arrival of democracy in February 1990, the Benin Parliament has, over the last three parliaments, had a different make up reflecting political circumstances. This situation of a changing parliament has often been one that favoured the opposition. With a large majority the opposition has not hesitated to put extreme pressure on the Government, particularly on questions relating to human rights. The third Parliament (1999-2003) was particularly noteworthy in this connection.

B. Mechanism of control

Controlling the Government action through Parliament was a task set down in the Constitution and was a basic one for the National Assembly.

In Benin, this control is carried out as referred to above through the means of oral and written questions and urgent questions to the Government. The Government has to reply to all questions relating to its management of affairs. In cases where the reply of the Government is not satisfactory, the National Assembly can establish a commission of inquiry in order to get more information. Questions relating to human rights are addressed in this way and the Government can be called to account at any time. But this form of control has its limitations and is purely political.

II. LIMITATION ON PARLIAMENT IN CONNECTION WITH HUMAN RIGHTS

Since it is an institution which represents the people, the National Assembly is the best place for the protection of human rights when it comes to controlling Government action in this area. But in Benin, this duty has its constitutional limits.

A. Constitutional limits

The principle of the separation of powers, which is a characteristic of the regime in Benin, does not allow interference by one power in another area. The powers of each institution are clearly defined. In case of conflict between the various institutions, only the Constitutional Court can decide. Its decision is without appeal and applies to all state institutions.

Indeed the principle of the separation of powers is affirmed. This separation is not watertight and some flexibility is allowed by the Constitution. In this way there can easily be a certain collaboration between the Government and the National Assembly. Unfortunately no collaboration is visible between Parliament and the Constitutional Court, at least within the framework of the institution. The Constitutional Court pronounces on the constitutionality of laws and sometimes in this connection plays the role of a censor of Parliament. The matter of human rights as understood in a law by the Constitutional Court at any one moment may not correspond to the understanding of the National Assembly.

B. The law in Benin on human rights

Specific laws relating to human rights derive from internal and international law.

Internally, Benin law does not have enough texts which relate to this. The most important one is of recent date and related to physical abuse and genital mutilation. These texts follow from ill treatment and abuse of which children and the feminine gender are the object. Therefore they relate to laws imposed on the social practices and daily lives of the people of Benin.

In terms of international law, specific legislation relating to human rights derives from conventions and treaties. The most important are:

— The United Nations Charter of 1945

— The Universal Declaration of the Rights of Man of 1948

— The African Charter of Human Rights and Peoples, which is an integral part of the Benin Constitution of 11 December 1990

— Agreements relating to child labour and forced labour

In Benin, the study of the impact of such laws has not been systematically organised. Therefore no particular organisation deals with this. Nonetheless some organisations such as charities, by themselves, take action in this area. This arises from the weakness of African law. Benin is no exception to this bitter truth which prevents one from learning in a concrete way what the social effects are of a particular law.

Mr Seppo TIITINEN (Finland) wanted to return to questions raised by Dr Rhodri WALTERS.

As a result of the system in force in Finland, a state which had ratified the European Convention on Human Rights, the legal regime relating to basic rights had been reformed in 1995. These changes were put into the Constitution in 2000 without involving major amendment.

The system for scrutiny of legislation and draft bills was fairly unusual. It was based on prevention and was essentially parliamentary. Finland had never had a constitutional court. For that reason all its efforts were concentrated on the process of preparing draft bills and on debate in parliament.

The Government put out recommendations on the preparation of draft bills. It published studies on the impact expected of any new legislation. Problems relating to human rights could at that point be drawn to public attention.

All parliamentary committees had to examine draft bills from the aspect of human rights. If there was any doubt on the compatibility of a text with the principles of human rights, the committee had to refer the matter to a special committee relating to constitutional law. This had a central role in assessing the compatibility of a draft bill with the Constitution. Its members took their work very seriously, even if they were elected politicians and for those purposes they forgot their partisan loyalties. Furthermore, the Speaker of the Parliament had to ensure that no draft bill could be discussed in plenary session which was inconsistent with the Constitution. In respect of this the Secretary General had a primary role to play since he advised the Speaker who was not necessarily a lawyer. The role played by the Speaker could be examined by the constitutional committee.

In Finland, the courts could not pass judgement on the laws. Nonetheless, an article of the Constitution set down that in the case of a conflict of constitutionality, a court had to give priority to the Constitution. In this way, a court could decide that a law might have an effect contrary to human rights, could request its repeal but could not declare it invalid.

There were two further institutions which dealt with scrutiny of human rights. One was the Chancellor of Justice who scrutinised acts of the Government and the President of the Republic and one was the parliamentary ombudsman. These independent bodies each submitted an annual report to Parliament.

Mrs Judith MIDDLEBROOK (Australia) *intervened as follows:*

Following the explosion of a car bomb which killed several people in the Marriott Hotel in Jakarta in August this year, Indonesia's Co-ordinating Minister for Political and Security Affairs discussed the implications of the attack saying "Those who criticise about human rights being breached must understand that all the bombing victims are more important than any human rights issue." Journalist Naomi Klein, writing in the newspaper The Australian on 8 September 2003, said of this statement: In a sentence, we got the best summary yet of the philosophy underlying Bush's so-called war on terrorism. Terrorism doesn't just blow up buildings; it blasts every other issue off the political map. The spectre of terrorism – real and exaggerated – has become a shield of impunity, protecting governments around the world from scrutiny for their human rights abuses".

This is a very challenging statement to contemplate for those of us who consider that such a fundamental issue as human rights is and has always been, under the protection of the Parliament and not vulnerable to ad hoc government action and reaction.

In Australia, as elsewhere, the legal profession has taken a leading role in the protection of human rights, both through the courts, through legal foundations and lobby groups, through courses taught in law schools and at the level of individual lawyers. This in turn has stimulated parliamentary involvement in human rights issues since a large number of Members – especially in the governing Liberal-National coalition parties — were lawyers by profession before

becoming parliamentarians, or have legal qualifications.[1] Many retain their links to the legal profession and continue to do pro bono work, particularly in human rights cases.

In relation to the involvement in human rights issues by the courts, there has been some tension between the judiciary and the Parliament. Members of Parliament, particularly government Members (of all political persuasions), have occasionally accused the courts of encroaching on the role of the legislature when the creative application of the law has been characterised as making rather than applying the law. Human rights issues are particularly susceptible to this contest of judicial and legislative power.[2]

Australia has traditionally regarded itself as having a strong humanitarian tradition (although this view has been trenchantly criticised both inside and outside the Parliament). The Australian Parliament, like others around the world demonstrates a very high degree of interest in human rights issues. Topics which have commanded the attention of the Parliament include the rights of indigenous people; the rights of asylum seekers and refugees; gender-based discrimination issues; anti-terrorism/security issues; the Australian role in Iraq and the Middle East; and scientific/medical issues including euthanasia and the use of human embryos in scientific research.

In the House of Representatives Members wishing to speak during the second reading debate on a bill or on a motion before the House are generally able to do so. Occasionally there is agreement between the parties that the time allowed for a particular debate will be limited for reasons to do with progressing the business before the House. Debates on human rights issues are rarely subjected to such arrangements and traditionally they have been lengthy affairs. The number of Members choosing to speak has been far in excess of the average time spent on say an economic or environmental issues bill.[3]

It is notable that the concept of formal recognition of universal human rights, which had its official beginning only 55 years ago in the 1948 Universal Declaration of Human Rights, has spawned a huge "industry" of supporting international covenants, domestic legislation and associated institutions. The communication from Mr Bruno Haller on the role of the Parliamentary Assembly of the Council of Europe in Defending Human Rights, presented at the

1. The current Parliamentary Handbook analysis of Members' and Senators' previous occupations shows the category "Barristers, solicitors, lawyers, legal officers etc." as by far the largest single previous occupation category. In the House of Representatives 21 out of 150 Members were previously in the legal category. The next largest category was 14 (for both Members of state legislatures and political consultants).

2. Examples include the Mabo case in which the High Court found that native title was not necessarily extinguished by European occupation and that in particular, a Torres Strait Islander from Murray Island remained the owner of his traditional land. The Parliament then followed the courts and passed the Native Title Act. In other cases the Parliament has reacted to judicial intervention by clarifying the law to reverse the court's perceived attempt to extend or enlarge the law. A recent example of the tension has been the finding by the High Court that holding children in a refugee camp was unlawful and ordering the release of a number of children from one family.

3. Examples include the Research Involving Embryos and Prohibition of Human Cloning Bill 2002; 2nd reading debate - 23 hours 36 minutes and 105 (out of 150) Members participated; The Euthanasia Laws Bill 1996; 2nd reading debate - 13 hours 31 minutes and 79 Members: The motion on Australia's commitment to support the coalition forces in the Gulf/Iraq 2003; 24 hours 35 minutes and 100 Members speaking: The Native Title Amendment Bill; 2nd reading debate 14 hours 47 minutes and 50 Members participating. This compares with an average of approximately 2 hours per 2nd reading debate (average for bills passed in 2002).

Havana session of the ASGP in April 2001, described the role of the European Convention on Human Rights in establishing a legally enforceable international system for enforcing rights.

The supranational context for identifying and defending human rights in Europe is quite different from that which applies in countries such as Australia. However, the actual role of the Australian Parliament in upholding human rights may not be that different in its essential elements.

1. APPROACHES TO THE PROTECTION OF HUMAN RIGHTS

a) The international context

There are six major UN conventions which add detail to the UN Convention of Human Rights. They are:

— The International Covenant on Civil and Political Rights

— The International Covenant on Economic, Social and Cultural rights;

— The International Convention on the Elimination of all forms of Racial Discrimination;

— The Convention on the Elimination of all forms of discrimination Against Women;

— The Convention Against Torture and Other Cruel, inhumane or Degrading Treatment or Punishment; and

— The Convention on the Rights of the Child.

These six treaties set out the human rights rules and internationally agreed standards against which all countries are judged. Australia has agreed to be bound by all these conventions. There are a number of other conventions and treaties with more specific application including the Refugee Convention which is highly pertinent to the world today.

Because Australia has agreed to be bound by the main international conventions it is one of the countries subjected to frequent criticism by, for example, the UN Committee on Human Rights. A recent example was the Committee's criticism of the Australian Government's actions in not treating the same sex partners of deceased war veterans in the same way as spouses or de facto partners of the opposite sex. The Committee identified the policy as discriminatory under paragraph 26 of the International Covenant on Civil and Political Rights.

Any Australian may take a human rights complaint to the UN Human Rights Committee and, while it is not common, several have done so. The UN committee has no way to enforce its decisions on a country but while the legal position of the complainant in Australian domestic law is not affected by the outcome of an appeal, individuals can always hope that the media coverage of the complaint will influence public opinion and eventually government policy or legislation.

Australian Members (particularly those in Government at any one time) focus on how much better Australia's human rights record is than certain other countries. Nevertheless, international criticism is keenly felt by Members of Parliament.

b) The Australian legislative context

The legislative framework for the identification and protection of human rights is the responsibility of the Attorney-General's Departments. Such legislation is introduced into the

Parliament by the Attorney or the Minister for Justice. In relation to the international human rights perspective, the Human Rights and Equal Opportunity Commission has responsibility in relation to seven international instruments ratified by Australia. These instruments are:

— International Covenant on Civil and Political Rights;

— International Labour Organisation Discrimination (Employment) Convention ILO 111;

— Declaration of the Rights of the Child;

— Declaration on the Rights of disabled Persons;

— Declaration on the Rights of Mentally Retarded Persons, and;

— Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Other international covenants are enforced under Australian domestic law including the International Convention on the Elimination of All Forms of Racial Discrimination (Racial Discrimination Act 1975) the Convention on the Elimination of All Forms of Discrimination Against Women (Sex Discrimination Act 1984 — which also provides domestic legal coverage over aspects of ILO Convention 156) and the Disability Discrimination Act 1992.

There is also a large body of legislation addressing human rights issues though not directly responding to a specific international convention. [Euthanasia Act, Terrorism Acts, Native Title Act etc.]

c) "Players" in protecting human rights

There is an extensive network of institutional and social mechanisms for identifying and protecting human rights in Australia. The concept of the "separation of powers" finds expression in Australian institutional life so human rights protection in the first instance is in the hands of the legislature (the law makers), the government (the implementers of the law) and the judicature (the interpreters and enforcers of the law). The legal profession is intimately involved in human rights both formally (for example the Law and Justice Foundation of NSW) and in a wide range of informal applications including individual lawyers acting on behalf of impoverished litigants (pro bono work). All Australian law schools teach human rights both from a national and international perspective.

Details of the discrimination case referred to above illustrate the judicial and executive decision making framework that applies to human rights issues in Australia. In September 2003 there was an outcome in a 1999 case in which a Sydney man, Mr Edward Young, took a complaint to the UN Human Rights Committee claiming to have been discriminated against by the federal Government. The man had been in a marital type relationship with his same sex partner for 38 years. The partner, a war veteran who had served in Borneo during the Second World War, died in 1998 of a heart condition which was linked to his war service. Under Australian law only heterosexual spouses or de facto partners of deceased veterans are entitled to a pension and other benefits. Mr Young's case had been considered under Australian law and his case had been rejected by the Australian Repatriation Commission, the Veterans Review Board and the Human Rights and Equal Opportunity Commission. A spokeswoman for the relevant government Minister said that the government is considering the UN Committee's views and will respond in due course. A senior law lecturer from the Australian National University was reported in the media as saying that "while he did not expect the Government to comply with the decision, it

had significant implications". He further noted "While the UN has no way to enforce its decisions on a recalcitrant country that doesn't want to oblige, Australia should consider that (its) human rights position has plummeted".

2. PARLIAMENTARY INVOLVEMENT IN HUMAN RIGHTS ISSUES

a) The Human Rights sub-committee

The Joint Standing Committee on Foreign Affairs, Defence and Trade is one of the more prestigious and influential parliamentary committees. The committee conducts inquiries by means of a number of on-going subcommittees which are re-established from Parliament to Parliament.

In 1991 a Human Rights subcommittee was established. The original intention was to prepare annual reports for the parent committee to present to the Parliament on Australia's record in upholding human rights in the international arena. The first such report was A Review of Australia's Efforts to Promote and Protect Human Rights (1992). One further comprehensive report was presented before the subcommittee decided that it could provide a better focus by concentrating on specific human rights issues from the Foreign Affairs, Defence and Trade perspective.[4] The subcommittee has since prepared, and the Joint Standing Committee on Foreign Affairs, Defence and Trade has presented the following reports relating to international human rights:

— Human Rights and Progress towards Democracy in Burma (1995)

— Improving but…Australia's regional dialogue on human rights (1998)

— The Link between Aid and Human Rights (2001)

The subcommittee has also prepared for the Joint Committee the following human rights related reports:

— The Human Rights and Equal Opportunity Commissioner and the Commonwealth

— Ombudsman: Report on Public Seminars 20 and 25 September 1996 (1997)

— Conviction with Compassion: A Report on Freedom of Religion and Belief (2000)

— A Report on Visits to Immigration Detention Centres (2001)

In addition the subcommittee reviews the Annual Reports of human rights bodies (for example the Human Rights and Equal Opportunity Commission and AusAID – the aid arm of the Department of Foreign Affairs and Trade.

The Committee undertakes an extensive private briefing program on a broad spectrum of human rights issues including:

— relevant government departments (such as DFAT and the Attorney-General's Department) updating the subcommittee on Australia's representations to international bodies such as the United Nations, informing the subcommittee on the lead up to, and the outcome of, bilateral dialogues and activities, and presenting the government's view on issues of the day; and

4. Australia's Efforts to Promote and Protect Human Rights (1994) was the second such report.

— private sector/non-government organisations and individual may be called to provide information to the subcommittee on domestic and regional human rights issues.

The parent committee also meets with visiting government and non-government delegations. Members of the committee have attended various human rights related conferences which informs their work in the subcommittee. The subcommittee also acts as a point of contact for members of the public and human rights interest groups to raise issues of concern with the Parliament.

b) The Treaties Committee

The Joint Parliament Committee on Treaties was established in 1996 to review and report on all treaty actions proposed by the Government before action is taken which binds Australia to the terms of the treaty. The Committee was established as part of a package of reforms to improve the openness and transparency of the treaty making process in Australia. The responsible Minister refers all treaties – with exceptions for urgency or particular sensitivity which to date have been rarely used – to the committee including those dealing specifically with human rights.

In examining the treaties referred to it, the committee enables interested individuals and organisations to participate in the treaty making process to an extent which was previously not available to them. In particular, the committee's activities allow citizens to voice concerns about potential conflicts between international agreements and national sovereignty and the direct impact upon them of the implementation of specific commitments.

While its recommendations are not binding on the government, the committee has demonstrated that it is no mere rubber stamp and has frequently criticised government actions.

c) Other parliamentary committees

Other parliamentary committees are involved in human rights issues in their day-to-day inquiries. For instance, a current inquiry into crime in the community is considering the human rights implications of this issue.

Senate committees are particularly active in conducting inquiries into and reporting on legislation before the Parliament. The Senate Legal and Constitutional Affairs Committee has been instrumental in forcing changes to counter-terrorism legislation to make it more supportive of the human rights of accused persons. As the Opposition, minor parties and independents can command a majority of members of the Senate, such reports are particularly influential.

d) The parliamentary Amnesty International Group

The Australian Parliament has an active Amnesty International Group consisting of Members, Senators and staff. The group was formed in 1974 and, so far as is known, was the first of its kind. The group is completely non partisan and is open to anyone working in Parliament. Generally about 60 per cent of Members and Senators have belonged to the group and the Prime Minister and Leaders of all political Parties in Parliament are joint patrons. Amnesty's Government Liaison Officer attends meetings and provides a close link with Amnesty International in Australia. A representative from the Human Rights Section of the Department of Foreign Affairs and Trade (DFAT) also attends meetings to provide expert advice and briefings as required.

One of the most important aspects of the group's work is the passing on of cases of human rights abuses drawn to its attention by the National Office of Amnesty to DFAT. The Department then takes up these cases with the governments concerned through the respective Australian Embassy. Most of the cases of human rights violations taken up by the Department have come from the Parliamentary Group Amnesty International. The group also has meetings with incoming overseas delegations during which it may raise specific human rights cases in the country concerned or simply promote the cause of human rights through discussion with the delegation.

e) Arrangements for demonstrations and protests

The Australian Parliament provides a designated protest area at the front of the public entrance to the building (but on the far side of the road in front of Parliament House). Demonstrations and protests on both domestic and international issues are commonly held in this area. The designated area was proposed by a joint committee report The Right to Protest and has been in operation for several years.

CONCLUSION

In an August 2002 seminar entitled Australia and Human Rights – the Scorecard The President of Amnesty International Australia said Australia's human rights scorecard is generally very good, but in certain key areas, there is significant room for improvement. … Further, although Australia has long been recognised as a country that plays by the rules and respects the umpires, attacks in recent years on the UN, the human rights umpire, have badly damaged Australia's human rights credibility.

Such criticism is taken seriously by Members and human rights issues will continue to be raised when Members have an opportunity to speak on matters unrestrained by the relevance rules (including Members' statements, adjournment debates and the weekly Grievance debate).

Mr Shahid IQBAL (Pakistan) said that since members of the Joint Committee of the British Parliament most often took a consensual and non-partisan position, it must follow that during a vote by the Committee some members would vote against their political group. What happened in such cases, and how did such members of parliament account for their actions to their political parties?

Dr Rhodri WALTERS (United Kingdom) said that the powers of the Whips were less extensive when it came to dealing with joint committees than in the rest of Parliament. Therefore it was possible for such members to act in a less partisan way. Draft bills were examined in standing committee and such procedure was controlled closely by the Whips, but their power was less extensive in scrutiny committees and when matters of principle were being dealt with.

Mr Roger SANDS (United Kingdom) said that the Joint Committee could only make recommendations which were presented to both Houses of Parliament. It was a different case with draft bills which were examined within committees. The Whips took a less controlling view in respect of joint committees and their membership.

Mr Bruno HALLER (Parliamentary Assembly of the Council of Europe) *presented the following intervention:*

I. THE PARLIAMENTARY ASSEMBLY'S ROLE IN DRAWING UP CONVENTIONS ON HUMAN-RIGHTS MATTERS

a) The European Convention on Human Rights (ECHR)

1. The proposal to draw up the European Convention on Human Rights came from the Parliamentary Assembly. The innovative feature of the Convention, adopted in November 1950, is that in addition to laying down rights, it created supranational machinery for protecting them which is operated by the European Court of Human Rights. Council of Europe members undertake to comply with final judgments of the Court in disputes to which they are party. Those judgments are binding and their execution is supervised by the Council of Europe Committee of Ministers. Since 1950 the Convention has been supplemented by 13 protocols, which have either added further rights or reinforced the protection machinery. The Assembly has played an instigative role in many of them.

b) Development of human rights through other legal instruments

2. Since 1950, and again at the Parliamentary Assembly's instigation, the body of Council of Europe conventions has been greatly enlarged by (among others) the following instruments.

— The European Social Charter (1961): in the face of governments' reluctance to include social and economic rights in the ECHR, the Assembly focused on drawing up a specific legal instrument, the European Social Charter, which was adopted in 1961. The Charter's main aims are to guarantee fair working conditions, decent pay, social security, social and medical assistance, and protection for children, the elderly, migrants, people with disabilities and families. The Assembly has since been active in making the Charter supervisory system more effective. In particular it pushed for a system of collective complaints, which a protocol to the Charter brought into existence in 1995. The Assembly is likewise keen to ensure that all the member states ratify the 1996 Revised Social Charter.

— The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987): this was modelled on proposals put forward by the Assembly. The Committee of Ministers opened it for signature in 1987. The Convention and related monitoring work by the Assembly and other Council of Europe bodies have helped significantly improve detention conditions in European countries.

— The Framework Convention for the Protection of National Minorities (1995): in co-operation with national parliaments concerned, the Assembly helped draw up the first legally binding international document on the rights of national minorities.

c) Assembly commitment to new rights

3. Responsiveness to the human-rights challenges thrown down by medical and biological progress is a permanent Assembly priority, as also is promoting children's rights and equality between women and men. The Assembly's autumn 2003 session will include a debate on research on human stem cells. The Assembly will also begin work on an opinion to the

Committee of Ministers on a draft protocol (to the Convention on Biomedicine and Human Rights) on medical research.

4. Concerned about environmental deterioration and the health of the community, in June 2003 the Assembly recommended that the Committee of Ministers draw up a further protocol to the ECHR. The intention is that the protocol confers procedural rights on the individual in line with the 1988 United Nations Aarhus Convention so as to strengthen protection of the environment.

II. THE PARLIAMENTARY ASSEMBLY'S ROLE IN THE OPERATION OF COUNCIL OF EUROPE HUMAN-RIGHTS PROTECTION MACHINERY

a) Election of judges

5. Under the ECHR the Assembly is responsible for electing judges of the European Court of Human Rights from lists of three candidates put forward by each Contracting Party. The Assembly, deriving as it does from Europe's national parliaments, confers democratic legitimacy on the election process. The Assembly is likewise active in reinforcing the judges' status and has just drawn up various requirements which member states must meet before putting forward lists of candidates for posts of judge at the Court.

b) Execution of European Court of Human Rights judgments

6. Since the 1990s the Court has had to deal with more cases with political implications and cases where a definitive solution to the problem requires general action by government. National compliance with judgments in such cases has sometimes proved extremely difficult. Full and scrupulous execution of the Court's judgments is nonetheless an absolute prerequisite for an effective and credible system.

7. In the Assembly's view, the European Court of Human Rights should be allowed, in those of its judgments which find a violation of the ECHR, to say what remedial measures it expects of the member states concerned

c) Reform of the Court and the functioning of other Council of Europe human-rights protection machinery

8. Since, in November 1998, Protocol No.11 to the ECHR set up the new European Court of Human Rights, making it a permanent institution, the Assembly has paid particular attention to the overload caused by spiralling applications to the Court. In 1999 there were 8,400 applications, whereas in 2003 applications are expected to total in the region of 34,500. Both the Assembly and the intergovernmental sector produce proposals to enable the European Court to cope with the situation and devote more of its energies to those applications which raise fundamental issues.

9. The Assembly is also keeping a close eye on non-judicial Council of Europe human-rights machinery such as the Commissioner for Human Rights, the European Committee for the Prevention of Torture (CPT) and the European Commission against Racism and Intolerance. Whenever it considers it advisable, the Assembly makes proposals to the Committee of Ministers to boost the effectiveness of those bodies' working methods.

III. THE ASSEMBLY'S ROLE IN COMPLIANCE WITH MEMBER STATES' HUMAN-RIGHTS OBLIGATIONS AND UNDERTAKINGS

10. After the fall of the Berlin Wall, the Assembly set the geographical boundaries, the timetable and the conditions for Council of Europe enlargement. Since accession of the first central and eastern European countries, the Assembly's opinions to the Committee of Ministers on requests for Council of Europe membership have included lists of detailed obligations and undertakings, with particular emphasis on respect for human rights. In particular the Assembly has required that acceding states ratify the ECHR and its protocols as well as other Council of Europe human-rights treaties. These new political requirements are an energetic and innovative way of using accession to ensure that any new state immediately signs up to the body of Council of Europe human-rights law.

11. From 1993 onwards the Parliamentary Assembly, and then the Committee of Ministers and the Congress of Local and Regional Authorities of Europe, also set up monitoring arrangements to keep under review member states' compliance with the undertakings they gave on joining the Council.

Dr Rhodri WALTERS (United Kingdom) in conclusion, thanked those who had intervened in the debate as well as those who had put in written contributions. He noted the extreme wealth and variety of the experience and practices which had been outlined. He was struck by certain accounts. The place of the Constitution in certain states, particularly India where the courts could declare invalid laws reflecting the protection of human rights even though parliament retained the illusion of its supremacy. In some other countries the drafts were closely scrutinised. In others still there was a particular parliamentary committee which was charged with protecting human rights.

It was also interesting to note the procedure relating to petitions which seemed to be alive and well in France although it had practically been abandoned in the United Kingdom. Further, in some countries, parliament played an essential role. The United Kingdom was just embarking in this direction.

Mr Ian HARRIS, President, thanked Dr Rhodri WALTERS, as well as the members of the Association, who had dealt with this subject in a very positive way.

E-DEMOCRACY IN THE PARLIAMENTARY CONTEXT

Marc BOSC

Mr Ian HARRIS, President *welcomed Mr. Marc BOSC of the House of Commons of Canada to speak about E-Democracy.*

Mr Marc BOSC (Canada) *spoke as follows:*

Introduction

In the past couple of decades, the myriad technological advances that have created what some call the "information society" have transformed society worldwide. Citizens today are accustomed to having instantaneous access to information, the ability to send messages anywhere to anyone and the ability to converse electronically with a multitude of institutions. Naturally, citizens expect similar connectivity to, and responsiveness from, democratic institutions, hence the expression e-democracy.

Parliaments, like other institutions, have generally been keeping pace with evolving technology. At a minimum, many parliaments have web sites that contain general information about the parliament, its members and the work it performs. Some have even established mechanisms that allow citizens to interact directly with parliamentarians. The challenge now is to further harness that technology to greatest effect without undermining the role of parliamentarians. What does this mean for parliaments and their elected representatives? What does this mean for clerks and secretaries-general charged with the administration of these democratic institutions? Many in this room will already be familiar with this subject. Several jurisdictions, notably in North America and Europe, have experimented with new technology applications in a parliamentary context and I hope those of you here today who have had some experience in this area will share your knowledge with colleagues.

Historically, a hallmark of our profession has been our ability to anticipate events and the needs and demands of parliamentarians. It can be argued that at a time of declining voter participation and increasing cynicism towards political and parliamentary institutions, there has rarely been a more appropriate time for us to position our respective institutions so that parliamentarians may have full access to all the tools they need to better meet the demands of citizens.

However, before this can be done, the true nature of citizen expectations must be correctly identified. The needs and expectations of parliamentarians must be known. Tools must be identified. The most appropriate forum for meeting parliamentarian and citizen expectations

must be found. Preferred conditions for the successful and rewarding use of technology in a parliamentary context must be set out.

In Canada, committees are an integral part of the parliamentary system, and many politicians find that committee work is one of the most satisfying and fulfilling parts of their jobs. Committees are often more collegial and informal that the main Chamber itself, and the atmosphere frequently less partisan and adversarial. They provide opportunities to make constructive contributions to the legislative process and to the discussion of public issues, as well as to scrutinize government and administrative actions. At the same time, committees are the place where citizens can participate in the legislative process as witnesses or by making representations; they can also allow politicians to represent actively the concerns and interests of their constituents. This paper will therefore review the issues raised above in reference to the experience of House of Commons committees, with particular reference to e-consultation (a series of techniques and mechanisms that harness the powers of new technology to provide stakeholder inputs into decision-making), one of many tools for parliamentarians performing committee work.

WHAT DO CITIZENS WANT FROM COMMITTEES?

Citizen expectations can be said to fall into three broad categories: the desire for information, the desire to be consulted and, thirdly, the desire to engage in dialogue with parliamentarians and with each other.

Information

The public expects an acceptable level of online information. This means having a committee website that is up-to-date, well designed and easy to use. The site must have excellent search capabilities because it must be easily accessible by the average citizen and even by schoolchildren. In our experience, speedy access to committee information, including membership, minutes of proceedings, transcripts, official reports and studies, reference material, links to pertinent government departments or studies and e-mail addresses and other contact information is essential. Without such information, meaningful consultation is difficult and productive dialogue virtually impossible.

A preview of trends suggests that in the not too distant future, on-line multimedia access to committee meetings will also be expected. The public should soon be able to view a broadcast, replay a broadcast, call up the transcript, cross-reference to statements made in the main Chamber by parliamentarians and further drill down on any issue of interest. In other words, the possibilities are staggering – and expensive.

Consultation

Consultation is not a new concept or idea brought about by technology. Traditionally, committees have consulted a wide range of citizens as part of their decision-making process. They regularly invite private individuals, experts, representatives of groups and organizations, lobbyists, public servants and ministers to appear before them in order to elicit information relevant to the study currently under consideration.

Committees select witnesses based largely on two criteria: the type of study and the amount of time available. When committees are not able to hear the testimony of all of those who wish to appear, they may ask potential witnesses to submit written briefs instead of testifying in person.

Committees hear from witnesses either in person in Ottawa or through video teleconferencing, or by travelling to regions where the witnesses reside.

Over time, however, we have seen a trend toward committees hearing selectively, in Ottawa, from what some call the "usual suspects" — the experts, lobbyists, groups and other "professional" witnesses, but less and less from the general public.

Now technology, under the right conditions, has opened up new possibilities for citizens. It is fast and easy to send e-mail to a committee. Citizens expect timely responses. They expect acknowledgement of the views they have put forward. They expect the committee to recognize their contribution. Most importantly, they want to be heard.

Dialogue

Traditionally, after the presentation of the brief or the opening statement of the witness, the members of the committee may ask questions. Many committees have agreed to limitations on the amount of time available to each member. This time limit includes the witness' response. Many committees have also agreed to the order in which members will be recognized to ask questions. For many witnesses, this can be a distinctly unsatisfying experience that does not approach their view of what a productive dialogue ought to be. The interaction is stilted and truncated.

For this reason, many committees have in recent years varied the format by holding town hall or round table type hearings, where witnesses hold a real dialogue not only with committee members, but with each other as well. Yet because of the heavy emphasis on the usual suspects, some argue that the general public remains suspicious of the outcomes.

Technology has been used to bring this approach to a new level, with consultation and dialogue taking place via the Internet. Public expectations are great, with some citizens holding the belief that because access is easy and views are easily shared, decision-making ought to be shared also. As we will see, it is this expectation that worries many parliamentarians.

WHAT DO PARLIAMENTARIANS WANT FROM COMMITTEES?

Although the benefits of new technology might elicit a mixed response from parliamentarians flooded with e-mail, it would be difficult to find one who in committee does not want a more meaningful role in the legislative process, an ability to represent actively the concerns and interests of constituents, influence in the political decision-making process, and recognition and credit for time invested in committee work. To achieve these objectives parliamentarians are open to the use of a variety of tools, from the traditional to the innovative. They do not see it as a case of either/or. Indeed in some cases – agriculture and fisheries come to mind – parliamentarians have a distinct and well-founded preference for travelling to the regions and meeting face to face with citizens. The underlying objective of many Chairs and members is to right the balance of power between the executive and legislative branches of government. By redefining the role of committees vis-à-vis the government and the public, parliamentarians also hope to increase their legitimacy.

Yet what parliamentarians do not want is just as important. With very few exceptions, they do not want technology to lead to direct democracy — mob rule, as some would call it — or endless referenda. As well, they fear being flooded with submissions they cannot process in a reasonable time – in other words, they want to remain in control of the consultative process. They care deeply about and wish for citizen engagement, but not at the expense of their own role and duty as elected officials. After all, they recognize that the greatest consultation of all – elections – take place regularly to hold them accountable for their decisions and actions.

WHAT NEW TOOLS ARE AVAILABLE?

The traditional means of committee consultation and dialogue have already been described: hearings, witnesses, written submissions, supplemented by travel or video teleconferencing where circumstances warrant.

Today, most communications outside of these methods occur via the Internet. E-mail is widely used as an administrative and communication tool. But in the context of committee consultation and dialogue, the newest stable of tools, of which e-mail is but one, is collectively referred to as e-consultation.

E-consultation borrows from the traditional, and builds upon it; a study commissioned by the House of Commons identified as many as eight e-consultation tools:

As has been noted, e-mail can provide any e-consultation activity with a wide array of qualitative input.

A document solicitation mechanism allows a participant to work through a series of steps on a website before submitting a document. An electronic document is attached or uploaded through the website and received by the consultation point of contact, in our case the committee clerk. It is also possible to perform screening and require registration before a submission is made in this manner.

An automated submission process uses a series of web forms to allow a participant to make a contribution to an e-consultation. It moves beyond e-mail and electronic documents by providing a structured approach to the qualitative data input (highlighting of key words to filter inappropriate submissions or to facilitate analysis of particular issues).

On-line opinion polls are the electronic cousin of the traditional public opinion polls conducted by market research firms. Generally a series of questions are provided with predetermined answer options, which allows results to be tabulated and analyzed, although open-ended questions can also be used.

Issue polling involves outlining an issue through information sources, such as a background document and then asking the participant to provide comments in a structured format.

A consultation workbook is an interactive tool that allows participants to work through an issue, identifying pros and cons, and to make choices based on the impartial information provided to them.

Discussion boards or newsgroups are electronic forums where questions or ideas can be posted and responded to by interested persons.

Discussion forums use different forms of chat technologies to allow participants to discuss ideas on-line in real time. Structure can range from moderated question and answer sessions to completely open interaction.

These tools provide increased access, are modern and relevant, flexible, participative, informative, can accommodate vast numbers of participants (costs may vary), can be replicated from committee to committee and, if properly designed, can provide a committee with actionable results, often in real time.

WHAT METHOD UNDER WHAT CONDITIONS?

There is no unique, correct way for a parliamentary committee to approach consultation and dialogue with citizens. Depending on the target audience, the timeline, the budget and the study, any number of combinations and permutations are possible. Committees should ask themselves whether the issue on which consultation and dialogue are desired is of specialized or general interest, whether participation is expected to be high or low, whether they are seeking qualitative or quantitative inputs, whether the issue is contentious or not, whether the audience is largely the general public, experts or a mixture, whether they are seeking opinions or deliberation, and whether it is a short or long term exercise.

The House of Commons Experience

The Sub-committee on Persons with Disabilities conducted a successful pilot e-consultation this year. There was broad agreement that the Canada Pension Plan Disability Program, a program designed to provide financial assistance to disabled Canadians, was not working as it should. Led by its Chair, the Subcommittee decide to examine the issue using every available means, including e-consultation tools. Three such tools – e-mail, issue polling and document solicitation (share your story and proposed solutions) – were used. The Subcommittee deemed it essential to tie on-line components to the traditional off-line study methods. It likewise found that broad consensuses on the issue being studied, as well as ongoing and active political support were critical success factors. It is interesting to note that the parliamentarians heavily promoted this particular e-consultation exercise. The subcommittee also used common marketing techniques, such as e-mail-to-a-friend and sending updates to subscribers to the site.

Other critical success factors included bringing all relevant administrative partners together at the outset, allowing adequate time for planning and development of the e-consultation exercise, establishing appropriate project management mechanisms and of course ensuring adequate financing. The pilot cost approximately $250,000 dollars to design, launch, e-consult, analyze and report, not counting internal staff costs which, if tallied, would probably be equivalent to or exceed the actual cash outlay. A major component of staff cost in this kind of activity is related to analysis of qualitative data, a very labour-intensive, difficult to automate process.

Despite the relatively high costs and major time commitment, members of the Subcommittee felt that e-consultation was a positive experience, giving citizens unprecedented access to them as they conducted their study. They also concluded in their report that e-consultation represents “the next step in the path towards greater participation by citizens in Canada’s democracy.”

Other considerations

Several other key issues must be addressed in any e-consultation. When they begin participating by registering on the site, participants often want assurances that their privacy will be safeguarded – system and e-consultation security are therefore essential. In a similar vein, parliamentary privilege limitations must be clearly indicated by way of a disclaimer to

participants, be they citizens or parliamentarians. The stability of the technical infrastructure must be tested before e-consultation begins. Balanced information must be presented to participants. Sufficient time must be allowed for the process to run its course and not too much time should be expected of participants. Access should be fast and easy. Participants and parliamentarians need to know at the outset how results will be used. Ownership and recognition of contributions should be as transparent as possible. Experienced moderators must be used if real-time chats or discussion board practices are contemplated. Finally, there must be an exit strategy to bring the e-consultation to a close and make that fact clear on the website.

CONCLUSION

Even with the best planning and preparation, challenges remain for any consultation and dialogue, be it on-line or off-line. The vagaries of parliamentary activity may cause a loss of momentum; the costs may be prohibitive; sufficient time may not be available; interest groups may hijack the consultation; or technical complexities and glitches in a poorly designed exercise may discourage participants. In addition, the validity of the information collected may be open to question.

That being said, the opportunities afforded to committees by the use of a mix of technologically innovative and traditional tools are great. Under the right conditions and with the proper controls in place, the demands of citizens to be heard, to have access can more easily be met. Participation can increase, leading to more meaningful consultation and dialogue. Stakeholders see results and are kept informed. The community of interest is broadened. Citizenship is enriched. Parliamentarians too are advantaged: their committee role is strengthened, their influence and credibility increases, and they become part of the modern wave, guiding it rather than being driven by it. The Internet publicity alone of a properly run e-consultation to individual parliamentarians is invaluable.

Our role is to ensure that parliamentary infrastructure is equipped to meet these modern demands, should they be made. We must ensure that informational sources are objective, complete, up-to-date, well maintained and accessible, ready as a basic platform of data from which any type of consultation and dialogue can be launched. We have a lot to gain by making full use of these new opportunities and a lot to lose by not being prepared for parliamentarians' demands when they inevitably come.

In the end, as administrators of assemblies and parliaments, new technology is for us a resource to be tapped for the benefit of parliamentarians and citizens alike, and the general benefit of the institutions we serve.

Mr Ian HARRIS, President *thanked Mr Marc BOSC and invited members to put questions.*

Mrs Siti Nurhajati DAUD (Indonesia) said that in Indonesia human resources and the budget were very limited. It was extremely hard to get more staff, particularly those with the right training. She asked for more guidance on how to get expert staff.

Mr Marc BOSC said that this was a problem in many jurisdictions. Unless there were members of parliament who championed the cause of information technology and who made demands on the administration, then it was very difficult to solve this problem. In Canada, members of the House managed development of the system of authorised expenditure. They saw significant benefits in it.

Mr Leendert J. KLAASSEN (Netherlands) thought that the expenses involved were very high. He was interested in how projects were evaluated and asked whether more work would not be done and whether the benefits would filter down to lower levels.

Mr Marc BOSC said that it was a pilot project so it would necessarily be more expensive. It was decided to upgrade the websites of all committees and there would be an economy of scale. The House authorities would build an e-consultation tool kit to allow all committees to set up e-consultation systems when they were required. The onus to improve increasing costs involved in this was placed on politicians.

Mr Everhard VOSS (Germany) asked about the expectations citizens have of parliamentary committees. He noted that there would be a growth in demand for services. He asked how this demand was to be catered for in the context of no increase in staff.

Mr Marc BOSC shared this concern. Mrs DAUD had emphasised the lack of funds and political will. The public was accustomed to internet consultation with private organisations. He thought that there was a lot of scope for the diffusion of information.

Mr Everhard VOSS (Germany) asked about the expectation among citizens for a "timely response". He asked what that meant. What was the average for a timely response?

Mr Marc BOSC said that systems could be prepared which gave instant acknowledgement of e-mails. If it was impossible to send out a well-thought out response early, then this had to be made clear, but he thought that what citizens really liked was seeing their contributions registered on the site.

Mrs Maria Valeria AGOSTINI (Italy) said that to some extent her question had been answered by previous questions. She noted that it was possible to use the internet and e-mail and asked about the problem of mass e-mails. She said that in Italy the two Houses of Parliament had made different choices. The Deputies had published all e-addresses so some deputies simply did not reply to electronic communications. The Senate published only those e-mail addresses on request by senators who were likely to use the system.

Mr Ibrahim SALIM (Nigeria) noted that committees regularly invited lobbyists to contribute. He asked whether such lobbyists were accredited and how they operated.

Mr Marc BOSC said that any lobbyists wishing to work in a particular field had to register with the House in writing.

Mr Ibrahim SALIM (Nigeria) asked whether lobbyists had offices in parliament set aside for them.

Mr Marc BOSC said no since they were private businesses.

Mme Hélène PONCEAU (France) said that the system in the French Senate was based on a pro-active policy to develop the website. The first phase, which had ended recently, was to publish as much material as possible. Debates were published as were a variety of documents from those relating to tabling motions to the adoption of a bill. Members decided to facilitate the provision of equipment by way of a grant for hardware and software. There was a system for the electronic tabling of amendments. Project AMELI had been described to the Association recently. The Senate had moved into cyberspace and aimed at locally elected officials. Her colleague Alain DELCAMP would continue.

Mr. Alain DELCAMP (France) said that it was important for questions put electronically to be answered. There were many e-mails, over half a million. The issue was one of dealing with

a critical mass. The Senate itself had decided it would not answer questions put by local officials because it was thought that these were matters for the local senator to deal with. The Senate undertook to specialise creating sites for particular groups of people. These were by way of dialogue sites. Lobbyists could dialogue with senators. The internet part was a small section in comparison with conferences. There had been a decision to target particular groups such as children. For example, target groups would have particular documents prepared for them and left on the website. There were mailing lists for aiming mail shots to particular interest groups. It had been decided to allow the public to see and hear debates via the web. '*Babillard*' was the French for a chat room and these had been set up in relation to particular topics. This allowed contact with Senate members as a group rather than individually.

Mr Marc BOSC summarised the exchange by saying that the impetus for the introduction of information technology and e-democracy was that some parliamentarians were concerned that they might be overtaken by information technology. Information technology should be grasped and used for the aims of parliament.

Mr Ian HARRIS, President *thanked Mr BOSC.*

VOTING METHODS IN PARLIAMENT

Judith MIDDLEBROOK (Australia)

Ms Judith MIDDLEBROOK (Australia) *presented her communication as follows:*

Members of the Committee have visited various legislative assemblies around the world where electronic voting is used. Most recently, we saw its operation in the Scottish Parliament. The general consensus of all of the legislators we have spoken to regarding electronic voting is positive. The technology exists and is reliable, and the results are accurate and readily available. [Extract from the Fifth Report of the Special Committee on the Modernization and Improvement of the Procedures of the House of Commons – Canada 2003]

There are arguments other than cost, moreover, against the adoption of electronic voting. … including (a) loss of an opportunity for a pause or 'cooling off' period in proceedings, (b) no sign of how a Member is voting by where they are in the Chamber, (c) possibility of Members voting for absent colleagues and (d) more divisions being called. To this can be added the opportunity for Members to liaise with colleagues, for example Ministers, while divisions are in progress. [Extract from Australian House of Representatives Standing Committee on Procedure report, Review of the conduct of divisions. 2003]

Introduction

There is no activity more central to the functioning of a legislature than decision-making by the elected Members on questions before them be they approval of legislation, government expenditure, or opinions on matters of national and international affairs. At the last meeting of the Association in Santiago de Chile Australia listed on the draft agenda for the next meeting a review of the issue of voting methods in Parliament. While the topic covers voting methods in general, the particular focus of this paper will be on electronic or mechanical[5] voting when a formal vote is being taken. A formal vote may include any method of casting a vote where the individual decision of each Member is recorded[6]. Such votes often follow the more usual

5. The term "electronic voting" is used in this paper to encompass older mechanical systems as well as state of the art computerised information systems.

6. This is not a precise category. For example the Israel Knesset does not use its electronic voting system for roll-call votes – even through roll-calls are an example of a formal vote. Several legislatures –

informal votes when the result of, for example, the voices or show of hands is indecisive. In one sense, it is an extension of the discussion on the impact of new technology which was held at the last autumn meeting in Geneva.

To gather updated information on the topic an informal questionnaire consisting of 19 items was circulated to 64 secretaries-general in May 2003. Responses have been received from 53 parliaments[7]. The clerk has asked me to thank all those who have so generously given their time in responding to the questionnaire. Only those parliaments which had experience of electronic voting were asked to respond to all 19 questions. Parliaments which have not installed electronic voting were asked to respond to three questions relating to provisions for electronic voting, interest in installing a system in the future and reasons for not installing an electronic voting system if relevant.

Scope of the paper

This paper considers the use of electronic voting and tallying of formal votes particularly from the perspective of those legislatures which may be considering the introduction of new technology but which currently record formal votes in traditional ways. This approach varies from previous ASGP studies of voting methods which focused on the ways in which decisions are reached by legislatures. In these reports[8] electronic voting was treated as merely a method of assessing the result of a vote. At that time the potential for adding value to electronic voting by means of the Internet and other technological advances was in its infancy. Improvements in technology provide the opportunity to expand electronic voting from a means of recording and counting votes to a tool for communicating with electors and the world.

While the focus of this paper is on the technology of electronic voting, the two quotations at the beginning of this paper are a reminder that technology may be viewed primarily as a tool or, alternatively, mainly as a procedure which operates in a social and political context. In the first quote electronic voting is viewed merely as a means of achieving quickly and efficiently what would otherwise be done by an alternative and less efficient method. The second quote highlights the social and political dimension in which technology operates.

The 1982 report by Mr K A Bradshaw, Clerk Assistant of the House of Commons of the United Kingdom, is a comprehensive and relevant account of the different approaches used by legislatures to reach decisions. It covers preliminary matters including the timing of votes, the interval between the warning of a vote and the vote, quorum issues and explaining the vote. It then considers categories of voting procedures and explains each by using a particular legislature as a model of that type of voting. Mr Bradshaw's report also includes an evaluation section in which conclusions on different categories of voting are drawn. The report is recommended reading. There is no attempt in this paper to cover topics already so comprehensively presented.

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for example Ireland – do not use electronic voting for electing office holders or for a motion of confidence in the Government. The response from the Polish Sejm provides detailed information on a range of voting possibilities provided for in the constitution.

7. A list of respondents is at appendix A.

8. The ASGP previously considered voting methods in 1951 and 1978/79. Reports were published in 1951 and 1982. The first report, by the Clerk of the Irish Dail, was a short report based on the responses to a questionnaire by 16 parliaments. The latter report which was presented to the ASGP in 1982 by Mr K Bradshaw from the United Kingdom House of Commons (and published in report No. 132 [3rd series]) is a comprehensive report.

Mr Bradshaw's report noted that since 1945 "a dozen Parliaments have taken up electronic methods of voting and others are thinking about it". The informal questionnaire which was used to gather material for the current paper included responses from 32 Parliaments with electronic voting (by no means an exhaustive total) and still "others are thinking of taking it up". I hope that this paper will be of most use to those who are "thinking of taking it up". It is one means by which they can learn from the successes (and failures) of those legislatures which have already installed electronic voting.

For this reason, the paper focuses on issues of particular importance to those who have not yet decided to use electronic voting. At the same time, it should also prove useful to those legislatures which already use electronic voting but which have experienced some difficulties with the technology or accompanying procedures.

Responses to the informal questionnaire are detailed in appendix B. This communication will use examples from the responses but in the context of commenting on issues rather than as a comprehensive survey. The paper covers four main issues:

— financial aspects;

— technological issues:

— security issues; and

— procedural or context issues.

Overview of responses to the questionnaire

Appendix A (pages 11-12) shows all the legislatures (a term used to indicate either a Parliament or a House of Parliament) which responded to the questionnaire. It also indicates which responses are from legislatures that use electronic voting (or not). Appendix B (pages 13-19) is a report on responses to the questionnaire. The responses themselves are not included in this paper but as they may be of particular interest to any legislature considering the introduction of electronic voting, they can be obtained from the office of the President if required. The responses have also been summarised in a statistical table (appendix C – pages 20-26). More than half the responses (32 of the 53) were from parliaments which do use a form of mechanical or electronic voting.

Legislatures, which do not use electronic voting

Twenty-one responses were from legislatures which do not currently use electronic voting. They include legislatures which have never seriously considered using electronic voting for various reasons including the small number of members or because the legislature meets in a heritage building which would not be suitable for electronic voting, or both (as in the case of the Parliament of Andorra). Almost 80% of legislatures using electronic voting also display the results on a large panel in the chamber and the display panel may be more difficult to incorporate into a heritage building than the electronic voting technology itself.

In relation to legislatures, which have not (or have not yet) given serious consideration to the installation of electronic voting, the fact that they responded to the questionnaire is much appreciated. Their reasons for not using electronic voting are of much interest to other legislatures which have not (or not yet) installed the technology. Of course many legislatures which have no interest in installing electronic voting may have decided against responding to

the questionnaire so this must be taken into account in interpreting the results. It is also the case that legislatures which officially have no intention of installing electronic voting in the near future may still be very interested in keeping up with the latest technology. In the case of the England for example, the House of Commons Factsheet (Series P No 9) states that … the House of Commons has not adopted a mechanical or electronic means of voting. This possibility was considered most recently in 1998 by the Modernisation Committee but was rejected because it would not have resulted in a significant saving of time to the House, and for other reasons was not convenient. While this is the official position there is interest in the subject. A media release of 3 March 2003 reported that MPs from the House of Commons Modernisation Committee, led by Robin Cook MP, will be in Edinburgh on Tuesday for a fact-finding mission to look at the Scottish Parliament's electronic voting system and innovative public petitions committee. … The visit to the Mound will be the second time the [then] Leader of the House of Commons has been to the Scottish Parliament to look at possible ways of updating Westminster's procedures.[9]

For other legislatures that do not currently use electronic voting, 20% plan to do so in the near future and others consider they might do so in the longer term. Still others may have considered the possibility and rejected it for the present, but realise that the future may bring a change of mind. All of these legislatures will have a particular interest in the experience of the 60% of responses which provided details of electronic voting systems now in place.

LEGISLATURES, WHICH HAVE A FORM OF ELECTRONIC VOTING

For those parliaments which do have a form of mechanical or electronic voting, the remaining 18 questions in the questionnaire were divided into three sections – system parameters and development – which encompasses design and set-up issues; technical effectiveness – which covers how the system actually works; and – procedural issues- which cover the practical implementation of the systems as a decision making tool.

Financial aspects

The financial implications of installing and operating electronic voting systems appear to be of more interest to those legislatures which do not use such systems than those which do. The informal questionnaire revealed that cost is an important consideration for 60% of the legislatures which do not have electronic voting and which were able to identify reasons for its non-introduction. Even where the cost is not the most important factor in whether a legislature adopts electronic voting, it is likely to be one of the factors.

The informal questionnaire did not inquire into set-up costs because variation in design and size would have rendered the information difficult to interpret. However, some legislatures did include the cost of installation and most did not experience cost overruns. The Japanese House of Councillors for example reported that the cost of installation was less than expected from the prior examination.

The size and sophistication of the system is clearly the most relevant factor in the cost. The European Parliament for example, provides each of 630 seats with a voting terminal. The

9. The House of Commons has an additional problem in relation to electronic voting since there are more Members than there are seats. The popular method of delivering one's electronic vote from one's seat in the chamber is not therefore a possibility. As Mr Robin Cook has resigned as Leader of the House there may no longer be such an active interest in electronic voting.

system cost E1,607,630.00 to install and annual maintenance and running costs are approximately E97,470.00.The system requires the attendance of a technical backup team of 4-5 technicians who supervise the operation of the equipment from a booth in the chamber.

The report on responses to the informal questionnaire (appendix B) provides a sample of estimated running costs. However, it is difficult to draw reliable conclusions from the information provided because of the range of costs included. Those legislatures which are considering introducing electronic voting and want to address the issue of costs more closely are advised to obtain the full copies of responses from the President's office. Even then, it is probably advisable to contact relevant legislatures to investigate more accurately how costs were estimated.

Technological issues

Technical effectiveness

For those legislatures which do not currently use electronic voting the issue of the technical effectiveness or accuracy of systems is a concern. This is a separate topic from deliberate fraud and focuses on issues such as Members changing their minds about how they wish to vote, Members accidentally voting the wrong way or technical breakdown and the need for a "back-up" system. All legislatures using electronic and mechanical voting systems have addressed these issues by a variety of technical and procedural methods[10].

For legislatures which regularly use electronic voting systems technical reliability is not a major concern. This is hardly surprising. One would expect that on a matter as fundamental as casting a formal vote, any technical problems would either be solved or the system abandoned. An example of the latter solution is the German Bundestag. Past technical difficulties have resulted in the decision to retain traditional voting methods in the new building.[11] On the other hand, the Israel Knesset had technical difficulties with the system first installed in 1989. This system was planned by staff and students of the Electronics Department in a technical high school. A professional firm (the same outsourced firm which now operates the Knesset's Computer Unit) was brought in to solve the problems.

Some legislatures have been through various upgrades of their voting systems. The Polish Sejm, for example, installed its third system in 2001. For legislatures which are considering installing electronic voting for the first time perhaps I could suggest that legislatures which have a history of using electronic systems and have recently upgraded their systems (such as the Sejm) would be in an excellent position to give advice on technical matters.[12]

10. An example of a procedural response to a technical difficulty is deferring the vote – one of the possible responses in the Irish Parliament.

11. An electronic voting system installed in 1970 in the old plenary chamber in Bonn was dismantled in 1973 following several unsuccessful attempts to fix it. The problems apparently related to the complexity of the system as well as its technical problems. As the legislature has now moved to a third location the debate over the use of electronic voting has arisen on three occasions. While costs, possible abuse of the system and doubts about a significant saving of time were raised, technical reliability is an ongoing concern.

12. The new system was custom designed for the Sejm and is based on Oracle, Windows and DELPHI technology. A different system is used in the committee rooms.

Integrated systems

Electronic voting systems are often part of an integrated information system in the Chamber. The Finnish Parliament is one of many which has such a system. Finland noted in a contribution to the impact of technology item in Geneva 2002:

The information system in the Chamber of the Finnish Parliament consists of three parts: a voting system, a monitoring system for plenary session matters, and a sound reproduction and recording system. These systems take care of recording votes, roll calls, signing up for the floor, sound reproduction and recording speeches. MPs can also use the system to monitor plenary session matters and decisions.

The public information aspect of many electronic voting systems is a major aspect of the attitude of many legislatures to electronic voting. The Lebanese Parliament has a system designed by Suny/CLD. The website of the company states that SUNY/CLD worked closely with the Parliament to determine its internal needs, as well as steps to render Lebanese Parliament procedures more open to the public, and then designed the Electronic Voting and Sound System (EV & SS). Through the EV & SS, voting results are displayed on a wall display apparent to the media and the public alike, increasing Parliament's transparency and enhancing the public's perception of the voting process.

Linking electronic voting systems with display devices need not be hugely expensive. The Estonian Riigikogu uses two 32" television screens for this purpose (as well as a larger video screen with an LCD video projector). As well as reporting the result of votes, the Estonian display device indicates the order of speakers. Other information provided on display screens might include the subject before the chamber and the immediate question being voted on (the Senate of the Czech Republic). The Czech House of Representatives also notes that one of the most significant benefits of the electronic voting system is the ability to provide immediate information to citizens (by means of the Internet site).

Many legislatures now broadcast live coverage of proceedings on the Internet. There are some excellent examples of the enhanced effectiveness of the broadcasts provided by screens displaying captions explaining proceedings. The Scottish Parliament's website is a good example of this use of technology associated with electronic voting but with much wider value and application. The link Welcome to the Scottish Parliament provides access to the webcast.

The Australian House of Representatives 2003 report reviewing the conduct of divisions (http://www.aph.gov.au/house/committee/proc/reports/divisions/report.pdf) concluded that for various reasons the House should not install electronic voting at this time but that electronic information display panels (which are usually associated with electronic voting), have a value in their own right and should be installed as a service to the public visiting the chamber.

Security issues

For those legislatures which already have electronic voting, security is probably the most sensitive issue. There have been at least two incidents in which the vote cast was not that of the Member purporting to vote. Legislatures which do not yet have electronic voting but which are considering installing a system will have a much broader menu of security options available than those in the past. The increased threat of the "new terrorism" has been the occasion of a flowering of security technology which can be expected to be available for future electronic voting systems. Since 1998 the Mexican Chamber of Representatives has used a PIN (personal identification number) together with scanning Members' fingerprints in a laser scanner installed

at each Member's seat. That legislature reports that The system is very secure, since it can only be accessed by the members of the Chamber by introducing their personal code and by scanning their fingerprints in the machines installed in their seats. Therefore it is impossible to vote by proxy, and each member needs to be physically present in the Chamber in order to vote.[13]

The range of security related technology which could be a feature of future electronic voting systems includes "smart cards", touch screens and infra red handsets. Iris recognition technology also has possible application to ensure the security of future electronic voting systems.

Procedural or context issues

Some legislatures are so large that the idea of not using electronic voting is particularly unattractive not to mention impractical. The Russian State Duma for example has 450 Members. It takes 15 minutes to vote without using the system (which is an option if so decided by the chamber) and an average of 20 seconds using the electronic voting system. There were 4774 votes during 71 sessions in 2002. With some degree of understatement the response from the Duma noted that without the electronic voting system, determining the will of Members would be unwarrantedly delayed. For a legislature this size consideration of procedural issues may be considered as irrelevant.

On the other hand, the number of Members may not be so relevant as the number of formal votes taken. The First Chamber of the States General of the Netherlands has no plans to introduce electronic voting because formal votes are only conducted a few times a year. In the case of the New Zealand House of Representatives the fact that most formal votes are party votes (rather than personal votes) means that there is no relevant application for electronic voting.

In most legislatures context or procedural issues are critical to the potential impact electronic voting may have on the operations of the chamber. In almost all cases, those legislatures which use electronic voting require Members to vote from their seats. There are very persuasive technical reasons for this but it may be seen as detracting from the "drama" of formal votes by those legislatures which traditionally require a physical grouping of Members voting in the same way. Typically Members voting "yes" assemble on a particular side of the chamber or in a separate place from those voting "no". While the time taken to move to the position which indicates a particular vote may be regarded as inefficient or a waste of time, it is seen as having symbolic value in terms of Members publicly supporting a particular decision. The loss of this symbolism has been cited as a reason for not installing electronic voting.[14]

The issue of visible grouping is not considered significant by legislatures which use electronic voting although they sometimes do not employ the electronic technology for particularly sensitive votes such as changes to the constitution or the election of office holders. Far from considering electronic voting as detracting from the symbolism of formal voting, it may be seen as supporting it. In response to the question in the informal questionnaire regarding the overall impact of electronic voting on the conduct of business in the chamber, the Japan House of

13. The system was designed and installed by Auditel LTD (a British company) and was installed in 1998. The annual running cost is approximately $US240,000. Mexico is one of the larger chambers with 500 members.

14. This issue has been raised in both the United Kingdom House of Commons and the Australian House of Representatives.

Councillors, for example, noted that Opportunities of putting on record the attitude of Members have dramatically increased following the adoption of the electronic voting system. Thus the system seems to be effective in clarifying the political responsibility of the Members.

The style of formal voting (particularly the time taken) may have the potential to influence the level of confrontation in the chamber when feelings are impassioned by the sensitivity of the question before the chamber. Again, there is a perception amongst legislatures which do not use electronic voting that not only is the "drama" of the occasion lost by a quick formal vote, but the opportunity to take stock and regain equilibrium in the chamber may also be lost. Again, the absence of a "cooling-off" period appears not to be a concern of those legislatures which actually use electronic voting.

One of the threshold questions for parliaments which are considering the introduction of electronic voting is whether the technology will affect, either positively or adversely, the procedural aspects of formal voting.

Views on this issue are not confined to the informal questionnaire which forms the basis of most of this paper. The contribution made Mr Kang Yong Sik, Secretary-General of the National Assembly of the Republic of Korea in the discussion of the impact of new technology in Geneva in September 2002 noted that "the electronic voting system in reality is not used often. However, it is anticipated that the electronic voting system will be put into full use when the people's call heightens for a more accountable move from the part of the Members in all bills as well as when free voting becomes commonplace where Members hold fast to their belief regardless of their respective parties' policies."

Conclusion

Although the arguments in favour of electronic systems are well established several problems have been identified with such systems. The opinion that traditional parliamentary procedures are not only reliable but have other inherent values plays an important role in the decision not to introduce electronic voting, particularly in small and old legislatures. The existence of numerous inter-related procedures in larger legislatures may also play a role in the decision not to introduce electronic voting. The framework within which these legislatures operate can be very complicated and this high degree of complexity may be a deterrent against implementing technological changes.

The act of visiting a legislature which uses electronic voting may have a positive impact on Members and staff from legislatures which have not yet installed the technology. It appears that after visiting and reviewing electronic practices of other legislatures, many of the Houses of Parliament that have not introduced electronic voting are examining seriously the introduction of such systems. This is particularly the case when they undertake a major retrofit of the existing infrastructure of the Chamber. Major infrastructure projects affecting the Chamber provide a window of opportunity to introduce electronic voting. In other cases, a legislature may agree in principle to the introduction of electronic voting whilst waiting for a more favourable financial or reformist climate.

For most legislatures which use electronic voting the technology has improved the overall conduct of business of the House. It is a common view that the electronic system represents a saving in time. The two most positive features of electronic voting that have been reported, are directly related to both proceedings and publication, namely the speeding of the counting and

tallying processes and the immediate display of the results both in the Chamber and on the Internet.

Hopefully the information provided by our colleagues in responses to the informal questionnaire will assist legislatures which do not have electronic voting to assess the value of such systems. The thanks of all are due to all those who responded to the request for information."

APPENDIX

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Responses to the informal questionnaire on electronic voting

Introduction

The questionnaire consisted of 19 items including a threshold question to identify those legislatures where formal voting is (or is not) carried out by electronic voting. The remaining 18 questions focused on aspects of electronic voting encompassing systems parameters and the development of electronic voting; the technical effectiveness of the systems; and procedural issues related to the methods of voting.

In total 53 individual legislatures responded to the informal questionnaire covering 47 countries. This report should be read together with the statistical summary of responses (appendix). The table in appendix C provides additional details and links the responses to the questions.

Threshold question (responses on not installing and using electronic voting)

The responses showed that 40% of respondents do not carry out formal voting by electronic means. The legislatures that do not currently carry out formal voting by electronic means, are: the House of Representatives of Australia, the Parliament of Andorra, the Parliament of Austria, the Senate and House of Commons of Canada, the Parliament of Cape Verde, the Parliament of Central African, the National Assembly of Cote d'Ivoire, the Cyprus House of Representatives, the National Congress of Ecuador, the German Bundestag, the National Assembly of Guinea, the House of Representatives of Japan, the National Assembly of Namibia, the First Chamber of the States General of Netherlands, the New Zealand Parliament, the Senate of the Philippines, the United Kingdom Parliament (both House of Commons and House of Lords), the Parliament of Zambia Although the Senate of Pakistan is not currently carrying out formal voting electronically, it has, however, made provisions for the installation of such equipment and is planing in the near future to switch over to electronic voting system.

Of the legislatures that are not using electronic voting, 33% report having made some provisions for the possible installation of an electronic voting system. The provisions are not necessarily technical. In the Austrian Parliament for example, the provision is in the Federal law on the rules of procedure although there is no corresponding provision in the rules of procedure of the Federal Council.

Only 19% of those legislatures that responded negatively to the threshold question report having made plans to move towards electronic voting in the near future. However, the question of installing an electronic device is usually discussed when the construction of a new plenary Chamber occurs or when the refurbishment of the existing one is on the agenda. The Canadian House of Commons, for instance, is planning a major refurbishment of the existing infrastructure in the Chamber. It will update the present equipment, such as cameras, audio, network etc. In doing so, cabling and below the surface infrastructure will be installed to allow for electronic voting, if the House were to decide to proceed in this fashion. Concurrently, the Special Committee on Modernisation and Improvement of Procedure recommended that the Clerk of the House, in conjunction with the Committee, prepares a detailed proposal so that if approved, electronic voting could be implemented as part of the renovations.

The bulk of the legislatures that do not have electronic voting do not consider the move necessary. The value accorded to traditional parliamentary procedures and the view that they are reliable are central to these decisions. For instance, a large majority of Members in the United Kingdom House of Commons prefer using the traditional voting procedure primarily because it is reliable. Members are also of the view that the system is known and understood by the public and that it should not be changed unless necessary.

In one response the provision of the technology for electronic voting has not been accompanied by the acceptance of the majority of Members. In the Legislative Assembly of Samoa, an electronic voting system was installed in 1996. The system was funded by the Australian agency AUSAID. It was designed and installed by Phillips Scientific and Industrial Electronics as a component of the Audio and associated Recording System currently in use. However, Members were comfortable with the current voting practice and do not use the electronic system.

Additional reasons why some legislatures do not plan to implement electronic voting in the near future are: the layout of the Chamber (30%), or the belief that the costs of installation and maintenance of such systems are not warranted (60%). These two reasons may be closely associated.

In other responses concern about technological failure is cited as the main reason why electronic equipment has not been installed. For example, in 1970 an electronic voting system was installed in the old plenary Chamber in Bonn. This system was dismantled in 1973. The Members of the German Bundestag did not have confidence in the system because it was complicated and also because its use resulted in a series of technical problems. Apparently because of this history it was decided in 1988 not to install an electronic system in the new plenary building in Bonn. Again, in connection with the transfer of the seat of the German Bundestag from Bonn to Berlin almost a decade later, the Chamber opted against the installation of an electronic voting system.

The responses to the questionnaire also reveal the use of electronic devices as peripheral tools although there is not electronic voting system. For instance, in the United Kingdom House of Lords the voting process involves traditional counting but the votes are scanned (electronically) away from the Chamber and then processed.

In other cases the use of electronic voting may be restricted by the rules of procedure. In the European Parliament, for instance, an electronic system is available but it is used as a standby system as the initial vote is taken by a show of hands. In this particular case, if the result is unclear, then the President can invite Members to carry out an electronic check using the voting system. The rule of procedure also provides for roll-call votes, which are taken using the electronic voting system.

Systems parameters and development

Electronic voting systems are generally made locally, although some systems are directly designed and installed by international companies. Philips DCN (Digital Congress Network), for instance, provided electronic voting systems in the Senate of the Czech Republic, in the Parliament of the Republic of South Africa (both National Assembly and National Council of Provinces), in the Legislative Assembly of the Samoa, in the Slovenian National Assembly. Doctronics designed and installed the electronic voting system of the Albanian Parliament. The electronic system of the Sudan National Assembly is a British design installed by a Jordanian company. One of the Mexican chambers also has a system designed by a British company.

Systems parameters are designed around the specific needs of the plenary chamber, or for other rooms (for example committees meetings). Systems currently in operation are mostly less than 10 years old or have been updated within the last 10 years (97% of respondents). They have generally been delivered within budget. Only a small number of legislatures (6%) report that mistakes in software design have extended the time taken to install the system.

The informal questionnaire asked for financial details of systems and an attempt has been made to assemble a sampling of these into a comparative list in the following table.

Legislature	Costs converted to SF as at 01/01/2003
1. Czech Senate	18,420
2. Estonian Rii	9,270
3. Ireland	101,556
4. Israel Knesset	17,967
5. European Parliament	141,409
6. Albania	1,589
7. Japan HC	279,377
8. Hungary	61,623
9. Belgium Senate	21,762
10. Norway ST	3,991
11. Romania Sen.	2901
12. Mexico	331,704
13. Italy	362,700
14. Denmark	97,728
15. Russia	11,530

The costs of running electronic voting systems naturally vary according to the sophistication of the system, the number of members and the technology available when the system was designed. The wide variation in estimated costs probably also reflects other variables including the integration of the voting system into the wider framework of Chamber technology. The wide variation also suggests that different items are being measured. The fifteen responses included in the comparison show annual running costs converted into Swiss francs using the currency conversion current at 01/01/2003.

While the table might give an indication of costs, they vary so greatly that there is probably no safe conclusion to be drawn. It cannot be assumed that the above figures and other cost estimates provided in questionnaire responses are truly comparative and used the same method of calculation. In each case the cost needs to be compared with the technological specifications including the sophistication of the system, the number of members and the date of installation.

For this reason legislatures which would like to be able to assess for themselves the usefulness of the data on costs are advised to get copies of the full responses from the office of the President.

Technology and design

97% of legislatures carrying out voting electronically do not use voting stations located in or outside the chamber. Electronic voting takes place from each Member's seat in the chamber and Members. Voting cards are sometimes used (47%). Entering a personal identification number on a keyboard is another method of ensuring that only the relevant Member can vote from his or her seat. The Mexican Chamber of Representatives is the only chamber which has introduced a personal identification system using fingerprint scanning technology (though from information provided apart from the questionnaire, other parliaments are interested in this sort of bio-technology). The majority of Members vote by simply pressing a "Yes" or "No" or "Abstain" button on a panel in front of seat which has been assigned to them.

Most chambers (78%) with electronic voting, display large panels which can be seen by all Members (and usually the public). The size of display panels in the Mexican Chamber of Representatives is: 5 metres by 15 metres. The Belgian Senate displays the result of votes on a large panel which can be viewed by all in the assembly and also displays the plan of the House. Each seat in the Chamber is represented by a number and three different colours provide information on individual votes – as well as on linguistic groups.

The format and size of the display panels range from simple rectangular modules generally located on the left and right side of the meeting hall to large advanced performance screens situated behind the President/Speaker's chair. Just under half of the chambers (41%) provide Members with a personal display on their desk, although the extent of information available might differ from that displayed on the larger screens. In the Assembly of Serbia and Montenegro the individual desktop units can display multimedia information (pictures etc.) as well as tallies.

The majority of legislatures report that such large display panels provide information other than the traditional tallies of the votes including the immediate question being voted on (34%); the principal subject before the Chamber (38%); and summaries of the outcomes of divisions (38%). Only 22% of respondents report that such displays reflect the seating plan of the Assembly. Similarly, individual votes are only shown in 22% of the cases.

Some legislatures (28%) report that the electronic voting system is directly linked to the Internet and digital sound recording systems, and that the results are immediately displayed on the Parliament Web page. In the Estonian Riigikogu, the Senate of the Czech Republic, the House of Councillors of Japan, the Slovenian National Assembly and the Polish Senate, for instance, results are directly displayed on the web site.

Some Houses of Parliament report that for security reasons the voting results are only stored in a database. For example in the Irish Parliament while information can be extracted and logged into the parliamentary records, the electronic voting system is currently independent of the main parliamentary IT system.

Parliamentary staff members generally operate the equipment whilst the system is maintained by specialist staff and experts from the company which designed and installed it.

Procedural/practical issues

Number of Members

The size of legislatures may be a factor in whether electronic voting delivers a substantially faster and more accurate result. The average number of each chamber which uses electronic voting for formal votes is 250 with a minimum of 49 Members (for the Legislative Assembly of Samoa which does not actually use the system) to a maximum of 630 (Italian Chamber of Deputes). Most of these legislatures report that electronic votes occur all the time and for almost all formal votes. Nominations and appointments of the highest officials are usually effected by means of secret ballot using either traditional or electronic voting methods.

Value attributed to electronic voting

Many of the legislatures which do not use electronic voting and have no intention of introducing it in the near future remain to be convinced that it is a desirable technology. By contrast, amongst (almost) all legislatures using electronic voting, it is a common view that the benefits outweigh the upfront cost. None of the chambers using electronic systems consider that they have suppressed or significantly altered the 'cooling-off' effect that may be attributed to non-electronic procedures. 84% report that the introduction of electronic voting represents a significant saving in the time of the House thereby contributing to the smoother flow of business.

The European Parliament reports that electronic voting has the advantage of being very rapid and reliable. The use of electronic voting allows disputed votes to be checked and carried with complete transparency without delaying the business of the House. It would be impossible to obtain such rapid and reliable results without recourse to an electronic system. The South African National Council of Provinces reported that the introduction of electronic procedures has improved the running of the business of the house. One of the advantages is that it is possible to track attendance in the Chamber as well as a print out of formal voting.

Saving time

While it is obvious that time saving has been a substantial benefit of the use of electronic voting, details of the amount of time saved may be of interest to those legislatures which are considering the introduction of electronic voting. With the exception of the Sudan National Assembly, the Argentinean Chamber of Deputies and the Mexican Chamber of Representatives, the average time for voting is 15 to 20 seconds against many minutes previously. The Parliament of the Republic of South Africa reports that since electronic voting has been installed it takes approximately 30 seconds from member's voting to the announcement of the results. By comparison the system of manual counting used before the new system was installed took approximately 15 minutes. The Mexican Chamber of Representatives reports that before electronic voting was introduced the voting process could take more than one hour.

In the National Assembly Council of the Republic of Belarus and in the European Parliament a vote can be taken in 10 to15 seconds, whilst both the House of Representatives of the Czech Republic and the Norwegian Parliament report that voting takes approximately 20 seconds, which is considerably less than the former method. The Hungarian National Assembly reported that electronic voting represents such a saving of time that there is no way the Chamber would use another voting method. The Indian Rajya Sabha indicated that electronic voting has

improved the overall conduct of the business of the House to such an extent that it now takes only 10 seconds to process a division. In the Slovenian National Assembly, where electronic voting has been in place for the last three decades, voting lasts approximately 20 seconds. During the first 10 seconds the deputies cast their votes, and during the following 10 seconds the chairperson reads the voting results. In the House of Councillors of Japan voting takes about 30 seconds and approximately 45 seconds in the Albanian Parliament.

The actual display of results takes less than 5 seconds, with the exception of the Parliament of the Republic of South Africa where results are not immediately displayed. In this instance, Whips are provided with print outs of the results of each vote soon after the results are announced.

It should be noted that the saving of time may be achieved by procedural reforms as well as by the use of technology. The Irish Parliament reports that the real saving in time occurs when one division immediately follows another (successive divisions). The standing orders provide for a shorter period for the ringing of the division bells and the whole vote takes considerably less time. The Australian House of Representatives also uses the standing orders rather than technology to minimise the time taken for formal votes in successive divisions. The bells ring for 1 minute instead of 4 minutes and the Members are not counted again unless they did not vote in the previous division or they wish to change their vote. In either case they must indicate this to the tellers.

The questionnaire included an item on the possibility of electronic voting encouraging a higher incidence of formal voting – called for tactical reasons. None of the legislatures identified a link between electronic voting and more calls for formal votes specifically for tactical reasons.

Provisions in case of technical difficulties

All legislatures which use electronic voting have fall-back procedures in case the electronic equipment fails, if the Chair or a majority of Members request it, or eventually if the announced voting result is disputed. Even where the fall-back procedures are not spelled out, voting by a show of hands or other method has been used when the equipment fails.

Electronic voting and secret ballots

In the case of secret (in camera or confidential) ballots or voting there may be special procedures relating to the application of electronic voting. In the European Parliament such procedures apply in the event of votes on appointments and may also be taken on any item if a request is made within the statutory deadline, by one-fifth of the Members.

Checking the results

The overwhelming majority of chambers report that Members are able to check that a correct vote has been recorded though there is a wide variety of practices relating to a challenge to the vote. In some legislatures Members cannot change their vote during the time allowed for voting, but are able to lodge objections. In those Houses where Members can actually change their vote during the time allowed for voting, it is generally accepted that they cannot cancel it and that the announcement of the results shall not be contested afterward. In the South African

National Council of Provinces Members are able to change their votes and can see whether a vote has been correctly recorded. There is a print out at the end of the vote that indicates the Member's name and vote. Before the voting is closed Members are afforded the opportunity to change their votes. Once it has been closed, the opportunity is over. The Romanian Senate follows similar procedures.

Voting by proxy and fraudulent voting

In nearly all the legislatures surveyed voting by proxy is not permitted. In most cases the rules of procedure provide that Members cast their votes individually and in person. Amongst all the respondents, France is the only country where the Constitution gives to the Members of Parliament, a personal right of vote that can be delegated. The French organic law may authorise in specific cases the delegation of a vote, which, however, cannot be given to more than one Member. In the South African Parliament, the Delegation Head in the National Council of Provinces votes according to the mandate of the Province. The voting card can be given to another Member if the Delegation Head has to leave the Chamber.

Only 13% of Houses using electronic voting prescribes penalties against Members for using another Member's key or card with or without consent presumably on the assumption that such an occurrence is most unlikely. If the rules of procedure are violated during the course of voting, then the Presiding Officer/Chair might suspend

the vote. Where a penalty is prescribed it may be as serious as suspension of the Member (European Parliament). The relevant rule provides for a motion of censure with the option of the immediate exclusion of the Member in question from the Chamber and his or her suspension for a period of two to five days. In the Mexican Chamber of Representatives the electronic system can only be accessed by the Members of the Chamber by introducing their personal identification code and by scanning their fingerprints in the machine installed in their seats. This reduces considerably the likelihood of fraud.

Conclusion

This overview of the responses to the informal questionnaire must be qualified by the observation that the information provided is subject to rapid change. The sort of technologies used in recording votes, ensuring the security and integrity of the system and the communication of information to Members and the public are constantly improving. One of the notable features of the responses is that so many legislatures have upgraded their mechanical or electronic voting systems. The relative costs of such technologies are decreasing making the use of efficient systems within the reach of more parliaments.

APPENDIX

DETAILED ANALYSIS OF THE ANSWERS SENT BY THE MEMBERS OF THE ASSOCIATION OF SECRETARIES GENERAL OF PARLIAMENTS

TALLY OF QUESTIONNAIRES RESPONSES ON VOTING METHODS IN PARLIAMENTS

THRESHOLD QUESTION		

1. In your Parliament, is formal voting carried out, in totality or partially, by electronic means?	YES 60% of responses: Czech Republic HR & SE, Estonia, Poland Sjem & SE, Ireland, Israel, Republic of South Africa NA & NCP, France NA, Croatia, Samoa, European PA, Sri Lanka, Albania, Japan HC, Slovenia, Hungary, India RS & LS, Serbia, Belgium SE, Norway, Romania SE, Sudan NA, Belarus NAC, Argentina CD, Mexico CR, Sao Tome Principe, Italia CD, Denmark, Russia FA.	NO 40% of responses: Australia HR, Andorra, Austria, Cyprus, Germany Bstag, New Zealand, Philippines SE, United Kingdom HC & HL, Zambia, Guinea, Namibia, Ecuador, Canada HC & SE, Netherlands, Pakistan SE, Cape Verde, Japan HR, Ivory Coast, Central African Republic. a) 33% of those that responded NO report that provision has been made in their Parliament for the possible installation of an electronic voting system. b) 19% of those that responded NO report that they plan to move toward electronic voting in the near future. c) those Houses of Parliament that responded NO report that if electronic voting has not been implemented it is because of the layout of the Chamber (in 30% of the cases) or because of the belief that the costs of installation and maintenance of such systems are not warranted (60%)
SYSTEM PARAMETERS AND DEVELOPMENT		
2. Who designed and installed the system and in what year?	Systems currently in operation are generally less than 10 years old (in 97% of the cases). The majority of the electronic systems are made locally.	

3. Was the electronic system delivered within expected cost and time?	YES 88% of responses	NO 6% of responses Those Houses of Parliament that responded NO indicate that time was the major factor.
4. What are the approximate annual running costs of the system (in local currency)?	The average running costs of the systems at January 2003 were SFr 97 568 with a minimum of SFr 1 589 and a maximum of SFr 362 700.	
TECHNICAL EFFECTIVENESS		
5. Does electronic voting take place from the following?		
a) Each Member's seat in the Chamber?	In nearly all the cases (97%) electronic voting takes place from each Member's seat in the Chamber.	
b) A voting station in the Chamber?	In 6% of the cases, Members vote or may vote from a station in the Chamber or outside the Chamber in a room dedicated to this purpose.	
c) Outside the Chamber in a room dedicated to this purpose?		

6. Do Members vote by: **a) Inserting their voting cards?** **b) Swiping their voting cards?** **c) Entering a personal identification number (PIN) on a keyboard?**	Members vote by inserting their voting cards (47%), by swiping their cards (3%), or by entering a personal identification number (9%). Only one House of Parliament reports that Members are entering a personal identification code and are using a fingerprints technology as a mode of identification.	
7. Do parliamentary officers in the Chamber or specialist staff operate the equipment?	The parliamentary staff generally operates the equipment whilst the system is maintained by specialist staff and experts from the company which designed and installed it.	
8. Does the electronic voting system display large panels in full view of the Chamber? If so: **a) Do the display panels reflect the seating plan of the Assembly?** **b) Are individual votes (including party affiliation) shown?** **c) What are the sizes of the display panels and where are they located?** **d) Do Members have a personal display on their desk?**	YES 78% of responses 22% of those Houses of Parliament that have electronic voting report that the existing panels reflect the seating plan of the Assembly; 22% also report that individual votes are shown. The format and size of the display panels range from basic rectangle modules located on the left and right side of the meeting hall to large advanced performance screens equipped with LCD video projector situated behind the President / Speaker's chair. 41% of the Houses of Parliament report that Members	NO 13% of responses

	have a personal display on their desk.	
9 Do the display panels give indications other than the traditional tallies of the votes (ayes/noes/abstainers; presence/absence), for instance:		
a) The immediate question being voted on?	34% of those that use e-voting report that the panels display the immediate question being voted on.	
b) The principal subject before the Chamber?	38% of those that use e-voting report that the panels display the principal subject before the Chamber.	
c) Summaries of divisions outcomes?	38% of those that use e-voting report that the panels display summaries of divisions outcomes.	
10 Is the electronic voting system linked to a general computing or broadcast network that extends beyond the Parliament?	YES 44% of responses positives. 28% report that the electronic voting system is directly linked to the internet whilst only 16% report that the system is directly linked to a database.	
PROCEDURAL ISSUES		
11 How many Members are in your Parliament /House of Parliament?	The average number of Members for each House of Parliament /Parliament carrying out formal format vote electronically is 250, with a minimum of 49 and a maximum of 630. There are between 49 and 100 Members (in 25% of the cases), 101 to 250 (34%), 251 to 500 (28%), and 500 to 630 (13%).	
12 How often do electronic votes occur?	Responses vary considerably depending on the type of procedure available. They also depend on the nature of the texts under consideration	

13 Has the electronic system improved the overall running of the business in the Chamber? **a) If so, do you think the benefit of electronic voting outweigh the upfront cost?** **b) If not, do you think the electronic system has suppressed or significantly altered the 'cooling-off' effect or other features of a non-electronic procedure?**	YES 88% of responses 47% of those that responded YES indicate that the benefit of electronic voting outweigh the upfront cost. Many have not responded, specifically, to this supplementary question. However, none of those that provided an answer responded negatively.	NO 3% of responses None of those that responded NO has indicated, however, that the electronic system has suppressed or significantly altered the 'cooling-off' effect or other features of a non-electronic procedure.
14 Does the chosen method of electronic voting represent a significant saving in the time of the Parliament through the smoother flow of business? **a) How long does it generally take to process a vote?** **b) Is this significantly less than before the electronic voting system was introduced?**	YES 84% of responses To process a vote it takes generally between 15 to 20 seconds, exceptionally between 2 to 3 minutes. Voting by traditional means took several minutes to more than one hour.	NO 3% of responses

15	**Is there a fall-back procedure (sitting and standing votes, roll-call votes, voting papers and cards, voting by show of hands, voice vote) in case the electronic equipment fails, or the announced result is significantly in dispute?**	YES 81% of responses	NO 3% of responses
16	**Has the Parliament retained any other non-electronic methods for sensitive or controversial matters such as secret ballots, amendments to the Constitution, certain nominations and appointments, statements of general policy and motions of confidence?**	YES 78 % of responses	NO 6% of responses
17	**as electronic voting resulted in the calling of additional divisions?**	YES 6% of responses	NO 67% of responses
18	**re Members able to check that a correct vote has been recorded or to change their vote before the result is announced?**	YES 81% of responses	NO 6% of responses

19 **Does the electronic system authorise voting by proxy and are there prescribed penalties for using another Member's key or card control with or without his or her consent?**	YES 3% report that the electronic system authorises voting by proxy 13% of those that have electronic voting report that there are prescribed penalties for using another Member's key or card control with or without his or her consent.	NO 84% of responses 41% of responses

NOTES:

1. Not all respondents answered all questions.
2. The percentage calculations have been rounded, so they may not tally accurately.

Dr Yogendra NARAIN (India) congratulated the speaker. He said that in India there was a very good system of electronic voting but he was keen to know what methods were used in different countries for dealing with claims that votes had been incorrectly registered. In India paper slips were sent out and a member could correct his or her vote. When the results were announced it was on the basis of the rectified votes. It was always possible for members to press the wrong buttons.

Ms Judith MIDDLEBROOK said that all legislatures with an electronic system of voting had a means of correction but that this was very varied. She would copy all the responses and have them available on the website.

Mr Arie HAHN (Israel) said that it was very important to have an electronic system of voting. The Knesset system had been installed in 1989. Work was being done on changing equipment so that each desk would include a laptop connected to the Knesset computer. In the middle of each session, all members could get information but also the laptop would allow voting using two fingers, one to operate and one to vote, via a touch screen. He noted that about 2 months previously in the Knesset, a budget vote had taken over 24 hours because the opposition had tabled so many amendments. Someone saw a member voting for his neighbour who had gone to the lavatory. The Knesset video showed this. The Speaker nominated the Head of Security and the Legal Adviser of the Knesset to watch 24 hours of voting and it turned out that 4 separate members had voted twice. The police were involved and they recommended legal action against 2 members. The conclusion was that a biometric, ie a fingerprint system should be introduced. This was decided to be implemented but it became the subject of national debate.

Ms Judith MIDDLEBROOK said there were two occasions which she had heard of where there had been fraudulent voting. It was not expected to be a big problem with electronic systems and only 13% of respondents with electronic voting systems had regulations which covered this.

Mrs Marie-Josée BOUCHER-CAMARA (Senegal) said that in Senegal an electronic voting system had been installed but nobody had dared to use it yet. It was a difficult system to operate because it required knowledge of the French language. Not all members spoke French. What was the powerhouse to do? Could it force members to learn French? Should it be a rule of the House or a matter for parties. A solution was needed urgently which had to recognise the circumstances of the Senegalese Parliament. At present, the Parliament relied on voting by show of hands.

Ms Judith MIDDLEBROOK said that she had no advice to give on that particular subject but noted that Senegal was not the only legislature with an electronic system that was not used. Samoa was also in that position. She noted that electronic voting was only a tool which was there to be used if convenient.

Mme Hélène PONCEAU (France) apologised for her late intervention. She said the French Senate had not replied to the request for information because it had no electronic voting system. The French Senate weighed ballot papers with very precise scales. No-one had believed that it would work but the Senators did not want to give up their scales. The scales were linked to a computer system which analysed the vote. It was very difficult to introduce an electronic system in a historic chamber.

Mr Ian HARRIS, President, *thanked Mrs Judith MIDDLEBROOK for her communication.*

PARLIAMENTS AND THE TRANSFER OF SOVEREIGNTY

Mr Ian HARRIS, President, *invited Mr Robert MYTTENAERE, Deputy Secretary General of the House of Representatives of Belgium, to take the floor.*

Mr Robert MYTTENAERE *made the following presentation:*

1. INTRODUCTION

From 1970 the reform of the state has made Belgium into a federal state which has led to several revisions of the Constitution. Apart from the national bicameral Parliament, there have been five assemblies which have, in successive phases, taken on new powers.

The regional councils were at first made up of indirectly elected members but since 1995 they have been made up of directly elected members.

This change has profoundly altered the institutional landscape of Belgium.

The chief object was to change Belgium into a federal state but in doing so the authorities took the opportunity of redefining the status of certain authorities which led to a change in the relationship between various centres of power.

The reform has affected the balance of powers between the two houses. The Chamber has seen its powers reinforced as opposed to those of the Senate.

In addition, there has been a reinforcement of the executive power as well as the effects of the deepening of federalisation and the extension of powers to international bodies.

2. PARLIAMENT AMPUTATED BY THE EXECUTIVE, FROM ABOVE AND FROM BELOW

The reorientation of institutions towards the chamber goes in tandem with a limitation on its power as much in relation to federal institutions and European institutions as in relation to the executive power.

2.1. Erosion by the executive

Since the second world war parliament has progressively lost its influence and the executive has gained as a result. The executive has become the motivator of legislative activity and furthermore has control over parties which it keeps thanks to majority discipline. As in other European democracies, Belgium has seen the centre of gravity of power shift towards the executive and towards political parties.

2.2. Amputation from below

2.2.1. Sharing out of power

— The federal level: The Constitution and institutional legislation: defence, social security, justice and civil legislation, commercial, penal …

— The community level: Education, culture, broadcasting …

— The regional level: Management of the land, agriculture, environment, regional economy.

These powers run in parallel. The levels of power are on an equal footing. This autonomy is moderated by mechanisms for cooperation.

There can be tensions between the different power levels because of disputes over powers or because of different interests, even if the principle of the federal state is loyalty to the federation.

There are various organisations which exist at the executive level (cooperation agreements, obligation to provide information, etc).

2.2.2. Resolution of conflict

— Conflicts relating to power: prevention: the opinion of the Council of State; rules: the arbitration Court can cancel laws

— Conflicts of interest

Even if one area of power in bringing about its policies respects the limits of its powers, it is possible that it may damage the interests of other levels. These conflicts of interest are basically political. They are outside the normal means of dialogue.

How to resolve these between parliaments: By a motion agreed to by three quarters of the members, one assembly can decide that a particular legislative initiative from another assembly can damage its interests gravely. This motion suspends examination of the text which is disputed for 60 days. If no solution is found, the Senate must give an opinion within 30 days to the joint committee made up of representatives of the various executives which has a further 30 days to make its mind up.

2.2.3 The Conference of the 7 Presidents

This is an informal structure. A discussion takes place every term concerning the matters required for a more or less uniform approach, for example on the incompatibility between a parliamentary mandate and certain other duties, the control of government communications, control of electoral expenses, the legal personality of assemblies …

These meetings are preceded by meetings between the 7 secretaries general.

2.3 Amputation from above

Europe (chiefly the European Union even though other organisations such as the Council of Europe influence decisions) imposes itself more and more as a law-making body or legal body before which parliament has to surrender.

National parliaments have only a very modest impact on the content of European legislation. They are, in that respect, 'policy-influencing legislatures'. Indeed, since the Treaty of Maastricht, parliaments are encouraged to involve themselves more in European activities. At the same time, various parliaments have put into place scrutiny mechanisms and means of finding information.

The growing impact of European legislation touches noticeably the law-making function of member states and from that their parliaments. It is estimated that about 40% of laws are putting into effect European directives. Furthermore, legal pressure from the Court of Human Rights and the European Union Court of Justice has on many occasions forced the national legislature to change internal legislation.

As I mentioned earlier, we cannot ignore the involvement of our countries in the international community from whom decisions come which affect national parliaments.

It is still the case that parliaments can influence the members of the Council of Ministers in Europe (that is to say, foreign affairs ministers). But this means that parliaments have to be informed and have to be able to ask their governments for account when discussing the use of their vote within the Council, which has only recently been made public even when it deals with law-making decisions.

The Belgian Parliament, even if it's generally pro-European attitude does not lead it to take a very critical attitude with respect to European arrangements, has since 1985 put into place a 'mega-mixed' committee which includes 10 members of the Chamber, 10 senators and 10 Belgian members of the European Parliament.

This committee, which is a privileged place where discussions take place, hears the Prime Minister and Foreign Minister before and after each European summit, agrees to resolutions on any European community matter and submits these directly to the plenary sessions, and it analyses particular draft European directives relating to standing committees.

3. REINVENTING THE POLITICAL SPACE BY A PARLIAMENTARY ABOUT-FACE

Parliament is aware of having lost some credibility in public opinion and therefore has resurrected a hitherto little-used instrument of political scrutiny: a parliamentary inquiry.

This touches as much on the dysfunction of certain institutions as on economic or human problems, international matters, environmental matters, or subjects to do with the colonial past. One innovation is the intensive use of advertising its debates and transmitting those live on television when witnesses are heard.

In this way, the scene of political debate is taken away from the parliamentary precinct and put into the public arena of the media. This is a way not perhaps without its own dangers of restoring a hitherto damaged and questioned legitimacy.

The parliamentary regime has been profoundly transformed. The new arrangement of the institutions has written into law a reality which is already quite old. There is a preponderance in power of the executive whether at the level of the regions or of the nation state or even of the European and international level.

At the national level the executive is dominated by political parties. At the European level, despite some advance, there is still a democratic deficit since the European Parliament does not have all the parliamentary powers that it might and that the national assemblies have only partial control over the actions of their governments in the forests of Brussels.

Certainly, the attempts to remodel the Belgian institutions have tended to bring the citizen closer to the centre of decision-making, but it has also attempted to revitalise political life and democracy by improving parliament and by rationalising the methods of decision-making, and in abolishing often obsolete working practices. This has been a vital necessity."

Mr Ian HARRIS, President, *thanked Mr Robert MYTTENAERE for his presentation and invited participants to intervene in the debate.*

Mrs Marie Valérie AGOSTINI (Italy) *made the following intervention:*

First of all, I wish to thank the authors of the guidelines for our debate, and the Secretariat of the Association for making them available to us.

The guideline relating to the topic "Parliaments and the transfer of sovereignty" highlights the national states' tendency to opt for a twofold devolution of sovereignty since the post-war period.

At national level, the role of local and regional governments has generally grown; at a higher level, supranational structures have been established with growing powers in several sectors of social and economic life.

As a result of this process, the role of parliaments – ie. the legislative assemblies of sovereign national states – tends to shrink.

The weakening of parliamentary powers following the decision to examine certain subjects at supranational level is highlighted by the so-called theory of "collusive delegation".

Various authors have argued that participation in international policy-making can increase the independence of a government from the domestic actors that are supposed to check its behaviour and in particular from Parliament. The collusive delegation thesis goes further and maintains that the elusion of parliamentary control is not merely a by-product of the transfer of powers to supranational institutions, but also one of the purposes of this transfer.

It is not necessary to go that far and ascribe secondary motives to governments (although there seems to be evidence of practical applications of the collusive delegation theory). What is certain is that the role of national parliaments in a context of supranational integration changes significantly, and the greater the integration, the deeper the change.

At this moment in history the European Union represents the most interesting experiment with step-by-step integration on the international scene. We have not gone as far as becoming a federation; consequently, there has not been that "*changement d'échelle*" mentioned in the final question contained in our guide to the debate.

The European Parliament has seen its functions grow considerably, although it has not acquired all the powers characteristic of a federal parliament. And national parliaments had to shift the focus from the legislative function to a function of control and guidance over the government, which holds most of the decision-making power at European level.

At organisational level, EU parliaments have found themselves faced with two possible alternatives: assigning control and guidance functions primarily to the committees specialising in the various areas (the Committee on Labour for matters concerning employment and social security; the Committee on Industry for matters concerning industrial activities; the Committee on Foreign Affairs for foreign policy decisions, etc.), or assigning them to an *ad hoc* committee on European affairs.

It is a matter of deciding whether to privilege a more specific knowledge of the subject and the synergy between the national and international aspects of each individual provision, which are provided by the specialised committees, or privilege the stronger focus that committees on European affairs devote by their nature to such aspects, sometimes to the detriment of the specialistic competence required.

The Italian Parliament has established committees on European affairs, but has attributed the power to issue recommendations to the Government to the specialised committees having jurisdiction over the various areas. This experience cannot be said to be fully satisfactory: recommendations to the Government have not been numerous and have not always been sufficiently timely to affect government decisions.

Partly in the light of the above experience, the Senate recently amended its Rules. According to the new Rules, which will enter into force by the end of October, the Committee on European Affairs shall acquire greater powers and become a "filter" committee that goes through all amendments containing aspects relevant in terms of compliance with EU legislation; a negative opinion by the above committee will affect the voting procedure in the House. Its changed composition is also to be noted: each member of the Committee on European Affairs shall also sit on one of the specialised committees having jurisdiction over the various matters, and all such committees shall be represented within the Committee on European Affairs.

The objective is to build a sort of "bridge" between specialistic competence and a sensitivity to supranational issues, which would presumably increase the effectiveness of parliamentary control over the Government.

The picture, however, is still evolving. The European Convention's proposals, envisaging the introduction of an early warning procedure regarding conformity with the principle of subsidiarity which can be activated by national parliaments, and the ongoing strengthening of the Conference of European Affairs Committees (COSAC) – whose next meeting will be held in Rome next week – bear witness to the attention the parliaments of EU countries are devoting to the progress of integration.[15]

Dr Yogendra NARAIN (India) *intervened as follows:*

15. The first point on the orders of the day for the meeting of COSAC in Rome was "draft treaty on a European constitution between the Convention and the Inter-governmental Conference: questions of method and principle, particularly relating to the role of parliaments in the European Union". See the internet site of COSAC http://www.cosac.org/fr/base/index.html (NDLR)

Transfer and dilution of sovereignty of Parliament has remained an important subject for discussion for several decades. This is particularly so after the end of the cold war and emergence of numerous world bodies such as the United Nations and many other international organisations the policies of which had far reaching impact in determining the laws and legislations of many countries. The liberalisation and structural adjustment and the growing process of global integration arising out of increasing contacts among peoples across the globe, emergence of World Trade Organisation to enforce agreements on national governments, dominance of markets and diminishing role of State in many vital sectors of collective life created new conditions for further eroding the authority of Parliament in almost all countries. In the context of the efforts to create a European Union and a Constitution for the member countries of the Union it has been recommended that the sovereignty of the Parliaments of member countries has to be curtailed in the interest of the supranational body. Similarly, the conditionalities that go with the loan given by international monetary institutions like the World Bank or the IMF also to some extent impinge upon the sovereignty of a country receiving the loan.

It is a fact that changes in law, legislations and policies of many countries have been brought about by multilateral agreements which bind national governments and commit Parliaments to introduce and pass particular legislation in consonance with the aims and objectives of the multilateral agreements. Rules of the World Trade Organisation covering new areas such as banking and insurance and intellectual property rights created unprecedented scope and opportunities for intervention of the Organisation to shape up domestic policies involving some transfer of sovereignty from the Parliaments.

Already within national governments, because of liberalisation policies, new phenomena of regulatory authorities have emerged and assumed power by dint of which vital decisions are taken without getting parliamentary approval. Actions of such authorities go beyond the purview of Parliament and, in a way, further restrict the sovereignty of people's representative bodies. However, in India, recently the Supreme Court gave a historic judgment the operative part of which directed the Government to take parliamentary approval before disinvesting public sector oil companies. Since earlier such companies were nationalised by an Act of Parliament, the court argued that revising that decision required parliamentary approval. There is a feeling that as the quantum and quality of Government intervention is reduced the role of Parliament to examine and oversee the functions of the Government recedes. In the emerging economic situation marked by greater global integration the role of Parliament is, thus, redefined and changing.

While dealing with transfer of sovereignty, one point which needs elaboration is the tendency for devolution and decentralisation of authority and power from Parliament to local bodies. This was done by the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) act, 1992. These two Constitutional Amendments have added Chapter IX and IX A which deal with Panchayats, i.e., local bodies from village to district levels and municipal bodies. While it is important to understand that the decentralisation is the trend of the age, it in some measure, also contributes to the transfer of sovereignty of Parliament. It has always been understood that decentralisation within the framework of the Constitution and consistent with unity and integrity of a country is a desirable step for effective participation of people at the lower levels of decision making bodies. The transfer of sovereignty or authority to elected bodies at local levels does underline the importance of participatory democracy at the grass roots. Such transfer of power which is carried out through the process of decentralisation, in fact, deepens democracy and democratically elected bodies. In India, under the Constitution,

the issue of decentralisation of power to the grass-root level bodies have been constitutionally guaranteed with 33 % of seats in them reserved for women.

Safeguarding sovereignty of Parliament in rapidly transforming world where competing and powerful economic forces are reshaping the world order to their advantage has become exceedingly difficult. In the emerging scenario it is understood that Parliament should provide an enabling facilitative role which will contribute to the full flowering of potentialities for unhindered growth. People have faith in Parliament and hope that its authority is defended for improving their living conditions."

Mr Claude DJANKAKI (Benin) said that the problems linked to the transfer of sovereignty and powers were so unforeseeable that the legislature who was often a poor jurist had great difficulty in understanding them. In Benin, after a decade of practice in the National Assembly, it was clear that the original rules were outdated as a result of the dynamism and change within the institution. If parliamentary control by way of inquiry committees played a role comparable to that of an examining magistrate, in Benin this type of control had no end.

Mme Hélène PONCEAU (France) thought that in France the qualitative importance of the limitations on power were considerable. For every 100 laws passed by Parliament, the Parliament ratified 100 international treaties as a result of which 300 new European texts become applicable. The areas of responsibility if the European Union regularly increased and touched the widest range of sectors in each country. Under the draft Constitution of the European Union, member states certainly remained sovereign but the Union created its own rules which national were bound by. Communative law had a primacy over that of member states.

On the other hand, it was clear that there had been an increase of parliamentarism in international organisations with the aim of controlling the action of governments. This was clear within the European Union with the European Parliament. That was elected by universal direct suffrage. It had legislative and budgetary powers and a power of scrutiny. Other examples were supranational or international, although probably in a less advanced way.

Another phenomenon was the rise of international jurisdictions, particularly at the European level (Court of Justice of the European Community, the European Court of Human Rights) but also on the world level (World Trade Organisation). These were also new forms of restraint which led to a progressive transfer of power from the national to the international level.

Mr Samuel Waweru NDINDIRI (Kenya) thanked Mr Robert MYTTENAERE for his presentation. He said that in his country the trend was in the opposite direction. The Government was giving new powers to national parliaments. This was a general trend in the African region. It showed the struggle between the executive and parliaments.

When in 1975 the Kenyan Parliament had created a committee to support its own administration, it had invited the Director of Public Administration to share his experience with them. His reaction had been particularly arrogant although the members of parliament had only wanted to have a right of scrutiny on the way in which their own staff were recruited.

In the 1990s, Parliament had taken on fresh powers.

Mr Roger SANDS (United Kingdom) said that in many ways the change in the United Kingdom had followed that of Belgium as far as the European Union was concerned. It was

clear that there was a transfer from the top level and it was necessary to put in place mechanisms to deal with this.

Transfers downwards were also important although less visible: the Scottish Parliament (with legislative power), the National Assembly of Wales (without legislative power), the Northern Ireland Assembly (at that moment suspended as a result of the local political situation).

It was interesting to ask whether the process was irreversible or not. The United Kingdom was of the opinion that all these transfers were not irreversible. For example, the law giving Scotland a Parliament was a simple act of the British Parliament which had no special place in the law Thus another act of Parliament could repeal it.

As far as the irreversible or not nature of transfer of power upwards, there was strong political debate about this. Some members of the British parliament thought that transfers towards the European Union might be reversible. Thus if the United Kingdom's signature to the Treaty of Rome could not be put in doubt, nonetheless the 1972 Act of Parliament relating to it could be.

Mr Ian HARRIS, President, said that the First Constitution of Australia was also an Act of the British Parliament. He hoped it would not be repealed.

Mr Arie HAHN (Israel) referred to the transfers of power in Israel from the Knesset to the Supreme Court. Some deputies questionned the functions of that Court even though they had voted a resolution on the same subject. This related to a separation of powers and was worth thinking about more deeply.

Mr Robert MYTTENAERE in conclusion said that separation was a theory. It was not totally true. Nowadays it was clear that there was a transfer, not necessarily from one parliamentary organisation to another, but a more diffuse evolution towards a number of institutions.

He remarked that Kenya was lucky if Government was frightened of Parliament (laughter). There was a difference between old countries with a long parliamentary tradition and more recent countries where various tensions were more lively. But nonetheless it was necessary to have a very close look at any gift which a government might bring before accepting it.

Perhaps it was best to speak of an erosion of powers rather than a transfer of powers. Transfer was not always irreversible and nothing was certain apart from birth and death. But this evolution was a very real trend.

He referred to the experience in the commercial world where mergers and disappearances of particular companies led to over-heavy structures.

It was necessary to become closer to citizens by way of decentralisation but it was also necessary to have a presence at international level. It was necessary to be clear about the danger which haunted all parliaments. They were being dragged more and more within a growing circle of international parliamentary bodies. There was a proposal for a parliamentary body linked to the WTO, a parliamentary assembly of the European Mediterranean countries and so forth. Grass root democracy had become a permanent feature of the political landscape.

The impact of parliamentary diplomacy, however, was less even if inter-parliamentary meetings were a useful means of gaining information and exerting influence. He noted how Scandinavian colleagues were very attached to co-ordination at all levels.

As far as the capacity for parliaments to conduct committees of inquiry with judicial powers was concerned, he thought that that was a very dangerous weapon and, as with all such weapons, should be used with great circumspection.

Mr Ian HARRIS, President, thanked Mr Robert MYTTENAERE and all the other people who had intervened in the debate. This was a changing subject and it would be necessary to return to it from time to time so as to keep up to date with changes and to exchange information.

He agreed that it was necessary to be very careful before accepting any presents from the government in the form of new responsibilities.

As far as the multiplication of parliamentary organisations was concerned, which was a very strong trend at the moment, it was necessary to remember the view of Montesquieu, according to whom "if triangles were to create god, they would give him three sides".