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### **COMMUNICATION**

by

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on

**“Constitutional conventions in the Dutch Parliament”**

**Nusa Dua Session**  
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Dear colleagues,

It is a great pleasure to meet you all here today. The pleasure is even greater because the COVID-19 pandemic prevented us two years from meeting each other physically. Even last November, the epidemical situation in The Netherlands prevented me from traveling to Madrid. I am glad that our Executive Committee took the initiative to organize two digital sessions during the pandemic, which gave us the opportunity to discuss important matters with each other, especially on how our national parliaments dealt with the pandemic and the COVID-19 restrictions in every country. However, digital meetings do not provide the possibility to have more informal conversations. To have bilateral contact in the margins of the conference. To enjoy lunch together and to exchange business cards in the corridors. I dearly missed these informal moments amongst colleagues and that is why I am very happy to be here today, although the terrible situation that is going on in Ukraine at this moment also casts a shadow over this conference. My thoughts are with the people of Ukraine and with our colleagues from the Ukrainian parliament. Hopefully, this inhumane situation caused by the Russian invasion will soon come to an end.

I thank the Executive Committee and the Indonesian parliament for the excellent organization of this conference and for the opportunity to speak to you in this session on the subject of 'Constitutional conventions'.

Dear colleagues,

The world and thereby the politics are always subject to change. Due to globalization, digitalization, the rise of new political parties, and fragmentation in the political landscape the norms and rules of the parliament may change. These new norms and rules will mostly not (directly) lead to changes in the constitution, but a different category of rules arises: the constitutional conventions. Conventions are unwritten rules of political practice accepted as obligatory by those concerned in the working of the constitution. Conventions are explicitly not legal rules, but they occupy a position between mere political practice and constitutional law. Usually, conventions develop from established constitutional practice, but sometimes they are deliberately created.

Conventions can be found in constitutions all over the world, so in the Dutch parliament. The Dutch constitutional rules governing relations within and between government and parliament have remained mostly the same since 1848, but the Dutch society has undergone significant transformations, such as the rise of political parties, the expansion of the role of the state, globalization, and the increasing fragmentation of the Senate and the House of Representatives. All these actual changes in society have resulted in only very limited changes to state law. In many situations, that makes it difficult to find rules that reflect the current political practice. For this reason, the Rules of Procedure, both in the Senate and the House of the Representatives, have grown in recent years. In addition, the gap in the Dutch constitution is partly filled by conventions. In the Dutch constitutional arrangement, one well-known convention is that the formation process is largely based on unwritten constitutional and customary law. Another example is the Role of the Senate, which is not laid down in concrete terms.

In recent years, the Senate spent relatively less time on legislation and more on other political (policy) matters. The question arises to what extent the role of the Senate repeats the work of the House of Representatives. The customary law, conventions, ensures the Senate is focusing on her tasks and responsibilities.

In addition, in recent years, the members of the Dutch Senate submit more motions than twenty years ago, but relatively fewer motions are adopted. The question arises whether the members of the Dutch Senate perhaps embrace the declaratory nature of a motion more than in the past, rather than consider whether it will be accepted during the votes when it is submitted. Thereby, the question can be asked if this fits the unwritten rules of political good behavior. Constitutional conventions are also seen as rules of good political behavior. They are typically rules of self-restraint, not exercising powers to the full.

So, constitutional conventions keep the system running, but they also provide challenges and raise questions on the field of responsibility and legality.

In all branches of government (legislative, judicial, and executive) constitutional conventions are used. These conventions embody a principle of responsible government. Members of the parliament should not exercise legal powers to the full, they should not abuse public power and they need to respect the constitutional role and functions of the other branches of government. Concerning the work of our parliamentary bodies, one could ask if members of parliament always take their responsibility and hold each other accountable for good political behavior. The question arises of how the parliamentary staff can stimulate good political behavior.

Another question is to what extent conventions are legally enforceable, and the possibility to impose sanctions if members do not comply with conventions. In fact, conventions are non-legal rules and thus legally unenforceable. However, breaking them can carry political sanctions. In this way, conventions play an important role in the Dutch constitution: they ensure that the constitution works according to prevailing constitutional values.

Finally, conventions are always subject to change and new conventions may arise according to the changing political reality. As a result, significant constitutional change can occur without any fundamental change in the law.

Dear colleagues, I think we can argue that despite the fact conventions are legally unenforceable, it is fundamental that we make sure rules of good political behavior are pursued. This plays an important role in the view of politics. As Secretaries-General, we have a responsibility to ensure that everyone knows the unwritten rules and follows them too. With this, we ensure politics is conducted in a good way.