SECOND CHAMBERS

Bicameralism Today

Editor
R.C. TRIPATHI

RAJYA SABHA SECRETARIAT

SECOND CHAMBERS

BICAMERALISM TODAY

Editor

R. C. TRIPATHI
Secretary-General, Rajya Sabha

RAJYA SABHA SECRETARIAT
NEW DELHI
2002

F. No. RS.17/2/2001-R&L

http://parliamentofindia.nic.in
http://rajyasabha.nic.in
E-mail: rsrlib@sansad.nic.in

***Price*: Rs. 300**

Published by Secretary-General, Rajya Sabha and printed by Manager, Government of India Press, Minto Road, New Delhi-110002

PREFACE

Bicameralism has emerged as a significant characteristic of most of the modern legislatures. About one-third of the Parliaments of the world today are consisting of two chambers. The role of a Second Chamber as a body scrutinizing and revising legislative proposals can hardly be overlooked. Political scientists and statesmen have always been debating the need or otherwise of a Second Chamber. While some of them have held that the Second Chamber is essential for an effective democratic governance, others have described it as an 'outdated and unrepresentative' body. Despite the ongoing debate on the role and efficacy of the Second Chamber, the fact remains that the Second Chamber can still be described best by using the famous metaphor, the 'senatorial saucer', which can cool legislation poured into it. The existence of Second Chamber acquires added significance in a federal State whose members have to act as guardians of the interests of the constituent units.

The articles contained in the book have been contributed by the Clerks, Secretaries-General of various Second Chambers, scholars and experts including the President of the Czech Senate. These articles throw light on the role, contribution and significance of the Second Chambers in different countries, delineate their evolution over the years and characterize their relationship with the directly elected chambers, their impact on legislative business and so forth.

India has a bicameral Parliament, consisting of the House of the People (Lok Sabha) and the Council of States (Rajya Sabha). Rajya Sabha, the Upper House of Indian Parliament, was constituted on 3 April 1952 and held its first sitting on 13 May 1952. During the five decades of its existence, Rajya Sabha has emerged not only as a federal legislative body and a forum for ventilating public grievances but has also shaped itself as an effective revisory chamber.

Rajya Sabha has completed fifty years of its existence in April 2002. In order to commemorate the fiftieth anniversary of Rajya Sabha, we decided to bring out a book which should deal not only with various aspects of the functioning of this chamber of Indian Parliament but the occasion should also be utilized to focus the role and status of Second Chambers existing in different parts of the world. We have also included in the book articles on the Legislative Council of Jammu and Kashmir, Karnataka, Maharashtra and Uttar Pradesh to give a perspective of the functioning of Second Chambers in Indian States.

In this work consciously no attempt has been made to compare and contrast the systems operating in different countries. Each system is there according to the need and genius of the people; sharing of experience will

contribute to a better perception and understanding of each other's practices and systems.

I express my profound gratitude to the authors of the articles included in the book who despite their busy schedule honoured our request by sending their valuable contribution for this publication. I place on record my appreciation for the assistance rendered to me by the officers belonging to the Research and Library Service, Shri N.C. Joshi, Joint Secretary, in particular, in bringing out this book.

I hope readers who are interested in the study of parliamentary institutions and procedures would find this book interesting and useful.

New Delhi;
April 2002.

R.C. TRIPATHI,
Secretary-General.

LIST OF CONTRIBUTORS

Richard A. Baker, Ph.D., Director, U.S. Senate Historical Office, United States of America

Sara Herrera Bazán, Projects Asesor, Senado de la República, Mexico

Paul C. Bélisle, Clerk of the Senate and Clerk of the Parliaments, Canada

Radhe Shyam Bhattarai, Secretary, National Assembly (Second Chamber), Nepal

Carlos Hoffmann Contreras, Secretary of the Senate, Republic of Chile

Norma Cox, Clerk of the Senate, Parliament of Trinidad and Tobago

J. M. Davies, Clerk of the Parliaments, House of Lords, United Kingdom

Harry Evans, Clerk of the Senate, Australia

Amparo Canto González, General Coordinator for Foreign Affairs and Protocol, Senado de la República, Mexico

W. Henrard, Secretary-General, Sénat, Belgium

Hisao Horikawa, Secretary General, House of Councillors (Sangiin), Diet of Japan

Phicheth Kitisin, Assistant Secretary General of the Senate, Thailand

Jan Kysela, LL.D., Ph.D., Secretary of the Senate's Standing Commission on the Czech Constitution and Parliamentary Procedures, Czech Republic

Deirdre Lane, Clerk of the Senate (Seanad Éireann), Ireland

Christoph Lanz, LL.M., Secretary General of the Swiss Council of States, Switzerland

Shirley M. Lewis, Clerk to the Houses of Parliament, Jamaica

D.S. Magongo, Acting Clerk to Parliament, Kingdom of Swaziland

G.R. Mehboobi, Secretary, Jammu and Kashmir Legislative Council, India

Manuel Alba Navarro, Secretario General del Senado, Spain

V.A. Nikitov, Secretary General, the Council of Federation, Russian Federation

Damiano Nocilla, Segretario Generale, Senato della Repubblica, Italy

Vilas Patil, Secretary, Maharashtra Legislative Council, India

Petr Pithart, LL.D., President, Senate, Czech Republic

Hélène Ponceau, le Secrétaire Général de la Questure, Sénat, France

Georg Posch, Secretary General of the Austrian Parliament

M. Rayev, Secretary-General of the Senate, Parliament of the Republic of Kazakhstan

Horst Risse, Head of the Division "Matters of Principle and Parliamentary Law" Bundesrat's Secretariat, Federal Republic of Germany

H.C. Rudrappa, Secretary, Karnataka Legislative Council, India

Oum Sarith, Secretary General of the Senate, Kingdom of Cambodia

D. Shilo, Secretary General of the Council of the Republic of the National Assembly, Belarus

Bogdan Skwarka, Secretary General, Chancellery of the Senate, Republic of Poland

Honoré K.M. Somda, le Secrétaire Général, la Chambre des Représentants, Burkina Faso

R.C. Tripathi, Secretary-General, Council of States (Rajya Sabha), India

S.D. Verma, Secretary, Uttar Pradesh Legislative Council, India

CONTENTS

1

The Role of the Australian Senate

HARRY EVANS

The first step towards an assessment of the role of the Senate in Australia's Constitution and system of government is an appreciation of the intention of the framers of the Constitution who ordained it.

The intention of the framers

The purpose of the Senate was to ensure, by securing equal representation of the states, regardless of their population, in one House of the Commonwealth Parliament, that the legislative majority would be geographically distributed across the Commonwealth. In other words, it would be impossible to form a majority in the legislature out of the representatives of only one or two states. Without that equal representation in one House, the legislative majority could consist of the representatives of only two states, indeed, of only two cities, Sydney and Melbourne, and this would lead to neglect and alienation of the outlying parts of the country.

This rationale of the Senate is illustrated by two statements by framers of the Constitution, one conservative and one radical democrat :

> ...it is accepted as a fundamental rule of the Federation that the law shall not be altered without the consent of the majority of the people, and also of a majority of the States, both speaking by their representatives...[1]

> ...the great principle which is an essential, I think, to Federation — that the two Houses should represent the people truly, and should have co-ordinate powers. They should represent the people in two groups. One should represent the people grouped as a whole, and the other should represent them as grouped in the states. Of course majorities must rule, for there would be no possible good government without majorities ruling, but I do not think the majority in South Australia should be governed by the majority in Victoria, or in New South Wales... If we wish to defend and perpetuate the doctrine of the rule of majorities, we must guard against the possibility of this occurring.[2]

This concept of a geographically distributed majority was also embodied in the provision for alterations to the Constitution: an alteration cannot pass unless agreed to by a majority of voters in a majority of states as well as an overall majority. This rationale explains why the Senate was given powers in

relation to proposed laws virtually equal to those of the House of Representatives. The Senate must assent to every law to ensure that it has the support of the geographically distributed majority. Section 57 of the Constitution, however, provides that, in cases of deadlock between the Houses as described in that section, following a general election for both Houses, if the deadlock persists, a proposed law in dispute can be passed by a joint sitting of the two Houses. In other words, the simple majority represented in the House of Representatives can in those limited circumstances override the geographically distributed majority in the Senate, provided that the simple majority is not too narrow.

Common misconceptions

There are several common misconceptions about this constitutional arrangement, which confuse constitutional discussion in Australia, and it is necessary to dispose of them.

Because the framers used the shorthand expression "States' House" in relation to the Senate, it is assumed that they intended that Senators vote in state blocs and according to the effect of proposed measures on the interests of particular states. Because Senators have never voted in this way, it is assumed that the Senate has not achieved its original purpose. The framers' concept of a geographically distributed majority, however, did not entail any such strange behaviour on the part of Senators. That concept is perfectly consistent with the formation of a legislative majority across all states and a legislative minority also formed across all states; the point is that it is not possible for the majority to come from only the two cities of the two biggest states.

A related misconception is that Australia was intended to have a system of government basically similar to that of the United Kingdom. This misconception is embodied in the frequently-heard statement that we have a "Westminster system". On the contrary, the framers of the Constitution explicitly and deliberately departed from the British model. As one of them said :

> Why, in this constitution which we are now considering, we have departed at the very start from every line of the British Constitution... We are to have two houses of parliament each chosen by the same electors... We are to have, instead of a highly centralised government such as they have in Great Britain, a division of powers.[3]

These non-British elements were combined with the British system of the executive government consisting of a cabinet formed out of the party having a majority of the House of Representatives. The total system, however, was unlike any other.

Related to the "Westminster" misconception is what might be called "the 1911 myth". On the assumption that the Australian framers simply copied the British Constitution, it is said that, if only they had drawn up the Constitution after 1911, they would have followed the British Parliament, which effectively deprived the House of Lords of its legislative powers in that year. On the contrary, the framers explicitly stated that the Senate was to be quite different from

the House of Lords, which was regarded as effectively powerless by convention even in the 1890s: the Lords were then referred to as approaching "a mere gilded ceremony".[4]

Has the intention been achieved?

When the intention of the framers in devising the Senate is properly understood, it is readily seen that the intention has been fulfilled. It has not been possible for a majority in the legislature to be formed out of one or two states; governments have not been able to rely on the votes of Sydney and Melbourne alone.

This is demonstrated by the contrary case of Canada, where the absence of an Australian-type Senate and only one elected House has allowed governments to be formed largely on the votes of Toronto and Montreal. This has led to the extreme alienation of the outlying provinces from the central government and consequent political difficulties in that country.

The geographically distributed majority continues to work even where voters in the various states vote for the same political parties, because no political party can afford to neglect any state.

This feature of Australia's constitutional design is like the operating systems software on a computer: the user is largely unaware of it as he or she employs the applications software to perform various tasks, but without it the system does not work. The applications software in the Senate is proportional representation.

Proportional representation

The use of proportional representation for Senate elections since 1948 has ensured that, as well as producing a geographically distributed majority, the Senate produces what might be called an ideologically distributed majority. Proportional representation ensures that the legislative majority more accurately reflects the division of views and opinions in the country and the voting pattern of the electors. In particular, it awards seats in the Senate to political parties nearly in proportion to their share of electors' votes.

The single-member constituency system used to elect the House of Representatives seeks to ensure that a party majority is produced representing a plurality (not necessarily a majority) of the electors. Governments are formed in that House by the party which receives more seats and, it is hoped, more votes, than any other party. That majority party, however, usually does not represent a majority of the electors; normally, a majority of seats is won with forty-odd per cent of the electors' votes, that is, a plurality of votes. In some cases a majority is achieved even without a plurality of votes; in other words, the majority party receives fewer votes than another party. This system also awards representatives only to major parties, and electors who vote for other parties go unrepresented.

These features are illustrated by various federal elections, but the 1998 election illustrates all of them. In that election, only the Liberal/National Parties and the Labor Party won seats in the House of Representatives, although they achieved only about 40 per cent of the votes each, and about 20 per cent of the electors who voted for other parties were not represented (one independent was elected). Moreover, the winning coalition, the Liberal/National Parties, won fewer votes than the "losers", the Labor Party, the "winners" gaining 39.5 per cent and the "losers" 40.1 per cent.

This situation of the "winners" achieving fewer votes than the "losers" is quite common: since 1949, the winning party has received fewer first preference votes than the other major party in three elections, 1954, 1987 and 1998. Preferential voting does not overcome this problem. In five elections since 1949, the winning party has had fewer votes than the losing party after the distribution of preferences in 1954, 1961, 1969, 1990 and 1998.

The system of proportional representation in the Senate ensures that parties win seats very nearly in proportion to their share of votes. A party cannot gain a majority with a minority of votes. Thus, in the 1998 Senate election the major parties gained about 40 per cent of the seats each, while the electors who voted for other parties shared out the remaining seats. (The actual percentages of votes are different for the two Houses, because some electors vote for different parties in the two Houses.)

This situation makes the claim by governments to possess a "mandate" meaningless. In accordance with the intention of the framers, the two Houses provide two different reflections of the electors' voting patterns. Equal representation of states in the Senate ensures that a law does not pass unless it is supported by majorities in a majority of states. Proportional representation in the Senate ensures that a law does not pass unless it has the support of the chosen representatives of a majority of voters, thereby enhancing the performance of the framers' intention.

Accountability

Governments are supposed to be accountable to Parliament, and through Parliament to the electorate; that is, governments are supposed to give account of their conduct of public administration so that the electorate can pass judgment on their performance.

Under the cabinet system, however, governments normally control lower Houses through disciplined party majorities. Lower Houses are not able to hold governments accountable, because governments simply use their majority to limit debate and inquiry in relation to their activities. Indeed, governments use their lower House majorities to suppress and limit accountability. They thereby seek to conceal their mistakes and misdeeds and prevent the electorate passing an informed judgment.

In this situation, upper Houses not controlled by the government of the day are the only avenue for accountability to Parliament.

The Senate, by inquiring into the activities of the government, often through committees, regularly compels the government to account for its activities when it would not otherwise do so.

The Senate has adopted a range of accountability mechanisms :

- A committee scrutinises delegated legislation, laws made by the executive government, with independent advice and in accordance with criteria related to civil liberties and proper legislative principle. In some other jurisdictions delegated legislation has escaped parliamentary scrutiny and governments can virtually make laws by decree. In conjunction with the establishment of the committee, the Senate developed laws to ensure that delegated legislation may be vetoed by either House.
- A comprehensive standing committee system allows regular inquiries into, and the hearing of public evidence on, matters of public concern, including proposed legislation.
- The Scrutiny of Bills Committee looks at all proposed laws, using the criteria applied to delegated legislation.
- If ministers fail to answer questions on notice (questions submitted by Senators in writing) within thirty days, they may be required to explain that failure in the Senate.
- Orders for production of documents require governments to produce information on matters of public concern. (For example, the Senate requires all government departments to place on the Internet, lists of their files, as guidance to people making freedom of information requests.)
- Legislation is frequently amended in the Senate to include provisions for the appropriate disclosure of information (in this category is the Freedom of Information Act itself, which was extensively amended in the Senate).
- Procedures allow the regular referral of bills to committees, so that any bill may be the subject of a public inquiry with opportunity for public comment. (The current government initially resisted the reference of the GST legislation to committees, even though, as was pointed out, such a complex legislative change merited close scrutiny and public comment.)
- Standing committees have the power to examine the annual reports of departments and agencies to determine the adequacy of the reports, and to inquire into the operations of particular departments and agencies at any time.

- Twice-yearly estimates hearings provide opportunities for Senators to inquire into any operations of government departments and agencies, with the ability to have follow-up hearings on particular matters.
- Deadlines for the receipt of government bills prevent governments introducing large number of bills at the end of a period of sittings with the demand that they be passed during that period of sittings. These deadlines attempt to remedy the "end-of-session rush" and "sausage-machine legislation".
- Governments are required to explain any delay in bringing into effect acts of Parliament duly passed by the two Houses.
- Taxation legislation is amended to ensure that it is not backdated to vague pronouncements by ministers (retrospectivity is accepted if the backdating is to a clear statement of government legislative intent).
- Other measures, for example, require governments to respond within a limited time to parliamentary committee reports or to explain a failure to do so, and place time limits on answers at question time, so that ministers cannot give 20-minute speeches when they are supposed to be answering questions.

The significant point is that most of these measures were opposed by the government of the day and were put in place only because the Senate is not under the control of the government.

Recent examples of the Senate forcing governments to be accountable are provided by the procedure of requiring the production of documents. But for this procedure, the public would not have discovered the facts about the importation of magnetic resonance imaging machines involving possible fraudulent and excessive claims on the Commonwealth, and nor would the basis and actual results of the government's policy for determining grants to public and private schools have been discovered.

Upper Houses have only one hold over governments, their ability to withhold assent from government legislation. This is the only reason for governments complying with accountability measures: as a last resort, an upper House with legislative powers may decline to pass government legislation until an accountability obligation is discharged. An upper House without legislative powers could simply be ignored by a government assured of the passage of its legislation. A reviewing House without power over legislation would be ineffective. This is why the framers gave the Senate full legislative powers.

This does not mean that the Senate rejects many laws proposed by the government; many government bills are amended to make them more acceptable, and many are framed so as to secure passage by the Senate.

The future

So long as the electors continue to deny any party a majority in the Senate, the Senate will be able to continue to ensure that legislation is not passed without the support of a majority of electors, as nearly as that support can be ascertained, and to hold governments accountable for their conduct of public affairs.

There are certainly areas in which the Senate's performance could improve. Although the committee system provides a valuable opportunity for the public to participate in the legislative process, legislating is an over-hasty process and could be made more deliberate. The Australian Houses pass more bills in less time than their counterparts in comparable countries. The scrutiny of legislation through committees is not given sufficient time to work, and interested members of the public are set unreasonable deadlines. A more consistent and systematic approach to requiring ministers and government departments to account for their activities would also be valuable; at present the accountability mechanisms operate very patchily.

The performance of the Senate, and any House of a Parliament, is ultimately in the hands of the electors. There may well be room for improvement in the civic-mindedness and attention to public affairs of the members of the public, but here as elsewhere they need information to make judgments. Public interest groups should monitor the performance of Houses of Parliaments in looking at legislation and holding governments accountable. Then, informed by the resulting information, enough electors might use their votes to bring about better Parliaments.

NOTES AND REFERENCES

1. Sir Samuel Griffith, quoted by Sir Richard Baker, *Debates of the Australian Federal Convention*, 23 March 1897, p. 28.
2. Dr John Cockburn, *ibid.*, 30 March 1897, p. 340.
3. Sir Richard Baker, *ibid.*, 17 September 1897, p. 789.
4. Sir Richard Baker, *ibid.*, 17 September 1897, p. 784.

2

The Austrian Bundesrat

GEORG POSCH

In the Federal Constitutional Act the *Nationalrat* and the *Bundesrat* are referred to as the two "legislative organs", which indicates that the main task of these two parliamentary bodies is to deliberate on and adopt federal laws. The *Bundesrat* is the legislative body representing the provinces at the federal level and was established in 1920.

By way of introduction, the following article presents how the *Bundesrat* is created. The second part gives a brief summary of the history of the parliamentary system in Austria. The third part describes the role of the *Bundesrat* in the Austrian legislative process. Mechanisms of parliamentary control and a description on the share of the *Bundesrat* in the Federal Executive Power lead over to the final part dealing with the *Bundesrat's* possibilities to exercise influence in the European decision making process.

Creation of the *Bundesrat*

Its members are elected by the legislative bodies of the provinces (the diets) for the duration of their legislative periods (indirect popular election). They need not be members of the respective diet but must be eligible for it. The election has to be in accordance with the principles of proportional representation and must be based on the results of the latest election to the provincial diet. As an exception to this principle, at least one seat must fall to the party which has achieved the second highest number of popular votes in the election to the provincial diet.

In exercising their mandate the members of the *Bundesrat* are free from outside influences. Like the members of the *Nationalrat*, they hold what is called a "free mandate". They cannot be recalled by their provincial diet before the end of that diet's legislative period, which is according to the province they represent five to six years. For the members of the *Bundesrat* the respective provincial parliamentary immunity regulations are in force. Members of the *Bundesrat* earn half the salary of members of the *Nationalrat*.

Since 1945, the *Bundesrat* has been permanently in session, and its membership is partially renewed at different times on the basis of the returns of the elections to the provincial diets. Accordingly, the legislative activities of

the *Bundesrat* are not divided into sessions or legislative periods as it is in the Austrian *Nationalrat*. That is why there were six hundred and seventy nine plenary meetings of the *Bundesrat* until mid 2001.

The number of members to which the individual provinces are entitled is determined by the Federal President after each census, which is normally taken every ten years — the last one just concluded at the end of May 2001. The province with the largest number of citizens has twelve seats, each of the other provinces as many members as corresponds to the ratio between the number of its citizens and that of the most populous province, the minimum of seats being three. The *Bundesrat* thus has no permanently fixed number of members.

TABLE 1

Composition of the *Bundesrat* since 1945

Break-up as to the seats allocated to the federal provinces

	19.12.1945 15.11.1952	16.11.1952 06.07.1962	07.07.1962 07.02.1972	08.02.1962 09.03.1982	10.03.1982 08.03.1983	09.03.1982 19.03.1983	as on 20.03.1993
Vienna	12	12	12	12	12	12	11
Lower Austria	10	9	10	11	12	12	12
Styria	7	7	8	9	10	10	10
Upper Austria	6	7	8	9	11	10	11
Tyrol	3	3	3	4	5	5	5
Carinthia	3	3	4	4	5	4	5
Salzburg	3	3	3	3	4	4	4
Burgenland	3	3	3	3	3	3	3
Vorarlberg	3	3	3	3	3	3	3
TOTAL:	50	50	54	58	65	63	64

The diets also elect a substitute member for each member delegated by them to the *Bundesrat*. This substitute becomes the member's *ex lege* successor upon the member's seat becoming vacant, by his resignation, death or for any other reason.

Currently, there are sixty four members in the *Bundesrat* on the basis of the census 1991. Twenty-eight seats are held by the conservative Austrian People's Party, the Austrian Social Democratic Party has twenty-three and the Austrian Freedom Party has twelve seats. For the first time in history, the Greens have won one seat in the *Bundesrat* according to the results of the Viennese provincial election of March 2001.

TABLE 2

Composition of the *Bundesrat* since 1945

Break-up on party-lines

	People's Party	Social Democratic Party	Freedom Party	Links-block	Greens	Total
Dec. 1945-Dec. 1949	27	23	-	-	-	50
Dec. 1949-April 1953	25	20	4WdU	1	-	50
April 1953-Oct. 1954	25	21	3 WdU	1	-	50
Oct. 1954-Dec. 1954	25	22	2 WdU	1	-	50
Dec. 1954-Nov. 1955	25	23	2 WdU	-	-	50
Nov. 1955-March 1957	25	24	1WdU	-	-	50
March 1957-July 1962	26	24	-	-	-	50
July 1962-May 1964	29	25	-	-	-	54
May 1964-Nov. 1967	28	26	-	-	-	54
Nov. 1967-Nov. 1969	27	27	-	-	-	54
Nov. 1969-March1970	26	28	-	-	-	54
March 1970-Feb. 1972	25	29	-	-	-	54
Feb. 1972-Nov. 1973	28	30	-	-	-	58
Nov. 1973-March 1982	29	29	-	-	-	58
March 1982-March 1983	33	32	-	-	-	65
March 1983-Nov. 1983	32	31	-	-	-	63
Nov. 1983-Dec. 1987	33	30	-	-	-	63
Dec. 1987-Nov. 1988	32	30	1	-	-	63
Nov. 1988-April 1989	31	30	2	-	-	63
April 1989-May 1989	30	29	4	-	-	63
May 1989-Oct. 1991	30	28	5	-	-	63
Oct. 1991-Dec. 1991	28	27	8	-	-	63
Dec. 1991-March 1993	27	26	10	-	-	63
March 1993-April 1994	27	27	10	-	-	64
April 1994-Oct. 1994	27	26	11	-	-	64
Oct. 1994-Jan. 1996	27	25	12	-	-	64
Jan. 1996-Nov. 1996	26	25	13	-	-	64
Nov. 1996-Nov. 1997	26	24	14	-	-	64
Nov. 1997-April 1998	27	23	14	-	-	64
April 1998-Nov. 2000	27	22	15	-	-	64
Nov. 2000-April 2001	28	22	14	-	-	64
Since April 2001	28	23	12	-	1	64

(A change of party affiliation during the legislative period of a provincial diet is not taken into consideration.)

WdU: Wahlverband der Unabhangigigen (Electoral Association of Independents).

Chairmanship in the *Bundesrat* changes every six months in the alphabetical order of the names of the federal provinces. In each case, the Council is chaired by the delegate placed first on the list of members representing the province. The respective delegate is a representative of the political party winning the largest share of the popular vote at the last provincial election. The person chairing the deliberations has the title of President of the *Bundesrat*. The Austrian *Bundesrat* was worldwide the first parliamentary chamber to be presided over by a woman President. In 1927, Olga Rudel-Zeynek (Christian Social Party) took over for six months. Every six months, the Council also elects from among its members two Vice-Presidents, at least two secretaries and two whips, who, together with the President himself, form the Presidium of the *Bundesrat*.

Members of the *Bundesrat* who belong to the same political party may join forces to form a parliamentary group, the minimum number required for recognition being five members. Members not belonging to the same political party may form a parliamentary group only with the approval of the *Bundesrat*. According to their party affiliation members of the *Bundesrat* are members of the respective parliamentary group organised for the members of the *Nationalrat* and the *Bundesrat* jointly. Due to this orientation along party lines the members of the *Bundesrat* are strongly considered as representatives of their political party and only to a limited extent of their home-province.

The President and Vice-Presidents of the *Bundesrat* as well as the chairmen of the parliamentary groups form the Conference of Presidents of the *Bundesrat*, which is an advisory body to the President. Among other duties the President convenes the sittings of the *Bundesrat* after consulting with the Conference of Presidents. On demand of a qualified minority of the members of the *Bundesrat* or on demand of the Federal Government, however, the President is obliged to convene a sitting.

Historical background

As early as 1848, a chamber representing the provinces was included in the constitutional draft of Kremsier. However, only after the World War I this goal was put into reality. The Austrian Deputies of the Reichsrat* constituencies met in Vienna on 21 October 1918, as the *Provisorische Nationalversammlung für Deutschösterreich*. However, for the purpose of drafting a Constitution, a Constituent National Assembly was to be elected by "Universal, equal, direct and secret ballot of all citizens without distinction of sex" according to the system of proportional representation in February 1919. The first year of its two-year term of office (which was ultimately reduced by four months) was dedicated to comprehensive legislative activities in a variety of fields, in particular on social matters. It was only subsequently that the assembly focused on its principal task as a constituent body, the drafting of a definitive Constitution, which by the nature of things had to be a Federal Constitution reflecting actual power constellations and honouring the historic importance of the Austrian provinces (*Länder*).

*Parliament of the Austrian part of the Austro-Hungarian Monarchy.

The Constitution of 1920 established the Austrian state as a parliamentary republic with a federal set-up, with unicameral diets (*Landtage*) as the legislative bodies in the provinces and a bicameral Parliament at federal level: The *Nationalrat*, which was to be elected by direct ballot, and the *Bundesrat*, whose members were elected by the provincial diets. The *Bundesrat* was to participate in federal legislation as the chamber representing the provinces but had merely a veto against most bills passed by the *Nationalrat*. However, the veto could be overridden by a second vote in the *Nationalrat*. The *Bundesrat* was not meant to constitute a real counterweight to the *Nationalrat*.

The *Bundesversammlung* (Federal Assembly), a body *sui generis* composed of the members of both the *Nationalrat* and the *Bundesrat*, was to elect the Federal President, who was to represent the Republic externally.

A basic modification of this Constitution was undertaken in 1929 when the second major Amendment to the Federal Constitutional Act was adopted. It greatly added to the powers of the Federal President, whose democratic standing was enhanced by direct popular election. Another provision contained in the 1929 Amendment to the Federal Constitutional Act, according to which the *Bundesrat* was to be converted into a body representing both the provinces and the corporations ("*Länder-und Standerät*"), actually never entered into effect, but clearly shows that the idea of a corporate state had its supporters already at that time.

On 4 March 1933, when the situation escalated, the major political "camps" ("*Lager*") — the Christian Socials and the Social Democrats — had been facing each other with increasing hostility since the early 1920s. When the three Presidents of the *Nationalrat* resigned following a controversial vote, a situation for which the Standing Orders of the *Nationalrat* made no provision, Chancellor Engelbert Dollfuss declared that the *Nationalrat* had incapacitated itself. Henceforth, he governed by decree on the basis of the "War Economy Empowering Act" (*Kriegswirtschaftliches Ermächtigungsgesetz*) of 1917. The "Constitution of 1934" gave rise to an authoritarian corporate system in which the parliamentary bodies of the "*Haus der Bundesgesetzgebung*", whose members were not elected but appointed, only played a subordinate role: the deliberative organs and the *Bundestag* as the decision-making organ were merely empowered to adopt in unchanged form, or to reject, bills transmitted to them by the government. In practice, however, all essential decisions were taken by the government itself.

On 12 March 1938, the country was occupied by German troops. For the next seven years, the Parliament Building on Ringstrasse served as *Gauhaus* of the Nazi administration of the *Reichsgau* Wien.

The Second Republic

As in 1918, when the First Republic was founded, the emergence of the Second Austrian Republic in April 1945 was due to the political parties. This time, however, these parties did not become active within the framework of a parliamentary body. The Socialist Party (SPO) and the People's party (OVP),

which continued the Social Democratic and Christian Social traditions, respectively, were joined by a third anti-fascist party, the Communist Party (KPO), while the Pan-German camp was discredited by the events of the National Socialist era and did not re-emerge politically until after 1949. On 27 April 1945, only a few days after the liberation of Vienna by Soviet troops, representatives of the three anti-fascist parties published a "Declaration of Independence" in which they proclaimed the restoration of the democratic Republic of Austria. After the government was recognised by all the provinces and all four Allied Powers, the road was clear for national elections, which were held on 25 November 1945. When the newly elected *Nationalrat* first met on 19 December 1945, the Federal Constitutional Act, as amended in 1929, again entered into force, with the important qualification that the provisions regarding the *Länder- und Ständerat* (Provincial and Corporation Council) were replaced with the constitutional provisions concerning the *Bundesrat* as of the time prior to 1929.

Even though the parliamentary system was thus re-instated and vested with national legislative powers, these powers could not be fully exercised since Austria was still under Allied occupation. It was not before the State Treaty of 15 May 1955 that the Republic regained its full sovereignty and full policy-making and legislative powers. The constitutional framework for the exercise of this power has remained essentially the same since then. In the last few years, the powers of the *Bundesrat* have been broadened: most importantly, changes in federal jurisdiction working to the disadvantage of the provinces have been subject to approval by the *Bundesrat* since 1984.

Austria as Member of the European Union

However, a fundamental change in Austria's constitutional order and policy-making was necessary due to Austria's joining of the European Union on 1 January 1995. As a supranational organisation, the European Community, in which the bulk of the legislative power of the European Union resides, claims an autonomous legislative power within its jurisdiction which takes precedence over national legislation. Major areas of economic, labour, social and environmental law, to mention only the most important aspects, are either regulated by Community legal instruments to be directly implemented by the member states, or the national legislatures are called upon to pass implementing legislation on the basis of directives issued by the Community.

Community policy-making, which is predominantly a prerogative of the Council, is not in the hands of Parliaments but of government representatives. If the individual state Parliaments wish to bring their influence to bear on the substance of legislation in areas subject to Community regulation, they have to check and influence the negotiating positions of their executive branches. Side by side with traditional methods of control and participation in the work of the executive branch, such as resolutions, which have no legally binding force, some Parliaments, such as those of Germany and Denmark, have special instruments at their disposal. In Austria, Parliament is also endowed with competences to participate in defining the Federal Government's negotiating position on projects of the European Union.

Stages of Legislation

The majority of the legislative proposals is submitted by the Federal Government to the *Nationalrat*. But all members of the *Nationalrat* or the *Bundesrat* are also entitled to submit "private members' bill". If three members of the *Bundesrat* submit a private members' bill, the *Bundesrat* has to debate and vote on this bill at first in its committees and in the plenary. Thereafter, this enactment will be transmitted to the *Nationalrat*. Furthermore, bills can also be submitted by one-third of the members of the *Bundesrat*. These legislative proposals are directly submitted to the President of the *Nationalrat* by the President of the *Bundesrat*. Finally, any legislative proposal made by at least 100.000 voters or by one-sixth of the registered voters in each of three provinces ("popular initiative") must be submitted to the *Nationalrat* by the Federal Electoral Authority. In any of these cases later on the enactment of the *Nationalrat* is transmitted to the *Bundesrat* without delay. The *Bundesrat* has eight weeks to decide how to react. Depending on the legislative matter there are different possibilities for the *Bundesrat* to decide. Basically, the *Bundesrat* has to come to a decision whether or not to raise a reasoned objection to the respective enactment.

Parliamentary procedure in the *Bundesrat* is similar to that in the *Nationalrat*. Firstly, the enactment transmitted by the *Nationalrat* is deliberated upon in a committee, whose meetings are not open to the public. The rapporteur then submits the committee's report to the floor of the House. On average, plenary meetings of the *Bundesrat* take place once a month, usually two weeks after the plenary of the *Nationalrat*. In addition to the members of the Federal Government, the Provincial Governors (*Landeshauptleute*) may attend the meetings and have the right to be heard on matters concerning the provinces. The *Bundesrat* has eight weeks to decide whether or not to raise a reasoned objection to an enactment. If in response to a *Bundesrat* veto the *Nationalrat* reiterates its decision in the presence of at least half of its members ("overriding the veto"), the original *Nationalrat* enactment stands. The *Bundesrat* has no right whatsoever to amend an enactment of the *Nationalrat*— basically, bills go to the *Bundesrat* for review. Anyway, in 1994, the *Bundesrat* raised an objection for the time being concerning energy taxation. During the First Republic, the *Bundesrat* objected thirty-eight times against enactments of the *Nationalrat*, whereas since 1945, the *Bundesrat* raised objections eighty-three times. (Only in the year 2000, the Austrian Parliament passed one hundred and forty-three federal laws.) The quorum for an enactment concerning federal laws is defined with one-third, and it must be passed by the consent of at least fifty per cent plus one.

The *Bundesrat* cannot raise an objection to the decisions of the *Nationalrat* concerning laws governing the Standing Orders or concerning the dissolution of the *Nationalrat*. Furthermore, Federal Finance Acts or preliminary budgetary provisions, dispositions concerning federal assets, laws governing the

acceptance or conversion of a liability on the part of the Federal Government, laws by which the Federal Government incurs or converts financial debts, or the approval of the Federal Accounts — such decisions of the *Nationalrat* are merely communicated to the *Bundesrat*.

On the other hand, the approval of the *Bundesrat* is required for constitutional acts or provisions designed to limit the legislative or executive powers of the provinces as well as for any amendment of the provisions of the Federal Constitutional Act that affect the *Bundesrat* itself. The quorum for an enactment to pass a constitutional federal law is defined with at least half the members of the *Bundesrat* and the approval of at least two-thirds of those present is needed. For these laws there is no time limit of eight weeks for consideration by the *Bundesrat*. There is only one enactment the *Bundesrat* can pass independently: The Standing Orders of the *Bundesrat*.

Voting in the *Bundesrat* is normally by show of hands or, alternatively, by the members standing up or remaining seated. As in the *Nationalrat*, members of the *Bundesrat* present in the chamber must not abstain from voting. Each member is free to demand, prior to the vote, that the President announces the number of members that have voted for or against the proposal in question. Furthermore, certain conditions permit nominal or secret votes to be taken.

Members not present when the vote is taken cannnot cast their votes at a later time. In case of a tie the motion (proposal) is lost. The President in the chair normally does not vote; in case he would not give rise to a tie, he may, however exercise his right to vote by oral declaration on condition. He is also free to participate in a secret ballot or in an election.

When the *Bundesrat* decides not to raise an objection, or does not raise a reasoned objection within eight weeks the enactment will be authenticated by the Federal President, countersigned by the Federal Chancellor and thereafter published in the Federal Law Gazette.

Parliamentary control

The *Nationalrat* and *Bundesrat* have the power to review the activities of the Federal Government by questioning members of the government about all subjects pertaining to the exercise of the executive power, and by calling for all relevant information.

The Federal Constitution provides for two forms of interpellation. The classic form of interpellation is the right to address written questions to the Federal Government or one of its members. Such questions must be seconded by the requisite number of Members of Parliament. Questions must be replied orally or in writing within two months; as a rule they are answered in written form. Should it prove impossible to provide the information desired, reasons must be given.

Secondly, it may be decided that a written question addressed to a member of the Federal Government will be given immediate treatment. Urgent consideration of a question must be called for before entry upon the agenda. The President may decide to have the question considered at the end of the sitting but not later than 4 p.m. The member of the Federal Government queried (or a state secretary attached to him to deputize for him in Parliament) is obliged to make an oral reply or take position on the subject matter after the reasons for the question have been given by an MP. Afterwards the subject matter is put to a debate. Finally, a discussion of the reply to a written question may be held under certain circumstances.

In principle, every sitting of the *Bundesrat* starts with a Question Time. The members of the *Bundesrat* may exercise their right or interpellation by addressing brief oral questions to the members of the Federal Government. These oral questions must be made known, and the Federal Minister to be queried notified on the fourth day before the sitting in which the question is scheduled to be called up for a reply. The questions are listed by the President in their proper order and called up for a reply during Question Time. Answers should be short and to the point. Following the reply to his question, the MP putting the question has the right to ask one supplementary question. Subsequently, other members of the *Bundesrat*, as the case may be — may ask supplementary questions; as a rule, this right is accorded to one member of each of the parliamentary groups other than the group of the member who has put the original question. All the supplementary questions asked must be germane to the issue addressed by the principal question.

As another measure the *Bundesrat* may also formulate wishes regarding the exercise of the executive powers. Motions for resolution submitted by members of the *Bundesrat* may be an independent item of business or may be filed in the course of a debate about another item of business as far as they are germane to the issue at hand. As implied by the term "wishes", these resolutions are merely an expression of the chamber's political will and there is no legal obligation for the executive branch to meet them.

Additionally, there are parliamentary fact-finding meetings, so-called parliamentary *enquetes*. These serve to provide the MPs with information but no decisions are taken. These enquiries take the form of requests for written statements, the hearing of experts and other witnesses in respect of matters subject to federal legislative jurisdiction. In the course of such meetings, participating MPs of the *Nationalrat* may also take the floor. This right to parliamentary fact-finding meetings should not be confused with investigating committees (right of enquiry), which are a privilege of the *Nationalrat* as is a veto of no-confidence against the Federal Government or one of its members.

Petitions addressed to the *Bundesrat*, on the other hand, will only be considered as items of business if they have been introduced by a member of the *Bundesrat*; they will then be referred to the competent committee.

A variety of federal laws require the Federal Government or its members to report to the *Nationalrat* about a particular aspect of activities of the federal executive branch at regular intervals or, in the case of matters of particular significance, once a year. Other reports are submitted to the *Nationalrat* or *Bundesrat* in response to a resolution. While the *Bundesrat* will deliberate on such reports by the Federal Government or its members in plenary, after due consideration in the competent committee, the *Nationalrat* normally leaves such matters to the competent committee for the final adoption.

The Share of the *Bundesrat* in the Federal Executive Power

Both the Federal Constitutional Act and other constitutional law provisions require the legislative organs to participate in the exercise of the executive power in specified fields. Therefore, the two chambers are in particular responsible for the approval of state treaties as well as agreements between the Federal Government and the provinces. Additionally, statements of the members of the Federal Government as well as reports by the Federal Government or one of its members are dealt with.

The *Nationalrat* proposes for the appointment of three members and two substitute members of the Constitutional Court, while the *Bundesrat* makes proposals for the appointment of three more members and one substitute member. One-third of the members of the *Bundesrat* may contest a federal law before the Constitutional Court.

The role of the *Bundesrat* in concluding state treaties is as follows: While the Constitution empowers the Federal President to conclude state treaties, all state treaties of a political nature, or state treaties that change or add to legislative acts or the Constitution, require the approval of the *Nationalrat*. The *Bundesrat* exercises the same rights as it has with regard to enactments of the *Nationalrat*. State treaties of a political nature or modifying or adding to legislative acts are also subject to approval of the *Bundesrat* if they relate to matters within the jurisdiction of the federal provinces.

The *Bundesrat* and Europe

The modus of parliamentary participation concerning EU matters was laid down in the so-called *EU-Begleit-Bundesverfassungsgesetz* 1994 (Federal Law Gazette No. 1013/1994). By way of this amendment, the Austrian Federal Constitution establishes a system, which allows for participation of the *Nationalrat* and the *Bundesrat* in EU affairs. Articles 23e and 23f of the Constitution confer the following main competences to both the *Nationalrat* and the *Bundesrat*:

- information rights, where the competent member of the Federal Government has to submit — without any delay — information about all projects within the framework of the European Union to the *Nationalrat* and the *Bundesrat*, and
- the possibility to present binding opinions to the Federal Minister. A binding opinion is legally and politically binding.

In the *Nationalrat* these rights are, in principle, to be exercised by the Main Committee. Similarly, the *Bundesrat* has rights to be informed and to participate in decisions, the exercise of which it may entrust to its EU Committee. EU Committee meetings are normally open to the public. The competent member of the Federal Government has without delay to inform the *Nationalrat* and *Bundesrat* on all projects of the European Union and invite them to take position on these projects.

The *Bundesrat* has the right to present binding opinions on issues falling not only into the first, but also the second pillar of EU law. Given that the EU proposals would lead to changes of the Austrian Constitution, where the *Bundesrat* would have to give its assent on the domestic level, departure from a position adopted by the *Bundesrat* on a project of the European Union is only legal for compelling reasons of foreign and integration policy.

Conclusion

Although the Austrian Constitution contributes an important share of the Austrian legislative process to the *Bundesrat*, the institutional position of the *Bundesrat* has always been rather weak both constitutionally and politically. The *Bundesrat* suffers from a rather weak tradition of representation of provincial interests at the federal level. The government as well as the *Nationalrat* tend to consider the *Bundesrat* of rather, minimal relevance in the legislative process. On the other hand, the provinces have found additional fora of coordination.

Despite these facts, the *Bundesrat* fulfils important functions in the Austrian political system. On the one hand, it helps to constitute Austria as a federal state. On the other hand, it is a rather good opportunity for politicians to train their abilities. Furthermore, the *Bundesrat* can operate as a strong opposition when using its possibilities to initiate laws and to veto against enactments of the *Nationalrat*. Summing up the developments, the *Bundesrat* has been transformed from an addendum to the legislative process, to an additional arena for inter-party duels.

LITERATURE

Dachs, Herbert. The Politics of Regional Subdivisions, in: Lauber, Volkmar (ed.). Contemporary Austrian Politics, Boulder, 1996, pp. 235-251.

Falkner, Gerda. How Pervasive are Euro-Politics? Effects of EU Membership on a New Member State, in: Journal of Common Market Studies, Vol. 38, No. 2/2000, pp. 223-250.

Labuda, Walter. Die Mitwirkung des Bundesrates in Angelegenheiten der Europäischen Union, in: Merten, Detlef (ed.). Der Bundesrat in Deutschland und Österreich, Berlin, 2001, pp. 151-160.

Morass, Michael. Österreich im Entscheidungsprozess der Europäischen Union, in: Tálos, Emmerich/Falkner, Gerda, (eds.). EU-Mitglied Österreich. Gegenwart und Perspektiven: Eine Zwischenbilanz, Vienna, 1996, pp. 32-49.

Müller, Wolfgang C. Political Institutions, in: Lauber, Volkmar (ed.). Contemporary Austrian Politics, Boulder, 1996, pp. 23-58.

National Demographic Institute. A Comparative Study of Second Chambers of Parliament in Selected Countries, Cape Town/Johannesburg/Washington D.C., 1996.

Parlamentsdirektion (ed.). Das österreichische Parlament. The Austrian Parliament, Vienna, 2000.

Pelinka. Anton. Austria. Out of the Shadow of the Past, Boulder, 1998.

Polaschek, Martin. Säule der Verfassung oder Nebenraum im Parlament? Österreichs zweite Kammer aus der Nähe betrachtet, in: Juridicum, No. 2/2001, pp. 60-63.

Rauchenberger, Josef (ed.). Stichwort Bundesländer-Bundesrat. Wahlen und Vertretungskörper der Länder von 1945-2000, Vienna, 2000.

Schambeck, Herbert. Föderalismus und Parlamentarismus in Österreich, in: Merten, Detlef (ed.). Der Bundesrat in Deutschland und Österreich, Berlin, 2001, pp. 15-32.

Schefbeck, Günther. Zur Entstehung des Bundesrates, in: Schambeck, Herbert (ed.). Bundesstaat und Bundesrat in Österreich, Vienna, 1997, pp. 299-345.

Urbantschitsch, Wolfgang. National parliaments in the European Union—the Austrian experience, Graz, 1998 (Schriftenreihe des Forschungsinstitutes für Europarecht der Karl-Franzens-Universität Graz).

3

The Council of Republic of the National Assembly of the Republic of Belarus

D. SHILO

The Republic of Belarus is one of the seventy countries in the world having a bicameral national Parliament. In compliance with the will of the Belarusian people expressed at a referendum in November 1996 and in accordance with the Constitution, the National Assembly, consisting of two chambers — the Council of Republic and House of Representatives, — is the supreme legislative organ of the Republic of Belarus.

The first stage, stretching over nearly five years, of the activity of the National Assembly of the Republic of Belarus proved the trend distinctive of the late twentieth century's state political system. A bicameral Parliament enables to adequately reflect the regional and national variety of contemporary societies in a political system and provides additional guarantees for securing stability and democratic legitimacy of state institutions.

A bicameral parliamentary system is in place not only in federations, like Russia, the USA, Germany, Australia, Brazil, India, Austria, Argentina, Mexico, etc. but also the Supreme Laws of about fifty unitary countries, including Japan, France, Italy, Spain, Poland, the Netherlands and Belarus, provide for a bicameral national Parliament.

The Council of Republic of the National Assembly of the Republic of Belarus commenced its activity on 13 January 1997. Fifty-six members of this territorial representative organ are elected at conferences of the Councils of each region and the capital city, and eight Senators are nominated by the President. This enables to consider the interests of the territories, without diverting attention of the heads of the executive from their principal duties.

The Council of Republic is independent within its competence set forth in the country's Constitution. Its major purpose is legislative activity carried out through passing new codes and laws, as well as through making amendments to current legislative acts.

In accordance with the Constitution of the Republic of Belarus, the Council of Republic approves or rejects bills passed in the House of Representatives following two readings, as well as draft laws on amendments of the Constitution and interpretation of the Constitution.

The Council of Republic takes part in making a series of decisions on the most important personnel issues at the country's level. Members of the upper chamber give their assent to the nomination by the President of the Chairman of the Constitutional Court, Chairman and judges of the Supreme Court, Chairman and judges of the High Economic Court, Chairman of the Central Commission for Elections and Republican Referenda, General Prosecutor, Chairman and members of the National Bank's Board; they elect six judges of the Constitutional Court and six members of the Central Commission for Elections and Republican Referenda.

Representing the territories, the Council of Republic is entitled to repeal decisions of local Councils of Deputies which are at variance with legislation, and to dissolve a local Council of Deputies in the event of its repeated or gross violation of law and in other events as set forth by law.

Besides its legislative powers, the Council of Republic has a number of other functions. In particular, the upper chamber of Belarus Parliament considers edicts of the President on declaring emergency, martial law, universal or partial conscription and takes a relevant decision within three days after such edicts have been referred to it.

The Council of Republic, a constantly operating organ, works in sessions. Annually, two sessions shall be held in spring and autumn, commencing on April 2 and October 2 accordingly, with the spring session lasting for up to ninety days and the autumn one up to eighty days. Plenary sittings of the Council of Republic are open. However, the Council of Republic may resolve by a majority of the total number of its members to hold a closed sitting in the event the country's interests demand this.

The Council of Republic harmoniously and effectively interacts with other instrumentalities of state power. The President of the Republic of Belarus makes an Annual Address to the National Assembly. Any member of the Council of Republic is entitled to pose a question to the Prime Minister, Members of Government, heads of state organs created or elected by Parliament. Such a question is placed on the chamber's agenda and a reply thereto shall be given within twenty days of the session.

Members of Government regularly submit their reports to the parliamentarians at joint sittings of both chambers of the National Assembly of the Republic of Belarus. Such a practice showed that direct contacts, a "question-reply" regime of work and involvement of the heads of ministries, state committees and organisations in plenary sittings with regard to important bills encourage the elaboration of a single concept of legislative activity in the country.

An important distinction of the Council of Republic of the National Assembly of the Republic of Belarus is the election thereto of the heads of regional executive organs: the chairmen of regions' and capital city's executive committees, chiefs of a series of large industrial and agricultural companies and persons enjoying authority in their fields of activity. This creates conditions

in which legislative provisions are correlated with concrete practical implementation thereof and enhances Senators' responsibility for each concrete decision before the people of their regions.

The Council of Republic carries out an active interparliamentary activity aimed at strengthening the positions of the Republic of Belarus in the international arena. Over fifty groups of deputies have been set up and actively co-operate with the Parliaments of foreign countries. Priority is given to relations with the countries of the Commonwealth of Independent States, Russian Federation — which is the partner within the Union State of Belarus and Russia — and Inter-Parliamentary Union, the largest international parliamentary organisation. In co-operation with the House of Representatives, the Council of Republic takes part in delegations of the National Assembly to work in the organs of the Inter-Parliamentary Assembly of the countries-members of the Commonwealth of Independent States; Inter-Parliamentary Committee of the Republic of Belarus, Republic of Kazakhstan, Republic of Kyrgyzstan, the Russian Federation and Republic of Tajikistan; Parliamentary Assembly of the Union State of Belarus and Russia; and to co-operate with the Parliamentary Assembly of the Council of Europe, Inter-Parliamentary Union, Parliamentary Assembly of the Organisation for Security and Co-operation in Europe, European Parliament, North-Atlantic Assembly, Parliamentary Organisation of the Central-European Initiative and European Orthodox Inter-Parliamentary Assembly.

At present, the Council of Republic of the second convocation is in place. Its first session took place on 19 December 2000.

On that day, Mr. Alexander Pavlovich Voitovich, a Doctor of Physics and Mathematics and Chairman of the Academy of Sciences of the Republic of Belarus, was elected as the Chairman of the Council of Republic of the National Assembly of the Republic of Belarus. Mr. Mikhail Alexandrovich Avlasevich, the Rector of the Mogilov University, was elected his deputy.

The Council of Republic consists of five permanent commissions: Commission for Legislation and Statehood; Economy, Budget and Finances; Social Protection; Regional Policy; and International Affairs and National Security. The following heads of permanent commissions of the Council of Republic have been elected: Ms. Andreichik Natalia Iosifovna (Commission for Legislation and Statehood), Ms. Bykova Tatiana Petrovna (Commission for Economy, Budget and Finances), Mr. Novikov Anatoly Vladimirovich (Commission for Social Protection), Mr. Shipuk Pavel Vladimirovich (Commission for Regional Policy) and Mr. Cherginets Nikolai Ivanovich (Commission for International Affairs and National Security).

In order to formulate a position of the Council of Republic on the most crucial issues related to the functioning of the country and society and to enhance the role of the upper chamber of Belarus Parliament, as a political institution, in the strengthening of national accord and democratic development, the Research-Expertise Council of the Chairman of the Council of Republic was established.

It encompasses the most qualified and prominent scientists, lawyers, economists, political analysts, representatives of state organs and other specialists having high theoretical knowledge and relevant experience.

To organise the work of the Council of Republic and to preliminarily review and prepare questions falling into the competence of Parliament, the Presidium of the Council of Republic of the National Assembly of the Republic of Belarus was established. It encompasses the Chairsman of the Council of Republic, his Deputy and Chairmen of the permanent commissions of the upper chamber of national Parliament.

Information on the Council of Republic of the National Assembly of the Republic of Belarus is available at Internet address:

http://www.president.gov.by/rus/nation_assembly/council_republic/opera.htm

4

Bicameralism in Belgium—The Role of the Senate

W. HENRARD

Introduction

On 5 May 1993, the federal Parliament of Belgium went through the most significant reform in its history. Both its composition and its ways of business were thoroughly amended.

The 1993 reform constitutes the culmination of a dual process.

Federalization of the State

For the past thirty years, the unitary Belgian State has slowly become a federal State. Federated entities were created and gradually acquired ever broader autonomy. While the majority of federal States are built by association, summarized by the Latin maxim *e diversitate unitas* ("out of diversity, unity"), federal Belgium was born of dissociation. Federalism in Belgium is centrifugal.

The State's federalization process had two effects on the federal Parliament's composition.

On the one hand, in 1993, when the Parliaments of the federated entities were to be directly elected, there was a fear that the number of political officeholders would increase considerably. Therefore, the number of federal parliamentarians had to be reduced significantly.

On the other hand as is customary in federal States, it was necessary to ensure that the federated entities were represented in the federal Parliament. The Senate therefore became, at least in part, a chamber that serves as a meeting place for those entities (called 'Communities'). In this respect, it was important for the Communities to be represented as such in the federal Parliament and to participate in the process of making federal norms.

Rationalization of parliamentary proceedings

Together with the federalization process of the Belgian State, another factor contributed to the reform of the federal Parliament in 1993.

The Belgian parliamentary system had evolved, as in other countries, into an undifferentiated and egalitarian bicameral system. The two chambers

had a practically identical profile, both in terms of composition and in terms of responsibilities, each in turn, performing exactly the same work. One cannot deny that the way parliamentary work was organized was the source of slowness and of sterile duplication. It was necessary to turn the federal Parliament into a modern and effective institution.

The reform of 5 May 1993, has endeavoured to achieve that objective by rationalizing parliamentary work. Political control of the Government and of public finances was consigned solely to the House of Representatives. The Senate became a "chamber given over to legislative thought and reflection", the guarantor of the quality of legislation. The two chambers have a joint responsibility for everything regarding the foundations of the Belgian State.

Composition of the legislative assemblies

The federal chambers are elected for four years. To be a candidate for the federal elections, one has to have the Belgian nationality, as well as full enjoyment of civil and political rights. Candidates must be twenty-one years old and have their residence in Belgium. These conditions are exhaustive: except for an amendment to the Constitution, no other condition may be imposed in any way.

In Belgium, voting is compulsory.

The House of Representatives is composed of one hundred and fifty representatives elected directly by the electorate in twenty constituencies. The number of seats assigned to each constituency is based on its population.

The Senate's composition is heterogeneous. It can appear complex.

Forty Senators, out of seventy-one, are directly elected by the people, divided into two electoral colleges: the French college elects fifteen Senators and the Flemish college elects twenty-five Senators.

Twenty-one Senators are designated by the Parliaments of the three Communities from among their members: ten by the Parliament of the Flemish Community, ten by the Parliament of the French Community and one by the Parliament of the German-speaking Community. Since they remain members of the Parliament which designated them, these Senators perform a dual function, sitting both at the federal level and at the level of the federated entities.

Finally, the Senate counts amongst its members, ten co-opted Senators, *i.e.,* Senators designated by the two above mentioned categories. Six of them are designated by all of the other Dutch-speaking Senators, and four by the French-speaking Senators.

To be complete, one should mention that the children of the King are *ex officio* Senators at eighteen years of age. In practice, however, they refrain from taking part in any political activity.

Incompatibilities

Federal parliamentarians may not be members of the federal Government or of the Government of a federated entity. They cannot sit in the Parliament of a federated entity (except for the twenty-one Community Senators) or in the European Parliament. There is no incompatibility between membership of Parliament and a local mandate. Limits exist however on the cumulated salary when combining different mandates.

Linguistic groups

The federal institutions have been set up in such a way that they guarantee the equilibrium between the two main Communities living in Belgium: the Dutch-speaking majority and the French-speaking minority. As regards the federal Parliament, each legislative assembly is divided into two linguistic groups: one composed by the Dutch-speaking members and another formed by the French-speaking members of the assembly. This division into linguistic groups is important. In addition to a two-thirds majority overall, the main laws defining the structure of the State require a majority of votes within each linguistic group to be adopted. This means that such laws cannot be passed against the will of one of the two major Communities.

The essentially dualist nature of Belgian federalism also transpires by linguistic parity within the Council of Ministers, in the higher courts as well as in the senior administration. This dual character clearly constitutes a key element in the Belgian institutional structure.

Political groups

A second principle governs the composition of the federal legislative assemblies. Representatives and Senators are elected using the proportional representation system.

This rule explains the rather high number of parties represented in the federal Parliament. This tendency is further amplified by the fact that there are no longer national parties in Belgium. Each political family is represented by two different parties in the North and in the South of the country.

Currently, there are ten political groups in the Senate.

The principle of proportional representation determines the composition of all parliamentary bodies and delegations. Membership of standing committees is divided amongst the political parties using this principle. This means that a political group must have a minimum number of members to sit on parliamentary committees with the right to vote. Members of small groups are however not excluded altogether from committee activities. They can participate in discussions and even submit amendments. But they do not enjoy the right to vote.

Political groups are granted material advantages: all groups receive subsidies, paid for by the House of Representatives' or Senate's budget, to ensure the operation of their secretariat and to hire assistants. The number of assistants a group gets is proportional to its size.

Division of functions between the legislative assemblies

One of the objectives of the reform of the federal parliamentary system of 5 May 1993 was to rationalize parliamentary work.

Traditionally, Parliament exercises three main functions. Of those, the budget and political control functions in Belgium are the *quasi*-exclusive domain of the House of Representatives. As far as the legislative function is concerned, the Constitution has arranged a sharing of responsibilities between the two federal chambers.

Political control

In Belgium, political supervision of governmental action devolves mainly upon the House of Representatives. This chamber alone may question the political responsibility of the federal Government and vote on a motion of confidence or of no-confidence.

Interpellations take place only in the House. This is also the case when a new Government is established: the House then debates on the main themes of the governmental accord, ending with a vote of confidence.

The Senate has preserved certain instruments to monitor the Government, as accessories of its legislative function, such as oral and written questions, requests for explanation and resolutions. However, the Senate cannot sanction, politically, the implementation of its parliamentary control.

The Senate, like the House of Representatives, has a right of inquiry. In recent parliamentary history, the House and the Senate had recourse to parliamentary inquiries much more frequently. This explains in large part the renewed interest by the media and the public in the federal Parliament.

Budget

The second traditional parliamentary function is the budgetary function. Historically speaking, Parliament's approval of the budget constitutes the prime form of control of the Government's action. The budgetary function is exercised by the House of Representatives alone. This responsibility includes not only approving the budget but also monitoring its implementation. The role of the Senate is limited to approving its own operating budget.

Law-making

The third parliamentary function is the legislative function. The procedure was rationalized in 1993.

One now distinguishes three types of laws.

For all laws concerning the State's structure and its institutions, the House of Representatives and the Senate are equally responsible. This means that in these matters, bills are passed only if both chambers agree on an identical text. The same holds, of course, for the Constitution. It is of interest to note that the Constitution has remained an exclusively federal domain.

For all other areas, the Constitution chose for a limited bicameral system. Intervention by the Senate is optional and the House of Representatives has the last word. Governmental or public bills are tabled in the House of Representatives.

Once that chamber passes a bill, it transmits it to the Senate. If fifteen Senators so request, the Senate in turn examines the bill. In parliamentary jargon, the Senate is said to "call up" the bill. It can amend the bill within sixty days and send it back to the House of Representatives who then reviews it again. The number of shuttles between the two chambers is limited and the House of Representatives is, in any event, entitled to the last word.

For laws governing civil and criminal liability of federal ministers, legislative power is held by the House of Representatives and the King, to the exclusion of the Senate. This solution is readily understood. It is the House of Representatives that lifts federal ministers' immunity. It is therefore also that chamber which is qualified to determine the rules of civil and criminal liability for federal ministers.

The Constitution lists other cases of "monocameral" laws: approval of State budgets and accounts, and establishing conscription quotas for the army, as well as granting naturalization. In reality, these acts performed by the House of Representatives have no normative content.

International relations

As far as the international relations are concerned, Members of Parliament can try to influence the Government's foreign policy or can try to set off an initiative using the ordinary means of political control, such as parliamentary questions and interpellations, motions or resolutions.

Treaties are submitted for ratification to both chambers. Ratification bills must first be tabled in the Senate and must be adopted following the full bicameral procedure.

The Constitution wanted to strengthen democratic control on European matters by obliging the federal Government to inform the legislative chambers of any negotiation with a view to revising European Union treaties, as well as of any draft regulation or directive. This obligation does not infringe on the authority of the executive power to conduct negotiations but simply enables the chambers to hold prior debate and possibly to influence the position of the Belgian delegation. Such drafts are examined in a committee composed of Senators and representatives, as well as Belgian members of the European Parliament.

Conflicts of interests

The Senate constitutes the "chamber where the Communities meet". The Community Parliaments are represented in the Senate. Through this representation, they participate in the process of developing federal legislation. In addition, the Senate plays an important role in the settlement of 'conflicts of interests' between the different federal and federated assemblies. When an assembly considers that its interests could be seriously damaged by a legislative bill submitted in another assembly, and the conflict cannot be settled by mutual arrangement, it appeals to the Senate. The Senate then plays an advisory role. The final decision, taken by consensus, belongs to the 'Concertation Committee', in which representatives of the different federal and federated Governments sit.

5

The House of Representatives of Burkina Faso

HONORÉ K.M. SOMDA

In Burkina Faso, democracy has been on a long track of apprenticeship, and it purports to carry the dreams and deep aspirations of the men and women who are building it. In such a context, the House of Representatives cannot have exactly the same content, nor the same missions as in the case of the old democracies. Neither can it indulge in the facilities of slavishly mimicking those democrats, which "by the way", were conceived in the image of societies and realities other than those found in Burkina.

At the advent of Fourth Republic in 1991, the members of the constituent assembly had clearly perceived such a state of the situation and consequently conceived a legislative power closer to the national realities. Of course, this was not one of the numerous and unfortunate singularities at which, for over thirty years now, Africans have become pastmasters, but rather the product of an attitude dictated by practice and realism.

Burkinabe people are quite familiar with the parliamentarian system. Indeed, since 1960 when Burkina became independent, they have been regularly called to the polls, either to vote their members of Parliament (1965, 1970) or to elect the Prime Magistrate (1978). But these experiences turned sharply, thus giving the impression that, as defined by Montesquieu or Jean-Jacques Rousseau, the concept and mission of parliamentarian representation were incompatible with the realities of the country.

The purpose of having a second Parliament Chamber in Burkina Faso was to fill up this gap. Thus, the VI Republic decided for a bicameral system, which though not egalitarian presents the advantage of involving the grassroots to the management of the city. Installed in 1995, the House of Representatives consisted of one hundred and seventy-eight members, originating from all the social layers of Burkina Faso. The first experience with this bicameral legislative system ended with the first term of the House of Representatives on 28 December 1998.

Presentation of the House of Representatives

Parliament of Burkina Faso is bicameral — the National Assembly and the House of Representatives. The House has an advisory capacity, and it is composed of representatives of the civil society elected by indirect suffrage for three years.

It is currently in its second term since its installation on 28 December 1995. It is composed of one hundred and sixty-two titular members, of which twenty-seven are women.

Following the equal and secret universal suffrage elections of 11 May 1997, one hundred and eleven members of Parliament, of which ten were women, entered the National Assembly. The purpose was to change all the members of the National Assembly who were at the end of their term. The preceding elections were held on 24 May 1992.

The House of Representatives has an advisory capacity. Its opinions are always justified.

The House of Representatives rightfully holds two sessions a year for a maximum of forty-five days each time. The first session begins on the first Wednesday of March, and the second on the first Wednesday of October.

The House may convene extraordinary meetings on a specific agenda, upon the summons of its President or upon the request of the Head of State, the Prime Minister, the President of the National Assembly, or of two-thirds of its own members.

The Board of the House of Representatives

The President is elected for the duration of the term of office, which is three years.

The other members of the Board are elected for one year, with the possibility of being re-elected.

The current Board is made up of the following personalities:

- President of the House of Representatives:
  Mr. Moussa SANOGO;
- Vice President:
  Pastor Freeman B. KOMPAORE;
- Chairman:
  Mr. Justin KOUTABA;
- President of the Committee of Finance and Budget:
  Mr. John Gabriel KABORE;
- President of the Committee of Economic Affairs:
  Mr. Harouna MAIGA;
- President of the Committee of Rural Development and the Environment:
  Mr. Abdoul Karim BOKOUM;
- President of the Committee of General and Institutional Affairs:
  Mr. Jean KOULIDIATI;

- President of the Committee of Infrastructures and Communication: Mrs. Franceline NARE/OUBDA;
- President of the Committee of Foreign Affairs and Defence: Mr. Seidou COMPAORE;
- President of the Committee of Employment, and Social and Cultural Affairs: Mrs. Jacqueline HIEN/MOMO.

Representatives of Socio-professional Structures and Organizations in the House of Representatives

- Two representatives appointed within each Provincial Council;
- Two representatives of the Catholic Community;
- Two representatives of the Protestant Community;
- One representative of the Tidjania Community;
- One representative of the Sunnite Community;
- Eight representatives of the Customary and Traditional Communities;
- One representative of the association of parents of primary school children;
- One representative of the association of parents of secondary school children;
- Two representatives of youth associations;
- Two representatives of the personnel of the National Education System (for primary and secondary schools);
- Two representatives of the personnel of the university and the national scientific research centre;
- One representative of consumers associations;
- Three representatives of informal sector;
- One representative of the association of retired people;
- Two representatives of human rights associations;
- Eight representatives of women's associations;
- One representative of traders;
- Two representatives of professional employer's associations;
- One representative of transporters;
- Five representatives of rural workers (agriculture, breeding and equivalent);
- Three representatives of the military;

- Three representatives of the paramilitary;
- Two representatives of the associations of artists;
- Two representatives of the associations of sportsmen and women;
- One representative of environmental protection and defence associations;
- One representative of the associations of the disabled;
- Three representatives of the Burkinabe living abroad;
- Four representatives appointed by the Head of State.

General Committees

There are seven General Committees, namely:

(1) The Committee of Finance and Budget;

(2) The Committee of Economic Affairs;

(3) The Committee of Rural Development and the Environment;

(4) The Committee of Infrastructures and Communication;

(5) The Committee of Foreign Affairs and Defence;

(6) The Committee of General and Institutional Affairs;

(7) The Committee of Employment, and Social and Cultural Affairs.

The Administration of the Parliament

A member of administrative entities helps the House of Representatives to achieve its missions.

1. The Cabinet

A Principal Under Secretary is in charge of coordinating all the services in the Cabinet of the House of Representatives.

2. The General Secretariat

Mr. Honoré SOMDA is responsible for coordinating all the services in the Secretariat of the House of Representatives.

In terms of international parliamentarian cooperation, efforts are being undertaken to create groups of friendship between the House of Representatives and several countries in Africa, Europe, America and Asia.

3. Services of the Fiscal Department

The Department of the Administrative and Financial Affairs fills in the role of questor for the House of Representatives.

4. The Accounts Department

This Department is under the management of an Accountant who also acts as treasurer of the House.

It is responsible for managing the funds allocated by the Ministry of Finance to the House of Representatives. It pays the personnel and equipment expenses of the House.

6

The Cambodian Senate

OUM SARITH

The Cambodian Senate was set up by a Constitutional Review adopted on 4 March 1999.*

The Senate acts as moderator in facilitating relations between the legislature and the executive and as an intermediary between the people and the Government. It also has a duty to guarantee that laws are in the interest of the nation.

Composition

The Senate has sixty-one members appointed or elected by their parties out of whom two are appointed by the King and two are from the majority party appointed by the National Assembly.

For the first legislature, all sixty-one members of the Senate were appointed by the King (25 March 1999): two at his discretion and the other fifty-nine proposed by the President of the Senate (himself appointed by the King) and the President of the National Assembly from members of parties with seats in the Assembly.

Term of office is five years for the current first legislature and six years for the second legislature in 2004.

Electoral System

Minimum age for election or appointment to the Senate is forty years. The electoral law has not yet been adopted.

Organisation of Sessions

A. Ordinary Sessions

The Senate holds two ordinary sessions per year, each lasting at least for three months.

*For details, *see* annexure.

B. Extraordinary Sessions

Extraordinary sessions may take place if convened by the Standing Committee (made up of the President, the two Vice-Presidents and Commission Presidents), or on the proposal of the President, the Prime Minister, or at least one-third of Senators.

Relations with the other chamber and the executive

A. Legislative Power

In Cambodia bicameral system exists where the Houses have unequal powers limited to providing the Senate with opinions.

(1) *The right to propose legislation*

This right lies with Senators, Deputies and the Prime Minister. Senators' proposals are sent back to the National Assembly by the Senate Standing Committee after they have been examined by the competent specialist commission of the Senate.

(2) *Right of amendment*

None (available only to Deputies).

(3) *Legislative procedure*

The Senate gives its opinions on draft laws and on amendments previously adopted by the National Assembly within one month (five days in urgent cases). Laws adopted by the National Assembly are promulgated if no opinion is forthcoming within that period of time.

If the Senate asks for changes, these must be examined by the Assembly, which in turn may reject them or accept them in part.

If the Senate rejects draft laws or amendments, the Assembly may not give them a second reading for one month (ten days for budgetary issues, four days for urgent matters) and must adopt them by an absolute majority.

Draft laws and amendments submitted to the Senate for examination are passed on to specialist commissions, whose opinions, the President notifies to the Senate at the end of the examination.

In the event of disagreement at the end of the procedure, the National Assembly has the final say.

The Constitutional Court may have legal matters raised with it.

B. Supervisory Powers

In the main, this is the prerogative of the National Assembly.

C. Decision-making Powers

The National Assembly and the Senate may meet in Congress to resolve the main problems facing the country.

The Presidents of these two Chambers are Co-Presidents of this Congress.

Special measures

A. Competences of the President of the Senate

(1) The President of the Senate deputises for the Head of State in the event of the King's absence, incapacity or death.

(2) He is also a member of the Council of the Throne, a body with responsibility for choosing a new King if the present one were to die.

(3) The agreement of the President of the Senate as well as those of the Prime Minister and the President of the National Assembly is required for the King to proclaim a state of emergency.

B. Declaration of War

To declare war, the King must have the agreement of the Senate and the approval of the National Assembly.

C. Legal Proceedings on the Grounds of Unconstitutionality

The President of the Senate or a quarter of the Senators, together with the King, the Prime Minister, the President of the National Assembly and one-tenth of Deputies, may refer laws to the Constitutional Council before they are promulgated.

They may act on matters submitted to them by ordinary people.

Annexure

KRAM dated 8 March 1999

We,

Preah Bat Samdech Norodom Sihanouk,

King of the Kingdom of Cambodia

- Having seen the 1993 Constitution of the Kingdom of Cambodia;
- Having approved the plenary session of the extraordinary session of the National Assembly from the 2nd, 3rd and 4th of March 1999;
- Pursuant to a proposal of the President of the National Assembly dated March 6, 1999.

HEREBY ORDER

Article 1

The promulgation of the amendments to Articles 11, 12, 13, 18, 22, 24, 26, 28, 30, 34, 51, 90, 91, 93 and other Articles from Chapter 8 through Chapter 14 of the Constitution of the Kingdom of Cambodia which was promulgated by the National Assembly on the 4th of March 1999.

Article 2

This Kram shall enter into force from the date of signature herein.

NORODOM Sihanouk

Made on 8th March 1999

Constitutional Law

Regarding

The Amendments of Articles 11, 12, 13, 18, 22, 24, 26, 28, 30, 34, 51, 90, 91, 93 and Articles of Chapter 8 through Chapter 14 of the Constitution

Only one Article

Articles 11, 12, 13, 18, 22, 24, 26, 28, 30, 34, 51, 90, 91, 93 and Articles in Chapter 8 through Chapter 14 of the Constitution were amended as follows:

Article 11 (new)

When the King cannot perform his normal duties as Head of State due to his serious illness certified by doctors chosen by the President of the Senate, President of the National Assembly and the Prime Minister, the President of the Senate shall perform the duties of the Head of State in the capacity of Regent.

If the President of the Senate is unable to perform the duties as Head of State in the capacity of Regent while the King is seriously ill as stipulated above, the President of the National Assembly shall perform the duties as Head of State.

The position of Head of State in the capacity of Regent of the King may be replaced by a dignitary in the circumstances provided for in the above paragraph pursuant to the following hierarchical order :

A. The first Vice-President of the Senate

B. The first Vice-President of the National Assembly

C. The second Vice-President of the Senate

D. The second Vice-President of the National Assembly

Article 12 (new)

In the case of death of the King, the President of the Senate shall take over the responsibilities as Acting Head of State in the capacity of Regent of the Kingdom of Cambodia.

If the President of the Senate is unable to perform the duties as Acting Head of State as a Regent, the paragraphs 2 and 3 of new Article 11-new shall be applied.

Article 13 (new)

Within a period of not more than seven days, the Council of the Royal Throne shall choose the new King of the Kingdom of Cambodia. The composition of the Council of the Royal Throne is as the following :

- The President of the Senate;
- The President of the National Assembly;
- The Prime Minister;
- Samdech the Chiefs of the Orders of the Mohanikay and Thamayut;
- The first and second Vice-Presidents of the Senate; and
- The first and second Vice-Presidents of the National Assembly.

The organization and functioning of the Council of the Royal Throne shall be determined by the law.

Article 18 (new)

The King shall communicate with the National Assembly and the Senate through royal messages.

These royal messages shall not be subject to discussion by the Senate or the National Assembly.

Article 22 (new)

When the nation faces danger, the King shall make a proclamation to the people putting the country in a state of emergency after the approval of the Prime Minister, President of the National Assembly, and the President of the Senate.

Article 24 (new)

The King shall serve as the Chairman of the supreme council of national defense to be established by the law.

The King shall declare war after adoption by the National Assembly and the Senate.

Article 26 (new)

The King shall sign and ratify international treaties and conventions after a vote of approval by the National Assembly and the Senate.

Article 28 (new)

The King shall sign the law promulgating the Constitution, laws adopted by the National Assembly and laws completely reviewed by the Senate and shall sign the Kret (royal decree) presented by the Council of Ministers. When the King is seriously ill and hospitalized abroad, the King has the right to delegate the power of signing the above laws and Kret to the Acting Head of State through delegating writs.

Article 30 (new)

In the absence of the King, the President of the Senate shall assume the duties of Acting Head of State.

If the President of the Senate is unable to perform his duties as Acting Head of State replacing the King due to his absence, the responsibilities as Acting Head of State shall be exercised in conformity with paragraph one and two of new Article 11.

Article 34 (new)

Khmer citizens of either sex shall enjoy the right to vote and to stand as candidates in the election.

Khmer citizens of either sex who are at least eighteen (18) years of age have the right to vote.

Khmer citizens of either sex who are at least twenty five (25) years of age have the right to stand as candidates for the elections.

Khmer citizens of either sex who are at least forty (40) years of age have the right to stand as candidates for the election of the Senators.

Any provisions restricting the rights to vote and stand as candidates for the election shall be determined by law.

Article 51 (new)

The Kingdom of Cambodia adopts a policy of liberal democracy and pluralism.

The Cambodian citizens are the masters of their country.

All powers belong to the citizens. The citizens shall exercise these powers through the National Assembly, the Senate, the Government, and the Judiciary.

The legislative, executive, and judicial powers shall be separate.

Article 90 (new)

The National Assembly is an organ, which has legislative power and performs its duties as provided for in the Constitution and the laws in force.

The National Assembly shall approve the national budget, state planning, loans, financial contracts, and creation, modification, and annulment of taxes.

The National Assembly shall approve the administrative accounts.

The National Assembly shall adopt the law of general amnesty.

The National Assembly shall adopt or repeal treaties or international conventions.

The National Assembly shall adopt the law on the declaration of war.

The adoption of the above-mentioned clauses shall be decided by an absolute majority vote of the entire National Assembly membership.

The National Assembly shall pass the vote of confidence in the Royal Government with the two-third majority of its members.

Article 91 (new)

The members of the Senate, the members of the National Assembly, and the Prime Minister have the right to initiate legislation.

The Deputies shall have the right to propose any amendments to the laws, but the proposals shall be unacceptable if they aim at reducing public income or increasing the burden on the people.

Article 93

Any law approved by the National Assembly and finally reviewed by the Senate and signed by the King for its promulgation shall go into effect in Phnom Penh ten (10) days after the date of promulgation and throughout the country twenty (20) days after the date of promulgation.

However, the Laws that are stipulated as urgent shall take effect immediately throughout the country after the date of promulgation.

The laws promulgated by the King shall be published in the Government Gazette and disseminated throughout the country in accordance with the above schedule.

CHAPTER VIII : The Senate

Article 99 (new)

The Senate is a body that has a legislative power and performs its duties as determined by the Constitution and laws in force.

The number of the Senators shall not exceed half the number of the National Assembly members.

Some Senators shall be nominated and other shall be elected by a non-universal election.

The Senators may be re-nominated and re-elected.

The citizens who are eligible to be Senate candidates are Khmer citizens of either sex who are eligible voters, at least forty (40) years of age and were Cambodian nationals at birth.

Article 100 (new)

The King shall nominate two Senators.

Two Senators shall be elected by a majority vote of the National Assembly.

The other Senators shall be elected in a non-universal election.

Article 101 (new)

A separate law shall determine the organization and operating procedures concerning the nomination and election of Senators and the determination of electors, election organization, and electoral constituencies.

Article 102 (new)

The term for the Senate shall be six (6) years and such term shall expire upon the new Senate being sworn in.

When the election of Senators cannot be conducted due to war and special circumstances, the Senate may continue its legislative term one-year at a time upon the proposal of the King.

The declaration of continuity of its legislative term shall be decided by at least a two-third majority vote of all Senators.

In the circumstances described above, the Senate shall conduct its meeting everyday. The Senate has the right to terminate the above situation if appropriate.

If the Senate is unable to conduct its meetings for good reason such as invasion of foreign troops, the proclamation of the state of emergency shall continue in effect automatically.

Article 103 (new)

The mandate of Senators shall be incompatible with the holding of any public function, with the function of members of the National Assembly, and of any membership in other institutions provided for in the Constitution.

Article 104 (new)

Senators shall enjoy parliamentary immunity.

No Senator shall be prosecuted, arrested, stopped, or detained because of opinions and statements expressed during the exercise of his/her duties. The accusation, arrest, stopping, or detention shall be made only if approved by the Senate or the Senate's Standing Committee between the Senate's meetings, except in the case of flagrant delicto. In that case, the relevant ministry shall immediately report to the Senate or to its Standing Committee for a decision.

The decision of the Standing Committee of the Senate shall be submitted to the next Senate meeting for approval by a two-third majority vote of all Senators.

In any case above, the detention or prosecution of any Senator shall be suspended if there is an approval by a three-quarter majority vote of all Senators.

Article 105 (new)

The Senate shall have an autonomous budget to conduct its functions.

The Senators shall receive remuneration.

Article 106 (new)

The Senate shall hold its first meeting no later than sixty (60) days after the election pursuant to a convening notice issued by the King.

Before taking its office, the Senate shall declare the validity of each Senator's mandate and vote separately to select the President of the Senate, Vice-President of the Senate, and members of each commission by a two-third majority vote of all Senators.

All Senators must take an oath before taking office in accordance with the provisions stated in Annex 7 of the Constitution.

Article 107 (new)

The Senate shall conduct its ordinary sessions twice a year.

Each session shall last at least three months. If there is a proposal from the King or Prime Minister or of at least one-third of the Senators, the Senate shall convene an extraordinary session.

Article 108 (new)

Between the Senate session, the Standing Committee shall assume the functions of the Senate.

The Standing Committee of the Senate consists of the President of the Senate, Vice-President, and the chairmen of all Senate commissions.

Article 109 (new)

The Senate session shall be held in the capital of the Kingdom of Cambodia at the Senate's meeting hall, unless it is stipulated otherwise in the summons, due to special circumstances.

Any meeting of the Senate conducted at a location other than the location and date specified in the summons shall be considered illegal and void.

Article 110 (new)

The President of the Senate shall preside over the Senate's session, receive draft bills and resolutions adopted by the Senate, ensure the implementation of the internal regulations, and manage the Senate's international relations.

If the President is unable to perform his duties due to illness or to fulfil the function as Acting Head of State as Regent, or is on a mission abroad, one of the Vice-Presidents shall assume the responsibilities of the President.

In the event of the resignation or death of the President or Vice-President, the Senate shall elect a new President or Vice-President.

Article 111 (new)

The Senate sessions shall be held in public.

The Senate may meet in a closed-door session at the request of the President, of at least one-tenth of its members, of the King, of the Prime Minister, or of the President of the National Assembly.

The Senate meeting shall be considered valid only if there is a quorum of seven-tenths of its members.

The number of votes, which are required for National Assembly approval, as provided for in the Constitution shall also be applied to the Senate.

Article 112 (new)

The Senate is responsible for the coordination between the National Assembly and the Government.

Article 113 (new)

The Senate shall review and comment on draft laws or proposed laws that have been firstly adopted by the National Assembly and other matters submitted by the National Assembly no later than one month. In case of an emergency, such duration shall be reduced to five (5) days.

If the Senate approves or fails to comment within the specified duration stipulated above, the law adopted by the National Assembly should be promulgated.

If the Senate calls for modifications to those draft laws or proposed laws the National Assembly shall immediately take those draft laws and proposed laws for a second consideration. The National Assembly shall review and decide whether to reject all or part of those provisions or terms in the draft laws or proposed laws that the Senate called for modification.

The exchange of the draft or proposed law between the Senate and the National Assembly shall be done only within one month. This duration shall be reduced to ten days in the case of the national budget and finance and the duration shall be reduced to only two days if it is an urgent matter.

If the National Assembly withholds for longer than the specified duration or delays while reviewing the law, the principle duration for the National Assembly and the Senate shall be extended so that the duration for both is equal.

If the Senate rejects the draft law or proposed law, the National Assembly before a one-month duration may not review such draft or proposed law a second time. This duration shall be reduced to fifteen (15) days in the case of national budget and finance and to four (4) days if it is an urgent matter.

During the examination of the draft and proposed laws a second time, the National Assembly shall adopt it by an open vote with an absolute majority.

The draft or proposed laws adopted through the above procedure shall then be sent for promulgation.

Article 114 (new)

The Senate shall establish necessary commissions. The organization and functioning of the Senate shall be provided for in the internal regulations of the Senate. These internal regulations shall be approved by a two-third majority vote of all Senators.

Article 115 (new)

In the case of the death of a Senator, resignation, or disqualification as a Senate member, which should occur six months before the end of the Senate's term, it should be preceded with his replacement in accordance with the Senate's internal regulations and with the electoral law about the Senate.

CHAPTER IX (NEW) : The National Assembly and the Senate

Article 116 (new)

In the special case, the National Assembly and the Senate can assemble as a Congress to resolve important national issues.

Article 117 (new)

Law shall determine the important national issues mentioned above in new Article 116 and the organization and functioning of the Congress.

CHAPTER X (NEW) : The Royal Government

Article 118 - new (previously Article 99)

The Council of Ministers is the Royal Government of Cambodia. The Council of Ministers shall be led by one Prime Minister assisted by Deputy Prime Ministers, and by State Ministers, Ministers, and State Secretaries as members.

Article 119 - new (previously Article 100)

At the recommendation of the President and with the agreement of both Vice-Presidents of the National Assembly the King shall designate a dignitary from among the representatives of the winning party to form the Royal Government. This designated representative along with other members chosen from the political parties represented in the National Assembly, then present themselves to the National Assembly to ask for a vote of confidence.

After the National Assembly has given its vote of confidence, the King shall issue a Kret (royal decree) appointing the entire Council of Ministers.

Before taking office, the Council of Ministers shall take an oath as stipulated in Annex 6 of the Constitution.

Article 120 - new (previously Article 101)

The functions of the members of the Royal Government shall be incompatible with professional activities in trade or industry and with the holding of any position in the public service.

Article 121 - new (previously Article 102)

The members of the Royal Government shall be collectively responsible to the National Assembly for the overall policy of the Royal Government.

Each member of the Royal Government shall be individually responsible to the Prime Minister and the National Assembly for his/her own conduct.

Article 122 - new (previously Article 103)

Each member of the Royal Government shall not use the orders, written or verbal, of anyone as grounds to exonerate themselves from their responsibility.

Article 123 - new (previously Article 104)

The Council of Ministers shall meet every week in a plenary session or in a working session.

The Prime Minister shall preside over the plenary session. The Prime Minister may assign the Deputy Prime Minister to preside over the working sessions.

All minutes of the Council of Ministers' meetings shall be forwarded to the King for his information.

Article 124 - new (previously Article 105)

The Prime Minister shall have the right to delegate his powers to the Deputy Prime Minister or any member of the Royal Government.

Article 125 - new (previously Article 106)

If the post of Prime Minister is permanently vacant, the new Council of Ministers shall be appointed under the procedures stipulated in the Constitution. If the vacancy is temporary, the Acting Prime Minister shall be appointed for such temporary period.

Article 126 - new (previously Article 107)

Each member of the Royal Government shall be punished for any crimes or misdemeanors that he has committed in the course of his duty.

In such cases and when he has committed serious offenses in the course of his duty, the National Assembly shall decide to file charges against him with a competent court.

The National Assembly shall decide on such matters through a secret and majority vote thereof.

Article 127 - new (previously Article 108)

Law shall determine the organization and functioning of the Council of Ministers.

CHAPTER XI (NEW) : The Judiciary

Article 128 - new (previously Article 109)

The judicial power shall be an independent power.

The judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of citizens.

The judiciary shall have jurisdiction over all lawsuits, including administrative ones.

The authority of the judiciary shall be granted to the Supreme Court and to the lower courts of all sectors and levels.

Article 129 - new (previously article 110)

Trials shall be conducted in the name of Cambodian people in accordance with the legal procedures and laws in force.

Only the judge shall have the rights to adjudicate. The judge shall fulfil his duty with strict respect for the laws, wholeheartedly, and conscientiously.

Article 130 - new (previously Article 111)

The judicial power shall not be granted to the legislative or executive branches.

Article 131 - new (previously Article 112)

Only the Department of Public Prosecution shall have the rights to file criminal suits.

Article 132 - new (previously Article 113)

The King shall be the guarantor of the independence of the judiciary. The Supreme Council of the Magistracy shall assist the King in this matter.

Article 133 - new (previously Article 114)

Judges shall not be dismissed. However, the Supreme Council of the Magistracy shall take disciplinary actions against any delinquent judges.

Article 134 - new (previously Article 115)

The Supreme Council of the Magistracy shall be established by an organic law, which shall determine its composition and functions.

The King shall chair the Supreme Council of the Magistracy. The King may appoint a representative to chair the Supreme Council of the Magistracy.

The Supreme Council of the Magistracy shall make proposals to the King on the appointments of judges and prosecutors to all courts.

The Supreme Council of the Magistracy shall meet under the chairmanship of the President of the Supreme Court or the General Prosecutor of the Supreme Court to decide on disciplinary actions against judges and prosecutors.

Article 135 - new (previously Article 116)

The Statute of Judges, and Prosecutors and the functioning of the judiciary shall be defined in a separate law.

CHAPTER XII (NEW) : The Constitutional Council

Article 136 - new

The Constitutional Council shall have the duty to safeguard the respect of the Constitution, interpret the Constitution, and laws passed by the National Assembly and finally reviewed by the Senate.

The Constitutional Council shall have the right to examine and decide on contested cases involving the election of the National Assembly members and Senate members.

Article 137 - new (previously Article 118)

The Constitutional Council shall consist of nine members with nine-year mandates. One-third of the members of the Council shall be replaced every three years. Three (3) members shall be appointed by the King, three (3) members shall be appointed by the National Assembly and three (3) others by the Council of the Magistracy.

The members of the Constitutional Council shall elect the Chairman. The Chairman of the Senate shall have a casting vote in cases of equal votes.

Article 138 - new (previously Article 119)

Members of the Constitutional Council shall be selected from among the dignitaries with a higher-education degree in law, administration, diplomacy, or economics and who have considerable work experience.

Article 139 - new

The function of the Constitutional Council member shall be incompatible with that of a member of the Senate, member of the National Assembly, member of the Royal Government, in-post judges, any position in the public service, President and Vice-President of a political party, President or Vice-President of a trade union.

Article 140 - new

The King, Prime Minister, President of the National Assembly, one-tenth (1/10) of the National Assembly members, President or one-fourth (1/4) of the Senate may forward the laws passed by the National Assembly to be reviewed by the Constitutional Council before the promulgation of such law.

The internal regulations of the National Assembly, internal regulations of the Senate, and organic laws shall be forwarded to the Constitutional Council for review before their promulgation. The Constitutional Council shall decide within no later than thirty (30) days whether the laws and internal regulations are constitutional.

Article 141 - new

After a law is promulgated, the King, President of the Senate, President of the National Assembly, Prime Minister, one-fourth (1/4) of the Senate or the court may ask the Constitutional Council to examine the constitutionality of that law.

Citizens shall have the rights to appeal against the constitutionality of laws through their representatives or President of the National Assembly or member or President of the Senate as stipulated in the above paragraph.

Article 142 - new (previously Article 123)

Provisions in any article ruled by the Constitutional Council as unconstitutional shall not be promulgated or implemented.

The decision of the Constitutional Council shall be final.

Article 143 - new (previously Article 124)

The King shall consult the Constitutional Council on all proposals for amendments to the Constitution.

Article 144 - new (previously Article 125)

An organic law shall specify the organization and operation of the Constitutional Council.

CHAPTER XIII (NEW) : The Administration

Article 145 - new (previously Article 126)

The territory of the Kingdom of Cambodia shall be divided into provinces (Khet) and municipalities (Krong).

Provinces shall be divided into districts (Srok) and districts into communes (Khum).

Municipalities shall be divided into districts (Khan) and Khan into Sangkat.

Article 146 - new (previously Article 127)

Khet/Krong, Srok/Khan, and Khum/Sangkat shall be governed in accordance with the provisions of the organic law.

CHAPTER XIV (NEW) : The National Congress

Article 147 - new (previously Article 128)

The National Congress shall enable the people to be directly informed on various matters of national interests and to raise issues and requests for the State authorities to solve.

Khmer citizens of either sex shall have the rights to participate in the National Congress.

Article 148 - new (previously Article 129)

The National Congress shall meet once a year in early December at the convocation of the Prime Minister.

The National Congress shall proceed under the chairmanship of the King.

Article 149 - new (previously Article 130)

The National Congress shall adopt recommendations for consideration by the Senate, National Assembly, State authorities.

A law shall define the organization and operation of the National Congress.

CHAPTER XV (NEW) : Effects, Revisions, and Amendments of the Constitution

Article 150 - new (previously Article 131)

This Constitution shall be the supreme law of the Kingdom of Cambodia.

Laws and decisions of the State institutions shall be in strict conformity with the Constitution.

Article 151 - new (previously Article 132)

The initiative to review or to amend the Constitution shall be the prerogative of the King, the Prime Minister, and the President of the National Assembly at the suggestion of one-fourth of all National Assembly members.

A Constitutional law passed by the National Assembly with a two-third majority vote shall enact revisions or amendments to the Constitution.

Article 152 - new (previously Article 133)

Revisions or amendments to the Constitution shall be prohibited when the country is in a state of emergency, as outlined in Article 86.

Article 153 - new (previously Article 134)

Any revisions or amendments to the Constitution affecting the system of liberal and pluralistic democracy and the regime of Constitutional Monarchy shall be prohibited.

CHAPTER XVI (NEW): Transitional Provisions

Article 154 - new

This Constitution, after its adoption shall immediately be promulgated by the King of the Kingdom of Cambodia.

Article 155 - new (previously Article 136)

After the entry into force of this Constitution, the Constituent Assembly shall become the National Assembly.

The internal regulations of the National Assembly shall come into force after the adoption by the National Assembly.

In the case where the National Assembly is not yet functional, the President, the First and Second Vice-Presidents of the Constituent Assembly shall participate in the discharge of the duties of the Throne Council if so required by the situation in the country.

Article 156 - new

After this Constitution takes effect, the King shall be selected in accordance with the provisions stipulated in Articles 13-new and 14.

Article 157 - new

The term of first legislature of the Senate shall be five (5) years and such term shall expire upon the new Senate being sworn into office.

In its first legislative term, the Senate shall have :

- sixty-one (61) Senators in total;
- the King appoints two of the Senators and the first Vice-President and second Vice-President of the Senate;
- other Senators shall be appointed by the King at the request of the President of the Senate and President of the National Assembly from among the members of the political parties having seats in the National Assembly;
- the congress sessions of the Senate and National Assembly shall be chaired by the Co-Presidents.

Article 158 - new (previously Article 139)

Laws and regulations in Cambodia that safeguard state property, rights, freedom, and legal private property and are in conformity with the national interests, shall continue to be effective until altered or abrogated by new acts, except those provisions that are contrary to the spirit of this Constitution.

Phnom Penh, 6 March 1999

The President of National Assembly

NORODOM Ranariddh

7

A Legislative and Historical Overview of the Senate of Canada

PAUL C. BÉLISLE

Introduction

The purpose of this overview is to highlight the major features of the Senate as a parliamentary institution and the events which influenced its evolution. The Senate retains an important place in Canadian history: indeed, without an agreement to include the Senate as it is presently constituted, there would have been no Confederation in 1867. George Brown said it was the key to federation, "the very essence of our compact". "Our Lower Canadian friends have agreed to give us representation by population in the Lower House, on the express condition that they would have equality in the Upper House. On no other condition could we have advanced a step."[1] The Senate of Canada is a unique institution, being the single Second Chamber within the Canadian federation, and the only one in the western world whose members are all appointed.[2] The Senate resembles very much the British House of Lords in many of its parliamentary procedures, in its functions as a check on questionable legislation sent up from the House of Commons and the fact that it is a non-elected House. However, the Senate differs from the Lords in that its membership is fixed, and that it is not subject to such constitutional provisions as the **Parliament Acts** of 1911 and 1949 which severely restrict the power of the Lords regarding the length of time it can delay legislation. The Senate is similar to the United States Senate in its federal character inasmuch as in both chambers the basis of representation is geographical equality. However, because representation is based on regional equality as opposed to individual state or provincial equality and because Canadian Senators are not elected and do not participate in ratifying executive decisions, the two chambers are quite dissimilar.

In order to better understand the work of the Senate and how it evolved, this paper will briefly examine its origins, its constitutional foundation, its functions and its composition. It will highlight its legislative work and will provide a chronology of the major historical events in its evolution. A selected

bibliography is included for those who wish to undertake further reading about the institution.

Origins of the Senate

With the exception of British Columbia,[3] all of the British North American colonies had bicameral or two chamber legislatures before 1867. It was from these pre-Confederation Legislative Councils, particularly that of the United Province of Canada (the union in 1840 of Upper Canada [Ontario] and Lower Canada [Quebec]) that the model for the Senate was taken. Its formal origins emerged from the Charlottetown and Quebec Conferences of 1864 which met to consider proposals for a union of the British North American colonies. Much of the Quebec Conference was devoted to creating an Upper House. Professor Robert MacKay writes, "the importance of this question in the minds of the statesmen at Quebec may be gleaned from the fact that practically the whole of six days out of a total of fourteen spent in discussing the details of the [union] scheme were given over to the problems of constituting the second chamber." [4] Various proposals for its method of selection were considered, including direct election. The Legislative Council of Prince Edward Island had been elective since 1862 and that of the Province of Canada since 1857. However, there was not a great deal of enthusiasm for an elected second chamber. Professor MacKay writes that the elected councils "tended to be a second edition of the assembly, and because small in numbers and composed for the most part of citizens who had already made their mark in life, it might in the end have overshadowed the assembly, just as the Senate of the United States has overshadowed the House of Representatives." [5] In the subsequent debate on the Quebec Conference Resolutions, John A. MacDonald, who had supported an elected Council in 1856, admitted the elective system "did not so fully succeed in Canada as we had expected." Another Father of Confederation, Sir Hector Langevin, stated that "in Lower Canada we have become tired of the system." George Brown told the House "I have lived to see a vast majority of those who did the deed, wish it had not been done." [6]

A. Text of the Quebec Resolutions as they pertained to the Senate

The following are the resolutions adopted at Quebec City on 10 October 1864 which relate to the Senate. They formed part of a set of resolutions adopted by the Fathers of Confederation which were eventually forwarded to the Imperial Parliament for their legislative enactment to unite the British North American colonies.

6. There shall be a General Legislature or Parliament for the Federated Provinces, composed of a Legislative Council and a House of Commons.

7. For the purpose of forming the Legislative Council, the Federated Provinces shall be considered as composed of three Divisions: (1) Upper Canada, (2) Lower Canada, (3) Nova Scotia, New Brunswick, and Prince Edward Island; each Division with an equal representation in the Legislative Council.

8. Upper Canada shall be represented in the Legislative Council by twenty-four members, Lower Canada by twenty-four members, and the three Maritime Provinces by twenty-four members, of which Nova Scotia shall have ten, New Brunswick ten and Prince Edward Island four members.

9. The Colony of Newfoundland shall be entitled to enter the proposed Union with a representation in the Legislative Council of four members.

10. The North Western Territory, British Columbia and Vancouver, shall be admitted into the Union on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable, and as shall receive the assent of Her Majesty, and in the case of the Province of British Columbia or Vancouver, as shall be agreed to by the Legislatures of such Provinces.

11. The members of the Legislative Council shall be appointed by the Crown under the Great Seal of the General Government, and shall hold office during life. But that if any Legislative Councillor shall, for two consecutive Sessions of Parliament, fails to give his attendance in the State Council, his seat shall thereby become vacant.

12. The members of the Legislative Council shall be British subjects by birth or naturalization, of the full age of thirty years, shall possess a continuous real property qualification of four thousand dollars ($4,000.00), over and above all encumbrances, and shall be worth that sum, over and above their debts and liabilities, and in the case of Newfoundland or Prince Edward Island the property may be either real or personal.

13. If any question shall arise as to the qualifications of a Legislative Councillor, the same shall be determined by the Council.

14. The first election of the Members of the Legislative Council shall be made, except as regards Prince Edward Island, from the Legislative Councillors of the various Provinces, so long as a sufficient number be found qualified and willing to serve. Such Members shall be appointed by the Crown at the recommendation of the General Executive Government, upon the nomination of their respective Local Governments, and in such nomination due regard shall be had to the claims of the Members of the Legislative Council of the Opposition in each Province, so that all Political Parties may as nearly as possible be equally represented.

15. The Speaker of the Legislative Council (unless otherwise provided by Parliament) shall be appointed by the Crown from among the Members of the Legislative Council, and shall hold office during

pleasure, and shall only be entitled to a casting vote on an equality of votes.

16. Each of the twenty-four Legislative Councillors representing Lower Canada on the Legislative Council of the General Legislature, shall be appointed to represent one of the twenty-four Electoral Divisions mentioned in Schedule (1) of Chapter I of the Consolidated Statutes of Canada, and each Councillor shall reside or possess his qualification in the Division he is appointed to represent.[7]

B. Excerpts from the Confederation Debates of the United Province of Canada

The following excerpts from the **Confederation Debates** on the Quebec Resolutions show the vision which the Canadian legislators had of a future Senate and their views on the decision to choose an appointed chamber over an elected one.

Mr. Alexander Campbell (Legislative Councillor): "Who that looks to the future will say that with an elective Upper House the Constitution will last? It was the apprehension of danger to its permanency that decided the Conference to adopt the principle of nomination to the superior branch, and it was the only way which suggested itself for averting it... He felt that the principle of election kept alive a germ of doubt as to the security of the Lower Provinces, and he was glad that a way was found of removing it altogether."[8]

Mr. Belleau (Legislative Councillor): "... the elective principle, as applied to the Legislative Council, becomes unnecessary in view of the numerical strength of Lower Canada in the federal Parliament, for the House of Commons is the body that will make and unmake ministers. Why have the elective principle for the Legislative Council, since we shall have it for the House of Commons, since we shall have a Responsible Government, composed of Members elected by the people?"[9]

Sir E.P. Taché (Legislative Councillor): "When the gentlemen who composed the (Quebec) Conference met, they had to lay down on a broad basis, as it were, for the foundation of the superstructure. Well, it so happened that the cornerstone was that which concerned the representation in both Houses. It was agreed on the one hand that in the House of Commons of the Confederate government representation should be according to numbers, and in the other branch of the Legislature it should be fixed that this representation should be equal for all the provinces — that is to say Upper Canada, Lower Canada and the Maritime Provinces, grouped into one, should each be allowed to send the same number of representatives, so as to secure to each province its rights, its privileges, and its liberties."[10]

John A. MacDonald (Member of the Legislative Assembly and Attorney General): "In order to protect local interests, and to prevent sectional jealousies, it was found requisite that the three great divisions into which British North America is separated, should be represented in the Upper House on the principle of equality. There are three great sections, in this proposed Confederation. We have Western Canada, an agricultural country far from the sea, and having the

largest population who have agricultural interests principally to guard. We have Lower Canada, with other and separate interests, and especially with institutions and laws which she jealously guards against absorption by any larger, more numerous or stronger power. And we have the Maritime Provinces, having also different sectional interests of their own, having from their position, classes and interests which we do not know in Western Canada. Accordingly, in the Upper House,— the controlling and regulating, but not the initiating, branch (for we know that here as in England, to the Lower House will practically belong the initiation of matters of great public interest), in the House which has the sober second-thought in legislation — it is provided that each of those great sections shall be represented equally by twenty-four members. The only exception to that condition of equality is in the case of Newfoundland, which has an interest of its own, lying, as it does, at the mouth of the great river St. Lawrence, and more connected, perhaps with Canada than with the Lower Provinces... It, therefore, has been dealt with separately, and is to have a separate representation in the Upper House, thus varying from the equality established between the other sections.

As may be well conceived, great difference of opinion at first existed as to the constitution of the Legislative Council. In Canada the elective principle prevailed; in the Lower Provinces, with the exception of Prince Edward Island, the nominative principle was the rule. We found a general disinclination on the part of the Lower Provinces to adopt the elective principle; indeed, I do not think there was a dissenting voice in the Conference against the adoption of the nominative principle, except from Prince Edward Island. The delegates from New Brunswick, Nova Scotia and Newfoundland, as one man, were in favour of nomination by the Crown. And nomination by the Crown is most in accordance with the British Constitution...

The arguments for an elective Council are numerous and strong; ... I hold that this principle has not been a failure in Canada; but there were causes— which we did not take into consideration at the time — why it did not so fully succeed in Canada as we had expected. One great cause was the enormous extent of the constituencies and the immense labour which consequently devolved on those who sought the suffrage of the people for election to the Council. For the same reason... the legitimate expense was so enormous that men of standing in the country, eminently fitted for such a position, were prevented from coming forward...

There would be no use of an Upper House, if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, but it will never set itself in opposition against the deliberate and understood wishes of the people."[11]

H.L. Langevin (Member of the Legislative Assembly and Solicitor General): "...the elective principle in our existing Legislative Council was merely an experiment and that in Lower Canada we have become tired of the system, not because the Councillors who have been elected by the people are unworthy of the position which they occupy, or because their selection was an unfortunate selection, but because the very nature of the system prevents a large number of men of talent, of men qualified in every respect and worthy to sit in the Legislative Council, from presenting themselves for the suffrages of the electors, in consequence of the trouble, the fatigue and enormous expense resulting from these electoral contests in enormous divisions. We know that the system has wearied Lower Canada..."[12]

George Brown (Member of the Legislative Assembly): "... It has been said that members of the Upper House ought not to be appointed by the Crown, but should continue to be elected by the people at large. On that question my views have been often expressed. I have always been opposed to a second elective chamber and I am so still, from the conviction that the two elective Houses are inconsistent with the right working of the British parliamentary system... When the elective element becomes supreme, who will venture to affirm that the Council would not claim that power over money bills which this House claims as of right belonging to itself? Could they not justly say that they represent the people as well as we do, and that the control of the purse strings ought, therefore, to belong to them as much as to us. It is said they have not the power. But what is to prevent them from enforcing it?"[13]

The Constitutional Foundation of the Senate

A. Powers and Selection Process

The Parliament of Canada is composed of the Sovereign, the Senate and the House of Commons and the consent of all three is necessary for the passage of legislation. The formal powers of the Senate are co-equal to those of the House of Commons with two exceptions : **(a)** Section 53 of the **Constitution Act, 1867** directs that money bills are to originate in the House of Commons and **(b)** Section 47(1) of the **Constitution Act, 1982** provides that amendments to the Constitution can be made without the consent of the Senate.

The constitutional foundation defines a selection process whereby Senators are appointed by the central government's executive (specifically by the Governor General, acting on the advice of the Prime Minister) and whereby the legislature is limited to a fixed size, based upon an equality of regional divisions. Senators are to be at least thirty years old, citizens by birth or naturalization and hold property of at least $4,000 in the province for which they were appointed. Previous to 1965, Senators were appointed for life. In 1965, in what was the first significant step towards Senate reform, the **Constitution Act, 1867** was amended so that all Senators appointed after that date were to retire at age seventy-five. Originally, the Senate was composed of seventy-two members, but increased as the country geographically and demographically grew in size. In the first forty years of Confederation, a series of arrangements to provide representation to Manitoba, British Columbia, Prince Edward Island, Alberta and Saskatchewan brought a

total number of Senate seats to eighty-seven. In 1915 the number of Senators increased to ninety-six, in 1949 to one hundred and two, in 1974 to one hundred and four and in 1999 to one hundred and five. Today, the number of seats per province is as follows : Ontario twenty-four, Quebec twenty-four, Nova Scotia ten, New Brunswick ten, Prince Edward Island four, Manitoba, British Columbia, Saskatchewan, Alberta and Newfoundland six each, and the Northwest Territories, Nunavut and the Yukon Territories one each. Pursuant to Sections 26, 27 and 28 of the **Constitution Act, 1867,** four or eight additional Senators may be appointed, upon the direction of the Queen.[14] The total number of Senators cannot exceed one hundred and thirteen, but the normal compliment is set at one hundred and five.

Four points may be emphasized with regard to the selection process: **(i)** The Senate is the only non-elected legislature in Canada. **(ii)** As a Senator's writ of summons states, he or she has been appointed "for the purpose of obtaining your advice and assistance in all weighty and arduous affairs which may be the State and Defence of Canada concern." In theory then, Senators are given a different function than that of popularly elected members. **(iii)** Since there is maximum number of appointments, the Senate, unlike the House of Lords, cannot be 'unlimitedly swamped' if a government finds it obstinate. This constitutional provision has bestowed a certain amount of independence on the Senate which governments have always had to consider when planning parliamentary work. **(iv)** Because their property is to be possessed within the province for which they are appointed, constitutionally Senators are given a regional, representative role.

B. Parliamentary Privilege

The parliamentary privileges of the Senate as a body and of its members as individuals are given with those of the House of Commons. R. MacGregor Dawson gives the following background note regarding privilege in Canada:

> The inherent privileges of the Dominion Parliament were of the same moderate proportions as those allowed to other colonial legislative bodies. The British North America Act, however, made explicit provision for the immediate addition of statutory powers and privileges on a substantial scale. Section 18 read as follows: "The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the members thereof respectively shall be such as are from time to time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof."
>
> In 1868, the Canadian Parliament enacted a law which gave to each of the Houses, in almost the identical words used above, the powers, immunities, and privileges enjoyed by the British House of Commons at the time of passing the British North America Act, "so far as the same are consistent with and not repugnant to the said Act." A further section stated that these were part of the general and public law of Canada and "it shall not be necessary to plead the same, but the same shall in all Courts in

Canada and by and before all judges be taken notice of judicially." The Act also protected the publication of any proceedings against civil or criminal suit if these were published under the order or authority of the Senate or House of Commons.

This was followed in the same year by an act professing to give to the Senate or to any select committee on private bills of the Senate or of the House the power to examine witnesses on oath. In 1873, the power to examine witnesses on oath was extended to any committee of either House. This latter act was disallowed by the British Government on the ground that it was *ultra vires*, in that it tried to give powers to the Canadian Houses which were not possessed in 1867 by the British House of Commons. The earlier act had been, in fact, *ultra vires* also, although it had been allowed to stand. The sequel came in 1875 with an amendment to the British North America Act, which repealed the original Section 18 and substituted another to the effect that the privileges, immunities, and powers of the Canadian Parliament and its members were never to exceed those enjoyed from time to time by the British House of Commons. Another section confirmed the earlier Canadian Act of 1868 noted above. Inasmuch as the British House of Commons in 1871 had given to its committees the power to examine witnesses on oath, the Canadian Parliament was able in 1876 legally to endow its committees with the same power.

The privileges, immunities, and powers of the Houses of the Parliament of Canada are thus potentially those of the British House of Commons, although their primary base is statutory and not established custom and inherent right. They can, of course, be increased beyond those of the British House by constitutional amendment, which under the British North America Act of 1949 (No. 2) would presumably be an ordinary Act of Parliament.

The privileges, immunities, and powers of the Canadian Parliament fall into two chief categories: **(a)** those of individual members of either House; **(b)** those of the Senate or of the House of Commons as a body. They are virtually but not quite the same for each House. The privilege of the Commons to settle controverted election cases, for example, could clearly not be a privilege of the Senate.[15]

C. Exclusion of Senate from originating Money Bills

Section 53 of the **Constitution Act, 1867** states that "Bills for appropriating any Part of the Public Revenue, or for Imposing any Tax or Impost shall originate in the House of Commons." The wording of this provision followed that of Section 57 of the **Union Act, 1840** which had constitutionally united Upper and Lower Canada into the United Province. Section 57 of the **Union Act** removed any doubt as to where money bills were to originate:

> "**57.** All Bills for appropriating any Part of the Surplus of the said Consolidated Revenue Fund, or for imposing any new Tax or Impost, shall originate in the Legislative Assembly of the Province of Canada."

Professor Elmer Driedger, in his article "Money Bills and the Senate", gives three possible reasons for excluding the Upper House from introducing financial measures:

> "...it is arguable that the words of section 53 embody the entire privilege of the House of Commons in England. This is the form in which the privilege was originally asserted and ...any interference, whether by way of amendment or otherwise, with a money bill was always regarded by the Commons in England as a breach of the privilege. The language of section 53 was first written into our constitutional documents in 1840, and at that time the Lords in England had for several centuries submitted to the privilege asserted by the Commons, with all its implications. It may well be that it was thought that these words were enough to place the House of Commons of the Confederated Canada of 1867, in the same position as the House of Commons in England with respect to financial matters and to subject the Upper House to the same disabilities.
>
> A second argument can be made that, apart from history and precedent and considering only the language of section 53, there is a necessary implication that the Senate cannot in any way amend a bill that by that section is required to originate in the House of Commons. If a bill is introduced in the House of Commons to levy a tax or grant a sum of money, and the tax or appropriation is reduced by an amendment in the Senate, it is arguable that the bill, as amended, did not originate in the House of Commons. Can it not be said that section 53 requires that the whole of the bill on which the ultimate law is founded must originate in the Commons? And that when a bill is amended in the Senate, it becomes a different bill and is not the same bill that originated in the Commons — even though it may be written on the same piece of paper?
>
> But perhaps the strongest argument in favour of the Commons can be founded on the theory that under our Constitution (similar in principle to that of the United Kingdom), representation and consent form the basis of the power of the Commons to grant money and impose taxes. As early as the twelfth century, when the Saladin Tithe was imposed, taxation and representation were connected; Tithe was assessed by a jury in some sense representative of the taxpayer and of the parish in which he lived, and the towns sent representative burgesses to Westminster to bargain with the Crown. Through the centuries, the principle was maintained that taxation required representation and consent. The only body in Canada that meets this test is the Commons. The elected representatives of the people sit in the Commons, and not in the Senate, and, consistently with history and tradition, they may well insist that they alone have the right to decide to the last cent what money is to be granted and what taxes are to be imposed."[16]

It must be noted that the Senate has historically taken the position that it has the constitutional right to amend (but not increase) money bills sent up from the House of Commons. **The Report of the Special Committee Appointed to Determine the Rights of the Senate in Matters of Financial Legislation** (the Ross Report) tabled in the Senate on 9 May 1918, made the following observations:

1. That the Senate of Canada has and always had since it was created, the power to amend Bills originating in the Commons appropriating any

part of the revenue or imposing a tax by reducing the amount therein, but has not the right to increase the same without the consent of the Crown.

2. That this power was given as an essential part of the Confederation contract.
3. That the practice of the Imperial Houses of Parliament in respect of Money Bills is no part of the Constitution of the Dominion of Canada.
4. That the Senate in the past has repeatedly amended so-called Money Bills, in some cases without protest from the Commons, while in other cases the bills were allowed to pass, the Commons protesting or claiming that the Senate could not amend a Money Bill.
5. That Rule 78 of the House of Commons of Canada claiming for that body powers and privileges in connection with Money Bills identical with those of the Imperial House of Commons is unwarranted under the provisions of *The British North America Act, 1867*.
6. That the Senate as shown by the *British North America Act* as well as by the discussion in the Canadian Legislature on the Quebec Resolutions in addition to its general powers and duties is specially empowered to safeguard the rights of the provincial organizations.
7. That besides general legislation, there are questions such as provincial subsidies, public lands in the western provinces and the rights of the provinces in connection with pending railway legislation and the adjustment of the rights of the provinces thereunder likely to arise at any time and it is important that the powers of the Senate relating thereto be thoroughly understood.

Functions of the Senate

The great English constitutional theorist, Walter Bagehot, once remarked with regard to the British parliamentary system that "if we had an ideal House of Commons... it is certain we should not need a higher Chamber."[17] This observation is key to any discussion about the Senate as it is presently structured and proposals for future reform. Bagehot was merely one of many constitutional experts who throughout the history of political thought favoured the 'mixed regime' as opposed to a single unicameral system. Bicameral theorists believed that 'popular', elected Houses were deficient, in particular, they had a potential of succumbing to special interests and the 'majority will' which they claimed needed to be supplemented by minority opinion, equally integral to the well-being of the state. In 1980, the Legal and Constitutional Affairs Committee's **Report on Certain Aspects of the Canadian Constitution** listed four roles of the Senate, all of which were complimentary to the functions of the House of Commons. They were: a revising legislative role; an investigative role; a regional representative role and a protector of linguistic and other minorities role. These are roles that the Senate has historically played.

Legislation

The Senate has always played an active role in scrutinizing legislation. Most of the legislation studied by the Senate originates in the House of Commons, since most bills contain some financial provisions and, pursuant to Section 53 of the **Constitution Act, 1867,** money bills are to originate in the House of Commons.

Government legislation may also be introduced in the Senate. The number of government bills introduced in the Senate has varied over the years. Between 1924 and 1945 only thirty-six government bills originated in the Senate but between 1946 and 1953 there were one hundred and thirty-eight. Professor F. A. Kunz has written:

> "Governments have invariably found the Senate a well-suited place for first consideration of voluminous, complex and highly technical pieces of legislation, such as consolidating measures, requiring great legislative experience as well as legal and financial talent and leisurely procedure. The services rendered by the Senate in such instances have been more than simple time-saving for the House of Commons; the Senate has turned out reliable and enduring pieces of legislation, which are amongst the best framed and most competently constructed Acts on the Statute Book of Canada."[18]

Senators may introduce private members public bills. Regarding these measures, Kunz observes: "Because of the more leisurely time-table and general procedural flexibility of the Senate a Senator appears to be better placed for introducing legislation than a member of the House of Commons, his chance of getting his measure enacted, however, is very slim indeed, except for agreed proposals... Indeed, since the end of the war only one private members' Senate bill has reached the Commons, that which was subsequently placed on the Statute Book."[19] Since 1965, four of the one hundred and twelve private bills introduced in the Senate have received royal assent.

Virtually all private legislation, that is, bills which deal with private interests such as incorporating a company, extending a railway line, or providing legal status to religious or charitable bodies, originate in the Senate, namely because it is less expensive. Petitioners for private bills must pay all legal, printing and translation costs. While the minimum fee for the introduction of a private bill in the Senate is $200, the fee in the House of Commons has been, since 1934, $500. Up until 1967, the Senate was very active in divorce legislation, passing an average since the Second World War, three hundred and forty divorce bills a year.[20] Since 1968, the authority for granting divorces rests with all provincial courts.

With regard to the rejection of legislation sent from the House of Commons, James R. Robertson of the Library of Parliament notes the following: "Without a detailed review of the debates and records of the Canadian Senate, it is not possible to give a definitive list of bills received from the House of Commons that have been rejected by the Senate. Even MacKay and Kunz differ in their interpretation of what constitutes a rejection. It is in part, a definitional question...

The Senate can reject bills outright at second or third reading, but it can also engage in other actions that amount to rejection. Similarly, Senate leaders can threaten to defeat proposed legislation, in an effort to affect or forestall government action."[21]

Robertson cites the following as some of the major pieces of government legislation rejected by the Senate since Confederation:

(i) In 1875, the upper chamber rejected a bill for the construction of a railway from Esquimalt to Nanaimo in British Columbia on the ground that it was an unwarranted public expenditure.

(ii) In 1879, the Senate turned down a bill to provide for two additional judges in British Columbia on the ground that the provincial government was in the midst of an election and had, under the circumstances, no right to ask for the increase.

(iii) In 1899 and 1900, the Senate rejected a bill to re-adjust representation in Ontario on the alleged ground that it was inexpedient to proceed with the bill until after the 1901 census, when re-adjustment of representation would be required under the **British North America Act.**

(iv) In 1909, a bill which allowed appeals in claims from the Exchequer Court to provincial Supreme Courts in certain cases was rejected on the ground that it would lead to unnecessary litigation and confusion.

(v) In 1913, the Senate defeated the Naval Assistance Bill and adopted the following resolution: "This House is not justified in giving its assent to the bill until it is submitted to the judgment of the country."

(vi) In 1919, a bill bringing the Biological Board of Canada under the jurisdiction of the Minister of Marine and Fisheries was thrown out on the ground that the Board should be independent and protected from political interference.

(vii) In 1924, the Senate rejected seven bills sent from the Commons and drastically amended three others relating to the construction of the branch lines for the newly organized Canadian National Railway.

(viii) In 1926, the Senate rejected the Old Age Pension Bill on the grounds that there was no general public demand, that the provinces had not indicated approval, and on the ground of social undesirability.

(ix) From 1930 to 1940, thirteen bills from the Commons failed to pass the Senate, including one private bill relating to patents, two private members' public bills, a bill relating to pensions for Judges, and a bill which provided for the extension of Farmers' Creditors Arrangement Act.

(x) In 1961, the Senate Banking Committee recommended that a Bill declaring vacant the post of Governor of the Bank of Canada be dropped after the former Governor, Mr. James E. Coyne, resigned.

(xi) In 1961, the Senate insisted on an amendment it made to a Government Bill to amend the Customs Act.

During the 1970's, the Senate impact on Commons legislation was principally to be found in recommendations emanating from pre-study committee reports made to bills in advance of their coming before the Senate. Such pre-study of the 1975 Bankruptcy Bill led to almost one hundred and forty amendments being proposed.

During the latter 1980's and the 1990's, the Senate became more active in formally opposing and amending Commons legislation. Among the more controversial bills which led to confrontation between the Senate and House of Commons were the following: **(i)** in 1985, Bill C-11, the Borrowing Authority Bill; **(ii)** in 1986, Bill C-67, the "gating" amendments proposed to the Penitentiary Act; **(iii)** in 1987, Bill C-22, the Drug Patent Bill and Bill C-84, the Immigration Bill; **(iv)** in 1988, Bill C-60, the Copyright Bill, Bill C-103, the Atlantic Canada Opportunities Agency Bill and Bill C-130, the Free Trade Bill; **(v)** in 1989, Bill C-21, the Unemployment Insurance Act Amendments; **(vi)** in 1990, Bill C-28, the "clawback" Income Tax Bill and Bill C-62, the Goods and Services Tax; **(vii)** in 1991, Bill C-43, the Abortion Bill, which was defeated at third reading; **(viii)** in 1996, Bill C-28, the Lester B. Pearson International Airport Bill, which was also defeated at third reading; and **(ix)** in 1998, Bill C-220, the profit from authorship respecting a crime Bill, which was defeated at report stage.

Investigation

Professor Kunz writes that "a considerable part of the Senate's functions is performed in Committee and... in many cases what happens in the Chamber is only a preparation for, or a consummation of, what is accomplished in the Committee room."[22] The role of Senate Committees is to study legislation, to scrutinize government spending proposals (the estimates) and to inquire into problem areas of concern. A Select Committee may refer to a Standing Committee, which is permanently established by the Senate Rules, or a special committee which is appointed to study a specific order of reference and disappears upon completion of its work. Pursuant to the Rules, Committees may appoint Sub-Committees. The Senate may also join with the House of Commons in the creation of Standing Joint Committees or Special Joint Committees.

A number of major investigations into social and economic issues have been undertaken by Senate Committees in recent years, prompting some commentators to observe that "its initiatives in this area have sometimes made unnecessary the appointing of royal commissions."[23] Among the studies conducted in recent years, mention may be made of Science Policy (1970), The Mass Media (1970), Poverty in Canada (1971), the Agricultural Potential of Eastern New Brunswick (1976), Children (1980), Veterans (1981),

Soil Erosion (1984), Canadian Financial Institutions (1990), the Canada-U.S. Free Trade Agreement (1990), the Goods and Services Tax (1990), Program Evaluation in the Government of Canada (1991), Truro-Sydney, N.S. Railway Line (1992), Peacekeeping (1993), Energy Emissions Crisis (1993), the Valour and the Horror (1993), Of Life and Death (1995), Post-Secondary Education in Canada (1997), Canadian Agriculture's Priorities (1999), Social Cohesion (1999), Aboriginal Governance (2000), and, Air Safety and Security (2000).

Composition of the Senate

The appointment system has permitted the entry into the Senate of many distinguished Canadians. Among some of the best known Senators were George Brown, Alexander Campbell, Oliver Mowat, Richard Cartwright, George Ross, George Foster, Allan Aylesworth, Raoul Dandurand, James Lougheed, Arthur Meighen, Ross Macdonald, T.A. Crerar, Leon Mercier Gouin, Chubby Power, Adrian Hugessen, Grattan O'Leary, Maurice Bourget and Eugene Forsey to name only a few. Historically, Senators have held important cabinet positions within government. In the first Canadian cabinet, five of the thirteen ministers were Senators, and two governments in the nineteenth century were led by Senators, Sir John Abbott (1891-92) and Sir Mackenzie Bowell (1894-96). Nearly every major portfolio except that of Finance has been held at one time or another by a Senator.[24]

In terms of party representation in the Senate, in 1867 the Conservatives and Liberals each held approximately equal representation. When the Liberals came into office in 1896, the Senate consisted of sixty-three Conservatives, ten Liberals and three Independents. In 1911, when the Conservatives came to power, there were fifty-seven Liberals and seventeen Conservatives. When the Conservatives returned to power in 1957, there were seventy-eight Liberals, five Conservatives and two Independents. In 1979, when Mr. Clark became Prime Minister (4 June 1979), membership in the Senate was seventy-two Liberals, eighteen Conservatives, three Independents and one Social Credit. In 1984, when Mr. Mulroney became Prime Minister (17 September 1984), the balance was seventy-three Liberals, twenty-three Conservatives and four Independents.[25] A few weeks prior to leaving office, Mr. Mulroney filled the fourteen vacancies in the Senate with thirteen Conservatives and one Independent. As a result, in 1993 Prime Minister Chretien's Liberal caucus of forty-one Liberals faced fifty-eight Conservatives and five Independents. The present composition of the Senate (March, 2001) is fifty-four Liberals, thirty-three Conservatives, one Alliance, five Independents and twelve vacancies.

The appointment system has produced a different kind of legislator than the elective system of the House of Commons. Senators are generally older than Members of the Commons and are the more senior legislators, in that they have had more parliamentary experience before taking their seats. There have been proportionately more women in the Senate than in the House. R. MacGregor Dawson writes, "the appointments to the Senate are frequently used to give not only provincial representation, but also representation to economic, racial, and religious groups in the provinces."[26]

A. Provincial Representation

The following provides a brief explanation of the history of the entry of each province and territory into Confederation and the variations in the number of Senators assigned to them. It must be noted, however, that the Senate's composition reflects both provincial and regional representation. As John A. MacDonald stated in the Confederation Debates, the principle of equality in the Upper House was "to protect local interests and to prevent sectional jealousies". MacDonald saw the British North American colonies as three great sections—Ontario, Quebec and the Maritimes, each with different economic interests. It was on the basis of regional equality and not provincial equality that Senate representation was agreed to.

(1) **Quebec and Ontario** —The only feasible scheme for the union of the British North American colonies in 1867, Professor MacKay writes "was a federal state in which Lower Canada (Quebec) should be protected in all its rights. Lower Canada must be a willing partner to any scheme of union since geographically it held the key to any union with the Maritime Colonies. And it could only be a willing partner by the grant of absolute guarantees for the protection of its institutions, its language, its religion, and its laws guarantees that must be clearly evident to all."[27] Quebec was given equal representation in the Senate with Ontario — twenty-four seats. Section 24 of the **Constitution Act, 1867** provided for a special representation in the case of Quebec: "each of the twenty-four Senators representing that Province shall be appointed for one of the twenty-four electoral districts of Lower Canada..." These districts are specified in Schedule A to Chapter One of the **Consolidated Statutes of Canada (1859).**

(2) **Nova Scotia, New Brunswick and Prince Edward Island** —The original agreement adopted at Quebec City in 1864 by the Fathers of Confederation stated that Nova Scotia would have ten Senators, New Brunswick ten and Prince Edward Island four. The record of the discussions which took place at the Quebec Conference shows that the Prince Edward Island delegates argued vigorously that the only safeguard the smaller provinces would possess was in the Senate and raised the demand for equal representation for all the provinces in the Upper House. This position, MacKay writes, "was farther than other Maritime delegations were prepared to go."[28] P.E.I. alone dissented from the Quebec agreement and refused to come into the new federation. In order to retain the equality of sectional representation, the twenty-four maritime members were divided equally between New Brunswick and Nova Scotia. When Prince Edward Island entered Confederation pursuant to the **Prince Edward Island Terms of Union, 1873,** it did so on the terms and conditions of the Quebec resolutions. Senate representation was therefore readjusted to ten Nova Scotia seats, ten New Brunswick seats and four from P.E.I.

(iii) **Newfoundland** —The Fathers of Confederation regarded Newfoundland as a distinct region and its representation in the Upper Chamber an exception to the condition of equality. Sir John A. MacDonald felt the province "had an interest of its own... It, therefore, has been dealt with separately, and is to have a separate representation in the Upper House, thus varying from the equality established between the other sections." Newfoundland entered Confederation only in 1949, pursuant to the **Newfoundland Act,** which confirmed the Terms of Union between the province and Canada. The Terms of Union provided for representation in the Senate by six members.

(iv) **Manitoba, Saskatchewan, Alberta and British Columbia** —The Quebec Resolutions stated that "the North Western Territory, British Columbia and Vancouver shall be admitted into the Union on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable." **The Manitoba Act, 1870** provided that it shall "be represented in the Senate of Canada by two members, until it shall have, according to decennial census, a population of fifty thousand souls, and from thenceforth it shall be represented therein by three members, until it shall have, according to decennial census, a population of seventy-five thousand souls, and from thenceforth it shall be represented therein by four members." The **British Columbia Terms of Union, 1871** stipulated that the province would be represented in the Senate by three members. The **Alberta Act, 1905,** and the **Saskatchewan Act, 1905** each provided for four Senators with a proviso added "that such representation may, after the completion of the next decennial census, be from time to time increased to six by the Parliament of Canada." By the **Constitution Act, 1915,** the West became recognized as a distinct section and was allotted a representation of twenty-four members equally with the other sections, six Senators being assigned to each of the four western provinces.

(v) **The Northwest Territories and the Yukon Territory** — Pursuant to the **Constitution Act, 1975**, the two territories were entitled to be represented in the Senate by one member each. Like the Province of Newfoundland, they were not added to an existing region but treated as an exception to the sectional divisions.

(vi) **The Nunavut Act of 1993** separated the new Territory of Nunavut from the Northwest Territories and granted it representation in the Senate by one member.

Significant Events in the Historical Evolution of the Senate of Canada

1864 — In September 1864, the Charlottetown Conference is held originally to discuss a Maritime Union and then to discuss a union of all the British North American Colonies. In October 1864, the Quebec Conference is held. Six out of the fourteen days of the Quebec Conference are devoted to discussing the powers and composition of the Upper Chamber.

1867 — The first sitting of the Senate is held on 16 November 1867. The first Senate Speaker is Joseph Edouard Cauchon. During the session, three Standing Committees are appointed : Banking, Commerce and Railways, Contingent Accounts, and Standing Orders and Private Bills.

1870 — Entry of Manitoba. The **Manitoba Act** provides for the addition of two Senators for that province.

1871 — Entry of British Columbia. The **British Columbia Terms of Union** awards three Senate seats to B.C.

1873 — Entry of Prince Edward Island. P.E.I. is awarded four seats, and the representation of each of the two other Atlantic provinces is reduced from twelve to ten seats.

1874 — The British Government replies that it could not advise Her Majesty to comply with the request of Prime Minister Alexander MacKenzie to appoint extra Senators pursuant to Section 26 of the **Constitution Act, 1867.**

1875 — The first major legislative confrontation between the Senate and House of Commons. The Senate rejects a bill for the construction of a railway from Esquimalt to Nanaimo in British Columbia.

1879 — The "Northwest Territories" of the time were given two seats in the Senate, a figure which was doubled in 1903.

1889 — Creation of the Standing Committee on Divorce.

1894 — Creation of the Standing Committee on Internal Economy and Contingent Accounts.

1905 — Entry of Alberta and Saskatchewan. These newly-created provinces each obtain four seats.

1909 — Creation of Agriculture and Forestry Standing Committee and Immigration and Labour Standing Committee.

1913 — Senate defeats Naval Assistance Bill saying "This House is not justified in giving its assent to the bill until it is submitted to the judgment of the country."

1915 — **Passage of the Constitution Act, 1915** which reorganized and rationalized the basis of representation by creating a fourth

division, the Western division, composed of the provinces of Manitoba, Saskatchewan, Alberta and British Columbia, each represented by six Senators. The same Act provided for the awarding of six seats in the Senate to Newfoundland when it entered Confederation, which it did in 1949.

1918 — Tabling of the Report of the Special Committee of the Senate appointed to determine the rights of the Senate in Matters of Financial Legislation (the Ross Report) which upheld the right of the Senate to amend Commons money bills.

1919 — Creation of the Standing Senate Committee on Finance.

1926 — Senate rejects the Old Age Pension Bill.

1930 — "Persons Case" decision by the Judicial Committee of the Privy Council in **Edwards v. Attorney General for Canada ([1930] A.C. 124)** confirming the possibility of appointing women to the Senate. On 14 February 1930, Mrs. Cairine MacKay Wilson, daughter of the late Senator MacKay of Ontario, was summoned to the Senate, becoming Canada's first woman Senator.

Parliament of Canada confers jurisdiction for divorce for Ontario on the Supreme Court of Ontario, leaving only Quebec and Newfoundland whose courts had no jurisdiction over divorces. Henceforth, divorce bills dealt with by the Senate concerned divorces in these two provinces alone. Pursuant to the Divorce Act, 1967-1968, the authority for granting divorces was completely taken away from the Senate. The Act replaced the then existing Dissolution and Amendment of Marriages Act, but allowed any proceeding not finally disposed of to continue as if the Act had not been repealed. The Senate disposed of its last divorce case on 26 November 1969.

1934 — At the instigation of the government of the day, the Commons raises its fee for the initiation of a private bill from $200 to $500, the understanding being that the Senate fee would remain at $200. The result was to divert the initiation of all private bills to the Senate.

1938 — Creation of the Standing Senate Committee on External Relations.

1946 — Restructuring of some Senate Committees. Natural Resources (which terminated in 1969-70) replaces Agriculture and Forestry and Transport and Communications replaces Railways, Telegraphs and Harbours.

1947 — Senate Rules changed to permit a Minister from the House of Commons to take part in a Senate debate in Committee of the Whole when a bill relating to his or her Department is considered in the Senate.

1961 — Appearance of Bank of Canada Governor James E. Coyne before the Banking Committee on the Bill declaring vacant the post of Governor of the Bank of Canada.

1965 — Reduction in the Senatorial term, pursuant to the **Constitution Act, 1965.** Under the terms of this reform, which does not apply to Senators appointed on or prior to 2 June 1965, Senators must retire at age 75.

1968-69 — Restructuring of Senate Committees. Foreign Affairs replaces External Relations, and Health, Welfare and Science replaces Immigration and Labour. Creation of the Standing Senate Committee on Legal and Constitutional Affairs. Major revision undertaken to Senate Rules.

1970-71 -72 — Creation of Standing Senate Committee on Internal Economy, Budgets and Administration, replacing Internal Economy and Contingent Accounts. Creation of the Standing Senate Committee on Agriculture in 1972.

1972 — Appointment of the first woman Speaker, Muriel McQueen Ferguson.

1975 — The Yukon and Northwest Territories are each awarded one Senate seat.

1979 — On 21 December 1979 in **Re: Authority of Parliament in Relation to the Upper House [1980],** 1 S.C.R. 54, the Supreme Court rules that Parliament cannot fundamentally alter the Senate in virtue of Section 91(1) of the **B.N.A. Act, 1867.** In this Bill C-60 reference, the Supreme Court confirmed that the consent of the provinces was necessary for the reform of the essential elements of the Constitution and the powers of the Senate.

1982 — Passage of the **Constitution Act, 1982.** Under the new amending formula, the Canadian Parliament is given exclusive authority to amend the provisions of the Constitution of Canada in relation to the Senate. A more demanding formula governs amendments affecting the Senate's powers, selection of Senators, the number of Senators by which a province is entitled, and the residency conditions to be met by Senators. In these areas, amendments may be made by proclamation of the Governor General authorized by resolutions of the Senate, the House of Commons and the legislative assemblies of seven provinces representing fifty per cent of the population of all of the provinces. The **Constitution Act, 1982** provides that for constitutional amendments the Senate has only a suspensive veto of one hundred and eighty days. In the absence of Senate agreement, the House of Commons has only to wait one hundred and eighty days and then adopt the constitutional amendment a second time.

1983-84 — Creation of the Standing Senate Committee on Energy and Natural Resources.

1987 — The 1987 Meech Lake Accord contains a provision regarding vacancies in the accord. The proposed new procedure could guarantee that no person would be appointed to the Senate who was not acceptable to both levels of government. The political accord accompanying the proposed **Constitution Amendment, 1987** contains a commitment ensuring that the new nomination procedure for Senators is to take effect forthwith upon signature of the accord and prior to the proclamation of the amendments. The provisional procedure is to apply until there are constitutional amendments regarding the Senate generally or until the Accord fails to be ratified. Six Senators are appointed pursuant to this Accord. In 1990, time expires for the ratification of the Accord.

1988 — Senate does not pass Bill C-130, the Free Trade Agreement Bill. A general election is called. With the Mulroney Government returned, the bill is speedily passed in the first session following the election.

1989 — Creation of the Standing Senate Committee on Aboriginal Peoples.

1990 — Elected in the Alberta province-wide election, Senator Stan Waters is summoned to the Senate on 16 June 1990.

On 25 September 1990, the Banking, Trade and Commerce Committee reports to the Senate that Bill C-62, the Goods and Services Tax be not proceeded with. The recommendation is defeated and following a lengthy and turbulent debate, the bill is passed and given Royal Assent on 13 December 1990.

On 27 September 1990, eight additional Senators are appointed pursuant to Section 26 of the **Constitution Act, 1867**. It is the first time the Section has been used.

1991 — On 18 June 1991, the Senate adopts major changes to its procedural rules and practices. It is the most important revision since 1906.

1992 — Defeat of the Charlottetown Accord in the 26 October 1992 referendum. The Accord had proposed that each province would be assigned six Senators and each territory one. Additional seats would be added to represent the Aboriginal peoples of Canada. Elections would take place under federal jurisdiction at the same time as elections to the House of Commons. Elections could be by the people or by their provincial or territorial legislatures. There would be scope for the provinces and territories to provide for gender equality or to designate seats for specific purposes. The Senate would be able to block key appointments, including the heads of key regulatory agencies and cultural institutions. It would also be able to veto bills that result in fundamental tax policy changes directly related to natural resources. In addition, it would have the power to act within thirty calendar days to force the House of Commons to repass supply bills. Defeat or amendment of ordinary legislation would lead to a joint sitting process with the House of Commons. At a joint sitting, a simple majority would decide the matter. Bills materially effecting the French language or French culture would require approval by a double majority — a majority of all Senators voting and a majority of all Francophone Senators voting. Senators would initiate bills, except for money bills, and the House of Commons would be required to deal with them within a reasonable time limit. Senators would not be eligible for Cabinet posts.

1993 — The Northwest Territories is divided and the new Territory of Nunavut is granted a seat in the Senate, bringing the maximum normal membership of the Senate upto one hundred and five.

1996 — Bill C-28, the Lester B. Pearson International Airport Bill, is defeated at third reading.

1998 — Bill C-220, the profit from authorship respecting a crime Bill, is defeated at report stage.

2001 — Creation of the Standing Senate Committee on Human Rights and of the Standing Senate Committee on Defence and Security.

NOTES AND REFERENCES

1. Quoted in Robert A. MacKay, *The Unreformed Senate of Canada*, revised and reprinted (Toronto: McClelland and Stewart, 1963), p. 38.
2. Robert Jackson and Doreen Jackson, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy*, Second Edition (Scarborough: Prentice Hall, 1990), p. 365.
3. Kitchen, G. William, "The Abolition of Second Chambers" in D.C. Rowat, *Provincial Government and Politics* (Ottawa: Carleton University, 1973), p. 61.
4. MacKay, *op.cit.*, p. 36.
5. *Ibid.*, p. 31.
6. *Ibid.*
7. Quoted in Ross, Sir George, *The Senate of Canada: Its Constitution, Powers and Duties Historically Considered* (Toronto: Copp, Clark, 1914), pp. 19-20.
8. *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces* (Quebec: Hunter, Rose, 1865), p. 22.
9. *Ibid.*, p. 186.
10. *Ibid.*, p. 234.
11. *Ibid.*, pp. 35-36.
12. *Ibid.*, p. 373.
13. *Ibid.*, pp. 88-89.

14. Regarding Section 26, Mollie Dunsmuir writes that when the **Constitution Act, 1867** was drafted, "there was considerable debate as to whether to include a 'deadlock provision' that would allow the government of the day to appoint additional Senators in case the Commons and the Senate should ever irreconcilably differ. Sir John A. MacDonald, opposing the concept, argued that such a 'swamping' provision could destroy the independence and utility of the Senate. At the London Conference of 1866, where the actual drafting took place, however, the other delegates were divided on the issue. The British Government was adamant that a deadlock provision be included, and so Section 26 was eventually drafted and approved. The colonial delegates insisted, however, that the additional appointments be regionally apportioned, that they be strictly limited in number, and that the final decision rest with the Crown rather than the government of the day. The British Government accepted these restrictions, although it expressed some concern about the last two." *See* "The Senate: Appointments under Section 26 of the Constitution Act, 1867", *Library of Parliament Research Paper*, August, 1990, p. 1.
15. Dawson, R. MacGregor, *The Government of Canada*, revised by Norman Ward (Toronto: University of Toronto Press, Fifth Edition), 1970, pp. 339-401. For a review of the questions of privilege which have been raised in the Senate since 1867, *see* W.F. Dawson "Privilege in the Senate of Canada" (Library of Parliament Collection, 1966).
16. Driedger, Elmer A., "Money Bills and the Senate", *Ottawa Law Review*, Vol. 3, No. 1 (Fall, 1968), pp. 40-41.
17. Quoted in S.D. Bailey, *The Future of the House of Lords* (London: 1954), p. 21.
18. Kunz, F.A., *The Modern Senate of Canada* (Toronto: University of Toronto Press, 1965), p. 198. *See* also Coulombe, Francoise, "The Value of a Bicameral Legislature: The Contribution of the Canadian Senate", *Library of Parliament Research Paper*, Revised, February, 1979.
19. Kunz, *op.cit.*, pp. 225-226.
20. *Ibid.*, p. 214.
21. Robertson, James R., "Rejection of Bills by the Canadian Senate", *Library of Parliament Research Paper*, November 5, 1990, pp. 3-4.
22. Kunz, *op.cit.*, p. 233.
23. Coulombe, *op.cit.*, p. 13.
24. *Ibid.*, p. 3.
25. *See* MacKay, *op.cit.*, p. 58 and Kunz, *op.cit.*, pp. 80-82.
26. MacGregor Dawson, *op.cit.*, p. 286.
27. MacKay, *op.cit.*, p. 34.
28. *Ibid.*, p. 37.

LITERATURE

Beck, J. Murray, "The Canadian Parliament and Divorce", *Canadian Journal of Economics and Political Science* (August, 1957), pp. 297-312.

Bourinot, Sir J.G., *Bourinot's Parliamentary Procedure*, ed. T.B. Flint (Toronto: Canada Law Book Company, 1916).

Canada. *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces* (Quebec: Hunter, Rose, 1865).

Dawson, R. MacGregor, *The Government of Canada*, revised by Norman Ward (Toronto: University of Toronto Press, Fifth edition, 1970).

Driedger, E.A., "Money Bills and the Senate", *Ottawa Law Review*, vol. 3:25, Fall, 1968.

Dunsmuir, Mollie, "The Senate: Appointments Under Section 26 of the Constitution Act, 1867", *Library of Parliament Research Paper*, August, 1990.

Franks, C.E.S., *The Parliament of Canada* (Toronto: University of Toronto Press, 1987).

Forsey, Eugene A., "Appointment of Extra Senators under Section 26 of the British North America Act", *Canadian Journal of Economics and Political Science*, xii, No. 2, May, 1946.

Heard, Andrew, *Canadian Constitutional Conventions* (Toronto: Oxford University Press, 1991).

Jackson, Robert J. and Doreen Jackson, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy* (Scarborough: Prentice-Hall, 1990, Second Edition).

Kunz, F.A., *The Modern Senate of Canada* (Toronto: University of Toronto Press, 1965).

—. "The Senate As A Parliamentary Institution". Address of Professor F.A. Kunz (McGill University) to the Training and Development Seminar for Senate Committee Clerks and Legislative Clerks, Ottawa, September 9, 1991.

MacKay, R.A., *The Unreformed Senate of Canada* (revised and reprinted, Toronto: McClelland and Stewart, 1963).

Massicotte, Louis and Francoise Coulombe, "Senate Reform", *Library of Parliament Research Paper*, April, 1988.

Robertson, James R., "Rejection of bills by the Canadian Senate", *Library of Parliament Research Paper*, November 5, 1990.

Senate of Canada, *Report of the Special Committee appointed to determine the Rights of the Senate in Matters of Financial Legislation* (Ross Report), 1918.

— . *Report on Certain Aspects of the Canadian Constitution*, November, 1980.

— . *Major Legislative and Special Study Reports by Senate Committees*, 1962-1992.

Stilborn, Jack, "Senate Reform in the Post-Meech Lake Era — A Backgrounder", *Library of Parliament Research Paper*, 1990.

8

The Senate of the Republic of Chile

CARLOS HOFFMANN CONTRERAS

The 1980 Political Constitution of the State, Chapter V, establishes a bicameral system with a National Congress consisting of two Houses: the Senate and the Chamber of Deputies.

The Senate is currently composed of forty-nine Senators:

- Thirty-eight elected by direct vote — two Senators by each of the nineteen Senatorial Constituencies of the country who remain in office for a period of eight years and are alternately replaced every four years.
- Two Life Senators — as stipulated in the Constitution these are former Presidents of the Republic having served continuously for six years in that capacity. However, not eligible for the nomination of Senator are those Presidents who have demitted office on the grounds of an impeachment.
- Nine Institutional Senators — elected on the grounds of their experience in the fundamental institutions of the Republic and their outstanding professional and academic background in the field of politics. They also serve for a term of eight years. They are:
  - — Two former Judges of the Supreme Court (elected by the latter)
  - — One former Comptroller General of the Republic (also elected by the Supreme Court)
  - — One former Commander-in-Chief of the Army (elected by the National Security Council)
  - — One former Commander-in-Chief of the Navy (elected by the National Security Council)
  - — One former Commander-in-Chief of the Air Force (elected by the National Security Council)

  - — One former Director General of the Police Force (elected by the National Security Council)
  - — One former Rector of a State University or of a University recognized by the State (nominated by the President of the Republic), and
  - — One former Minister of State (also nominated by the President of the Republic)

Eligibility for Senator

As set forth in Article 46 of the Political Constitution of the State, eligible candidates for Senator are all Chilean citizens with the right to vote, with two years of residence in their respective regions prior to the date of the election, who have completed secondary education or equivalent, and forty years of age by the day of the election.

Exclusive attributions of the Senate

The exclusive attributions of the Senate are: to take cognizance of the accusations presented by the Chamber of Deputies against a Chilean authority and act as a Court; to decide on the admissibility of a judicial action which any individual might bring against any Minister of State; to take cognizance of conflicts of jurisdiction arising between political or administrative authorities and superior Courts of Justice; to grant reinstatement of citizenship; to lend or deny consent to actions of the President of the Republic; to grant its approval for the President of the Republic to absent himself from the country for a period exceeding thirty days or during the last ninety days of his term; to declare the incapacity of the Head of State on the grounds of physical or mental impediment; and to give its opinion to the President of the Republic when he should so request.

As provided by the Political Constitution, the Senate, its legislative committees and other bodies thereof are expressly prohibited from conducting investigations into the actions of the Government or adopting agreements implying inspection.

The articles of the Political Constitution normatively provide the ineligibilities, incompatibilities, inviolabilities and parliamentary privileges applicable in the manner of common norms for Senators and Deputies.

Senators and Deputies shall receive as sole compensation a fee equal to the remuneration of a Minister, all concerned allowances included.

Ordinary and Extraordinary Sessions

Every four years, the Chamber of Deputies is totally renewed and the Senate is partially renewed. The so-called Legislative Period is the time that passes between one renewal of the Congress and the next one.

The ordinary sessions of Congress are those held every year between the 21st day of May and the 18th day of September. During parliamentary recess, Congress may be reconvened by the President of the Republic or convoke itself for an extraordinary session.

Congress may be convoked by the President of the Republic for an extraordinary session within the last ten days of an ordinary legislature or during parliamentary recess. Self-convocation of Congress should be done through the President of the Senate and upon written request of the majority of the members in office of each of its chambers. This shall only apply during parliamentary recess and provided Congress had not been convoked by the President of the Republic.

When convoked by the President of the Republic, Congress may only deal with legislative matters or with international treaties which the President of the Republic may have included in the agenda for said convocation, without prejudice to the power of Congress to exercise its attributions and pass the Budgetary Law.

When convoked by the President of the Senate, Congress may deal with any matter of its concern.

The Congress shall, as a matter of law, always be understood convoked to take cognizance of the declaration of the state of siege.

Sessions

Every Chamber has the exclusive faculty to issue norms and regulations in order to control its own organization and performance within the framework of the Constitution and the Constitutional Organic Law of the Congress. In addition, the necessary funds for the operation of the Congress shall be earmarked every year by the Budgetary Law of the Nation and each Chamber shall establish the manner in which such funds shall be allocated.

Both the Senate and the Chamber of Deputies shall hold separate sessions and establish specialized committees to study the various Bills introduced in the Congress as well as any other matter of its concern.

Every meeting held by the Senate or the Chamber of Deputies or both is called a Session. The Full Congress is the joint assembly of Senators and Deputies.

Quorum is the minimum number of parliamentarians required for any of the Chambers to hold a session or to adopt a resolution. The required quorum for every Chamber to meet in session is one-third of the Senators or Deputies in office.

Agreements are usually adopted by a simple majority (half plus one) of the present members. However, a special quorum has been established by the Constitution for some specific laws.

While determining a quorum or majority, Senators or Deputies who have been deprived of their rights or suspended, and Senators and Deputies who have been constitutionally allowed to absent themselves from the country shall not be considered.

Types of Sessions

As set forth in their Regulations, there are various kinds of Sessions:

- Ordinary Sessions : They are held on the days and times fixed in the beginning of each legislative period.
- Extraordinary Sessions : They are held on a day and time other than the dates previously fixed for ordinary sessions. However, the matters to be considered form part of the ordinary agenda.
- Special Sessions : Those aimed at discussing specific current affairs or incidents.

Committees

Each House of the Congress shall have the number of Permanent Committees stipulated in its own Regulations.

Special Commissions may also be designated to carry out a detailed study of a specific subject such as Reform and State Modernization.

Permanent Committees

Members : With the only exception of the Internal Regime Committee which shall also consist of the President and the Vice-President of the Senate, each Senate Committee shall consist of five Senators.

The members of each Committee shall be elected by the Senate at the proposal of its President and shall remain in office for the full legislative period.

There exist nineteen Permanent Committees in the Senate:

1. Government, Decentralization and Regionalization
2. External Relations
3. Constitution, Legislation, Justice and Regulations
4. Economy
5. Finance
6. Education, Culture, Science and Technology
7. National Defence
8. Public Works
9. Agriculture

10. Environment and National Heritage
11. Labour and Social Security
12. Health
13. Mining and Energy
14. Housing and City Planning
15. Transport and Telecommunications
16. Human Rights, Nationality and Citizenship
17. Maritime Interests, Fishery and Aquiculture
18. Internal Regime
19. Accounts Reviewing

Special Joint Budget Committee

Members: Thirteen Senators (the five members of the Finance Committee plus eight additional Senators) and thirteen Deputies (members of the Finance Committee).

Special Norms: The Special Joint Budget Committee shall be established prior to the completion of the ordinary legislative period. The Committee shall set up the rules of procedure to be used and the Sub-Committees required to study the various items of the Nation's Budget.

Joint Committees

These are specified in the Political Constitution of the State and the Set of Rules and Regulations of the Senate. They consist of five Senators and five Deputies.

Joint Committees are presided over by one Senator. The Joint Committee Sessions are held in the headquarters of the Senate, and serviced by its Secretariat. The quorum of the Joint Committee is the majority of the members of the Chamber of Deputies and Senate forming part of the Committee, and agreements are approved by a simple majority of the members present. The objective of the Joint Committee is to settle the differences arising from a Bill which has been totally rejected by the Reviewing Chamber, or from an amended Bill whose additions or amendments have been rejected by the Chamber of its origin.

Parliamentary Committees

Committees are liaison bodies between the Table of the Senate and Senators for the processing of matters submitted to their consideration.

Their attributions, which range from censuring the Table, changing the members of a Committee and summoning Special Sessions to altering the Agenda of the Ordinary or Extraordinary Session — among others — are stipulated in the Rules and Regulations of the Senate.

Initiative and Origin of Laws

Laws may originate in the Chamber of Deputies or in the Senate, through a message from the President of the Republic or through a motion of any of their members. The motions may not be signed by more than ten Deputies nor by more than five Senators.

Laws on amnesty and general pardons may only originate in the Senate.

The President of the Republic holds the exclusive initiative for Bills related to changes of the political or administrative division of the country, or to the financial or budgetary administration of the State, amendments to the Budgetary Law included. As set forth in the Constitution, the President of the Republic also holds the exclusive initiative for a large number of matters.

The National Congress may only accept, reduce or reject the services, employment, salaries, loans, benefits, expenditure and other related initiatives as proposed by the President of the Republic.

Urgency

As stipulated in the Constitution, it is for the President of the Republic to point out the urgency for passing a Bill. Time limits to discuss and vote on a Bill shall depend upon the specific urgency of the matter:

- Simple urgency : Thirty days
- Extreme urgency : Ten days
- For immediate consideration : Three days

Time limits shall be counted from the date of the session in which the concerned Chamber is informed of the message or Official Letter wherein they are requested for an early consideration of the matter.

Quorum to pass a Bill

Quorum is the smallest number of favourable votes required to pass, amend or repeal a law.

The Constitution distinguishes various categories of law which also require different quorums for their approval:

- Laws interpreting Constitutional Precepts shall require three-fifths of the total number of Senators and Deputies in office to be passed, amended or repealed.

- Constitutional Organic Laws shall require four-sevenths of the total number of Senators and Deputies in office to be passed, amended or repealed.
- Laws of qualified quorum shall require a simple majority of the Senators and Deputies in office to be passed, amended or repealed.
- Ordinary or Common Laws shall require the majority of the members present in the session to be passed, amended or repealed; or the majority applicable in conformity with the Constitution in the event of a Bill being rejected by the Chamber of origin.

Voting

On performing their legislative duties, Senators shall exercise their right to vote in a public voting session: by showing of hands (economic vote); in order of seats (individual vote); in alphabetical order (roll-call or nominal vote).

There also exist secret voting sessions (ballots) in which small balls are employed:

- White balls : Favourable vote
- Black balls : Negative vote
- Red balls : Abstention

A "Match" is a verbal agreement between Senators of opposite political parties who commit themselves to not participating in voting sessions for a given period of time. A "Match" does not apply to Committees or to the Chamber of Deputies.

Constitutional Reforms

REFORM INITIATIVE

A Constitutional Reform Bill may be proposed by any Deputy or Senator in their respective Chambers, and put forward by a maximum of five Senators or ten Deputies.

APPROVAL BY EACH CHAMBER

A Reform Bill is discussed in each of the Chambers and approved with the favourable vote of three-fifths of the Senators and Deputies in office.

However, there are certain matters which shall require the approval of two-thirds of the members of each Chamber to be reformed:

- Chapter I : Foundations of the Institutional Framework of the Country
- Chapter III : About Constitutional Rights and Duties
- Chapter VII : Constitutional Tribunal
- Chapter X : Armed and Police Forces, Public Security
- Chapter XIV : Constitutional Reforms

Interpretative Laws of the Constitution

The Congress also plays a constituent role by passing laws which aim at interpreting constitutional precepts that are not clear enough. The obligatory nature of such laws applies to all. Interpretative laws shall require, for its approval, amendment or repeal, the votes of three-fifths of the Senators and Deputies in office. While they are subject to the general norms in their processing, they are submitted to an obligatory constitutionality control by the Constitutional Tribunal. After an interpretative law of the Constitution has been passed, it shall be understood as forming part of it.

The Senate and the Designation of Senators to other State Bodies

The Senate participates in the National Security Council as its President forms part of the above mentioned body with the right to vote. Other members of the National Security Council are the President of the Republic, the President of the Supreme Court, the Comptroller General of the Republic, the Commanders-in-Chief of the Armed Forces and the Director General of the Police Force.

The Senate shall nominate, by a simple majority of the Senators in office, a Lawyer to be a member of the Constitutional Tribunal. The person nominated by the Senate shall be one of the seven members of the said Tribunal; three other members shall be designated by the Supreme Court; one by the President of the Republic, and two by the National Security Council.

The Comptroller General of the Republic, the Central Bank Councillors, the Director of the Electoral Service, the members of the National Television Council, and the Directors of the National Television shall be nominated by the President of the Republic, and ratified by the majority of the Senators in office.

Art in the Senate

An important collection of works of art — specially Chilean paintings — are exhibited in various places of the Senate. Some of them were donated; others are contributions (under a contract of loan and restitution) from the Central Bank of Chile, the Municipality of Valparaiso, the Fine Arts Museum and other bodies.

The Senate has a modern and humanistic view of its relations with people. It is currently undergoing a process of modernization which involves a further approach to the electorate. To let people know about its activities, the Senate avails itself of modern technology, press, television and its own website.

This all aims at having an increasingly interactive, participating democratic regime in a State with a rule of law in which the Senate is one of its fundamental pillars.

9

The Second Chamber in a Unitary State: The Example of the Czech Senate

PETR PITHART
JAN KYSELA*

Twenty-five years have elapsed since the publication of "*The Second Chamber— Its Role in Modern Legislatures*" (Ed.: S.S. Bhalerao, New Delhi, 1977) on the occasion of the 25th anniversary of the Rajya Sabha. In the meantime, Czechoslovakia ceased to exist, and with it also the Federal Assembly, the bicameral legislature of the Federation, which had been presented to the readers of the above-mentioned collection. While Slovak Republic, one of the successor states, provided for a unicameral legislature in its Constitution,[1] the authors of the Constitution of the other successor state, Czech Republic, opted, after certain hesitation, for a legislature with two Houses: the Chamber of Deputies and the Senate.

Only a short period of a few months was set aside for the drafting of the Constitution in the independent Czech Republic. In a unitary state without a significant presence of ethnic minorities and corporatist traditions, the creation of a bicameral legislature gave rise to political, and to a lesser degree also academic, discussions and disputes. To a certain degree, we saw a re-enactment of the disputes surrounding the drafting of the first complete Constitution of the Czechoslovak Republic in 1920. A highly heterogeneous camp of Second Chamber champions was formed aside the camp of those who rejected the Second Chamber on principle. The pro-group included those who envisaged the Second Chamber as a promoter of regional interests aside those who wished to establish a "council of the wise", an assembly of ephors guarding the fundamental principles of a political community. Devotees of Friedrich August Hayek and his concept of specialized parallel Houses — a legislative assembly, which discovers the spontaneously arising rules of good behaviour, and a governing assembly, which sets out rules and measures for the day-to-day operation of the state —, eventually gained the biggest influence.[2] In fact, Hayek conceived of two independent parliamentary assemblies rather than a bicameral legislature

* Petr Pithart, Prof. LL.D., has served at the Czech Senate as the first President between 1996 and 1998, Vice-President between 1998 and 2000, and President again since the elections in December, 2000. Jan Kysela, LL.D., Ph.D., is the Secretary of the Senate's Standing Commission on the Czech Constitution and Parliamentary Procedures.

involving re-consideration of the same decision. Although the idea of specialized Houses devoted to different branches of law was rejected,[3] it can still be traced in the absence of representation of particular interests (of territories, professions, nationalities, language or religious communities, etc.) by the Czech Senate, as well as in the elimination of all links to the government, including debates on the national budget, from the powers of the Senate.

Although the Constitution of the Czech Republic, enacted on 16 December 1992 and effective as of 1 January 1993, set forth the existence of a bicameral legislature, the Senate was not established until several years later, in December 1996. The Deputies of the first chamber repeatedly refused to establish the Provisional Senate envisaged by the Constitution, while failing to adopt the Electoral Act, which would enable proper Senate elections. We have even seen several failed attempts at reviewing the Constitution in order to lay down a unicameral legislature. Consequently, the modern history of the Czech Senate is only four and a half years old.[4]

There are many typologies and classifications of Second Chambers; this paper will limit itself to four criteria: namely, the **basic functions**, or the significance of the Second Chamber, **its relation with the First Chamber**, the identification of **the interests it defends**, and the **mode of its establishment**.

The justification of the Senate in the Czech Republic's constitutional system rests mainly on formal arguments. The Senate is seen as part of a power-sharing system, both in terms of the classic triad of the legislative, executive and judicial powers, and in terms of the internal sharing within each of the three powers. The Senate serves as one of the hindrances to the concentration of power in a single parliamentary body, mainly, thanks to equal powers of both Houses over constitutional acts, electoral acts and other areas (use of armed forces; entering into international contractual obligations). In addition to the above, the Senate reviews the regular legislative work of the Chamber of Deputies, and may make the Chamber re-consider its decision. The mere existence of the Senate promotes consensual rather than majoritarian resolution of disputes. Since the Senate may not be dissolved, and since one-third of Senators are elected every two years, the Upper House is also expected to contribute to the continuity of legislation and political life.

We have already mentioned its relation to the Chamber of Deputies. May we add here, that since the first chamber is in a position to get a "last word" in the debate of common bills,which constitute an overwhelming majority of the legislative agenda, relatively easily, the Senate is the weaker of the two.[5] May we also say, that the position of the Senate has been somewhat strengthening thanks to the constitutional practice and, in part, also thanks to common legislation (the creative function).

As we mentioned earlier, the Senate does not explicitly defend any partial community interests. However, given the choice of the electoral system, which enhances personal contacts of individual Senators to their relatively small constituencies (about hundred thousand voters), we have been witnessing what

is sometimes referred to as "regionalization" or "communization" of the Senate. Due to the personal and professional background of a large number of Senators (mayors, city councilors, members of community governments, and recently also regional representatives), the Czech Senate has a similar focus to the French Senate, which had been designed as a House of territorial representation. Being very active in holding public hearings and seminars, the Senate also adds another dimension to the Second Chamber portfolio, namely making the parliamentary forum accessible to the civic society and expert politics.

The mode of establishment gives the Second Chamber, particularly its individual members, a relatively high degree of legitimacy. Senators are elected directly by majoritarian non-transferable vote in single-member constituencies. Election requires absolute majority, and has two rounds. Candidates receiving a simple majority of turned-in ballots will win in the first round; no limits are set for the turn-out. If a Senator was not elected in the first round, two top candidates move on to the second round. Whoever gets more votes in the second round, wins. Considering that both Houses have the same mandate derived from direct elections, unlike in France, the Netherlands or the Spanish combined system, the significantly weaker position of the Senate is hardly justified. For the weaker position of Second Chambers is often justified by their indirect election, and therefore a second-hand foundation in popular will.

A brief overview of the Senate's and Senators' status

The Senate is composed of eighty-one Senators elected for a six year term of office. Two hundred Deputies are elected for four years. Senate elections are held every two years in twenty-seven constituencies; like in the US, the Senate is re-elected third by third. Unlike the Chamber of Deputies, the Senate may not be dissolved. Czech citizens older than eighteen hold active voting rights. Czech citizens older than forty hold passive voting rights (in other words, Senators, the President of the Republic and Justices of the Constitutional Court must be over forty years of age).

During their term of office, Senators may not hold a seat in the Chamber of Deputies, may not serve as the country's President, a judge, a civil servant, and may not hold several other positions. However, they may be members of the national government (four Senators have been members of the national government since 1996; among Senators are several former ministers and a Prime Minister). They are endowed with an excessive immunity with regards to crimes and misdemeanors, which provides them with life-long impunity, as long as the Senate refuses to release them for prosecution.

A caucus may be established by at least five Senators. Four caucuses have been operating in the Second Chamber since 1996. Their numeral strength has been levelling off from the original 32-25-14-7 to the current 22-19-16-14. Aside from caucuses, numbers of independent and non-allied Senators have been growing to reach ten at present. Perhaps it may be said that in the long term horizon, the Senate ranks among the Second Chambers that dilute, *de facto*, the importance of party alliance of its members, which is to the benefit of

rational and factual argumentation. According to sociological surveys, Senators consider themselves far less dependent on political parties than Deputies.

Both chambers have a one-third quorum.

Powers of the Senate

According to modern constitutional science, the powers of a legislature are divided into **constitutional, legislative, creative, participation in the executive power and its control, and autonomous**.

The constitutional process is set in the framework of the legislative process of the Czech Republic with several important exceptions. Legislation may be initiated by the government, the Senate, a bloc of Deputies, individual Deputies, and regional governments. Constitutional Bills are presented to the Chamber of Deputies, and undergo three readings. If a Constitutional Bill is approved by three-fifths of all Deputies, it is passed up to the Senate. The Senate does not face any deadlines in its debates, and may either approve the Bill by three-fifths of all present Senators, or reject it by simple majority. Constitutional practice has given rise to the interpretation of the Constitution, which allows the Senate to return Constitutional Bills with proposed amendments to the Chamber of Deputies, if three-fifths of all present Senators so decide. If qualified majorities in both chambers agree on the same wording, the Constitutional Bill becomes a Constitutional Act, and is not subject to presidential veto or ratification through a referendum. A Bill on the communication of the two chambers is under preparation. It is expected to set forth the classical "shuttle" (*la navette*), limiting it to the duration of the term of office of the Chamber of Deputies.

So far, the Senate has approved seven Constitutional Bills, has rejected an extensive constitutional amendment which aimed at reducing presidential powers, and returned one Constitutional Bill to the Chamber of Deputies with proposed amendments. The constitutional commission of the Senate has been working for a few years on a proposal to amend the Constitution, and has drafted a Constitutional Bill on the Referendum Concerning Accession to the European Union.

Legislation may be **initiated** as listed above. A Senate's legislative proposal may be put forth by a group of at least five Senators, and by a committee or commission of the Senate. Twenty-one Bills have been presented to the internal debate within the Senate between 1996 and 2000, of which twelve were approved by the Senate, and sent down to the Chamber of Deputies as Senate Bills.

All Bills are presented to the Chamber of Deputies, and undergo, with some exceptions, three readings. Once a Bill is approved by the Chamber of Deputies, it is sent up to the Senate. The Senate has thirty days to either approve the Bill, reject it, or return it with proposed amendments. Upon brief deliberation, the Senate may rule that it will not hear the Bill. In fact, the Senate may also ignore the Bill without any debate or resolution. Once the thirty days

have elapsed, the Bill is considered approved, unless the Senate resolves otherwise. The Chamber of Deputies will vote again on the rejected or returned Bill. In order to over-ride the Senate, the Chamber of Deputies needs to achieve an absolute majority of all Deputies, that is one hundred and one votes. Amendments proposed by the Senate must be debated as a whole in the Chamber of Deputies; they may not be voted on separately. In practice, the Senate tries to facilitate inter-cameral communication by sending rapporteurs, who defend Senate resolutions in the Chamber of Deputies.

The emerging category of "organic acts", comprising the Electoral Act, the Act on Inter-Cameral communication, and the Rules of Procedure (Standing Orders) of the Senate, represent a deviation from consideration of common Bills.[6] This category is planned to be expanded and include some ten Acts on the status of constitutional bodies, courts and regional and local governments. Explicit consent of both Houses is required to enact these laws; in essence, the Constitutional Bill procedure is applied, but qualified majority is not required.

The Senate considered three hundred and thirty-six Bills during the first two terms of office, *i.e.* between 1996 and 2000, of which it either approved or did not debate two hundred thirty-seven Bills, rejected fourteen Bills, and returned eighty-four Bills to the Chamber of Deputies with proposed amendments. The Chamber of Deputies over-rode the negative resolution of the Senate in nine cases (the success rate of the Senate reaching almost forty per cent). Of the eighty-four Bills sent down to the Chamber of Deputies, the Senate's wording was approved in fifty-three cases (the success rate exceeding sixty per cent), while eight Bills were not enacted at all.

Once the Chamber of Deputies is dissolved,[7] the Senate takes a role of an "emergency" or provisional legislator; it may take legislative measures in urgent matters upon governmental recommendation, but these measures will become void unless they are approved by the first session of the Chamber of Deputies.

Creative powers of the Senate, namely of involvement in the presidential election and appointment of Constitutional Court Justices, are set forth in the Constitution. The President of the Czech Republic is elected by a joint session of both Houses. In the first two rounds, votes of Senators and Deputies are treated separately. In the third round, the two Houses merge into an Electoral College of two hundred and eighty-one members, and the President is elected by a simple majority of present electors. The Constitutional Court Justices are appointed by the President of the Czech Republic with the Senate's consent.

Common legislation vests the Senate with powers to propose, along with the country's President, candidates for the position of the Ombudsman and the Ombudsman's Deputy, who are then elected by the Chamber of Deputies. The Senate also may make proposals to the President of candidates for the position of the Chairperson and Inspectors at the Personal Data Protection Authority,

and appoint other officials. Enactment of the Senate's involvement in the appointment of Banking Councilors at the Czech National Bank has been considered for a long time. The same holds for the Supreme Judicial Council, a project which has recently been rejected by the Chamber of Deputies.

The Senate **does not control** the government. Unlike the Chamber of Deputies, the Senate does not participate in non-confidence votes, does not have the right to summon the government, or pose questions to it, does not establish investigative commissions, and does not debate the Act on the National Budget and the State Closing Account. However, the Rules of Procedure of the Senate give Senators and the bodies of the Senate the right to request information and explanation from members of the government and heads of administrative bodies; members of government are in regular attendance of Senate sessions, and often come to meetings of the Senate bodies. The Senate addresses to the Government a number of appendant resolutions to Bills, which are usually reflected in future legislative work. The Senate is involved in extensive legislative projects (for instance, the Pension Reform) through its specialized sub-committees.

Other important powers of the Senate represent control over the government *sui generis*, in other words a specific form of participation in the executive power. The Senate is the Chamber of Deputies' equal in decisions to declare war or the State of Emergency, in approving the stationing of Czech armed forces abroad, and of foreign armed forces on the local territory, unless such a decision is reserved for the government.[8] The approval of the Senate is also required for ratification of international treaties. Ratification of treaties concerning human rights and fundamental freedoms require consent of three-fifths of all Deputies, and three-fifths of all present Senators. The currently considered proposal of Constitutional Amendments concerning conditions of the Czech Republic's integration into the European Union is expected to enhance the powers of the Senate in this field, where legislative powers are blended with control powers.

And finally, the Senate exercises its **powers of autonomy** by establishing its bodies, namely committees and commissions, electing its President and Vice-Presidents, verifying the mandate of Senators, and conducting disciplinary proceedings with them. Throughout the third term of Office, *i.e.* since 2000, the Senate has had nine committees, of which seven deal with specialized cross-departmental and thematic portfolios. Committees have eight to twelve members. A Senator works only in one committee, with the exception of the "organizing committee" (a non-political "leadership" of the Senate), mandate and immunity committees. In addition to committees, four commissions have been set up, of which three are standing, and have eight to twelve members. These commissions deal with internal issues (the work of the Senate Office) or other specific issues (the Constitution and parliamentary procedures, Czechs living abroad).

The text reflects reality as of 10 June 2001.

NOTES AND REFERENCES

1. Having said that, the Slovak political representation made two attempts at establishing the Second Chamber in the 90's: the first one related to pondered changes in the position of the country's President and to the role of direct democracy in the Slovak constitutional system in the early 90's, and the other one related to decentralization of the state and regionalization at the very end of the 90's. The early 2001 constitutional review left the parliamentary structure unchanged.
2. Hayek, F.A.: Law, Legislation and Liberty (London, 1973).
3. Similarities can be found with the project of specialized Houses of the Italian Parliament proposed in the 80's by the so-called Bozzi's Commission. *See*, for example, Couwenberg, W.S.: Bicameralism — historical background, alternative conceptions and current relevance, in: Bloom, H. W. (Hg.): Bicameralisme (s'— Gravenhage, 1992), p. 141.
4. In hindsight, the establishment of the Senate can be seen as part of an interesting trend to revive bicameralism, which seemed to be on the decline as late as in the 60's. Today, bicameral legislatures exist in some 70 countries/states, and are considered or being developed in many others. *See*, for example, the Bicameral System in the World— A Survey. Meeting of the Senates of the World (Paris, 2000).
5. *See*, for example, typology A. Lijpharta: Patterns of Democracy, Government Forms and Performance in Thirty-six Countries (New Haven and London, 1999) or Democracies (New Haven and London, 1984).
6. Rules of Procedure of both Houses have a power of Acts. This tradition dates back to 1920, and, in fact, spills over into the depth of the 19th century.
7. May we point out that four conditions must be met in order to dissolve the Chamber of Deputies, which is quite unlikely. So far, the Chamber of Deputies has not been dissolved. The political crisis at the turn of 1997 and 1998 was resolved by passing a special Constitutional Act on a one-off shortening of the Chamber of Deputies' term of office.
8. This unusual power is given to Parliament in the light of historical experience of former Czechoslovakia. Some of these exclusive powers of Parliament were transferred to the government by the Constitutional Amendment of 2000 after the country's accession to NATO.

10

The Senate of the Fifth Republic of France*

HÉLÈNE PONCEAU

I. The Senate of the Fifth Republic: a Parliamentary Assembly that is a direct descendant of the French bicameral tradition

Parliamentary tradition has established the existence of two chambers in many democratic States: on the one hand, an Assembly elected by direct suffrage by the entire electorate; on the other, a Second Chamber designed to balance the decisions of the former. Because of the ways in which it recruits, its term of office and its competences (for the most part, these are different from those in the First Assembly), the Second Assembly is first and foremost designed as a regulator of the political system.

France has generally kept to this plan throughout its constitutional history since 1795; in particular, it has been able to maintain the existence of a Parliament incorporating two Assemblies almost without interruption.

It goes without saying that the present Senate differs from earlier Second Chambers on many counts.

For example, the Second Assembly was not elected between 1799 (when the Conservative Senate was installed in the Luxembourg Palace) and 1870, and accordingly took on an essentially aristocratic character, but under the Third Republic (1875 —1940), the Senate became a democratic, elected Assembly. By ensuring representation of territorial authorities in Parliament through its method of voting, the '*Grand Council of the local authorities of France*' imposed itself as a key component of government. That ceased to be true beween 1946 and 1958 when a Second Chamber, known as the Council of the Republic, was set up; the Council was endowed with competences that were initially limited, but it (the Council) was gradually able to re-discover most of its powers, particularly following the Constitutional Review of December 1954.

In those circumstances, although it only maintained a distant link with the Conservative Senate of Year VII, for example, **the Senate of the Fifth Republic**

* Ms. Hélène Ponceau, le Secrétaire Général de la Questure, sent the article prepared by the civil servants of the French Senate Library.

has perpetuated and revived the gains achieved by the Second Chambers that preceded it in the Luxembourg Palace.

Under Article 24 of the Constitution of 4 October 1958, '*the Parliament consists of the National Assembly and the Senate*'. **Taking its parliamentary prerogatives as a whole** (including voting on laws and controlling government action), **the Senate lies half-way between a strictly egalitarian bicameral system** (as under the Third Republic) **and an excessively non-egalitarian bicameral system** (as under the Fourth Republic).

The Senators, who are elected by indirect universal suffrage, are Parliamentarians in the same way that the Deputies are: they enjoy the same status, the same rights and the same prerogatives as their colleagues in the Palais-Bourbon, except for the 'final word' procedure and the opportunity to overthrow the government: these are the prerogative of the National Assembly. **Notwithstanding, the principle of equality between the two chambers does not mean they are identical.**

The Parliament can only benefit from the diversity of the two Assemblies that make it up. **Far from wishing to become the Assembly's 'clone', the Senate has a duty to develop its own specific features through its constitutional function of representing regional and local authorities and French people who have settled abroad.**

With growing decentralisation and the globalisation of trade, this 'double bonus' enables the Senate to play its role as a chamber, offering opportunities for reflection and perspective to the full.

The Senate has, on occasions, been challenged, but it has always been 're-legitimated' by the French people, particularly during the referendums of 1946, 1958 and 1969. **The Senate has managed to respond to the challenges that face all modern Parliaments,** such as, taking increasing responsibility for international questions, European integration, the development of new information technology, the continuing progress made by science (particularly life sciences) and, above all, new ways in which public opinion is expressed in a society increasingly informed by media coverage.

The Senate takes the form of a pole of institutional equilibrium. Thanks to the principle of three-yearly elections, the Senate, which cannot be dissolved, ensures the Republic's institutional continuity: an illustration of this is the stand-in role taken by the President of the Senate when the President of the Republic is absent.

II. The Senate's dual specific role: elected by elected members

The Senate '*is responsible for representing the Republic's regional and local authorities. French people who have settled outside France are represented by the Senate*'. (Article 24 of the Constitution)

Three hundred and twenty-one Senators now sit in the Senate: three hundred and nine represent authorities in Metropolitan France and the overseas territories; twelve represent French people who have settled outside France.

A. Representation of French people who have settled outside France

This function is one of the innovations introduced by the 1958 Constitution. It gives some 1,700,000 French people who have settled around the world a right to real parliamentary expression that they do not have in the National Assembly. Their twelve Senators are elected by proportional representation by elected members of the Higher Council for French People Abroad.

As Parliamentarians, it is their duty to express the specific concerns of French people abroad, particularly with regard to a social or fiscal scheme appropriate to their situation, the development of educational establishments around the world, improvements to diplomatic and consular services, and the protection and promotion of French economic interests outside the country's borders.

The existence of these Parliamentarians also contributes to a better grasp of international matters in the Senate.

B. Representation of Regional and Local Authorities

Regional and local authorities represent an element of the foundations of French democracy. It is quite legitimate that they should participate in expressing the will of the nation through their representatives, particularly as many decisions taken in Paris, especially in the fields of finance and taxation, can impact on the budgets of local authorities, departments and regions. The Constitutional Court takes this point up emphatically: '*As a Parliamentary assembly, the Senate participates in the exercise of national sovereignty.*'

As a corollary to this principle, a regulation in force since 1875 states that Senators should always be elected by indirect suffrage, and by a college of the 'great electors'. This voting method does not deprive the Senate of its elective democratic legitimacy in any way, as indirect suffrage has always been universal. In local elections (in France, they are not a simple administrative matter), citizens have a double vote: they elect their Municipal, General and Regional Councillors directly, and their Senators indirectly.

Senators representing regional and local authorities are elected in each department or territory by a college of 'great electors' made up of Deputies, Regional Councillors, General Councillors and local authority Delegates; the Senatorial College is made up of more than 150,000 electors nationally.

Although each local authority is entitled to at least one Delegate, irrespective of its population, Senators are elected on an essentially demographic basis in that the number of Delegates varies according to the size of the Municipal Council and the number of inhabitants.

For several years now, the composition of the Senatorial College has prompted debate on the Senate's representativeness[1]: how can the Constitutional mission to represent all regional and local authorities be reconciled with the need to take account of demographic shifts, while not calling the need for a major readjustment of the country into question?

According to the Electoral Code, local authorities with fewer than 9000 inhabitants elect one to fifteen Delegates depending on the size of the Municipal Council, while all Municipal Councillors in local authorities with 9000 inhabitants or more are Delegates as of right. In local authorities with more than 30,000 inhabitants, Municipal Councillors elect one additional delegate for every 1000 inhabitants over 30,000.

The voting system is plural: In the less densely populated departments (which elect one or two Senators), Senators are elected by single-candidate majority vote, and in departments electing three Senators or more, by proportional representation. In this way, over half the Senators are voted by a proportional system, which is reckoned to be the most equitable form of representing all views.

Just the same, given that France is not a federal State, the Senate has always managed to avoid becoming a 'corporatist chamber' of local elected members.

III. A Parliamentary Assembly in full flow

A Parliamentary Assembly is usually characterised by a dual mission: voting on laws, and controlling government action, but without forgetting the participation of the constituent power. All of these powers have been devolved to the Senate, and notwithstanding changes in government majorities and in its various components, it has sought to preserve the flow of Republican dialogue with the government and the National Assembly.

At the same time, the Senate has attempted to develop its specific role as a chamber offering opportunities for reflection and perspective.

A. The Senate's dual Parliamentary mission

1. *The Senate as lawmaker: constructive dialogue between the Assemblies and the government*

Like the government and the Deputies, **every Senator has the right to initiate legislation and propose amendments.**

This right to initiate legislation is exercised by lodging private members' bills with the Senate Office. About hundred of these are lodged every year. As happens in many other democracies, only a small number of these private members' bills get onto the Senate agenda, mainly because of the priority given to the government, whose own bills take up most of the time in public sittings. This situation has improved, particularly since the introduction in 1995 of a single nine-month session that has opened a window, 'a space for Senatorial autonomy', in the agenda; one sitting a month is also reserved for 'Senatorial initiatives' such as questions, debates and, above all, private members' bills— all dealing with a wide range of subjects.

But when a private member's bill has been adopted in the Senate, it still has to be sent on to the National Assembly. The bicameral system is indeed a long, smoothly-flowing river.

It is estimated that one law in eight (excluding international conventions) originates in the Senate. For the most part, Senators' contributions to the legislative process takes the form of examining the 5000 or so amendments lodged each year (almost 6200 in 2000): almost sixty per cent of them are adopted by the Senate, but adoption in the National Assembly depends on the political conjuncture and the nature of the proposed legislation. The amendments themselves vary enormously, ranging from simple technical modifications to the insertion of additional provisions: these amount to 'wagons' that have to be coupled onto the shuttlecock 'train'.

When discussing the texts, the principle is that of the shuttlecock: *'all government bills and private member's bill are examined successively in both assemblies of the Parliament with a view to identical texts being adopted.'* (Article 45 of the Constitution)

To facilitate or accelerate reconciliation between the two chambers, the Fifth Republic has established an unusual institution known as the 'Commission mixte paritaire' (CMP — Joint Mixed Commission); it is made up of seven Deputies and seven Senators, and may be convoked at the behest of the government after two readings, or after only one if it is an emergency matter.

If the CMP is successful (over two-thirds of CMPs have been successful since 1959), the common text is submitted to both assemblies for their approval; however, if the CMP does not reach agreement, or if the CMP's conclusion is not endorsed by the two Assemblies, the government has the power, following a further reading before the National Assembly and the Senate, to give the 'final word' to the National Assembly. The National Assembly may choose between the CMP's text and the one that it adopted itself at the last stage: this may, as appropriate, contain one or more amendments from the Senate. The bicameral system functions, therefore, up to the very last moment.

Adoption of a law by the National Assembly on its own is a statistical exception: it has affected only one law in ten on average since 1959. The normal path continues to be a vote by both Assemblies on an identical text. The President of the Senate made this abundantly clear at the closing meeting of the 1998-1999 session: "*the best laws, that is to say the ones that pass the dual test of practice and time, are those that are 'co-produced' by both assemblies with no recourse to the 'final word' procedure.*"

All in all, the legislative process that was drawn up in 1958 is balanced, and complies with the rights of Parliament — particularly those of the Senate — and with those of the government which, under Article 20 of the Constitution, '*leads and determines the nation's policy*'.

2. *The Senate as investigator and controller: 'a second string to the bow'*

The Constitution and regulations of the Senate provide Senators with a variety of means of questioning people, and of carrying out controls and investigations. These are conducted in public sessions or not, according to circumstances.

a. *Parliamentary questions*

Depending on the subject-matter and the importance they wish to give to their questioning, Senators may choose between written questions, oral questions, questions with debate, and current events questions for the government.

- **Written questions**

These questions are published in a special booklet attached to the Official Journal. There are over 8000 of them every year: they mainly focus on technical matters often linked to the interpretation or application of a law, particularly in the field of taxation. The Minister concerned must reply within one month, after which the Senator may turn the written question into an oral one.

- **Oral questions**

These questions are asked in public sittings in alternate weeks on Tuesday mornings. The procedure consists solely of the Senator's question, the Minister's reply, and a comment by the questioner on the reply. Since the introduction of the ordinary nine-month session in 1995, this questioning procedure (it covers a wide range of subjects) has found new favour, particularly because of the attendance of the Minister concerned (approximately two hundred and fifty oral questions a year on average).

- **Oral questions with debate**

These questions differ from those described above in that they trigger debate under rules imposed by the Conference of Presidents,[2] and in which all interested Senators may take part.

- **European questions with debate**

Since 1991, the rules have provided for a procedure unique to the Senate: it is known as 'European questions with debate'. Once every three months, the Senate is obliged to discuss the issues and perspectives of European integration: one speaker per political group, the representative of the European Delegation and, if appropriate, the representative of the Foreign Affairs Commission may participate in addition to the questioner and the Minister with responsibility for European Affairs.

- **Current affairs questions for the government**

These questions are televised on alternate Thursdays, often in the presence of the Prime Minister. The exchange between the Minister being questioned and the Senator is always courteous, often lively and sometimes passionate; neither the question nor the answer may exceed two minutes thirty seconds.

b. *Government statements followed by a debate*

At the request of the Senate or on its own initiative, the government may decide to make a statement before the Senate; this is usually on an institutional theme, or an international matter of the highest importance. The intervention of the Prime Minister or of the relevant Minister gives rise to a debate that enables speakers from each group to defend their points of view, or to put forward proposals. These statements are not normally sanctioned by a vote, particularly as the Prime Minister may only commit his government's responsibility before the National Assembly [*see* Article 49(1) of the Constitution].

On the other hand, the Prime Minister has the power to ask the Senate to give its approval to a statement of general policy under Article 49(4) of the Constitution. This procedure was never used at all before 1975, but has been invoked a dozen times since then.

Every year in June since 1995, the Senate has also debated the Government's budgetary policies under the remit of a discussion on the coming year's Finance Bill.

c. *Monitoring work at Commission level*

- **The monitoring work of the Standing Commissions**

Under Senate rules (Article 22), the six Standing Commissions[3] furnish the Senate with information that enables it to monitor government policy.

The Commissions are the most appropriate devices as the action of monitoring involves listening not only to Ministers, but also to civil servants and representatives of the economic and social communities. When the hearings are open to the public and the press, they are also televised.

The monitoring work of the Commissions can lead to the publication of an information report that often results in a public debate or the lodging of a private member's bill.

The special 'rapporteurs' of the Finance Commission may carry out root-and-branch investigations, particularly in Ministries and public establishments, with a view to checking that the Finance Act is being implemented according to the will of the Parliament. The 'rapporteurs' of the Social Affairs Commission have the same prerogatives in respect of the Social Security Financing Act.

Following the 1992 Constitutional Review prior to France's ratification of the Treaty on European Union (*i.e.,* the Maastricht Treaty), the Standing Commissions together with the Delegation for the European Union (*see* below) have been accorded a new competence monitoring the EC legislative process. This enables them to adopt European resolutions which, although not binding the government in European negotiations, nonetheless officially express the Commission's position, and as such they acquire considerable political weight. European resolutions adopted by the Commissions are not normally examined in public sittings; after a certain period of time, they are deemed to be resolutions of the Senate itself.

The Commissions also have the power to set up internal working groups and study groups. When the issue concerns several Commissions, the Senate may, at their request, authorise the establishment of a common information mission which, after several month's work, must publish a report describing the hearings and putting forward proposals.

Lastly, the Standing Commissions may be recognized by the Senate to have the prerogatives of Commissions of Inquiry (*see* below) for a limited period to monitor a matter that lies within their field of competence.

- **Commissions of Inquiry**

The conduct of certain more intensive investigations can lead to the setting up of Commissions of Inquiry that must hand in reports within six months. These Commissions are established following a deliberation by the Senate, and are designed to investigate precise facts (providing they are not the subject of legal proceedings) or monitor a public service or national enterprise. People summoned to appear before the Commissions are obliged to do so, they must swear an oath, and provide all information or be liable for legal sanctions. The inquiry 'rapporteur' also has the power to conduct in-depth investigations.

Historically, it is worth noting that the first Commission of Inquiry was set up in the Senate in 1960. In forty-one years, the Senate has established thirty-seven Commissions of Inquiry (called Monitoring Commissions until 1995) — that is to say almost one a year — and several have had a considerable media impact.

d. *Parliamentary Delegations: new bodies offering opportunities for reflection and study*

A broadening of the field of Parliamentary concerns and a desire to diversify monitoring and reflection bodies prior to public sittings have led the Parliament to establish Parliamentary Delegations under the law. When these delegations are bicameral, they are known as **'Parliamentary Offices'.**

The Parliamentary Delegations currently in existence are:

- **The Delegation for the European Union**

  Its task is to monitor the work of European bodies. Its work has increased dramatically following the implementation of the Treaties of Maastricht and Amsterdam and the Treaty on European Union.

- **The Delegation for Planning**

  Its role has shifted towards using modern methods of economic analysis and prediction. Each year, as part of the budgetary forecast, the European delegation presents the outcomes of medium-term forecasting work that it has conducted with the help of macro-economic models.

- **The Parliamentary Office for Evaluating Scientific and Technological Choices**

  It informs the Parliament about the consequences of scientific and technological choices, and particularly with a view to clarifying its decisions. The Office is assisted by a Scientific Council, and addresses issues of reflection of the very highest importance like nuclear safety, the headway being made by life sciences, and global warming.

- **The Parliamentary Office for Evaluating Legislation**

  This Office is chaired by the President of the Law Commission, alternatively by the National Assembly and the Senate. The Office examines how legislation reflects the objectives sought by the lawmakers, and has responsibility for 'simplifying' the law.

- **The Parliamentary Delegation for Planning and Sustainable Development of the Land**

  It has the task of evaluating policies that affect both of these fields, and enables Parliamentarians to give opinions on bills aimed at implementing sectoral plans such as transport and telecommunications.

- **The Parliamentary Delegation on Women's Rights and Equal Opportunities for Men and Women**

  This Delegation was set up following the Constitutional Review of 8 July 1999, and has remitted '*responsibility for fostering equal access for men and women to electoral mandates and elective functions*' to the law. Since the Delegation was set up, it has sustained a high level of activity, and has issued opinions on all government bills that have one way or another affected the status of women in French society.

This list of the Parliamentary Delegations' responsibilities is sufficient evidence on its own of the proliferation of areas of reflection within the Luxembourg Palace.

B. The Constituent Senate : Parity with the National Assembly

Under Article 89 of the Constitution, the procedure for reviewing the Constitution involves as a precondition the adoption of a Constitutional government or private member's bill set out in identical terms by both the National Assembly and the Senate. It follows that in Constitutional terms the Senate has no right of veto, but as for organic laws that concern it, it has powers of appraisal and decision-making that is the same as that enjoyed by the National Assembly. The latter does not have the 'final word' option.

In the case of a bill to review the Constitution, the President may then choose between a popular referendum and a meeting of the Congress of the Parliament (Deputies and Senators) at Versailles. In the latter case, the Constitutional Review Bill has to attract a qualified majority of three-fifths of votes cast.

Since 1959, of the fifteen Constitutional Review Bills submitted to it, the Senate has adopted thirteen: these have included the introduction of a single nine-month session, the establishment of a new category of laws, the Social Security Financing Acts, the fact that Ministers are subject to criminal proceedings in the Court of Justice of the Republic, harmonisation of the Constitution with the Treaties of Maastricht and Amsterdam, and the President of the Republic's five-year period of office.

IV. The Senate, a chamber offering opportunities for reflection and perspective

Like other democratic chambers, the Senate cannot restrict itself to a daily staple of legislation and monitoring. A Parliamentary Assembly has to be, or has to become once again, the centre of political debate, an area of opening and exchanges in which representatives of the nation prepare or clarify the future of a society undergoing rapid social and technological change.

President Poncelet has made the point succinctly: '*Senators are the roots of the future*'.

In the French institutional landscape, the Senate is particularly well placed to direct in-depth, long-term reflection on societal problems and on questions that affect citizens in their day-to-day lives.

Political reflection needs time. The Senate's voting system, the period of office and the institution's permanence provide Senators with an opportunity to half-open some paths of reflection, while distancing themselves to a certain degree from the contingencies of day-to-day political life. It is the Senate's job to make proposals and suggestions, to initiate reflection, to convince people, and to undertake prospective studies particularly with regard to all societal questions and all problems that affect the growth of these economic and social problems.

From a broader perspective marked by the globalisation of (economic and cultural) trade, the Senate, under pressure from its President, has sought to

expand its international activity, particularly among parliamentary friendship groups that promote the establishment of fruitful contacts between Parliaments of different traditions. In the same spirit of opening up on the international arena, and at President Poncelet's suggestion, the Senate has solemnly received Nobel Peace Prize-winner Rigoberta Manchú and Vaclav Havel, President of the Czech Republic, to honour their work in promoting the democratic ideal. Cooperation with emerging democracies has also developed.

On 14 March 2000, the Senate invited the Second Chambers of some seventy countries that have adopted the bicameral system. This solemn and unique meeting confirmed that the bicameral system is a solution for the future, as it constitutes a basic guarantee for the harmonious functioning of parliamentary democracy, which in turn cannot be reduced to a single assembly.

ANNEX

The President of the Senate: the 'second highest-ranking person in the State'

The President of the Senate is elected by his peers at each three-yearly election. He plays a key role in the efficient operation of the Republic.

The responsibilities accorded to the President of the Senate by the Constitution include first and foremost the fact that he stands in for the President of the Republic. In the event of the latter being absent from the Élysée Palace for whatever reason (*e.g.*, resignation, death or impeachment by the Constitutional Council), the President of the Senate temporarily takes over all of the duties of the President of the Republic except for recourse to a referendum, Constitutional initiative and the dissolution of the National Assembly. The functions of the Acting President of the Republic include chairing the Council of Ministers, appointing people to senior positions of state, directing diplomatic and military activity, and promulgating laws voted on by the Parliament.

President Alain Poher has stood in as President of the Republic on two occasions: after General de Gaulle's resignation (28 April to 19 June 1969) and after Georges Pompidou's death (2 April to 19 May 1974).

Other Constitutional prerogatives of the President of the Senate are shared with the President of the National Assembly. Accordingly, the President of the Senate :

- appoints three of the nine members of the Constitutional Council;
- may bring the matter to the attention of the Constitutional Council if he believes that a law or treaty is contrary to the Constitution;
- is consulted by the President of the Republic if he plans to dissolve the National Assembly or invoke Article 16 of the Constitution;
- appoints one member of the Upper Council of the Magistrature.

Other legislation involves the President of the Senate in appointing members of several bodies of the highest importance such as the Higher Audiovisual Council, the Monetary Policy Council of the Banque de France and the CNIL (Commission Nationale de l'Informatique et des Libertés — National Commission for Information Technology and Freedoms).

In the Senate itself, he chairs the Senate Office: this consists, in addition to himself, of six Vice-Presidents, three *Questeurs* and twelve Secretaries appointed by proportional representation among the groups. The Office has full powers to chair deliberations of the Senate and to direct its services.

Together with the six Vice-Presidents, the President of the Senate is in charge of debates in public sittings, and chairs the Conference of Presidents which organises the Senate's programme of work.

From a legislative point of view, he enjoys high authority and control over the services of the Senate. In administrative terms, authority for the services lies with the Office; they are directed by the *Questeurs* under the control of the Office.

Under another prerogative allocated to the President of the Senate, he is responsible for the Senate's internal security. To this end, he may call on the armed forces and all authorities whose involvement he believes necessary. For this purpose, he has a detachment of the Republican Guard answerable to the Military Commandant of the Luxembourg Palace.

In France, as elsewhere, the President embodies and represents the institution of the Senate. Accordingly, he gives audiences and receptions for numerous Heads of State and Government, and to foreign delegations paying official visits to Paris. He also makes visits abroad where his advice is anticipated and listened to.

In carrying out his important duties, the President of the Senate is assisted by several high-ranking officials who make up his Cabinet. The Cabinet is placed under the authority of the President's Cabinet Director.

The Senate has had four Presidents since 1959:

- Gaston Monnerville (1958-1968), Senator for the Lot and former Mayor of Cayenne and Saint-Ceré;
- Alain Poher (1968-1992), Senator for the Val de Marne, Mayor of Ablon, former Minister and President of the European Parliament;
- René Monory (1992-1998), Senator for Vienne, President of the General Council, Mayor of Loudun and former Minister;
- Christian Poncelet (1998-), Senator for the Vosges, President of the General Council, Mayor of Remiremont, former Minister and President of the Senate Finance Commission.

NOTES AND REFERENCES

1. By a decision of 6 July 2000 (promulgated on 10 July 2000) on the recent law relating to the election of Senators, the Constitutional Court emphatically highlighted the main distinctive elements of the Senate's institutional status, and therefore its specific constitutional character. Insofar as the Senate is responsible for representing the Republic's regional and local authorities, it has to be elected by an electoral group that itself emanates from these authorities, and this electoral group accordingly needs to be made up 'essentially' of elected members. Moreover, 'all categories of authority must be represented on it', and 'representation of the local authorities must reflect their diversity'. Lastly, to ensure compliance with the principle of equal suffrage, representation of each category of authority and of the various kinds of local authority must take account of the population, and fixing the number of additional Delegates must be no more than a simple demographic adjustment.

2. The Conference of Presidents organises the agenda for sittings. It is chaired by the President of the Senate, and brings together all actors in a public sitting: the six Vice-Presidents, the Presidents of the political groups (currently six in number), the Delegate representing independent members, the Presidents of Commissions, the 'Rapporteur général' of the Finance Commission, and the President of the Delegation for the European Union. The Minister with responsibility for relations with the Parliament also takes part in the proceedings of the Conference of Presidents.
3. The Constitution limits the number of Standing Commissions in each assembly to six. All Senators, with the exception of the President of the Senate, are members of one (and only one) Standing Commission. The six Senate Commissions are divided up by competences. They are:

   - the Cultural Affairs Commission (fifty-two members);
   - the Economic Affairs and Plan Commission (seventy-eight members);
   - the Foreign Affairs, Defence and Armed Forces Commission (fifty-two members);
   - the Social affairs, Commission (fifty-two members);
   - the Finance, Budgetary Control and Economic Accounts of the Nation Commission (forty-two members);
   - the Constitutional Law, Legislation, Universal Suffrage, Regulations and General Administration Commission (fotty-two members);

11

The Bundesrat in the Legislative Process of the Federal Republic of Germany

HORST RISSE

As you may well know, the political and national life in the Federal Republic of Germany is controlled not only by the Federation, which is the central authority, but also by the Länder, the Bundesrat (Federal Council) being one of the key institutions in this framework. In comprehensive and intensive consultations, the Parliamentary Council, which prepared the Basic Law (Constitution) of the Federal Republic after World War II, considered the question of how the participation of the Länder should be structured within a second parliamentary organ alongside the Bundestag. Among the models proposed was that of the US-Senate, whose members are elected. Finally, a large majority formed in favour of Germany's traditional form of a Federal Council, in which the members come from state governments. In the year 1949, the Bundesrat convened for its first session. On 3 October 1990, as you all know the day of German unity, the number of Länder in Germany grew from eleven to sixteen.

Before going into the details of the Bundesrat's structure and task in the legislative process, let me first outline briefly its constitutional status, followed by its organisation. I should like to round up my briefing by giving you some aspects of the Bundesrat as a political factor.

Constitutional Status of the Bundesrat

The Bundesrat is the federal organ. Article 50 of the Basic Law describes its status and function as follows, I quote: "The Länder shall participate through the Bundesrat in the legislative process and administration of the Federation and in matters concerning the European Union." This participation of the Bundesrat in the political process of the Federation expresses both the distribution of power and the checks and balances in the German federal system. The Federation and the Länder monitor and control each other in the fulfilment of their respective tasks, at the same time, however, they must respect each other and function jointly. With respect to this distribution and performance of tasks, German federalism differs from all other federal systems in that the governments of the German Länder participate directly in the decisions of the federal state as a

whole. This participation takes place through the Bundesrat, which has *three central functions*:

- It represents the interests of the Länder at federal level and, indirectly, at the level of the European Union;
- It incorporates the political ideas and administrative experience of the Länder in federal legislation and administration and, not to forget, in EU matters;
- Like all the other federal institutions, it bears responsibility for the Federal Republic of Germany as a whole.

In exercising these functions, the Bundesrat is a counterweight to the Bundestag and the Federal Cabinet, but at the same time it is also a link between the Federal Government and Länder governments. As a federal organ, the Bundesrat has responsibility to determine the Federation's policy, but not the policy of the Länder. Neither is the Bundesrat responsible for co-ordinating the work on problems and issues that the Länder, in their dealings with each other, wish to co-ordinate or harmonize. The conference of Minister Presidents and special departmental ministerial conferences are held to provide such co-ordination.

The functions of the Bundesrat

A. Right to initiate legislation

Just like the Bundestag and the Federal Government, the Bundesrat has the right to introduce bills (*legislative initiative*). If, on the application of one or more Länder, the Bundesrat approves a bill of its own, then the bill is forwarded to the Federal Government for comment. As a next step, the Federal Government is required to forward the bill — normally within six weeks — to the Bundestag.

As a matter of fact, most bills are introduced by the Federal Government. The Bundesrat has the "first say" in the parliamentary treatment, since the Federal Government is required to submit its proposals directly to the Bundesrat for comment.

The review and discussion of government proposals is one of the Bundesrat's primary functions. The Länder's experience in putting laws into practice — they are responsible for the implementation of almost all of them — is incorporated into federal legislation in this "*first reading*". At this stage, the Länder governments conduct an intensive dialogue on specifics with the Federal Government. The Bundesrat's check and balance function in the federal system of government is clearly manifested here.

At this stage of the legislative procedure the Bundesrat's assessment of a bill is not binding, neither for the Federal Government nor the Bundestag. Then the Federal Government formulates its view in a "counterstatement". The

bill, the Bundesrat's initial statement and the Government's counterstatement are then sent to the Bundestag.

All of the bills approved by the Bundestag must be sent to the Bundesrat by the Bundestag President. In the "*second reading*" opened through such forwarding, Bundesrat Committee meetings are held to determine whether or not the results of the "first reading" were taken into account and whether or not the Bundestag decided on other changes. Bills initiated by the Bundestag, and which for this reason were not previously submitted to the Bundesrat for assessment, are subject to special scrutiny.

If the Bundesrat is not in agreement with the version of a bill passed by the Bundestag, it can apply, within a period of three weeks, to the *Mediation Committee* composed of sixteen members of the Bundesrat and sixteen members of the Bundestag. The Mediation Committee may present a compromise to both Houses. The Mediation Committee has gained growing influence due to the different majorities in the Federation on the one hand and the Länder on the other. Many important bills have been dealt within the Committee, the most recent one being the tax reform bill that failed in the end.

The wording of a bill is, naturally, always decided by the Bundestag. The Bundesrat is not involved until after a bill has been formulated and then to varying degrees. Two types of bills are distinguished, in accordance with the Bundesrat's powers of influence: consent bills and objection bills.

The Bundesrat has a particularly strong position in connection with "*consent bills*". Such bills, which have a special bearing on Länder interests, cannot become law unless the Bundesrat gives its express approval. The Bundestag and the Federal Government may each apply once to the Mediation Committee in an attempt to bring about a compromise on a bill. However, if the Bundesrat still refuses to give its approval, the bill has failed. There are three categories of consent bills. First of all, bills that would change the Constitution. They require Bundesrat's approval based on a two-thirds majority. Secondly, bills affecting Länder finances. Thirdly, and this is the most important group, bills that affect the administrative jurisdiction of the Länder, that means if a bill contains only one provision that in any way affects Länder rights, the entire bill requires Bundesrat's approval. Due to individual provisions of this kind, entire bills that, in general, do not affect "Länder interests", may require approval.

The constitutional rank and importance of the Bundesrat stem mainly from its ability to veto these kinds of legislation. In practice, more than half of the bills require the consent of the Bundesrat, among them the domestically most controversial bills with the effect that the Bundestag cannot legislate on its own, but rather must deal with the Bundesrat. On the other hand, the Bundesrat cannot legislate on its own either.

In the case of "*objection bills*", the Bundesrat can file an objection within two weeks of the conclusion of mediation proceedings. This means, that the

Bundestag will have to subject the bill to another reading. If the Bundestag does not share the Bundesrat's reservations, it can override the objection, passed by an absolute majority in the Bundesrat, with an absolute majority. If the Bundesrat's objection was based on a two-thirds majority, correspondingly a two-thirds majority of votes cast in the Bundestag is required to override it. If the objection is overridden, the bill in question may be promulgated despite the Bundesrat's disapproval.

B. Other functions

Just to give you a complete view let me add some more of the Bundesrat's functions, its administrative role being one of them. Most ordinances issued by the Federal Government with their sometimes politically important details require the consent of the Bundesrat.

Moreover, the Bundesrat is involved in *EU matters*. Pursuant to Article 23 of our Basic Law, the Bundestag and the Länder — through the Bundesrat — participate in matters of the European Union. For this reason, the Federal Government is charged with comprehensively informing the Bundestag and the Bundesrat at the earliest possible date about all European Union activities. Whenever such European legislation affects subjects that fall within Länder jurisdiction, the establishment of their authorities or administrative procedures, then the Bundesrat's assessment must be taken into account, affecting the German position within the Council of Ministers in Brussels. In cases in which EU regulations mainly affect legislative competences that belong exclusively to the Länder, then the head of the German delegation and spokesman within the Brussels Council of Ministers should be a Länder Minister appointed by the Bundesrat.

Now let me turn to the Bundesrat's participation in *Foreign Affairs*. Also in this field, according to Article 59 Paragraph 2 of the Basic Law, stipulating that international treaties which regulate the Federation's relations with other states or relate to matters of federal legislation, the participation or — under certain conditions — the consent of the Bundesrat is required.

The Basic Law gives the Bundesrat numerous *other tasks* and competences, for example the Bundestag and the Bundesrat each elect half of the members of the Federal Constitutional Court. Furthermore, the Bundesrat can bring complaints of unconstitutionality and testify in cases before the Federal Constitutional Court.

Organisation of the Bundesrat

The Bundesrat is composed of members of Länder governments. Having a seat and a vote in a Land government is a prerequisite for *membership* in the Bundesrat. Each Land can appoint as many members as it has votes in the Bundesrat. The remaining members of the Länder cabinets are usually sent to the Bundesrat as deputy members. Since the members of the Bundesrat are

not elected, the Bundesrat does not have legislative terms as such. In constitutional parlance it is a "permanent body" that changes as Länder elections take place at different times.

The *number of votes* that a Land has in the Bundesrat depends on that Land's number of inhabitants: each Land has at least three votes, Länder with a population of between two and six million have four votes, Länder with a population of between six and seven million have five votes and Länder with a population of more than seven million have six votes. Thereby a compromise has been found between a democratically acceptable consideration of the number of inhabitants and the principle of an equal Länder representation in a federal state.

The votes of each Land must be cast *en bloc* — either "yes", "no" or "abstention" — so that every Land government must reach an agreement on the issue under discussion before voting takes place in the Bundesrat, which is sometimes difficult in the case of coalition governments. In practice, one member of a Land delegation, the so called "vote caster" casts all of his Land's votes. In voting, the Bundesrat members are bound by the decisions taken by their Land governments, so that they do not have a free mandate. On the other hand, however, they are not subject to an imperative mandate, since they do not carry out instructions or act on behalf of third parties. Instead, as members of a state government, they are themselves involved in determining how their Land will vote in the Bundesrat.

The Länder have equal access to the presidency of the Bundesrat: every year the premier of a different Land is elected *President of the Bundesrat*. The order in which this takes place is determined on the basis of state populations. The President's main duty is to convene and chair the plenary sessions of the Bundesrat. In legal terms, he represents the Federal Republic of Germany in all Bundesrat matters. He is assisted by three Vice-Presidents. The Basic Law ascribes to the President of the Bundesrat a special duty outside the sphere of his own office: he assumes the authority of the Federal President, if the latter is prevented from conducting the affairs of his office. The *Permanent Advisory Council*, which is composed of the sixteen Länder plenipotentiaries provides assistance to the President. The Advisory Council is comparable with the Council of Elders in other parliaments. Besides its duties in providing information and coordination, the Council has consultative functions.

Another organ the Bundesrat can create, is the *EU Chamber* for treating urgent or confidential European Union matters. It is convened only at the request of the President of the Bundesrat in order to avoid special Bundesrat sessions.

Like all parliamentary bodies, the Bundesrat too, has permanent *committees* which give recommendations for decisions to be taken by the body as a whole. The Bundesrat has sixteen committees, their distribution of competences corresponding largely with those of the federal ministries.

The Bundesrat as a political factor

The Basic Law does not limit the Bundesrat to the function of representing Länder interests. As a federal institution the Bundesrat shares responsibility for overall federal policy, being reflected by its broad range of duties. The Bundesrat is a *political institution*, its members are politicians and it has to fulfil political functions. This places the Bundesrat in a naturally competitive relationship with the Bundestag and the Federal Government. Since the Länder governments, and not the political parties, are represented in the Bundesrat, the question arises as to whether and, if so, to what extent there is room for party politics in the Bundesrat.

The Basic Law makes it possible for the political parties to take part in the political decision-making process. Given the form in which constitutionally defined principles of democracy have been implemented under our system of government, it can be said that the parties are the real "policy-makers". Therefore, the decisions of the Bundesrat may be influenced by party political considerations. In a "party democracy" with its close-knit relations between the federal and state levels of government it would be illusory to try to differentiate between "*objective policy*" and "*party policy*". Political decision-making takes place on the basis of parliamentary majorities and the governments formed on this basis at the Länder level. They are represented by leading politicians from the Länder exerting political influence at the federal level through the Bundesrat.

Twice in the history of the Federal Republic there have been different majorities on the federal level and the Länder level: between 1969 and 1982 when we had a CDU-led Bundesrat and a SPD Federal Government and since 1990 when the CDU-led Länder governments lost their majority in the Bundesrat we have the opposite situation. In both cases the Bundesrat was qualified as an "*instrument to block*", a qualification that does not properly reflect the constitutional situation and duties the Bundesrat assumes in its responsibilities for the Federal Republic as a whole.

The causes for the recent generally complained "*reform blocks*" in the Federal Republic cannot be focussed to the role of the Bundesrat alone. The decreasing capability to take decisions in the political system has several reasons, some of them being the interdependence of legislative and administrative competences, different opinions about the distribution of financial burdens on the one hand and regulatory responsibilities on the other hand and — not to forget — psychological motives.

12

Rajya Sabha : The Upper House of Indian Parliament

R.C. TRIPATHI

Introduction

In the Constituent Assembly, the founding fathers of the Indian Constitution took into account the views for and against having a bicameral legislature at the Centre. If there were members who favoured a bicameral central legislature, there were others who thought that Second Chamber might prove to be a "clog in the wheel of progress" involving expense and adding nothing to the efficiency. The debate, which went on in the Constituent Assembly, can be succinctly summarized in the words of Shri Gopalaswami Ayyangar, a legal luminary and a member of the Constituent Assembly. He said:

> The most that we expect the Second Chamber to do is perhaps to hold dignified debates on important issues and to delay legislations which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature; and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this Second Chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of the People. That is all that is proposed in regard to this Second Chamber. I think, on the whole, the balance of consideration is in favour of having such a chamber and taking care to see that it does not prove a clog either to legislation or administration.

Parliament: President and the two Houses

Parliament consists of the President of India and two Houses known as the Council of States, *i.e.,* Rajya Sabha and the House of the People, *i.e.,* Lok Sabha.* The President is an integral part of Parliament.

Rajya Sabha

The Council of States (Rajya Sabha) consists of not more than two hundred and fifty members, two hundred and thirty-eight members representing the States and Union territories and twelve members nominated by the President. The Fourth Schedule to the Constitution provides for allocation of seats to various States and Union territories. The representatives of the States are elected by the elected members of State Assemblies in accordance with the system of proportional representation by means of the single transferable vote. The representatives of the Union territories in Rajya Sabha are chosen in accordance with law enacted by Parliament. There are twelve members nominated by the President from amongst the persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service.

The present strength of Rajya Sabha is two hundred and forty-five, the distribution of which is given in Table I.

TABLE I

Total number of members in Rajya Sabha from different States / Union territories

States	No. of Members
Andhra Pradesh	18
Arunachal Pradesh	1
Assam	7

* The House of the People (Lok Sabha) which is the Lower House of Indian Parliament consists of five hundred and fifty-two members out of which five hundred and thirty members are directly elected from territorial constituencies in the States and twenty from the Union territories. Two members are nominated by the President from the Anglo-Indian community, if that community is not adequately represented in Lok Sabha. Seats are also reserved in Lok Sabha for the Scheduled Castes and the Scheduled Tribes who are elected from constituencies specially earmarked for them all over the country. The Representation of the People Act makes provision for allocation of seats to various States and Union territories. The actual strength of Lok Sabha at present is five hundred and forty-five which includes the Speaker and the two nominated members. Lok Sabha, unless sooner dissolved, continues for five years from the date appointed for its first meeting. However, while a Proclamation of Emergency is in operation, this period may be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

States	No. of Members
Bihar	16
Chhattisgarh	5
Goa	1
Gujarat	11
Haryana	5
Himachal Pradesh	3
Jammu and Kashmir	4
Jharkhand	6
Karnataka	12
Kerala	9
Madhya Pradesh	11
Maharashtra	19
Manipur	1
Meghalaya	1
Mizoram	1
Nagaland	1
Orissa	10
Punjab	7
Rajasthan	10
Sikkim	1
Tamil Nadu	18
Tripura	1
Uttaranchal	3
Uttar Pradesh	31
West Bengal	16
Union territories	
The National Capital Territory of Delhi	3
Pondicherry	1
Nominated by the President under Article 80(1)(a) of the Constitution	
Nominated by the President	12

Rajya Sabha is a permanent body and is not subject to dissolution. However, one-third of its members retire biennially. A member who is elected for a full term retains his membership for six years. He is eligible for re-election. After the constitution of Rajya Sabha in 1952, the term of office of some of the

members then chosen was curtailed in terms of the provisions contained in the Council of States (Term of Office of Members) Order, 1952, made by the President in order that as nearly as may be one-third of the members holding seats of each class would retire every second year. As per this Order, one-third of the members retired in April 1954 and another one-third in April 1956 and on each occasion elections were held and nominations made to fill the seats thus vacated.

Qualification for membership

In order to be chosen a member of Rajya Sabha a person must be a citizen of India and must not be less than thirty years of age. Under a statute of Parliament, a person has to be an elector in a parliamentary constituency in the State from where he seeks election to Rajya Sabha.*

Disqualification for membership

The following grounds could disqualify a person for being chosen and for being a member of Rajya Sabha —

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament, by law, not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; and

(e) if he is so disqualified by or under any law made by Parliament.

The mere fact of a person being a Minister either of the Union or of any State does not amount to holding an office of profit. Pursuant to certain constitutional provisions, Parliament has enacted laws exempting holders of certain offices from being disqualified as members of Parliament.

Besides, the Constitution provides for disqualification of the members on ground of defection. As per the provisions contained in the Tenth Schedule to the Constitution, a person shall be disqualified for being a member, if he has voluntarily given up the membership of his political party; or if he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs, unless such voting or abstention has been condoned by the political party within fifteen days.

An elected member who has been returned to the House as an independent candidate shall incur disqualification, if he joins any political party after such election.

* The Representation of the People (Amendment) Bill, 2001 proposes, *inter alia,* to do away with the requirement of residence of a particular State or Union territory for contesting election to Rajya Sabha from that State or Union territory. The Bill has been referred to the Department-related Parliamentary Standing Committee on Home Affairs, for consideration.

A nominated member of the House shall be disqualified from the membership of the House, if he joins any political party after the expiry of six months from the date of his taking seat in the House. He can join a political party, if he so chooses within the first six months of his term.

Disqualification on ground of defection, however, does not apply in case of 'split' in a political party or 'merger' of political parties under the provisions contained in the Tenth Schedule to the Constitution.

The provisions of disqualification, under the Tenth Schedule, will not apply to a member who on his election as the Speaker or the Deputy Speaker of Lok Sabha and the Deputy Chairman of Rajya Sabha or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, voluntarily gives up his membership of the political party to which he belonged immediately before his election or rejoins such political party after he ceases to hold such office.

The Chairman or, as the case may be, the Speaker has been given the final authority to decide questions of disqualification of a member of a House under the provisions of the Tenth Schedule to the Constitution.

Presiding Officers

The Presiding Officers of Rajya Sabha have the responsibility to run the House. The Vice-President of India is *ex officio* Chairman of Rajya Sabha. Rajya Sabha also chooses from among its members a member to be the Deputy Chairman. There is also a Panel of Vice-Chairmen in Rajya Sabha. In the absence of Presiding Officers, a member from the Panel of Vice-Chairmen presides over the proceedings of the House. The Presiding Officers play an important role in the smooth functioning of the House and their offices are of great importance and significance. They function in the House with total impartiality. Confidence in their impartiality is an indispensable concomitant for successful working of parliamentary procedure.

Secretary-General

Apart from the Presiding Officers, the Secretary-General is another functionary whose contribution to the smooth functioning of the House is quite significant. The Secretary-General is appointed by the Chairman of Rajya Sabha and holds rank equivalent to the highest civil servant of the Union. The Secretary-General works with near anonymity and is readily available to the Presiding Officers for rendering advice on parliamentary matters. The Secretary-General is also the custodian of the records of the House.

Federal Chamber

The Indian Constitution envisages a federal polity where the lower House is directly elected by the people and the upper House is elected by elected members of the Legislative Assemblies of the States and the two Union territories except for the twelve members who are nominated by the President under the provisions of article 80(1)(a) of the Constitution. As the Legislative Assemblies

are directly elected by the people, the democratic character of Rajya Sabha has been fully maintained by having its members elected by these legislative bodies.

The founding fathers of the Indian Constitution did not favour the idea of providing equal representation to the constituent units of the Indian Union. The size and population of different States and Union territories in India vary considerably. If all these States are provided equal representation in Rajya Sabha, the smaller States and Union territories which are greater in number, may sometime prevail upon the wishes of the bigger States. Moreover, the special circumstances which were existing in the United States of America and Australia which led them to provide equal representation to the federating Units in the Senate did not exist in India. Indian federation was not formed out of any compact between the constituent units.

As the term of office of members of Rajya Sabha is longer than those of the members of Lok Sabha and one-third members of Rajya Sabha retire every second year, sometimes it happens that the majority party in Lok Sabha may not have the majority in Rajya Sabha as well. There have been some occasions in the past when the Government of the day did not enjoy majority in Rajya Sabha. Rajya Sabha played its role effectively in providing 'checks and balances' in the legislative machine. Under article 75(3) of the Constitution, though the Council of Ministers is collectively responsible to Lok Sabha, Rajya Sabha, cannot make or unmake the Government. It can, however, control the Government and this function becomes quite prominent particularly when the party in power does not enjoy majority in Rajya Sabha. In such a situation, sometimes there may arise a deadlock between the two Houses. Of course, in the case of a Money Bill there cannot be a deadlock between Lok Sabha and Rajya Sabha. Lok Sabha clearly enjoys pre-eminence over Rajya Sabha in financial matters. As regards Constitution amendment Bill, it has been provided in the Constitution that such a Bill has to be passed by the specific majority, as prescribed under article 368 of the Constitution, by both Houses. There is, therefore, no provision for resolving a deadlock between the two Houses in regard to a Constitution amendment Bill. In fact, in 1970, the Constitution (Twenty-fourth Amendment) Bill, which aimed at abolishing the privy purses, etc., of the erstwhile rulers, was passed by Lok Sabha. The Bill, however, was defeated in Rajya Sabha. Similarly, the Constitution (Sixty-fourth Amendment) Bill, 1989, which intended to insert Part IX in the Constitution relating to *Panchayats* and the Constitution (Sixty-fifth Amendment) Bill, 1989, which in the same part intended to introduce provisions relating to *Nagar Panchayats* and Municipalities, though passed by Lok Sabha fell through in Rajya Sabha.

In case of an ordinary legislation, however, to resolve a deadlock between the two Houses, a provision has been made in article 108 of the Constitution, for the joint sitting of both Houses. In fact, there have been two occasions in the past when the Houses of Parliament had met in a joint sitting to resolve the differences. In 1961, a joint sitting of Lok Sabha and Rajya Sabha was convened

to resolve deadlock on the Dowry Prohibition Bill, 1959. Again, in 1978, the two Houses had met in a joint sitting on the Banking Service Commission (Repeal) Bill, 1977.

Under article 87 of the Constitution, President addresses both Houses of Parliament assembled together at the commencement of the first session after each general election to Lok Sabha and at the commencement of the first session of each year. In this Address, President informs Parliament of the causes of its summons. The discussion on the Address is initiated through a Motion of Thanks moved by a member and seconded by another member both of whom are from the ruling party. Amendments can be moved to the Motion of Thanks. If an amendment is carried, the Motion of Thanks as amended is put to the House and adopted. A Motion of Thanks when passed in an amended form clearly reflects that the Government of the day is not enjoying majority in the House. There had been three occasions when the Motion of Thanks on the President's Address was adopted with amendments in Rajya Sabha. For the first time, the Motion of Thanks on the President's Address was amended in 1980. Again, the Motion of Thanks on the President's Address was passed in an amended form in 1989. On 12 March 2001, once again, the Motion of Thanks on the President's Address was adopted in an amended form.

Distribution of legislative powers

The scheme of distribution of subject-matters of laws between the Centre and the States, followed in the Constitution emphasizes in many ways the general predominance of Parliament in the legislative field. While a State Legislature can make laws for the whole or any part of the State territory only, Parliament has power to legislate for the whole or any part of the territory of India.

The Seventh Schedule to the Constitution contains an elaborate enumeration of subjects distributed among three Lists defining legislative relations between Parliament and the State Legislatures. While Parliament has exclusive power to make laws with respect to the subjects included in the Union List, Legislature of the State has exclusive power to make laws for such State with respect to the matters enumerated in the State List. On matters included in the Concurrent List, both Parliament and State Legislatures can make laws. Further, Parliament enjoys exclusive power to make laws on subjects not mentioned in any of the three Lists.

Apart from the wide range of subjects allotted to Parliament and the State Legislatures in the Seventh Schedule to the Constitution, even in normal times Parliament can, under certain circumstances, assume legislative power over a subject falling within the sphere exclusively reserved for the States. If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, prevails, and the law made by the Legislature of the State to the extent of repugnancy becomes inoperative.

Further, in times of grave emergency when the security of India or any part thereof is threatened by war or external aggression or armed rebellion and a Proclamation of Emergency is made by the President, Parliament acquires the power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List. Similarly, in the event of failure of the constitutional machinery in a State, the powers of the Legislature of that State, become exercisable by or under the authority of Parliament.

Besides the power to legislate on a wide range of subjects, the Constitution vests the power to initiate amendment to the Constitution in Parliament only.

Rajya Sabha enjoys certain special powers under the Constitution. Rajya Sabha may pass a resolution by a majority of not less than two-thirds of the members present and voting, to the effect that it is necessary or expedient in the national interest that Parliament should make a law with respect to any matter enumerated in the State List. Then, Parliament is empowered to make a law on the subject specified in the resolution for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing a further resolution.

If Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it is necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, Parliament becomes empowered to create by law such services.

Under the Constitution, as stated earlier, the President is empowered to issue Proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency. Normally, every such Proclamation has to be approved by both Houses of Parliament within a stipulated period. Under certain circumstances, however, Rajya Sabha enjoys special powers in this regard. If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the Proclamation can remain effective, if a resolution approving it is passed by Rajya Sabha.

Legislative functions

From 1952 till the end of hundred and ninety-fourth session (December 2001), 734 Government Bills were introduced in Rajya Sabha. From 1952 till December 2001, in a total of 2712 sittings during which Government Bills were introduced or considered, Rajya Sabha considered 3118 Bills and passed a total of 3081 Bills. Considering that a large part of the legislative business of Parliament is financial, the record of Rajya Sabha as a House taking initiative in the matter of introduction of Government Bills is impressive. An analysis of the subject-matter of the Bills introduced in Rajya Sabha would reveal that many of these Bills were of immense importance. The entire Hindu Law enactments,

Bills for the Prevention of Corruption, Slum Areas — Improvement and Clearance, and Children were some of the social measures introduced in Rajya Sabha. Amongst the Bills relating to labour welfare, initiated in Rajya Sabha, mention may be made of the Beedi and Cigar Workers (Conditions of Employment) Bill, the Bonded Labour System (Abolition) Bill and the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Bill. Similarly, some important Bills in the fields of health, education, etc., were: the Medical Termination of Pregnancy Bill, the Copyright Bill, Bills establishing the Jawaharlal Nehru University, the Pondicherry University and the Indira Gandhi National Open University, and the Code of Criminal Procedure Bill. All these Bills were introduced in Rajya Sabha. An important legislation relating to trade and industry which was initiated in Rajya Sabha was the Monopolies and Restrictive Trade Practices Bill.

As a revising Chamber, Rajya Sabha has revised a number of Bills. Among the important Bills revised are the Income-tax (Amendment) Bill, 1961 and the National Honour Bill, 1971, wherein some very substantial amendments suggested by Rajya Sabha were accepted by Lok Sabha. The Dowry Prohibition Bill was another legislation on which a joint sitting of the two Houses was convened due to the difference which arose between the two Houses on certain amendments suggested by Rajya Sabha. Rajya Sabha also revised eight clauses and the schedule of the Urban Land (Ceiling and Regulation) Bill, 1976. Substantial amendments amounting to major revisions in the Government of Union Territories (Amendment) Bill, 1977, and the Delhi Administration (Amendment) Bill, 1977, were carried by Rajya Sabha by divisions. The Special Courts Bill saw Rajya Sabha playing a major revisory role when on 21 March 1979, it made two major amendments of far reaching importance in the Bill. Similarly, the Delhi Apartment Ownership Bill, 1986, the Goa, Daman and Diu Reorganization Bill, 1987, the Prevention of Corruption Bill, 1988, the Bharat Petroleum Corporation Limited (Determination of Conditions of Service of Employees) Bill, 1988, the Commissions of Inquiry (Amendment) Bill, 1990, the Prasar Bharati (Broadcasting Corporation of India) Bill, 1990, the Code of Criminal Procedure (Amendment) Bill, 1990, the Constitution (Scheduled Tribes) Order (Amendment) Bill, 1991, the Advocates (Amendment) Bill, 1992 and the Passports (Amendment) Bill, 1993, were also amended by Rajya Sabha in the past. More recent instances of Rajya Sabha suggesting amendments to the Bills passed by Lok Sabha are (i) the Small Industries Development Bank of India (Amendment) Bill, 2000; (ii) the Madhya Pradesh Reorganization Bill, 2000; (iii) the Uttar Pradesh Reorganization Bill, 2000; (iv) the Bihar Reorganization Bill, 2000; and (v) the Indian Council of World Affairs Bill, 2001.

In regard to the Constitution Amendment Bills, as already stated, both Houses enjoy equal powers. Some of the important Constitution Amendment Bills introduced in Rajya Sabha were the Constitution (Twenty-first Amendment) Bill, 1967, which aimed to add Sindhi as a language in the Eighth Schedule; the Constitution (Fifty-ninth Amendment) Bill, which was about extending President's rule in Punjab beyond specified time as the State was facing worst kind of

terrorism; the Constitution (Sixty-second Amendment) Bill, 1989, which sought to amend article 334 of the Constitution proposing to continue reservation for a further period of ten years, beyond 26 January 1990, for the members of the Scheduled Castes and Scheduled Tribes in the legislatures; the Constitution (Seventy-sixth Amendment) Bill, 1992, which aimed at providing representation to the legislators of the legislatures of the Union territories in the matter of election of the President; the Constitution (Eighty-first Amendment) Bill, 1994, which sought to include land reform laws of various States in the Ninth Schedule; and the Constitution (Eighty-sixth Amendment) Bill, 1999, which sought to strengthen the *Panchayati Raj* institutions.

On four occasions Rajya Sabha asserted its role as a constituent body. The Constitution (Twenty-fourth Amendment) Bill, 1970, which was intended to abolish privy purses of the princes of former princely States and which was passed by an overwhelming majority in Lok Sabha was defeated in Rajya Sabha by a fraction of a vote. In the Constitution (Forty-fifth Amendment) Bill, 1978, passed by Lok Sabha, Rajya Sabha deleted as many as five important clauses and Lok Sabha later agreed to the deletions made by Rajya Sabha. It became the Constitution (Forty-fourth Amendment) Act, 1978. This amending Act, *inter alia*, took away from the category of fundamental rights the right to property; and put the right to life and liberty on a secure footing. This Act also provided safeguards against the misuse of emergency provisions and guaranteed the right of the media to report freely the proceedings of Parliament and State Legislatures. Through the enactment of this amending Act the distortions, which came into the Constitution by reason of the amendments enacted during the period of emergency, were sought to be removed. Similarly, the Constitution (Sixty-fourth Amendment) Bill, 1989, and the Constitution (Sixty-fifth Amendment) Bill, 1989, though passed by Lok Sabha could not be passed in Rajya Sabha as the motion for consideration could not be carried in accordance with the provisions of article 368 of the Constitution in Rajya Sabha. These two Bills related to the *Panchayati Raj* institutions and the municipal bodies, respectively.

Deliberative functions

Through the device of questions and interpellations important matters are raised in the House. This device has been used not only to elicit information and ventilate public grievances but also to compel the Government to admit lapses, if any, and to investigate and rectify them. During question hour, Rajya Sabha has been able to secure important assurances and policy statements from the Government.

Another device, which has become quite popular is the calling attention. This procedure has acquired a distinct importance in Rajya Sabha due to concerted efforts on the part of its members to make the best use of it in the absence of the provision for adjournment motion. Due to the practice of calling one member from each party to speak on the subject of calling attention, the discussion becomes an occasion for political parties to register their views on

various issues. Many times the discussion under the calling attention has highlighted the constitutional issues. For instance, in December 1983, the House discussed a calling attention on the re-promulgation of Ordinances in some States. This provided a good opportunity to the House to discuss the constitutional aspects of the phenomenon. Again, in November 1985, there was a calling attention regarding the delay in assenting to Bills passed by the State Legislatures and reserved for consideration of the President under article 200 of the Constitution. Both the calling attention discussions in Rajya Sabha highlighted the constitutional issues involved.

The special mention procedure provides a convenient mechanism to a member to highlight or to bring to the notice of the Government matters of urgent public importance. The advantage of this procedure is that the members get replies to their special mentions from Ministers individually.

Apart from these, there are such well-established procedural devices as 'short duration discussion', 'half-an-hour discussion', 'motions', etc., which have been used in Rajya Sabha from time to time to raise issues of public importance and thereby making Rajya Sabha fulfil its watchdog functions, oversee the administration and ventilate public grievances.

Though Rajya Sabha does not vote on Demands for Grants, a new practice has been started since 1970, to discuss the working of a few selected Ministries every year. Since these debates on Ministries entail no risks for the Government, the nature, character and efficacy of such debates differ vitally from those in the other House.

Rajya Sabha and Private Members

Under the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha), two and a half hours of every Friday when the House is in Session, are allotted alternatively to Bills and Resolutions to be initiated by private members. Under this procedure a number of Bills have been introduced and resolutions moved since the inception of Rajya Sabha. Upto the end of hundred and ninety-fourth session (December 2001), 1149 private members' Bills were introduced out of which 291 were considered. So far only fourteen private members' Bills have found place in the statute book, out of which five were introduced in Rajya Sabha. The measure of success of a private member's legislation may not be reckoned in terms of the number of Bills becoming Acts of Parliament. The strength of the procedure of private members' Bills lies in the opportunity it provides to members to actively participate in law making. Occasionally, a member may be discussing through a Bill an idea, which may be ahead of time. Some of the Bills may become precursors of future legislation as happened in the case of the Prevention of Cruelty to Animals Bill, which was initiated by a private member but on the assurance of the Government to appoint a committee to go into the subject-matter raised through the Bill, the Bill was withdrawn. Later on, the Government brought forth a comprehensive Bill on the subject. Similarly, the Prohibition of Smoking and Littering in Public Places Bill, 1992 and the Prohibition of Smoking Bill, 1999, introduced by private members

also formed the basis for bringing about comprehensive legislation. The Government on 7 March 2001, introduced the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2001, in pursuance of its commitment to fulfil the assurance given during the course of discussion on the above referred private members' Bills.

The same can be said about Resolutions. A number of Resolutions have been moved during all these years, on various matters of general public interest. Some of the Resolutions adopted are regarding prohibition of production of undesirable films, widening the scope of NCC, environmental improvement, etc. Here, mention may be made of the Resolution on abolition of privy purses which was adopted by the Rajya Sabha on 19 December 1969, even before the Government had brought the Constitution Amendment Bill, which, as already stated, got defeated in Rajya Sabha by a fraction of a vote.

Role of the Rajya Sabha through Committees

Rajya Sabha has a number of Committees to enquire, to scrutinize, to control and to advise.

The Business Advisory Committee recommends the time that should be allocated for the discussion of the stage or stages of such Government Bills and the business as the Chairman in consultation with the Leader of the House may direct for being referred to the Committee. This Committee also recommends time that should be allocated for the discussion of stage or stages of private members' Bills and Resolutions. The time allocated in regard to the business of Rajya Sabha as settled by the Committee is reported by the Chair to the House and is then notified in Rajya Sabha Parliamentary Bulletin Part-II.

The Committee on Rules considers matters of procedure and conduct of business in Rajya Sabha and recommends any amendment or modifications to the rules that may be deemed necessary. The reports of the Committee are required to be adopted by the House. Any member by giving prior notice can move amendment to the motion for consideration of the report.

General Purposes Committee considers and advises on such matters concerning the affairs of the House as may be referred to it by the Chairman from time to time.

The House Committee deals with all questions relating to the allotment of residential accommodation to members of Rajya Sabha and exercises supervision over facilities for accommodation so allotted and other amenities given to members. The Committee makes appropriate recommendations in regard to matters of common interest to members of both Houses of Parliament pertaining to their residences and other amenities. For this purpose, generally, the Chairmen of the House Committees of Lok Sabha and Rajya Sabha both confer together.

The Committee on Petitions is one of the oldest Committees of Parliament. A cursory look at the various reports presented by this Committee shows that the Committee has proved itself to be a valuable instrument for the redressal of public grievances. It has established itself as a forum, which has brought the people nearer to Parliament. Since 1964, when the Rules of Procedure of Rajya Sabha were amended, the scope of the Committee has been widened. Now petitions can be presented on any matter of general public interest barring the subjects which fall within the jurisdiction of the court of law and judicial and quasi-judicial bodies. However, petitions on matters, which are not the concern of the Government of India, which can be raised through substantive motion or resolution and for which remedy is available under the law, cannot be presented.

A huge volume of papers is laid on the Table of the House. The Committee on Papers Laid on the Table undertakes a closer scrutiny of each and every document laid on the Table. After a paper is laid before Rajya Sabha by a Minister, the Committee considers whether there has been compliance with the provision of the Constitution or the Act of Parliament or any other law, rule or regulation in pursuance of which the paper has been so laid; whether there has been any unreasonable delay in laying the paper before the House and if so, (i) whether a statement explaining the reasons for such delay has also been laid before the House along with the papers, and (ii) whether these reasons are satisfactory; whether the paper has been laid before the House both in English and Hindi and if not, (i) whether a statement explaining the reasons for not laying the paper in Hindi has also been laid before the House along with the paper, and (ii) whether these reasons are satisfactory.

The Committee on Subordinate Legislation is also an important Committee of Rajya Sabha. The Committee considers, scrutinizes and reports to the House, whether the powers delegated by the Constitution or a statute of Parliament have been properly exercised within the framework of the Constitution or the concerned statute. The Committee may also examine Bills as introduced in, or laid before the House with a view to seeing whether the provisions have been made requiring laying of the rules, regulations, etc., on the Table of the House.

The Committee of Privileges performs an important role in ensuring that the privileges of members or of the House or of a committee thereof are protected. The Committee examines every question of privilege referred to it either by the House or by the Chairman and determines with reference to the facts of each case whether a breach of privilege is involved, the circumstances leading to it and makes such recommendations as it may deem fit.

Another important Committee of Rajya Sabha is the Committee on Government Assurances. The Committee is wholly an Indian innovation. The function of the Committee is to scrutinize the assurances, promises, undertakings, etc., given by Ministers, from time to time, on the floor of Rajya Sabha and to report on the extent to which such assurances, promises, undertakings have been implemented; and whether such implementation has taken place within the minimum time necessary for the purpose.

The assurances are culled out from the verbatim proceedings of the House on the basis of a standard list of expressions or forms approved by it. After the assurances, etc., have been culled out from the proceedings of the House, the Secretariat sends them to the Ministries concerned for implementation. The Ministry thereupon takes action under intimation to the Ministry of Parliamentary Affairs. On the basis of information furnished by the Ministries, the Minister of Parliamentary Affairs lays on the Table of the House, from time to time, statements of action taken by the Ministries. Such statements clearly show the implementation of specific assurances supported by documents, wherever necessary. As soon as statements on the implementation of the assurances are laid on the Table of the House, the Secretariat, on behalf of the Committee, examines these statements with a view to ensuring that there has been a complete and satisfactory implementation of the assurances or whether something further is required to be done on any of the assurances or whether an inordinate delay has occurred in their implementation. The findings in the matter are placed before the Committee for its consideration.

Apart from these Committees, the Rajya Sabha is also represented on the Committees on Public Accounts, Public Undertakings, Railway Convention, Welfare of the Scheduled Castes and Scheduled Tribes, Office of Profit, and Salaries and Allowances of Members, set up by Lok Sabha. The Members of Rajya Sabha enjoy equal rights and powers with those of Lok Sabha on these Committees.

With a view to further strengthening the Committee System, the two Houses of Parliament gave approval on 29 March 1993, for the setting up of the seventeen Department-related Standing Committees. Members of both Houses serve on these Committees. Out of these, six Committees, *viz.,* Committee on Commerce; Home Affairs; Human Resource Development; Industry; Science and Technology, Environment and Forests; and Transport and Tourism are serviced by the Rajya Sabha Secretariat. These Committees encompass for scrutiny purpose within their ambit all Ministries and Departments of the Government. These Committees consider the Demands for Grants of the related Ministries/ Departments and report thereon. The report does not suggest anything of the nature of cut motions; examine Bills, pertaining to the related Ministries/ Departments, referred to them by the Chairman or the Speaker, as the case may be, and report thereon; consider the annual reports of the Ministries/ Departments and report thereon; and consider national basic long term policy documents presented to the Houses, if referred to them by the Chairman or the Speaker, as the case may be, and report thereon. These Standing Committees do not consider matters of day-to-day administration of the related Ministries/ Departments.

Recently constituted Committees

The Ethics Committee of Rajya Sabha was constituted by the Chairman, Rajya Sabha on 4 March 1997, with the mandate to oversee the moral and ethical conduct of members and to examine cases referred to it with reference to ethical and other misconduct of members.

The Committee on Provision of Computers to Members of Rajya Sabha was constituted by the Chairman, Rajya Sabha on 18 March 1997. The Committee goes into all efforts relating to supply of computers to members of Rajya Sabha. It also reviews the hardware and software requirements of members.

Since a large number of complaints were being received from members about non-implementation of various items of work under the Members of Parliament Local Area Development (MPLAD) Scheme, it was felt that there should be some effective monitoring mechanism so that proper and quick implementation of projects under MPLAD Scheme could be achieved. With this end in view, the Committee on Members of Parliament Local Area Development Scheme was constituted in Rajya Sabha on 5 September 1998.

Relationship between Lok Sabha and Rajya Sabha

As stated earlier, a Money Bill can be introduced only in Lok Sabha. After it is passed by that House, it is transmitted to Rajya Sabha for its concurrence or recommendation. The power of Rajya Sabha in respect of such a Bill is limited with regard to the duration of its retention and making amendments thereto. Rajya Sabha has to return such a Bill to Lok Sabha within a period of fourteen days from its receipt. If it is not returned to Lok Sabha within that time, the Bill is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha. Again, Rajya Sabha cannot amend a Money Bill directly; it can only recommend amendments. Lok Sabha may either accept or reject all or any of the recommendations made by Rajya Sabha. Rajya Sabha, in fact, made some recommendations with regard to the Travancore Cochin Appropriation (Vote on Account) Bill, 1956; the Union Duties of Excise (Distribution) Bill, 1957; and the Income Tax Bill, 1961 which were accepted by Lok Sabha.

Apart from a Money Bill, certain other categories of Financial Bills also cannot be introduced in Rajya Sabha. There are, however, some other types of financial Bills on which there is no limitation on the powers of the Rajya Sabha. These Bills may be initiated in either House and Rajya Sabha has powers to reject or amend such Financial Bills like any other Bill. Of course, such Bills cannot be passed by either House of Parliament unless the President has recommended to that House the consideration thereof.

From all this, however, it does not follow that Rajya Sabha has nothing to do in matters relating to finance. The Budget of the Government of India is laid every year before Rajya Sabha also and its members discuss it. Though Rajya Sabha does not vote on Demands for Grants of various Ministries — a matter exclusively reserved for Lok Sabha — no money, however, can be withdrawn from the Consolidated Fund of India unless the Appropriation Bill is passed. Similarly, the Finance Bill also passes through Rajya Sabha on which Rajya Sabha can make its recommendations which may or may not be agreed to by Lok Sabha.

In the sphere of law-making, both the Houses enjoy equal powers as originating and revising chambers. All Bills (other than Money Bills or Finance Bills) including the Constitution Amendment Bills, may originate in either House of Parliament. There is a possibility of disagreement between the two Houses on a Bill other than a Money Bill or a Constitution Amendment Bill. To resolve the deadlock on such a Bill between the two Houses, the Constitution makes provision for the joint sitting of both Houses, which may be summoned by the President. If at the joint sitting of the two Houses, the Bill is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed to have been passed by both Houses. There is no provision for the joint sitting of both Houses on Money Bills. Both the Houses possess equal powers with regard to a Constitution Amendment Bill and there is no joint sitting provided to resolve any deadlock on a matter relating to a Constitution Amendment Bill.

Ministers may belong to either House of Parliament. The Constitution does not make any distinction between the Houses in this regard. Every Minister has the right to speak in and take part in the proceedings of either House but he is entitled to vote only in the House of which he is a member.

Similarly, with regard to powers, privileges and immunities of the Houses of Parliament, their members and committees thereof, the two Houses are placed on equal footing by the Constitution.

Other important matters in respect of which both Houses enjoy equal powers are election and impeachment of the President, election of the Vice-President, approving the Proclamation of Emergency, the Proclamation regarding failure of constitutional machinery in States and financial emergency. In respect of receiving reports and papers from various statutory authorities, etc., both Houses have equal powers.

It is thus clear that except in the case of collective responsibility of the Council of Ministers and certain financial matters, which fall in the domain of Lok Sabha only, both Houses enjoy equal powers.

Conclusion

It is, indeed, a difficult task to present a complete account of the work done by Rajya Sabha during the past five decades. Suffice is to say that as a legislative chamber, Rajya Sabha has played an important part in the social engineering and has acquitted itself well as a debating House. As a federal chamber, this House has worked for the unity and integrity of the nation and has reinforced the faith of the people in parliamentary democracy.

13

Seanad Éireann*

DEIRDRE LANE

Seanad Éireann (Senate) is the second House of Parliament. However, the primacy of Dáil Éireann in regard to the life of Parliament is recognised in that a General Election to Seanad Éireann must take place not later than ninety days after the dissolution of the Dáil.

Unlike Dáil Éireann whose members are directly elected by the people, membership of Seanad Éireann is composed of sixty members as follows:

(i) Forty-three elected by five panels representing vocational interests namely, Culture and Education, Agriculture, Labour, Industry and Commerce and Public Administration.

(ii) Six elected by the graduates of two universities — three each by the National University of Ireland and the University of Dublin (Trinity College).

(iii) Eleven nominated by the Taoiseach.

In theory, Seanad Éireann does not recognise party affiliations. However, as the electorate for the panels is made up of the members of the incoming Dáil, the outgoing Seanad, county councils and county borough councils, the composition of Seanad Éireann, will tend to reflect party strengths in Dáil Éireann. In practice, Senators will divide into groups supporting and opposing Government business when voting on issues.

The main business of Seanad Éireann is to revise legislation sent to it by Dáil Éireann. However, in recent years the Government has tended to make greater use of the Seanad Éireann to initiate legislation. Moreover, the increasing use of the Committee system and the expansion in the number and range of Committees has resulted in its members having additional opportunities to participate in the work of Joint Committees, which are Select Committees of each House sitting and voting together. The effect of these developments has been to enable Seanad Éireann to become more involved in an ever increasing schedule of Government parliamentary business.

*Senate of Ireland

In relation to its legislative role, Seanad Éireann can initiate and revise legislation but under the Constitution its legislative role is restricted in that it cannot initiate Money Bills, *i.e.*, financial legislation, and can only make recommendations but not amendments to such Bills and these must be made within twenty-one days. Neither can a Bill to amend the Constitution be initiated in the Seanad. The fact that a Dáil Bill must be examined by Seanad Éireann is a significant democratic safeguard against legislation being enacted too quickly. Seanad Éireann cannot delay indefinitely Bills, which have already been passed by Dáil Éireann and cannot initiate Bills to amend the Constitution. Ministers and Ministers of State may, of course, attend and be heard in Seanad Éireann.

In addition to its legislative role, Seanad Éireann also debates important issues. Indeed, as the Government is constitutionally responsible to Dáil Éireann alone, Seanad Éireann can debate issues with greater freedom because the fate of the Government will not be at stake. As with Bills, the Taoiseach, Ministers or Ministers of State will be present from time to time in the House when it is debating aspects of Government policy and administration.

Seanad Éireann has powers complementary to Dáil Éireann in certain areas, *e.g.*, the removal from Office of the President, a judge of the Supreme Court or the High Court, the Comptroller and Auditor General and the Ombudsman, the declaration and termination of a state of emergency, the making of law and annulment of Statutory Instruments (*i.e.*, delegated legislative power to Ministers). However, Seanad Éireann does have prior or exclusive powers in two areas, respectively:

- petitioning the President to decline to sign a Bill until the people have decided the matter by referendum (such a petition requires the support of a majority of the Seanad and not less than one-third of the Dáil).
- abbreviating the time within which the President may sign a Bill into law (called an "earlier signature motion").

The Constitution provides certain safeguards in relation to the passing of Bills which are presented to the President for signature. One such provision is: if a majority of the Seanad and at least one-third of the Dáil petition the President not to sign a Bill on the grounds that it contains a proposal of such national importance that the will of the people ought to be ascertained, the President may agree to the request after consultation with the Council of State. In these circumstances, the President shall decline to sign the Bill unless and until the proposal has been approved by the people in a Referendum or by a new Dáil after a dissolution and a General Election.

A typical working day for a Senator can parallel that of a Deputy in that it will involve researching and preparing speeches for debates on social, economic and financial issues, drafting amendments to Bills and examining proposals for new legislation, contributing to debates on Bills and other important matters,

voting on issues in the House and making representations on behalf of individuals and others to Government Ministers. As stated previously, the setting up of a well organised system of Joint Committees (*i.e.*, Committees of both Houses sitting and voting together) has resulted in Senators having additional opportunities to participate, to an even greater extent, in specialized parliamentary work in the areas of Foreign Affairs, European Affairs, Irish Language, State Enterprise, Women's Rights, Family Matters, Sustainable Development and Small Business and Services.

In addition to their parliamentary duties, Senators also make themselves available to assist members of the public who may require advice or guidance on matters relating to State administration. Senators will often be members of health boards, local authorities and VECs and will frequently be called upon by the media to comment on current political issues and to participate in broadcast debates. As in the case of Deputies, Senators also are provided by law with a range of entitlements (*e.g.*, secretarial assistance, mileage, subsistence, postal and telephone allowances) to help them to deal effectively with their duties as Senators and legislators.

The Cathaoirleach — Chairperson of the Seanad

At its first meeting following a General Election, Seanad Éireann elects a Cathaoirleach—or Chairperson—who will preside impartially and with authority over the business and proceedings of the House. The Standing Orders of the Seanad are the basis of the Cathaoirleach's powers and duties. Seanad Éireann also elects a Leas-Chathaoirleach (Deputy Chairperson). Many of the powers of the Cathaoirleach parallel those of the Ceann Comhairle of Dáil Éireann. For example, during sittings of Seanad Éireann, the Cathaoirleach is the sole judge of order with a range of disciplinary powers to maintain order and the dignity of the House. The Cathaoirleach calls on Members to speak, puts such questions to the House as are required and declares the results of Divisions (votes). Again, as with the Ceann Comhairle, the Cathaoirleach may put a motion for the closure of a debate when, in his view, the issue has been adequately discussed. Under Article 15.11.2° of the Constitution, the Cathaoirleach has and must exercise a casting vote in the case of an equality of votes.

Each sitting of the Seanad is governed by an Order Paper which is prepared under the Cathaoirleach's direction. Motions and amendments are examined individually to ensure that they comply with the Standing Orders and precedents of the House. The Cathaoirleach also has discretion to shorten the formal notice required for motions and amendments and is Chairperson of the Seanad Committee on Procedure and Privileges. The Cathaoirleach represents the Seanad at international meetings of parliamentarians, at Conferences of Speakers of Parliament of the European Union, the Council of Europe and the European Parliament and, together with the Ceann Comhairle, will co-host visits of foreign parliamentary delegations. The Cathaoirleach is a member of the Council of

State which aids and counsels the President in relation to the exercise and performances by her of certain powers and of the three-person Commission which exercises and performs the President's powers and functions should the President be absent or temporarily incapacitated.

Under the Electoral Acts, the Cathaoirleach is an *ex officio* member of the Appeal Board established to decide on any doubt, dispute or question which may arise in connection with the Register of Political Parties in respect of Dáil Elections. The Cathaoirleach is also an *ex officio* member of the Appeal Board that hears and decides appeals from decisions of the Seanad Returning Officer under the Seanad Electoral (Panel Members) Act, 1947.

The Clerk of the Seanad

The Clerk of the Seanad advises the Cathaoirleach on procedural matters. The Clerk is also the Returning Officer for the election of forty-three Panel Members, notifying the Members of the new Seanad to attend and sign the Members' Roll and following the General Election formally announces the names of all those elected and nominated by the Taoiseach at the first sitting of the House. The Clerk of the Seanad is also a member of the Electoral Boundary Commission and Public Office Commission.

14

The Role of the Senate within Italy's Parliamentary System

DAMIANO NOCILLA

The Italian Constitution that came into force in 1948 provided for a bicameral system of equality. The Parliament is made up of the Chamber of Deputies and the Senate of the Republic. Deputies and Senators are elected by direct universal suffrage. The President of the Republic is elected by Parliament in a common session with all members. The Government must have the confidence of both Houses, and each chamber grants and revokes that confidence. The Chamber of Deputies and the Senate of the Republic are each distinct bodies, but are invested with identical functions and have identical independence and autonomy.

The duties of Parliament, and above all those pertaining to legislation, are exercised collectively by both chambers. There are no differences of power between the Houses, so that the Government can ask for a vote of confidence or trust from either one of the branches. Both the legislative assemblies vote for a motion of confidence until the Government enters into the fullness of its powers. Votes of confidence are taken on roll call. Since 1948, the practice of presenting itself alternatively in the Chamber and the Senate has been followed. However, if it does not receive a majority vote of confidence even in only one of the chambers it must resign. Therefore, Parliament normally acts as a bicameral body, although the Constitution sets down as a rule a few hypotheses where the components of the two chambers, plus a limited number of regional delegates, unite in common sessions such as: election of the President of the Republic, impeachment of the Chief of the State, elections of one-third of members of the Superior Magistrates' Council, and elections of one-third of the justices of the Constitutional Court. In addition, the members of the Chamber and of the Senate may be called by their Presidents to take part in some bicameral committees.

The characteristics of the Senate are identical to those of the Chamber of Deputies, inasmuch as the republican Constitution did not grant preponderance to the Lower Chamber in financial matters, as the old Statute of the Italian

Kingdom had done. Parliament's powers include: (1) the power to revise the Constitution; (2) the exercise of the legislative power; (3) the power to declare war; (4) the power to elect the Chief of the State, called President of the Republic; (5) the power to concede or deny confidence in the Government; (6) the power to establish the administrative machinery of the Government; (7) the power to investigate matters of public concern; and (8) the power to coordinate autonomous social initiatives and the autonomous territorial bodies.

As can be seen from this litany of powers, the Italian parliamentary system is organized according to bicameral principles, tempered by unitary moments provided by the Constitution. The deliberations in legislative matters undertaken by one chamber must be transmitted to the other, and become operative only if approved by the other chamber without modifications. If the transmitted material undergoes changes or amendments, it must then return to the first chamber in order to have two conforming deliberations.

The chambers, all in all, have some distinct characteristics that can be summed up in this way: (i) The Chamber of Deputies is composed of members wholly elected by the electoral body. The Senate, instead, has some exceptions to this with its life members, of which there are currently eight. These members, according to the dictates of the Constitution, are former Presidents of the Republic and five citizens nominated by the Chief of the State who have demonstrated patriotism with extreme merit in social, scientific, artistic, or literary fields. (ii) There are differing age requirements for the right to participate in the active and passive electorates. For the formation of the Chamber, one must have reached the age of eighteen in order to participate, whereas for the election of the Senate, the voters must be at least twenty-five years of age. In addition, citizens are eligible to run for Deputy if by the time of the election they have reached the age of twenty-five; citizens running for Senator must be at least forty years of age. In this way, there is an attempt to form the Senate with greater reflection than that of the Chamber of Deputies, but it must be observed that in reality neither the Chamber nor the Senate has much difference from the other in its political composition. The Constitution and a successive law fix the number of elective components for each body as six hundred and thirty for the Chamber and three hundred and fifteen for the Senate. (iii) The electoral systems for the elections of the two chambers are different. Both branches of Parliament have seventy-five per cent of their members elected by a first-past-the-post method, the remaining twenty-five per cent reflect a proportional mechanism. Apart from the obvious major territorial extensions of the constituencies for the Senate, there is a sensitive difference in the system of election for the Senators' proportional share. Two hundred and thirty-two Senators are elected by a uninominal majority vote, and eighty-three by proportional means. The allotment of seats between the regions is based on a decree of the President of the Republic of 1994. The Constitution states that no region may have fewer than seven Senators, with the exception of Valle d'Aosta, that has only one, and Molise, that has two. Back in 1994, the separate electoral terms and

constituencies for members of the two Houses made it possible for one party to win control of one chamber and the other party to win control of the other. An Italian version of divided Government.

Whereas, joint sittings of the two Houses are presided over by the Speaker of the Chamber of Deputies, particular importance is given by the Constitution to the Speaker of the Senate. As a matter of fact, the latter assumes the duties of the President of the Republic when the Chief of the State cannot fulfil them due to a temporary hindrance such as illness, long official trips to foreign countries, or resignation.

Worth remembering is a Constitutional Law approved in 1963 that decreased the term of the Senate to five years, eliminating another element of differentiation ordained in the Constitution, that originally fixed a five year term for the Chamber and six years for the Senate.

Other distinctive elements can be found in the regulations that the two assemblies can impose upon themselves autonomously in order to discipline their own internal organization, and the way in which each House performs its duties.

The Speaker of the Senate, like the Speaker of the Chamber, is representative of the assembly, and according to the tradition of the Speaker of the British House of Commons, is called on to perform his or her duties in an impartial way. There exist other elected officers of the House who are supposed to aid the Speaker while he or she is performing his/her duties. These include four deputy speakers, three questors, and eight senator secretaries. Deputy speakers, questors, and secretaries make up the Speaker's Council, which makes decisions concerning the House administration and discipline.

There exists, also, a complex of offices and services employed by the Senate and under the direction of a Clerk, called Secretary General, that is also head of personnel. In the Senate (as in the Chamber of Deputies) there are caucuses called "parliamentary groups". They are formed of Senators belonging to the same party or political group. The parliamentary groups likewise design the components of single standing committees and select committees. The chairs of the Senate parliamentary groups join together in a special conference with the deputy speakers to assist the Speaker with the formation of the agenda.

As already stated, the essential duty of Parliament is the approval of ordinary laws. In addition both Houses pass constitutional laws and revisions of the fundamental Charter. The political direction is manifested mainly on the occasion of the vote of confidence for the Government: the Constitution, in fact, calls for each cabinet, within ten days of its formation, to present itself to the chambers to obtain their confidence. The subsistence of the relationship of trust between Parliament and the executive is verified each time the "question of confidence" is raised by the Government with reference to a determined and controversial proposal about which one of the chambers is about to declare its opinion, or also the "motion of no confidence" is presented by one-tenth of the

members of a House. The political direction of the chambers can also be shown in its resolutions, motions, and orders-of-the-day. Parliament also performs the general duty of controlling the activities of the Government. Both Houses can take positions on critical issues, and even if controversial, they don't necessarily call for a refusal of confidence in the Government. Among the main mediating instruments through which control may be used are "interrogations" and "questions". With such tools the executive is asked, respectively, if it is up to date on a specific issue and its orientation on a certain problem.

With the passage of time there have been many proposals of structural reform of Parliament. Almost all of them have to do with the Senate, such as making it into a Chamber of Regions (*i.e.*, a Chamber of Local Governments), a prospect that clearly diminishes its powers at the legislative level. This attitude towards the Senate can possibly be explained by the fact that even in their formal legal equality, the two branches have almost always lived in a complex condition of differing political weight even though this condition has not been translated by the Constitution into a minor role for the Senate.

It is reasonable to say that the entire term of the Fourteenth Parliament (which expires in 2006) will be absorbed by this attempt at reform. The final results of which are still cloudy. Despite an electoral law that seems to anticipate a binary system, Italian politics is still marked by a strong fragmentation and as a result an exasperated multi-party system. The risk is that such disintegration provokes greater difficulties in finding a point of convergence toward a solution that gives shape to a defined differentiation of the duties of the Chamber and the Senate.

15

The Second Chamber of the Jamaican Parliament

SHIRLEY M. LEWIS

Under the Jamaican Constitution of 1962, a bicameral legislature was established. The Constitution states that Parliament is composed of Her Majesty the Queen, a Senate and a House of Representatives.

The Second Chamber of the Jamaican Parliament is called the Senate. It consists of twenty-one members appointed by the Governor General, thirteen on the advice of the Prime Minister and eight on the advice of the Leader of the Opposition. Currently, there are two independent Senators who are included in the thirteen appointed on the advice of the Prime Minister.

Any Commonwealth citizen over the age of eighteen years, who has been resident in Jamaica for the immediately preceding twelve months, may be nominated to the Senate provided that he or she is not:

(a) a Member of the House of Representatives;

(b) under allegiance or obedience to a foreign power;

(c) the holder of or acting in any public office or a judge of the Supreme Court of Appeal or a member of the Jamaica Defence Force;

(d) under sentence of death or serving a prison sentence of or exceeding six months imposed by a court in any part of the Commonwealth;

(e) an undischarged bankrupt under the laws of a Commonwealth country;

(f) certified to be insane; and

(g) convicted of an electoral offence.

Under the Constitution, the Senate on its first meeting elects a Senator to be President and Deputy President. A Senator who is a Minister of Government, or Parliamentary Secretary cannot hold these two posts.

Law making

The Senate has a role in law making. Bills may be introduced in either House, but a Money Bill cannot be introduced in the Senate. After the Bill is passed in the House of Representatives it goes to the Senate where it is read and debated. If passed, it goes to the Governor General for signature. If the Senate amended it, it would be returned to the Lower House, which could accept or reject the amendment. If the amendments are rejected, the Bill may be sent to the Governor General for his assent without being passed by the Senate. Other Bills may be sent to the Governor General in similar manner after specific periods of time have elapsed after the Bill has been sent to the Senate but not passed by them.

Committees

Like the Lower House, the Senate has Sessional Select Committees, for example, the Senate Committee, Regulations Committee, Standing Orders Committee and the Privileges Committee. Members of the Senate are also appointed to serve on Joint Select Committees along with members of the Lower House, to examine and report on legislation or other documents.

Relationship with the Executive

The Cabinet, also referred to as the Executive, is the principal instrument of policy and is charged with the general direction and control of the Government. No less than two or more than four Ministers must be appointed from the Senate.

16

The Role and Contribution of Jammu and Kashmir Legislative Council

G.R. MEHBOOBI

India has adopted parliamentary system of democracy and in such a system the important pillars of governance are the Legislature, the Executive and the Judiciary. Legislature is the law-making authority and all the laws are enacted and find a place on the statute book only after these are passed by the Legislature (Parliament) and assented to by the President of India. Executive is answerable before the Legislature (*i.e.*, before Parliament at the national level and before the Legislature at the State level) for all the actions, which are carried in the public interest and for the welfare of the people. Judiciary in India is a sovereign body and is the authority to interpret the law and see that any law enacted by the Legislature is not *ultra vires* the Constitution. In our country, it is the Constitution which is supreme and every institution is subordinate to the Constitution of India, though, of course, if required amendments are made in the Constitution through the Constitution amendment Bills passed by the Parliament. So far as the composition of the Legislature in India is concerned, we have bicameral Legislature at the national level having two chambers, Lok Sabha and Rajya Sabha. At the State level most of the Legislatures in India have only one chamber, *i.e.*, Assembly, whereas some States like Uttar Pradesh, Bihar, Maharashtra, Karnataka and Jammu and Kashmir have the bicameral Legislature.

In Jammu and Kashmir, the two Houses of the Legislature are known as the Jammu and Kashmir Legislative Assembly and the Jammu and Kashmir Legislative Council. The Legislative Assembly has the effective strength of eighty-seven members whereas the Legislative Council has thirty-six members. In the state, the first Legislative Assembly was constituted in1951, whereas, the first Legislative Council was constituted in1957. Right from its inception, the Legislative Council has played an important role in strengthening the democratic system in the State. It has, on many occasions, proved as a safeguard against what is called as apotheosis of democratic rashness. The composition of Jammu and Kashmir Legislative Council is as under:

(1) twenty-two members are elected by the members of the Jammu and Kashmir Legislative Assembly;

(2) two members are elected by the electorates of Municipal Council, Town Area Committees and Notified Area Committees;

(3) four members are elected by the electorates of *Panchayats*;

(4) eight members are nominated by the Governor (not more than three of whom shall be persons belonging to any of the socially or economically backward classes in the State and the others shall be persons having special knowledge or practical experience in respect of such matters as literature, science, art, co-operative movement and social service).

The above composition ensures that there is always a representative from all shades of the society in the Jammu and Kashmir Legislative Council. For example, at present the Legislative Council has the members from far-off places of the State, *viz.*, Duchan/Madwah (Doda District), Rajouri/Poonch Districts and Kargil/Ladakh Districts. The Jammu and Kashmir Legislative Council had always a representative from the Scheduled Castes/Scheduled Tribes and other socially and economically backward classes.

The Jammu and Kashmir Legislative Council has the distinction of having academicians, persons having practical experience in the field of science, literature, art, etc., as its members. Even at present, among the members of the Legislative Council who have been nominated by the Governor, one is a retired Army General, whereas the other one is a leading doctor of the State, who is known by his profession and social work not only in the State but at the national level as well. Another member in the Legislative Council is a literary person *par excellence* having special knowledge in art and culture. One more member, besides being an academician was also the Vice-Chancellor of the Jammu University. Two members of the Legislative Council have served as the Chief Minister of the State. Dr. Farooq Abdullah is one of those. He became the Chief Minister the first time in September 1982 and was elected as a member of the Jammu and Kashmir Legislative Council on 1 March 1983. The Chairmen of the Jammu and Kashmir Legislative Council have also been the recognized academicians, best parliamentarians of the time and having a shining legal background. The same holds good in respect of the present Hon'ble Chairman, Mr. Abdul Rashid Dar.

The Jammu and Kashmir Legislative Council besides discussing the working of various Ministries in the House has always played its role in rectifying the possible imperfections relating to enactment of laws in the State. The Jammu and Kashmir Legislative Council provides representation to all sections of society, the downtrodden, the minorities, the Scheduled Castes/Scheduled Tribes, the socially and economically backward classes, people of far-flung areas of Ladakh/ Kargil, Doda, Poonch/Rajouri Districts, besides the intellectuals having practical experience in the fields of literature, science and art, etc. Had there been unicameral Legislature, there was an apprehension that all these sections would not have been represented in the Legislature. Therefore, in Jammu and Kashmir the necessity of having a second chamber (Legislative Council) has been very strongly felt both in view of application of the doctrine of checks and balances and in view of topographic position of State.

17

The House of Councillors of Japan

HISAO HORIKAWA

Founding

The modern Japanese parliamentary system dates from the promulgation of the Meiji Constitution (Imperial Constitution) of 1889.

It was called the Imperial Diet, and its mission was to sustain the Emperor's prerogative in the sphere of legislation. It was bicameral and consisted of the House of Peers and the House of Representatives. The Members of the House of Peers were not elected by the people; they consisted of Imperial Family Members, Peers and Imperial nominees. The Members of the House of Representatives, however, were elected directly by the people. However, the suffrage was granted only to those paying taxes above a certain level.

The two Houses were equal in power, and operated independently except that the right of prior consideration of the national budget was given to the House of Representatives.

After World War II, the Imperial Constitution was greatly changed and the New Constitution was promulgated on 3 November 1946 and came into effect on 3 May 1947. The New Constitution proclaims that sovereign power resides with the people. The Imperial Diet, which functioned as an advisory organ to the Emperor in his conduct of state affairs under the Imperial Constitution, was replaced by the National Diet which functions as the sole law-making body of the state. After discussion on whether the bicameral system should be adopted or not, it was in fact adopted, and members of both Houses came to be elected by popular vote. The National Diet, consisting of the House of Representatives and the House of Councillors, was thus founded in 1947.

Reason for Existence

The bicameral parliamentary system varies country by country. The House of Councillors of Japan is not based either on the peerage or the federal state system. It consists of members elected as representatives of the whole nation. There is no difference between the House of Councillors and the House of Representatives in this regard. Thus, the value of the House of Councillors has come to be questioned.

"The House of reason", "the House of sound judgment", "the House of due consideration", "the House of re-consideration" and so on are the images given to the House of Councillors to show its characteristics and the significance of its existence, and what those titles mean is the following:

First, it is impossible to establish a perfect election system. Since each House has different types of members, the two-chamber system enables the two Houses to complement each other. The first House, the House of Representatives, is based on party politics and cannot cover the full range of social interests. So a second House, the House of Councillors, is needed to reflect the peoples' various interests on the national policy which tend to be neglected in the first House.

Second, the House of Councillors is able to detect the public sentiment following deliberations in the House of Representatives and reflect it in its own deliberations. Checks and balances inside the legislative bodies and tension between the two Houses and the process of reconsideration of the decisions taken by the Lower House, makes the deliberations and decisions more thorough.

Third, the House of Councillors mitigates the headstrong force of the House of Representatives and helps to stabilize government policies. This is because it is able to formulate long-range policies since the members hold a six-year term of office which is relatively long. The House of Councillors is never dissolved and only half of its members are elected in each of the regular elections which take place every three years. To the contrary, dissolution of the House of Representatives means that all its members are involved in a General Election together, possibly resulting in a large-scale change in political power balance.

Powers, Structure and Activities

(1) Diet system

Japan has adopted the separation of powers, namely legislative, administrative, and judiciary, like many countries. These three powers are executed separately by the Diet, the cabinet and the court. Checks and balances between these powers prevent the concentration and abuse of power and guarantee peoples' rights and freedom. The parliamentary/cabinet system of government takes care of the relation between the administrative and the legislative branches.

The Japanese Constitution states, "The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State." While there are differing interpretations of the term "highest organ", there is no doubt that the Diet is paramount in embodying the sovereignty of the people, since it is composed of members elected directly by the sovereign people.

The Diet, as a legislative body, is authorized to make laws, propose amendments to the Constitution, decide the national budget, and approve the

conclusion of treaties. It is also authorized to examine the settlement of accounts of the national budget, and approve the expenditure of reserve funds, in order to achieve the democracy in the field of finance. According to the parliamentary/cabinet system, the Prime Minister is designated by the Diet, and in terms of its judicial power, the Diet is authorized to impeach judges. Aside from these functions, to be carried out by both Houses jointly, each House independently elects its own presiding officer and decides its own rules. Each House is also authorized independently to conduct investigations in relation to Government. The House of Representatives has the authority to pass resolutions of no-confidence in the Cabinet, but the House of Councillors does not.

Technically, the Diet is convened by the promulgation of the Imperial Rescript, but in practical terms it is the Cabinet that decides on the convocation of the Diet. The Diet is able to work only during a session, and it stops functioning when the period of the session ends. There are three types of Diet sessions: ordinary, extraordinary and special. The ordinary session is held annually in January and lasts for one hundred and fifty days. An extraordinary session is held for some specific purpose. A special session is convoked in the wake of a general election following the dissolution of the House of Representatives. The length of an extraordinary session and special session is decided by both Houses. The decision of the House of Representatives has priority over the decision of the House of Councillors when the two Houses come out with different conclusions. When the House of Representatives is dissolved, the Diet session ends and the House of Councillors also stops functioning.

(2) Relations between the Two Houses

Members of both Houses are elected by the people, thus representing the entire people of the country. In this sense, it cannot be determined which is Upper or which is Lower House. However, from the historical point of view, the House of Councillors can be termed the Upper House. As regards its functions, however, the House of Councillors can be called the secondary House since the House of Representatives is given superiority over the House of Councillors in several matters.

(i) *Priority given to the House of Representatives*

The common intention of both Houses becomes the intention of the Diet. But the House of Representatives is given priority in the following cases as provided in the Constitution:-

- ***Decision on bills***

  A bill becomes a law when it is passed by both Houses. But as an exception, even if the House of Councillors votes against a bill or comes out with amendments on a bill which has been passed by the House of Representatives, the original bill becomes law if the House of Representatives passes the bill for the second time by a majority of two-thirds or more of the members present. In addition, a bill which

has been passed by the House of Representatives and the House of Councillors fails to come to a decision on it within sixty days after receiving it, the House of Representatives is entitled to rule that the House of Councillors has rejected the bill, and hold a second vote as above.

- ***Decision on the budget***

  The Cabinet submits the budget first to the House of Representatives. After it is passed by the House of Representatives, and subsequently by the House of Councillors, it has obtained the Diet approval. But if the House of Councillors votes against it or proposes amendments and no agreement can be reached even through a Conference Committee of both Houses, or in the case of failure by the House of Councillors to take final action within thirty days after the receipt of the budget passed by the House of Representatives, the decision of the House of Representatives becomes the decision of the Diet.

- ***Decision on treaties***

  Treaties need not necessarily be submitted to the House of Representatives first. However, the decision by the House of Representatives takes precedence over a contrary decision of the House of Councillors as is the case of the budget.

- ***Nomination of the Prime Minister***

  The Prime Minister is designated by the Diet, by the common decision of both Houses. If the House of Representatives and the House of Councillors designate different persons as the Prime Minister, and if no agreement can be reached even through a Conference Committee of both Houses, or if the House of Councillors fails to make a designation within ten days after the House of Representatives has made a designation, the decision of the House of Representatives becomes that of the Diet. The House of Representatives is also qualified to pass a vote of non-confidence in the Cabinet, while the House of Councillors is not.

(ii) *Conference Committee of both Houses*

A meeting of a Conference Committee is called to adjust the decisions of the two Houses whenever the two Houses come out with different decisions in regard to a bill, a budget, designation of the Prime Minister, and other matters requiring the resolution of the whole Diet. It is necessary to hold such a meeting in case of a budget, a treaty or the designation of the Prime Minister. In other instances, a meeting of the Conference Committee is optional; for example, in case of a law bill, and the opinion of the House of Representatives takes precedence over that of the House of Councillors in deciding to hold such a meeting.

The committee is composed of twenty members, ten elected from each House.

If a definite proposal is gained as a result of adjustment, it is needed to resolve it at the plenary sessions in both Houses.

(iii) *Emergency Session of the House of Councillors*

The emergency session is unique to the House of Councillors. When the House of Representatives is dissolved, the House of Councillors also closes and the Diet stops functioning until it is convened following the general election of the House of Representatives. But if urgent matters of State arise in this period, the Cabinet is entitled to seek an emergency session of the House of Councillors, and the House of Councillors then carries out the functions of the Diet. It is necessary to obtain the assent of the House of Representatives to measures adopted at the emergency session within ten days after the next session of the Diet is convened.

ORGANIZATION — STRUCTURE

(i) *Membership and Term of Office*

The total membership of the House of Councillors is two hundred and fifty-two. It has been decided to reduce the membership. It is to drop to two hundred and forty-seven in 2001, and to two hundred and forty-two in 2004, after the ordinary election.

The term of office of the members of the House of Councillors is six years, half of the members being elected every three years. The membership of the House of Representatives is four hundred and eighty. Their term of office is four years. They lose their membership, however, if the House is dissolved before their term of office expires.

(ii) *Election System*

Members of both House of Representatives and House of Councillors are publicly elected. The proportional representation system and the constituency system are both used for the elections of the House of Councillors. Half of the members elected by each system are subject to re-election in the triennial elections. The number of members elected by the proportional representation system is now hundred; this will be reduced to ninety-eight in 2001 and ninety-six in 2004, following the election in each year. The membership based on the prefectural constituency system is now one hundred and fifty-two. It will be reduced to one hundred and forty-nine in 2001 and one hundred and forty-six in 2004. Those who are twenty years old and older have the right to vote, and persons who are thirty years old and older are eligible to stand for election.

In the meantime, the House of Representatives has four hundred and eighty members of whom one hundred and eighty are elected by the proportional representation system, carried out in eleven districts covering the entire country, and by the single-member constituency system. The minimum age for voters is twenty years and for candidates twenty-five years.

(iii) *Structure*

No great differences exist between the structures of the two Houses. The House of Councillors has some organs established to make use of its own characteristics.

(a) *Officers*

Each House has five types of officers: (1) Presiding Officer, (2) Deputy Presiding Officer, (3) Temporary Presiding Officer, (4) Chairmen of Standing Committees and (5) Secretary-General.

- **Presiding Officer (called President)**

  The Presiding Officer represents the House, maintains order in the House, arranges its business and supervises the administration of plenary sittings. He is elected by secret vote in a plenary sitting. The term of office of Presiding Officer corresponds with his term of office as a member of the House of Councillors. However, in practice, the Presiding Officer resigns following the regular election of the House of Councillors held every three years for half of the membership of the House, and a new Presiding Officer is elected. This is because the composition of the members changes following the election.

- **Deputy Presiding Officer (Vice-President)**

  A single Deputy Presiding Officer is elected and he acts as the Presiding Officer when the Presiding Officer is unable to perform his duties, or when the post becomes vacant. His term of office and method of election is the same as that of the Presiding Officer.

- **Temporary Presiding Officer**

  If both the Presiding Officer and the Deputy Presiding Officer are unable to attend to their duties, a temporary Presiding Officer is elected at the plenary sitting to perform the duties of Presiding Officer.

- **Standing Committee Chairman**

  A Standing Committee Chairman represents the Committee, maintains order in the Committee, arranges its business and supervises the administration of the Committee. The House of Councillors has seventeen Standing Committees each of which has a Chairman. The Chairman of each Standing Committee is elected from among its members. The posts are allocated to political groups in the House in proportion to the number of seats they hold in the House. The Chairmen of the Standing Committees are elected in a plenary sitting, according to the recommendations of the political groups. The term of office of a Chairman coincides with his or her term of office as member of the Standing Committee. However, as in the case of the President, in practice, a new Chairman is elected in the wake of the regular election of the House of Councillors.

- **Secretary-General**

  The Secretary-General is the head of the Secretariat of the House and is elected in each House from among those other than members of Diet.

(b) *Committees and others*

Organs to conduct internal examination are Standing Committees, Special Committees, Research Committees, the Research Commission on the Constitution and the Deliberative Council on Political Ethics. They conduct preliminary examinations before decision-making at the plenary sitting, except for Research Committees and the Research Commission on the Constitution.

- **Standing Committees**

  The House of Councillors has seventeen Standing Committees, in accordance with the Diet Law. They are grouped into two. The first group comprises eleven Committees which cover the entire field of government policies, corresponding to the jurisdictions of ministries. The other group comprises the Committee on Fundamental National Policies, Committee on Budget, Committee on Audit, Committee on Oversight of Administration, Committee on Rules and Administration and Committee on Discipline.

- **Special Committees**

  Special Committees are set up at each session, to consider and research matters which the House considers necessary, or particular matters which are not in the jurisdiction of Standing Committees.

- **Research Committees**

  Research Committees are bodies peculiar to the House of Councillors. They are not engaged in the deliberation of bills, and instead conduct long-ranging and comprehensive research on basic matters of state policies. These committees are established following a regular election of the House of Councillors and operate for three years.

- **Research Commission on the Constitution**

  This Commission is engaged in comprehensive and overall research on the Japanese Constitution.

- **Deliberative Council on Political Ethics**

  This Council examines whether members of the House of Councillors have violated the code of conduct for the establishment of political ethics and are judged to bear political and moral responsibility.

(c) *Structure of Committees*

- **Committee Members**

  Committee members are nominated by the President. Membership of a committee is allocated to political groups in proportion to the number of seats held by them in the House so that each committee is a microcosm of the entire House.

- **Chairman of Special Committee and others**

  While Chairmen of Standing Committees are appointed as Officers of the House at a plenary sitting, the Chairmen of Special Committees, Research Committees, the Research Commission on the Constitution and the Deliberative Council on Political Ethics, are elected by the Committee's members from among themselves.

- **Director**

  Each committee has Directors as officials who perform duties on behalf of the Chairman. The main role of a Director is to discuss matters concerning the management of the committee. Directors are members of their committees and are elected by the members. In practice, Directors' posts are allocated to political groups in proportion to the number of seats held by them in the committee, and are appointed by the Chairman on the recommendation of the political groups.

(4) Activities

Matters concerning the organization and administration of the Diet are stipulated in the Constitution and the Diet Law. The autonomy of each House is recognized and it has its own rules for proceedings and other regulations. However, no great differences exist between the rules of the two Houses. Hence, the conduct of plenary sittings and committee meetings does not differ widely.

(i) *Simultaneous and independent activities of the two Houses*

Both Houses are in session simultaneously during the Diet term (the Emergency Session of the House of Councillors is an exception). During this time, the two Houses are independent in their activities and make their own resolutions. However, as exceptions, a Conference Committee of both Houses is called for to make adjustment when views of the two Houses differ from each other, and it is also possible to hold joint meetings of Standing Committees of both Houses.

(ii) *Deliberation on Bills*

Bills may be presented by the Cabinet, members of the House of Representatives and members of the House of Councillors. The President refers a presented bill to a Standing Committee. Following consideration by the Committee, it is put on the agenda of the plenary sitting. The Committee plays

a main role in the consideration. Main activities in the Committee meetings are, questions that are put to the member who presented the bill or to the Cabinet and discussions. Sometimes, concerned parties or persons with specialized knowledge are invited from outside to express their own views to the Committee. Committee members sometimes go out and make an on-the-spot survey. It is customary for the plenary session to vote immediately after the Chairman reports to it on the process and the results of deliberations conducted in the Committee.

Committees also play a leading role in exercising the right to conduct investigations in relation to government, an important right of the House, and they also have available the procedure for demanding the presence and testimony of witnesses and production of records.

(iii) *Administration of meetings*

Plenary sittings and Committee meetings operate under majority rule. A quorum consists of one-third of the total membership at plenary sittings, and half at Committee meetings. The adoption of a resolution requires the agreement of at least half of those present.

Plenary sittings and Committee meetings are managed by consultation among the political groups in the House. Not all the proceedings are decided by motions. Consultative organs on proceedings (the Committee on Rules and Administration in the case of the plenary sitting; meeting of Directors in the case of Committee meetings) decide beforehand on necessary matters such as the selection of the subjects for discussion or the time limit for making a speech.

Reform

(1) Need for Reform

In a unitary democratic state, the reason for the existence of a second chamber is often questioned, and fierce criticism is directed against the way it functions in practice. Some even declare it useless.

Japan is no exception. Since its founding, the nature of the functions of the House of Councillors has been discussed in various areas. At the beginning, many independents were elected to the House, resulting in the formation of groups of members without ties to political parties and in many cases, the House of Councillors showed some individuality when led by such groups. However, every time an election was held, the number of independents decreased. Problems attributed to the dominance of political parties in the House have arisen. Hence, the awareness of the need for reform has increased.

Under such circumstances, reform plans have been carried out by successive Presidents since 1971 with the aim of recovering people's trust in the House of Councillors and getting back to the original mission of the House. The reform plans are mainly designed to : (i) show its unique character; (ii) achieve lively debate; and (iii) open itself up to the public.

(2) Bodies to discuss Reform Plans

Discussions on reform are held mainly in the President's advisory group. This consultative body, comprising members recommended by political groups of the House, conducts research on and considers problems in regard to the activities of the House and plans for improvement. When it reaches a conclusion as a result of such research and consideration, it makes a report to the President of the House, and afterwards a discussion is held in the Committee on Rules and Administration, in order to take measures necessary to implement its recommendations, such as revision of the Diet Law or the Rules of the House of Councillors.

To examine major principles of reform, a group consisting of scholars and experienced persons who are not members has been formed and is sometimes consulted by the President of the House.

(3) Achievement of Reform

The main thrust of the reform of the House of Councillors so far is as follows:

The reform covers various areas. As a part of this, the entire Diet system has been changed for the reform of the organization and the administration of the House of Councillors. Some matters were first improved in the House of Councillors independently and were later followed by the House of Representatives.

- **Independence of the President and the Vice-President**

  It has become customary for the President and the Vice-President to resign from their political parties to ensure neutrality and fairness, and not let themselves become involved in conflicts between parliamentary groups and political parties.

- **Ordinary Sitting in January**

  Usually, most of the law bills are submitted to the Diet by the Cabinet, and most of them are first considered in the House of Representatives. Accordingly, toward the end of the term, law bills sent from the House of Representatives pile up waiting for consideration in the House of Councillors, this situation made it difficult to ensure enough time for deliberation. Hence, the House of Councillors requested the Cabinet to increase the number of law bills to be considered first in the House of Councillors and to change the time of convocation of the Diet. Formerly, it was convened in December, and actually went into recess for about one month until the budget was submitted in January. The House of Councillors worked on revising the Diet Law so that the ordinary session of the Diet would open in January with the approval of the House of Representatives, in order to eliminate such empty time.

- **Establishment of the Research Committee system**

  This was started in 1986. These committees aim at making full use of the special characteristics of the House of Councillors, such as the relatively long term of office (six years) held by its members, and the fact that the House is not dissolved. These committees conduct long-term and comprehensive researches relating to fundamental matters of administrative policies. As a result, these committees can submit their own law bills to the Diet, and advise other committees to draft law bills.

- **Commissioned consideration of the total Budget**

  Budget is basically considered in the Committee on Budget, but there is an exception. In 1982, a new, original rule was introduced only in the House of Councillors which enables the Committee on Budget to commission partial consideration of the total budget to any other committee. This rule enables the other committee to deal with the budget of the ministry which comes under its jurisdiction, and all members of the House to join in the consideration of the budget.

- **TV-broadcasting of Diet deliberations**

  Some TV stations have been airing live broadcasts of parts of the Diet deliberations, but such partial coverage does not adequately inform the public about the activities of the Diet. Since 1998, television broadcasts of Diet deliberations provided by the Diet itself have been offered free to broadcasting stations nation-wide and a CS-TV station to transmit live broadcasts of Diet deliberations on a regular basis was established. In addition to that, live Internet service allowing Diet deliberations to be viewed started in 2000.

- **Electronic Ballot System**

  It is necessary to show clearly to the public how the members vote, in order to clarify their political responsibilities and promote free access to legislative information. An electronic ballot system was introduced at plenary sittings of the House of the Councillors in 1998. The system makes it possible to record in the minutes of the proceedings how all the members voted on.

- **Establishment of the Committee on Oversight of Administration**

  This Committee was established in 1998. It is a Standing Committee and functions as an Ombudsman system. It is designed to improve the capability of the House of Councillors to keep a watch on administration, one of the functions expected of this House.

- **Database system for the minutes of the proceedings**

  The minutes of the proceedings are now stored in a database enabling prompt and easy access. The system is designed to assist the legislative activities of the members and to facilitate public access to Diet information by the people.

Conclusion

Fifty years have passed since the establishment of the Constitution of Japan, without any amendments being made. In recent years, however, lively discussion about the Constitution has arisen. The deliberations of the Research Commission on the Constitution in each House are attracting public attention. It is possible that the Commission will produce suggestions for reform of the parliamentary system that will affect the framework of the Constitution.

Lastly, for reference, we quote the Joint Communiqué of the Conference of Presiding Officers of Upper Houses held in May 1997 in Tokyo at the invitation of the House of Councillors in commemoration of the 50th anniversary of its founding. The Presiding Officers of eight countries where Upper House Members are chosen through direct election attended the conference. These countries were: the Argentine Republic, Australia, the Kingdom of Belgium, the Republic of Colombia, Japan, the Kingdom of Norway, the Republic of the Philippines, the Republic of Poland, and Romania. They exchanged views on "The Role of the Upper House", which are summarized as follows:

(1) We confirm that the bicameral system in the participating countries—though each is different from the others in terms of historical background, modality, and authority — contributes to the full realization of democracy. It eliminates the non-exhaustive or hurried deliberations that may happen in a single-chamber system and allows for the airing of many diverse opinions that otherwise might not be heard. The Upper House acts as a guarantor of political stability and of the quality and balance of laws.

(2) While recognizing that it is not possible to determine a single course that will lead in all cases to an ideal Upper House, we affirm our determination to contribute to the healthy development of democracy by taking advantage of the merits of the bicameral system. By demonstrating the uniqueness of the Upper House in comparison with the Lower House, we shall strive to invigorate parliamentary politics and to satisfy the wide-ranging needs of the people as they encounter changes wrought by the changing times.

(3) We appreciate that each Upper House, under its own distinctive bicameral system, is exerting itself to scrutinize the executive branch and review the proposed legislation of the Lower House. We believe that Upper Houses are particularly suited to focusing on middle and long-term issues.

18

Constitution and Functioning of Karnataka Legislative Council

H.C. RUDRAPPA

Karnataka State was one of the earliest native states in India to start the formation of democratic institution with a view to associating the representatives of the people in the administration. The Representative Assembly, the Lower House, was set up by the Executive Order of the Ruler promulgated on 25 August 1881 and its first sitting was held on 7 October 1881, under the Chairmanship of Dewan Sri C. Rangacharlu. It had a membership of one hundred and forty-four. This marked the beginning of the formation of Legislature in Karnataka. This body underwent many changes. It was placed on a statutory basis with enlarged powers and functions under a Regulation called the Mysore Representative Assembly Regulation enacted in the year 1923.

The Representative Assembly constituted in the erstwhile princely state of Mysore had no power to make laws. The legislation was entirely in the hands of the Government. In British Indian provinces, Legislative Councils had been established to make laws. The members of the Representative Assembly began to plead that either they be given the power to make laws or a Legislative Council be constituted to make laws.

Since the Representative Assembly had very limited powers, the question of giving greater powers and making it a regular legislative body was urged by the representatives of the people from time to time and with a view to respecting their wishes, His Highness, the then Maharaja, established a "Legislative Council" in the year 1907 by the promulgation of Regulation I, in order to associate non-official gentlemen qualified by practical experience and knowledge of local conditions and requirements, in the actual process of law making. In the beginning, it consisted of the Dewan as President, two *ex officio* members and such members and such number of additional nominated members not less than ten and not more than fifteen as may be fixed by the Government from time to time, partly from officials and non-officials. The term of membership was two years.

All Laws or Regulations made by the Council would become valid after they received the due consent of the Maharaja. By an amendment of the

Regulation made in the Rule 1915, the Council was permitted to discuss the annual budget and put supplementary questions under certain conditions.

In 1919, the strength of the Council was raised to thirty consisting of twelve officials, eighteen non-officials, eight of whom were elected. On 27 October 1923 by a Proclamation issued by the Maharaja, further constitutional reforms were announced on the recommendations made by the committee appointed under the Chairmanship of Sri Brajendranath Seol, Vice-Chancellor of the Mysore University.

The Council was permitted to vote grants and move cut motions. The duration of the Council was fixed at three years. But the Government had power to extend it for a period not exceeding a year. The quorum for a meeting was fixed at half of the total members.

With the growth of political consciousness in the people as a result of agitation carried in the rest of India for the establishment of responsible Government, the Government of Mysore appointed in the year 1938, a committee under the Chairmanship of Sri K.R. Sreenivasa Iyengar for the purpose of examining the working of the representative institutions in the state and to formulate comprehensive proposals as to the further changes, which might be desirable in order to secure the steady and harmonious constitutional progress of the state. The report of the committee was submitted to the Government on 31 August 1939 and a Proclamation was issued by the Maharaja embodying his acceptance of the several reforms suggested by the committee and directing the Government to take immediate action for their implementation. The Government while accepting the recommendations of the committee for the continuance of the two representative institutions in the state observed that the Representative Assembly embodies the oriental conception of Government while the Legislative Council represents its occidental conception. The two stand in a peculiar relationship to each other. They are not strictly co-ordinate, but supplement each others functions.

In 1952, after the first General Elections, a Legislative Council was constituted in Mysore, which was then a Part B State with forty-two members. The strength of the Council has also undergone a number of changes. The strength of the Karnataka Legislative Council was sixty-three till 1987. The Council is now composed of seventy-five members out of which twenty-five are elected by the Legislative Assembly members, twenty-five are elected by the local authorities, seven are elected by the graduates, seven by the teachers and eleven members are nominated by the Governor of Karnataka.

The number of members in the Legislative Council shall not exceed one-third of the total number of members in the Legislative Assembly of the state. The term of the members of the Council is six years. One-third members retire once in every two years for which biennial elections are held and nominations are also made to fill the vacancies. The Legislative Council of the State is not subject to dissolution in accordance with provisions of article 172 (2) of the Constitution.

Sessions of the Legislative Council

Normally, Karnataka Legislature meets twice in a year, once for the budget during February/March/April and another during winter session or which was earlier known as Dasara Session. They also meet to transact any other Government business that may be brought forward by the Government by meeting more frequently, if necessary, followed by provisional calendar of sittings indicating the Government business or the non-official business to be transacted on the dates. In this connection, attention is invited to article 174 of the Constitution which says, "...but six months shall not intervene between the last sitting in one session and the date appointed for its first sitting in the next session."

The list of the Presiding Officers of the Karnataka Legislative Council since 1952 is as below :

HONOURABLE CHAIRMEN

KARNATAKA LEGISLATIVE COUNCIL

Sriyuths :

1.	*K.T. Bhashyam*	:	*(17.06.1952 to 25.05.1956)*
2.	T. Subramanya	:	(25.09.1956 to 01.11.1956) (19.12.1956 to 31.03.1957)
3.	P. Seetharamaiah	:	(10.06.1957 to 13.05.1958)
4.	V. Venkatappa	:	(05.11.1958 to 13.05.1960)
5.	K.V. Narasappa	:	(30.08.1960 to 13.05.1962)
6.	H.F. Kattimani	:	(03.06.1962 to 03.07.1962)
7.	G.V. Hallikeri	:	(03.07.1962 to 13.05.1966) (26.12.1970 to 15.05.1971)
8.	S.C. Hedke	:	(28.07.1966 to 10.06.1968)
9.	K.K. Shetty	:	(05.09.1968 to 18.05.1970)
10.	R.B. Naik	:	(26.09.1970 to 26.11.1970)
11.	S.D. Gaonkar	:	(10.04.1972 to 13.05.1974)
12.	M.V. Venkatappa	:	(30.08.1974 to 30.06.1978)
13.	S. Shivappa	:	(10.08.1978 to 14.05.1980)
14.	Smt. Basavarajeswari	:	(12.06.1980 to 11.06.1982)
15.	K. Rehman Khan	:	(30.06.1982 to 30.06.1984)
16.	R.B. Potdar	:	(08.04.1985 to 26.04.1987)
17.	D. Manjunath	:	(02.09.1987 to 13.05.1992)
18.	D.B. Kalmankar	:	(16.01.1993 to 17.06.1994) (26.08.1994 to 16.06.2000)
19.	B.L. Shankar	:	(06.08.2001 — till date)

19

The Senate of Parliament of the Republic of Kazakhstan

M. RAYEV

Modern parliamentarism in Kazakhstan was worked-out by the Constitutional Committee headed by President N. Nazarbayev of the Republic of Kazakhstan. Parliamentarism experience in the countries with long-standing democratic traditions was utilized.

Kazakhstan Parliament replaced one-chamber representative body—Supreme Soviet, which was formed on the basis of the 1937 Constitution, Kazakh SSR. In pursuance of the 1978 Kazakh SSR Constitution and Republic of Kazakhstan Constitution, the Supreme Soviet was the supreme body of state power. During the period of its existence the Supreme Soviet was elected thirteen times.

The Law on State Independence of the Republic of Kazakhstan adopted on 16 December 1991, proclaimed the principle of division of the state power into legislative, executive and judicial branches, which became an important step towards establishing parliamentarism in Kazakhstan.

The Constitution of the Republic of Kazakhstan adopted in 1993, recognized the Supreme Soviet as the sole legislative and representative body. It was endowed with wide authorities, which hampered the realization of the principle of dividing state power and creation of the system of checks and balances. Thus, the 1993 Constitution included contradictory legal basis of the state power. Simultaneously, laws adopted by the Supreme Soviet laid the basis for the new state legislative system.

The 1995 Constitution of the Republic of Kazakhstan has defined Parliament as the supreme representative body to execute legislative functions. The people directly and through Parliament express their political will.

Along with the legislative functions Parliament shall execute though in limited manner, controlling functions for the executive power. Parliament shall approve the Republican Budget and the report of the Government and Accounting Committee for the control over realization of the Republican Budget,

shall make modifications and addenda to the Budget. Parliament may approve or decline the Government programs and express the vote of non-confidence in the Government.

Parliament of the Republic of Kazakhstan shall carry out its activity in session order. Parliament session includes joint and separate sitting of Chambers, Chambers bureaus, standing committees and joint Chambers commissions.

The regular sessions are held once a year, starting from the first working day of September till the last working day of June. The session of Parliament is opened and closed in the joint sittings of the Senate and Mazhilis. The session of Parliament is opened by the President of the Republic and in case of his absence by the Chairman of the Mazhilis.

The Senate shall be exceptionally authorized to:

(1) elect and release from the office under the submission of the President of the Republic of Kazakhstan — Chairman of the Supreme Court, Chairpersons of boards and judges of the Supreme Court and to take their oaths;

(2) give a consent for the appointment by the President of the Republic of Kazakhstan of the General Prosecutor and Chairman of the National Security Committee;

(3) deprive the immunity of the General Prosecutor, Chairman and judges of the Supreme Court of the Republic of Kazakhstan;

(4) suspend authorities of local representatives under Kazakhstan legislation;

(5) delegate two Deputies into the Supreme Court Council; and

(6) consider the issue of dismissal from the office of the President of the Republic of Kazakhstan instituted by the Mazhilis and to submit its results for the consideration of the joint sitting of Chambers (Article 55, the Constitution of the Republic of Kazakhstan).

No person shall be a Deputy of the Senate of the Republic of Kazakhstan who shall not have attained the age of thirty years and been a citizen of the Republic of Kazakhstan for five years, got higher education and work record of less than five years and who shall be an inhabitant of the corresponding region, city of the Republican status or capital of the Republic for less than three years (par. 4, Article 51 of the Constitution).

Election of the Senate Deputies shall be executed on the basis of the indirect suffrage by secret voting. Half of the elected Deputies shall be re-elected every three years. With this the regular elections shall be held not later than two months before the expiration of their term of office (par. 2, Article 51 of the Constitution).

A candidate for the Senate Deputy shall be considered elected if he/she collects more than fifty per cent votes of electors who participated in voting at the joint sitting of Deputies of all representative bodies of the city, region and the capital, respectively. The election to the Senate shall be considered valid if more than fifty per cent of electors participate in voting. Term of office of the Senate Deputies is six years.

In pursuance of the Constitution Law "On Parliament of the Republic of Kazakhstan and the Status of its Deputies", the Senate shall form its coordinating body — the Bureau of the Senate, set up under the Chairman of the Chamber. The Bureau shall consist of the Deputy Chairman of the Senate and Chairpersons of Standing Committees. The Bureau of the Senate shall :

- coordinate the work of the Senate Committees and commissions;
- prepare proposals for the Senate's consideration in the order of priority of draft laws and any other decisions of the Senate;
- assist in organizing joint work of committees on issues regarding the competence of some committees;
- take decision on parliamentary hearings by the Senate Standing Committees;
- approve the structure and the staff of the Office of the Senate; and
- settle any other issues of the Senate organization not referred by the Constitution Law "On Parliament of the Republic of Kazakhstan and the Status of its Deputies" to the competence of other bodies and officials of the Senate.

The Bureau of the Senate within its competence shall adopt enactments, which may abolish the Senate.

Under Article 11 of the above-mentioned Decree, the Senate shall set up its working bodies — Standing Committees of the Deputies of the Chamber.

On 30 January 1996, four Senate Standing Committees were formed at the session of the Senate. Under Article 29 of the Law of the Republic of Kazakhstan "On Committees and Commissions of Parliament of the Republic of Kazakhstan", the Senate committees, set up to conduct the legislative work, to initiate consideration and preparation of issues regarding the authorities of the Chamber shall :

- execute the preparation for the conclusions of laws submitted by the Mazhilis;
- work-out and consider preliminary draft laws; organize parliamentary hearings;
- settle the issues on organization of its activity and work of the Chamber; and

- participate in considering other issues regarding the Senate authorities.

In accordance with the Constitution Law "On Parliament of the Republic of Kazakhstan and the Status of its Deputies", Deputies of Parliament may create Deputy associations as fractions to political parties and other public associations, Deputy groups. A fraction shall unite not less than ten Deputies of Parliament. Only fifteen Deputies shall enter any Deputy groups. Deputies can be members of only one fraction and several Deputy groups. The registration of fractions and Deputy groups shall proceed in the Bureau of Parliament.

Pursuant to the Constitution Law of the Republic of Kazakhstan "On Parliament of the Republic of Kazakhstan and the Status of its Deputies", Parliament adopts Legal Acts acting on the territory of Kazakhstan, *inter alia*, Constitutional and Individual Regulations as well as Normative Regulations on Issues of Law Implementation. In accordance with its scope of activities the Senate is entitled to adopt Regulations of its own.

The right of the legislative initiative shall belong to Deputies of Parliament, Government of the Republic of Kazakhstan and shall be realized only in Mazhilis.

Parliament in separate session of Chambers by sequential consideration of issues, firstly in Mazhilis and then in the Senate, shall have the right to issue laws, which adjust the basic public relations and establish fundamental principles and norms.

A draft law, considered and approved by the majority of votes out of total number of the Deputies of Mazhilis shall be submitted to the Senate, for consideration not more than for sixty days. The draft accepted by the majority of votes of the Senate Deputies shall become effective and during ten days shall be submitted for signing to the President. If the Senate by majority of votes shall deviate the draft, it shall be returned back to Mazhilis. In this case the draft shall again be submitted to the Senate for new discussion and voting, if Mazhilis by the majority of two-thirds of votes shall approve it again. The repeatedly rejected draft law shall not be subject to submission at the same session.

Modifications and amendments made to the draft law by the majority of votes of the Senate Deputies shall be submitted to Mazhilis. If the Mazhilis by the majority of votes shall agree with proposed modifications and amendments, the law shall be considered adopted. If Mazhilis by the same majority of votes objects to modifications submitted by the Senate, the disputes between Chambers shall be settled through conciliation procedure.

Modifications and addenda to the Constitution shall be made by the majority of not less than three quarters of votes out of total number of Deputies of each Chamber. Constitutional laws shall be made on issues stipulated by the Constitution by the majority of not less than two-thirds of votes of the total number of the Deputies of each Chamber. Legislative acts of Parliament and its

Chambers shall be made by the majority of votes out of total number of Deputies of Chambers, if otherwise is not stipulated by the Constitution.

Changes and amendments to the Constitution may also be introduced by the Republican Referendum, which is conducted by the Decree of the President or on the suggestion of Parliament and the Government.

There is certain coherence in election process for Parliament of the Republic of Kazakhstan. Seventeen among thirty-nine of Senators were re-elected within the period between November 1997 and September 1999. Most of the parliamentarians have experience of juridical activity, business and productive social work, research and management.

The Senate consists two Academicians, six Ph.Ds., five Professors and four Masters of Science. The number of legal experts and economists has increased.

The Senate has thirty-nine Deputies as on 1 December 2000. The Chairman, who is elected out of the Chamber Deputies, heads the Chamber. The President of Republic of Kazakhstan recommends him as candidate of the Senate Chair.

The second Senate convocation elected Mr. Oralbay Abdukarimov by secret ballot. He was born in 1944, has the highest education, graduated from Karaganda State University as well as highest party school in Almaty. He is a historian, social science teacher and political scientist. He started his career as a shepherd and served in navy also. He has been in the socio-political service from 1963 and in the public service in the republican branch from 1981. He has been appointed by the chief of division of organize-inspectory and territorial development of the administration of President and the Cabinet of Ministries, Head of the Administration of Mazhilis, Chairman of the Higher Disciplinary Board, and Chairman of the State Commission on Corruption Control. He has been elected as delegate of the highest board of the twelfth assembling. He has also received Government awards.

The Chairman of the Senate:

- assembles the session and presides over them;
- carries into effect the common authority on preparation of the questions which is discussed by the Senate;
- proposes a candidate through the Chamber to his Deputy;
- observes the order in the Senate activity;
- controls the Senate coordinating board activity;
- signs acts issued by the Senate;
- appoints two members of Constitutional Council;
- works up the project of agendas for regular meeting of the Senate;
- calls extraordinary meeting of the Senate;

- addresses the Bills to the committees of the Senate;
- addresses the Bills for the signing up by the President;
- acts as RK Ambassador at the negotiations with public organizations and Parliaments of foreign states;
- along with Mazhilis, proposes to the President about convocation of extraordinary joint meeting;
- is responsible for other obligations which belong to him by the Regulation of the Senate; and
- solves other questions of organization of the Senate's activity in accordance with other normative legal acts.

The Chairman of the Senate has a right of deciding vote in the case, if the number of voting Senators is divided equally. The Chairman issues arrangements by the questions of his competence.

The Vice-Chairman is elected in a plenary session of the Senate by the majority of votes of the open balloting on the Chairman's recommendation.

Mr. Omirbek Baigeldi was elected as the Vice-Chairman of the Senate of the Republic of Kazakhstan, on 1 December 1999. He was born in 1939, has the highest education, graduated from Almaty Veterinary College, Academy of Social Science on Central Committee of Communist Party of the Soviet Union. He is scientist zoo-service, political scientist and doctor of economy. He was delegate of the Supreme Soviet of the 12th calling, also of the Senate of the 1st calling. He has received Government awards.

The Vice-Chairman has several functions. Sometimes he acts as a substitute to the Chairman when he is away or when it is impossible for him to carry out functions. The Vice-Chairman has various other functions on internal standing affairs of the activity of the Senate, according to the Senate order.

20

The Role and Contribution of the Maharashtra Legislative Council

VILAS PATIL

The history of the Legislative Council in Maharashtra actually extends over a period of about one hundred and twenty-five years, when the first Legislative Council under the Indian Councils Act, 1861 was formed. Thereafter, successive Acts such as the Indian Councils Act, 1892, the Indian Councils Act, 1909, the Government of India Act, 1919, made further advances towards the composition of the Council and at every stage the elective element was included more and more until finally, by the Government of India Act, 1935, a bicameral legislature was envisaged in the Provinces of Madras, Bombay, the United Provinces and Bihar and the two Chambers of the Provincial Legislature came to be known respectively as the Legislative Council and the Legislative Assembly. Though the nomenclature 'Legislative Council' was in vogue before 1935, the Legislative Council as understood today as an Upper Chamber came to be established for the first time only after the Government of India Act, 1935.

The elections to the Legislative Council under the Government of India Act, 1935, having been completed, a notification under section 65 was issued on 8 July 1937, by the Governor of Bombay. The first meeting of the Legislative Council as the Upper Chamber, was held at 2.00 p.m. on Tuesday, 20 July 1937, at the Council Hall, Pune.

The Legislative Council was suspended for nearly six years during the Governor's regime under section 93 of the Government of India Act, 1935. After the lapse of so many years, the Council again met on Thursday, 23 May 1946, for a one day session. There was a change in the composition of membership, inasmuch as some members had retired or died in the meantime and new members had taken their places by election. The new members were sworn in on that day.

The Constituent Assembly after due deliberations decided to have two Houses in the States also, but with the option, and carefully set out in the Constitution the composition, role, powers, and functions of each House.

Though the new Constitution of India came into force from 26 January 1950, the earlier members continued till elections were held for the first time under the Constitution. It took some time for making legal and administrative preparations and the first election was held in 1952 and the first meeting after such election was held on 3 May 1952, when the new members took oath. A new era had begun.

Subsequent elections to the Council were held biennially in all constituencies, which underwent changes either because of the two reorganizations of the State (1956 and 1960) or because of the delimitation of constituencies. The new State of Maharashtra continued to have the Legislative Council.

However, the existence of the Legislative Council had been under threat off and on and particularly after the coming into force of our Constitution. Section 308 of the Government of India Act, 1935, contained a provision for abolition or creation of the Legislative Council by passing a resolution by the Chamber or Chambers of the Legislature of the Provinces concerned after ten years of commencement of the Act and it was thus left open for future representatives of the people to reconsider the desirability or otherwise of having the Second Chamber obviously in the light of their experience. Article 169(1) of the Constitution of India follows in a way the Government of India Act and provides —

> "169 (1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting."

Once or twice when a resolution under the above article was moved, and even on an occasion when it was resolved to recommend to the Central Government an increase in the membership of the Legislative Council, the central point of discussion had invariably been the utility of the Legislative Council as a Second Chamber or Upper Chamber. Perhaps a prejudice, which might have entered into the minds of most people about the role of House of Lords, which might have influenced them whenever they thought of a Second Chamber or of the Legislative Council, even though there is no comparison whatsoever between the House of Lords and our Council as regards their composition. Another strong probability for the hostility towards Second Chambers has been due to the composition of the Council under the Government of India Act as they were considered to be the strongholds of communal and vested interests established to thwart the will of directly elected representatives of people. These considerations have become totally misplaced after the coming into force of our secular, republican and democratic Constitution and if still sentiments are expressed against the Second Chambers they appear to be as a result of some lurking suspicion in a corner of the mind of some and not as a result of any systematic or deep study of the achievements of Second Chambers in general. Yet the prejudice seems to be rearing its head on occasions.

In 1953, there was a resolution in the Assembly for the abolition of the Bombay Legislative Council. The House was no doubt divided in its opinion and many favoured the abolition; but the matter was not pursued to the logical end inasmuch as Parliament did not pass the necessary law. The futility of the Second Chamber was obviously the central theme. The then Chief Minister was non-committal and he felt satisfied merely to place the pros and cons and leave the matter to the House to decide. Strangely, and paradoxically too, the Assembly approved a resolution in 1957, recommending enhancement of membership of the Bombay Legislative Council. In the meantime in 1956, Parliament passed the States Reorganization Act, 1956, which contained provisions, *inter alia,* for the continuance of the Council. Likewise, the Bombay Reorganization Act of 1960, which created Maharashtra and Gujarat States contained provisions relating tc the Legislative Council, *viz.* continuance of Legislative Council in Maharashtra State and absence of Council in Gujarat and thus retiring the Council members coming from Gujarat region. It will not be out of place to mention here that these two Reorganization Acts were considered by the Bombay Legislature before Parliament enacted them; but the Legislature did not recommend abolition of the Council. In July 1961, another resolution was moved, for the first time after the formation of Maharashtra State, for abolition of the Council but it was not adopted. Thereafter, time and again such resolutions have come up. In other words, the Maharashtra Legislative Council has been under a persistent threat and none can draw comfort from the fact that the Constitution elsewhere lays down assuringly that "the Legislative Council of a State shall not be subject to dissolution". The Councils in some other States have succumbed; in Maharashtra, it still survives.

Moreover, the Golden Jubilee (Fifty years of Legislative Council in Maharashtra 1937 to 1987) was celebrated in 1987 and since 2000, the day 20th July is being celebrated as the foundation day every year. The sitting as well as all the ex-members of the Council are being invited with a view to having interaction between them in respect of the business transacted in the Council regarding the changing scenario in the society at large.

In the present times, the role of Legislature is not confined to the enactment of statutes or the grant of supplies. When the domain of powers of the executive is ever enlarging, Legislature assumes the crucial role of supervising and checkmarking it. Though the executive is not directly responsible to the Upper House, it is constantly influenced by the deliberations of the House.

It is experienced that the Upper House can also serve as a mechanism for promoting unity and integrity in a State composed of diversity of caste, creed, religion, language and ethnic groups. In a parliamentary democracy these various groups can be harmonised only through a bicameral system.

The Council has grown continuously in more and more vigorous activity from one decade to another. This is evidenced not only by the number of notices given by the members and those admitted by the Chairman in respect of questions, short notice questions, half-an-hour discussions, calling attention

notices, special mentions and adjournment motions but the number of Government Bills introduced during the five decades also points to the same conclusion.

During the last sixty-four years of its existence this House has revised the Government Bills, all of which cannot be mentioned here, but recently the following Bills have been considered in detail and extensive amendments suggested to those Bills which were accepted by the Assembly:

(1) L.A. Bill No. VIII of 1993 —The Maharashtra Municipalities (Amendment) Bill, 1993.

(2) L.A. Bill No. XLIX of 1995 —The Maharashtra Co-operative Societies (Amendment) Bill, 1995.

First rejected by the Council on 21 December 1995, and thereafter passed with amendments on 16 July 1996.

(3) L.A. Bill No. XLI of 1996 —The Maharashtra Krishna Valley Development Corporation (Amendment) Bill, 1996.

(4) L.A. Bill No. XX of 1997—The Vidarbha Irrigation Development Corporation (Amendment) Bill, 1997.

(5) L.A. Bill No. LVI of 1997—The Maharashtra Tax on Entry of Motor Vehicles into Local Areas (Amendment) Bill, 2001.

Being a Money Bill, the recommendations were made by the Council on 22 July 1998 and the same were accepted by the Assembly.

(6) L.A. Bill No. XXXIII of 1998 —The Maharashtra Pre-School Centres (Regulation of Admission) (Amendment) Bill, 1998.

(7) L.A. Bill No. XXXV of 1998 —The Maharashtra University of Health Sciences Bill, 1998.

This Bill had been extensively amended by the Council which was approved the second time by the Assembly as proposed by the Council.

(8) L.C. Bill No. XXI of 2000 —The Maharashtra University (Amendment) Bill, 2000.

Earlier L.A. Bill No. XLIV of 2000 was introduced and passed by the Assembly and transmitted to the Council. In the Council thirty-one amendments were proposed but the said Bill could not be passed in the Council for want of time. Thereafter, the Government by incorporating all the amendments proposed by the Council, issued a new Ordinance and brought a Conversion Bill as L.C. Bill No. XXI of 2000 in the Council and that Bill was passed then by both Houses.

The situation was changed somewhat when there was a change in the complexion of the Government. Some of the nominated members, who had joined the earlier Government party which has now become an opposition party, continued to side with this party and voted against some measures brought by the new Government.

This only confirms that the nominated members by and large remain loyal to the regime which has appointed them and they generally do not vote against the party during whose regime they have been nominated.

The Upper House debates issues and legislations at a level which is usually high, discusses in greater detail and more freely matters of wide-ranging public interest and shares the legislative burden of the Lower House. If properly utilised, the Upper House can become the 'Clearing House' of knowledge and information. Though the executive is generally not directly responsible to the Upper House, it is constantly influenced by the deliberations in this House, and where the procedure is similar, the Upper House is almost an equal partner of the Lower House in the process of scrutiny and over-screening of the executive.

The Council has shown moral prowess and strength of collective will to bring the executive down on its knees. Its dogged determination to expose corruption, irregularities and malpractices has led, in the face of an equally determined Government, to setting up of commissions of inquiry or investigations through other means.

It has initiated and supported progressive measures and has displayed ample and sustained concern for the less privileged, the oppressed and the deprived.

The standard of debates in the Council has undoubtedly been of a high order particularly of the special debates which prove to be more absorbing, enriching and instructive.

The party system, which is no doubt important for the Lower House as the Government is directly responsible to it, has been unfortunately as rigidly followed in the Council as in the Assembly. This has tended to prevent the Upper House from acquiring an independent personality of its own. If despite these limitations, the Council has been able to do well, the credit goes to its active members.

Practice and precedents of the Council have established that in suitable cases when the occasion so demands, the Council can have its voice adequately felt. The Council has been a vigorous body and has been instrumental in focusing attention on many important matters of public importance. On some occasions it has stolen a march on the Assembly in focusing attention on current matters of importance.

Many procedural changes have been made from time to time and new devices introduced — all with a view to ensuring that problems confronting the people are focussed on the floor of the House and the Government is put on

notice to solve them as speedily and satisfactorily as possible. It is not possible to state here, case by case, how a particular question or resolution or calling attention notice has achieved the desired purpose. But it can be generally stated, and every member of the Council also would have known and felt, that the moment a notice of a question, etc., is sent to the Government, the machinery in Mantralaya starts moving, if it had not done earlier. The formation of new committees and constant follow-up action have achieved a great measure of success. In all these processes the Legislative Council, as a part of the Legislature of this State, has not lagged behind and is continuing its onward march.

Another important factor why the Council enjoys its present position is the eminence, wisdom and learning of the Presiding Officers who successively occupied the position of the Chairman of the House. All of them, great personalities, occupied the Chair with great distinction and conducted the proceedings in the House with impartiality, dignity and grace during all these years.

Thus, it is seen that the Upper Chamber has done remarkably well in respect of its watch-dog functions by intervening effectively whenever it found the executive going astray or tending to become arbitrary, oppressive, corrupt, callous, unresponsive to public opinion and acting against the enlightened interest of the people at large.

21

The Congress of the Union

AMPARO CATO GONZÁLEZ
SARA HERRERA BAZÁN

Mexico is a representative, democratic, federal republic composed of free and sovereign states in everything that concerns their internal regime, but united in a Federation established according to the principles of the Political Constitution of the United Mexican States. Sovereignty resides in the people, who exercise it through the three branches of the Union: Executive, Legislative and Judicial.

Composition of the Federal Legislative Branch

The Federal Legislative Branch of the United Mexican States is entrusted to the Congress of the Union, which is divided into two chambers: the Chamber of Deputies — which represents the citizens — and the Senate — which represents the federative entities (the states and the Federal District).

The Chamber of Deputies

It is made up of five hundred Deputies, elected in their entirety every three years and without the possibility of immediate re-election. Three hundred Deputies are elected on the principle of relative majority in the same number of federal uninominal districts, whose distribution is determined in terms of the percentage of the population residing in each federative entity over the national total.

The remaining two hundred Deputies are elected on the principle of proportional representation in five plurinominal circumscriptions, through closed and blocked lists, that is, the order of the candidatures is invariable and, therefore, voters do not have the option of eliminating candidates or altering their order of presentation. Forty Deputies are elected in each circumscription.

The Senate of the Republic

The Senate is made up of one hundred and twenty-eight members, elected on three principles: two by relative majority and one from the first minority corresponding to each of the federative entities, that is, ninty-six Senators, and the thirty-two remaining Senators are elected by proportional representation by means of the system of lists voted in a single national circumscription.

The composition of the Chamber of Deputies and the Senate in the LVIII Legislature (2000-2003) is as follows:

Chamber of Deputies			**Senate of the Republic**		
Party	Seats	%	Party	Seats	%
PRI	211	42.2	PRI	60	46.9
PAN	206	41.2	PAN	46	35.9
PRD	51	10.2	PRD	16	12.5
PVEM	17	3.4	PVEM	5	3.9
PT	8	1.6	PT	—	—
CD	2	0.4	CD	1	0.8
PSN	3	0.6	PSN	—	—
PAS	2	0.4	PAS	—	—

PRI - Institutional Revolutionary Party
PAN - National Action Party
PRD - Party of the Democratic Revolution
PVEM - Ecologist Green Party of Mexico
PT - Labor Party
CD - Convergence for Democracy
PSN - Party of the Nationalist Society
PAS - Social Alliance Party

Operation of the Congress of the Union

Meetings of the General Congress

The Congress meets to hold regular sessions on two occasions a year: from September 1 to December 15[1], and from March 15 to April 30. During both sessions the Congress studies, discusses and votes on the bills submitted to it.

The Congress or each Chamber meets for special sessions every time they are convened for that purpose by the Standing Committee; but in both cases they will only deal with the matter or matters that the Committee itself submits for their knowledge.

The President of the Republic attends the opening of the regular session of the first period of the Congress, before which he presents a written report on the general state of the country's public administration.

The Standing Committee

During the recesses of the Congress of the Union a Standing Committee meets, which is made up of thirty-seven members: nineteen Deputies and eighteen Senators, appointed by their respective Chambers by means of a secret vote during the last session of each regular period. An alternate is appointed for each regular Deputy or Senator.

The Standing Committee meets once a week, with the possibility of holding meetings outside the stipulated days, after prior notice is given by the Chairman of the said Committee. The Standing Committee adopts its resolutions by a majority of votes of the members present.

Powers of the Congress of the Union

Among the main powers of the Congress are :

- Admitting new States to the Federal Union;
- Forming new States;
- Changing the residence of the Supreme Powers of the Federation;
- Imposing the necessary contributions to cover the budget;
- Annually approving the amounts of indebtedness to be included in the revenue laws;
- Legislating throughout the Republic on hydrocarbons, mining, cinematographic industry, trade, games with bets and raffles, financial intermediation and services, and electric and nuclear energy;
- Creating and eliminating public posts of the Federation and indicating, increasing or diminishing their supply;
- Declaring war;
- Issuing laws relating to peace and wartime admiralty law;
- Issuing laws on nationality, juridical condition of foreigners, citizenship, naturalization, colonization, emigration and immigration and general health of the Republic;
- Issuing laws on general means of communication, and on post and mail;
- Issuing laws on use and development of waters of federal jurisdiction.

In addition, each of the Chambers has exclusive powers.

POWERS EXCLUSIVE TO THE CHAMBER OF DEPUTIES

- Issuing the solemn edict to make known throughout the Republic the declaration of President-elect made by the Electoral Court of the Judiciary of the Federation;
- Coordinating and evaluating, without detriment to its technical and management autonomy, the performance of the functions of the superior inspection entity of the Federation;

- Examining, discussing and approving annually the Expenditures Budget of the Federation, first discussing the contributions which, in its opinion, should be decreed to cover it, as well as reviewing the Public Accounts of the preceding year;
- Declaring whether action lies or not in proceeding penally against public servants who have committed offenses under the terms of Article 111[2] of the Constitution;
- Taking cognizance of the charges made against the public servants to which Article 110[3] of the Constitution refers and acting as organ of accusation in the impeachment proceedings instituted against them;
- Any others expressly conferred on it by the Constitution.

POWERS EXCLUSIVE TO THE SENATE OF THE REPUBLIC

- Analyzing the foreign policy implemented by the Federal Executive based on the annual reports that the President of the Republic and the Minister of Foreign Affairs submit to Congress;
- Approving international treaties and diplomatic conventions signed by the Executive of the Union;
- Ratifying the appointments the Executive makes of the Attorney General of the Republic, Ministers, Diplomatic Agents, Consuls General, higher employees of the Ministry of Finance, Colonels and higher ranks of the National Army, Navy and Air Force, under the terms provided for in the law;
- Authorizing the President of the Republic to allow the exit of national troops outside the limits of the country, the passage of foreign troops through the national territory and the stationing of squadrons of other powers, for more than one month, in Mexican waters;
- Giving its consent so that the President of the Republic can have the National Guard at his disposal outside their respective states, establishing the necessary force;
- Declaring, when all the constitutional powers of a State have disappeared, that the case has arisen to name a provisional Governor for that State, who shall call elections in accordance with the constitutional laws of that State. The appointment of Governor shall be made by the Senate at the proposal of a list of three by the President of the Republic, with the approval of two-thirds of the members present;
- Resolving political issues arising between the powers of a State when one of them applies to the Senate to that end, or when, on occasion of said issues, the constitutional order has been interrupted by means of a conflict of arms;

- Setting itself up as a sentence jury to take cognizance in impeachment proceedings of the faults or omissions committed by public servants and that are to the detriment of fundamental public interests and their attention, under the terms of Article 110 of the Constitution;
- Appointing the Ministers of the Supreme Court of Justice of the Nation from among the list of three submitted for its consideration by the President of the Republic, as well as granting or denying its approval of requests for leave or resignation of same submitted by the Chief Executive;
- Appointing and removing the Head of the Federal District in the hypotheses provided for in the Constitution;
- Any others conferred on it by the Constitution.

The Organic Law of the General Congress of the United Mexican States

In late August 1999, the report with draft Decree of Organic Law of the General Congress of the United Mexican States was approved, which repeals the law published in 1979 and the amendments and additions carried out in 1981 and 1994. This Law entered into effect on 4 September 1999.

Among the main provisions of the Law are the disappearance of the Committee on Internal Regime and Political Coordination (CRIPC) of the Chamber of Deputies and of the Grand Commission of the Senate, giving rise to the establishment of Political Coordination Boards as organs of government that represent the Parliamentary Groups and establishing Directive Boards to conduct debates.

The reform of the Organic Law also involved a reorganization of the regular and special committees in both Chambers. Within the framework of the LVIII Legislature, the committees belonging to the Chamber of Deputies (forty) and to the Senate of the Republic (forty-seven regular and one special) are the following :

Committees of the Senate	**Committees of the Chamber of Deputies**
Administration	Agriculture and Livestock
Agriculture and Livestock	Indigenous Affairs
Border Affairs	Attention to Vulnerable Groups
Indigenous Affairs	Science and Technology
Library and Editorial Matters	Trade and Industrial Development
Science and Technology	Communications
Trade and Industrial Development	Culture

Committees of the Senate	**Committees of the Chamber of Deputies**
Communications and Transportation	National Defense
National Defense	Rural Development
Human Rights	Social Development
Regional Development	Federal District
Rural Development	Public Education and Educational Services
Social Development	Energy
Federal District	Equity and Gender
Education and Culture	Cooperative Development and Social Economy
Energy	Strengthening of Federalism
Equity and Gender	Interior and Public Security
Legislative Studies	Finance and Public Credit
Legislative Studies, First	Jurisdictional
Legislative Studies, Second	Justice and Human Rights
Federalism and Municipal Development	Youth and Sports
Economic Development	Navy
Interior	Environment and Natural Resources
Finance and Public Credit	Citizen Participation
Retirees and Pensioners	Fisheries
Jurisdictional	Population, Borders and Immigration Affairs
Justice	Budget and Public Accounts
Youth and Sports	Constitutional Issues
Navy	Radio, Television and Cinematography
Belisario Dominguez Medal	Water Resources
Environment, Natural	Agrarian Reform
Resources and Fisheries	Parliamentary Regulations and Practices

Committees of the Senate	Committees of the Chamber of Deputies
Constitutional Issues	Foreign Affairs
Water Resources	Health
Agrarian Reform	Social Security
Parliamentary Regulations and Practices	Labor and Social Welfare
Foreign Affairs	Transportation
Foreign Affairs, North America	Tourism
Foreign Affairs, Latin America and the Caribbean	Inspection of the General Accounting Office
Foreign Affairs, Asia-Pacific	Housing
Foreign Affairs, Europe and Africa	
Foreign Affairs, International Agencies	
Foreign Affairs, International	
Non-Governmental Organizations	
Health and Social Security	
Labor and Social Welfare	
Tourism	
Housing	
Special Committee for Attention and Follow-up of the Inquiries on the Process being followed with regard to the Homicide of Luis Donaldo Colosio Murrieta	

The Congress of the Union also has the following bicameral committees:

- Bicameral Committee for the Libraries System of the Congress of the Union;
- Bicameral Committee for the Television Channel of the Congress of the Union; and
- Commission for Concord and Pacification for the State of Chiapas.

NOTES AND REFERENCES

1. Article 66 of the Political Constitution of the United Mexican States indicates that the first regular session of the Congress of the Union may be extended up to December 31 in the year in which the President begins his term of office.
2. Article 111 establishes the procedure for proceeding penally against Deputies and Senators of the Congress of the Union, Ministers of the Supreme Court of Justice of the Nation, Magistrates of the Higher Division of the Electoral Court Counselors of the Federal Judicature, State Ministers, Heads of administrative departments, Deputies of the Federal District Assembly, the Head of Government of the Federal District, the Attorney General of the Republic and the Attorney General of the Federal District as well as the Councilor President and the Electoral Councilors of the General Council of the Federal Electoral Institute, for the commission of offenses during their terms of office.
3. Article 110 determines which officials can be subject to impeachment proceedings, as well as the procedure for carrying out same.

22

The Second Chamber of the Parliament of Nepal

RADHE SHYAM BHATTARAI

The popular movement which began on 18 February 1990, completed its course by restoring multi-party system of democracy with the promulgation of the Constitution of the Kingdom of Nepal on 9 November 1990.

The Constitution of the Kingdom of Nepal, 1990, has incorporated certain basic features, namely: multi-party system, constitutional monarchy, sovereignty of the people, independence of judiciary and guarantee of fundamental human rights. Ample democratic exercises have been undertaken during the short span since the restoration of democracy in Nepal.

Composition of Parliament

House of Representatives

His Majesty, the House of Representatives (Lower House) and the National Assembly (Upper House) together form Parliament of the country. The House of Representatives has two hundred and five members elected directly on the basis of universal adult franchise.

The term of every elected member of the House of Representatives is limited to five years. However, the House may be dissolved earlier by His Majesty on the recommendation of the Prime Minister. If the House is dissolved earlier fresh elections should be held within six months.

National Assembly

The Upper House of Parliament (or the House of Elders in the conventional term) consists of sixty members who must be Nepalese citizens, have attained thirty-five years of age, are not disqualified under any law, and have not held any office of profit. It is a permanent body not subject to dissolution, and one-third of its members retire every two years. The tenure of office of the members is six years. While thirty-five members, including at least three women, are elected by the Lower House under the system of proportional representation by means of a single transferable

vote, ten members are nominated by His Majesty from people having rendered illustrious service, distinguishing themselves in various fields of national life. The rest of the fifteen members, at the ratio of three members from each Development Region, are elected through single transferable vote by an electoral college consisting of the Chairmen and the Deputy Chairmen of the Village and Town Level Local Committees and the Chairmen, Deputy Chairmen and members of the District Level Local Committees. But until elections are held in local committees, such electoral college shall, for the first time, consist of the members of the House of Representatives representing the concerned Development Region. The National Council elects a Chairman and a Vice-Chairman from among its members.

Privileges

The members of both Houses of Parliament have full freedom of speech under the Constitution and no member can be arrested, detained or prosecuted in any court for anything said or any vote cast in any House. No question can be raised in any court regarding the exclusive right of the House to decide on the regularity or irregularity of any matter. No member of Parliament can be arrested between the date of issuance of summons for the session and the date on which that session closes, except on a criminal charge. Any breach of privileges of any House of Parliament constitutes the contempt of Parliament and the question of breach of privilege shall be decided only by the concerned House.

Warrant of Precedence

Both Houses of Parliament have vital role in legislation. Bills, except the finance and Armed Police and Army ones, may be introduced in either House. The Presiding Officers, Speaker and Chairman, have exclusive right to regulate the business of their respective Houses. Both of them are the *ex officio* members of the Raj Parishad or Council of State Affairs. However, in practice, the House of Representatives enjoys precedence over the National Council. The Council of Ministers is accountable to the Lower House as the Prime Minister should command a majority in the House of Representatives. A motion of no-confidence against the Government can be moved only in the Lower House. As thirty-five members of the Upper House are elected by the House of Representatives, the composition of the Lower House can have decisive say in the composition of the Upper House. Besides, the Speaker presides over the Joint Session of the two Houses such as on the Royal Address Day or some other occasions as mentioned in the Constitution. While Bills may be introduced in either House of Parliament, Finance Bills can be introduced only in the House of Representatives. The Speaker has to certify the Finance Bills.

Sessions of Parliament

The sittings of Parliament are divided into two main sessions, namely the Summer Session and the Winter Session. The Summer Session usually begins on the last week of June and prorogues on the third week of September. The Winter Session usually begins on any date of February-March and lasts for three to four weeks period.

Annual Budget is passed in the Summer Session and hence, it is also called the Budget Session. Winter Session is normally considered as Bill Session.

The House of Representatives sits for an average of about four hundred hours each year in two sessions. The National Assembly consumes an average of about one hundred and fifty hours each year in the proceedings. The session of Parliament is summoned and prorogued by His Majesty on the recommendation of the Cabinet and the Presiding Officers.

Members of the House of Representatives also have special power in reference to convene a session or meeting of the House of Representatives. Pursuant to this, during the prorogation or recess of the House, one-fourth of its members can make a representation that it is appropriate to convene a session or meeting of the House of Representatives. Then the date and time for such session or meeting is specified by His Majesty and the House of Representatives meets in its session on the date and time thus fixed. The Second Chamber, National Assembly does not enjoy such a special power.

Conduct of the House

The Speaker/Chairman is in charge of the conduct of business, presiding over the sittings of the House of Representatives and the National Assembly, respectively. A panel of members is appointed by the Speaker/Chairman with the consent of the House/Assembly, to conduct the business of the House in the absence of the Presiding Officer.

The Speaker/Chairman normally does not vote unless required to vote in case of a tie.

Committees

The work of the House/Assembly is complemented by a comprehensive system of committees and joint committees. The responsibility and work of the members on Parliamentary Committees are increasing along with the complex and expanded affairs of the government.

The all-party composition of most of the committees and their continued as well as common endeavour are important and valuable features of the system.

The details of the committees of the current National Assembly are given below :

COMMITTEES OF THE NATIONAL ASSEMBLY

(a) *Committees constituted by the Assembly*

In order to perform the functions of the Assembly in a more regulated and effective manner and associate the members more extensively in the affairs of the country, the National Assembly has the following standing committees :

Name of the Committee	No. of Members	Responsibilities
1. Remote Areas Committee	15	To study the problems of remote areas of the country and recommend to the Government for their solution.
2. Government Assurances Committee	15	To examine and submit the reports on the steps taken by HMG in order to carry out the assurances given in the Assembly from time to time by the members of the Council of Ministers.
3. Social Justice Committee	15	To study and submit the report on the contemporary issues on prevailing condition of human rights, education, growth and development of ethnic and backward community, protection of rights of children and disabled persons.
4. Delegated Legislation Committee	15	To examine and submit the report on the Rules and By-laws framed and the orders and notices issued in exercise of the powers delegated by Parliament.

(b) *Committees constituted by the Chairman*

In order to aid and advise the Chairperson in his/her works, committees like (i) Business Advisory Committee, (ii) Petitions Committee, and (iii) other committees deemed necessary, can be constituted in consultation with the leaders of the parliamentary parties. Currently, the Business Advisory Committee is in operation.

(c) *Committees constituted by the Assembly*

Subject to the provisions of the Constitution of the Kingdom of Nepal, 1990 and the current Rules, the Assembly can constitute special committees

through special motions passed by the Assembly. At the moment, under the prevailing Rules following types of committees can be formed. The constitution and the responsibilities of such committees are as follows:

	Name of the Committee	No. of Members	Chairperson	Responsibilities
1.	Privilege Committee	9	Nominated by Chairman	To study and investigate on the question of breach of privilege of the House and its members.
2.	Ethics Committee	7	Chairman as *ex officio*	To investigate and examine the question raised on members' ethics.
3.	Special Committee	9	Nominated by Chairman	Clause-wise discussion of the Bills and submit report to the House.

Conclusion

As mentioned above the twin Chambers of Nepal's Parliament manifest marked differentiation. Whereas members of both Chambers are eligible for appointment in the Council of Ministers, to contest for Prime Ministership and to hold that office, one has to be the member of the House of Representatives and enjoy the confidence of the majority of its members. Also, whereas the Prime Minister and Ministers participate and interact with members of the Second Chamber during its proceedings, the Constitution of the Kingdom of Nepal, 1990, categorically underlines the collective accountability of the Prime Minister and Ministers *vis-a-vis* the First Chamber. However, both the Chambers of Parliament have been complementing each other and concentrating attentively in the responsibility assigned to them by the Constitution. Thus, we have taken roles of two Chambers as a strong integrating force in Nepal.

23

The Senate in the Constitutional System of Poland

BOGDAN SKWARKA*

In accordance with Article One of the Constitution of 17 October 1992 (on mutual relations between the legislative and executive branches of the Republic of Poland and on local government) the Senate as well as the Sejm — is a legislative organ of the State. The Senate consists of hundred Senators elected in the provinces by secret ballot for the term of the Sejm, in free, general and direct elections.

In the cases specified in the Constitution, the Sejm and the Senate, deliberate jointly under the Sejm Speaker and constitute the National Assembly. The Senate, in common with Sejm Deputies, the President and the Council of Ministers, can propose legislation. As an organ of the legislative branch, the Senate examines bills passed by the Sejm within thirty days of their submission, unless they are urgent bills, in which case the Senate has a seven-day deadline. The Senate may accept a bill submitted by the Sejm without amending it; it may introduce amendments to it, or else reject it. If the Senate makes amendments which have financial implications for the state budget, it indicates how these are to be met. A Senate resolution rejecting a bill or an amendment is held to have been adopted, if the Sejm does not reject it by an absolute majority of votes.

The adoption of the state budget follows a somewhat different procedure. The Budget Act passed by the Sejm is submitted to the Senate, which has twenty days to introduce amendments or else accept it as it stands. The Senate has, therefore, a shorter time to examine the Budget Act, and it may not reject it.

The Senate Presidium, Senate committees or thirty Senators may appeal to the Constitutional Court for a ruling on whether a legislative act is in conformity with the Constitution, or whether another normative act is in conformity with the Constitution or a legislative act.

* The article is based on the material downloaded from the Website of Polish Senate—http://www.senat.gov.pl , permission for which was given by Dr. Bogdan Skwarka, Secretary General, Chancellery of the Senate, Poland.

Besides playing an important part in legislation, the Senate also approves the appointment of the President of the Supreme Board of Control (NIK) and of the Ombudsman, but — unlike the Sejm — it does not exert control over the executive authority. Moreover, the Senate appoints two members of the National Council of Radio and Television, and elects one member of the Selection Committee, as well as two Senators as members of the National Council of Judicature.

In addition, the Senate approves the President's decision to hold a referendum on matters of particular importance to the State. The Senate also debates on reports submitted by the Ombudsman and by the National Council of Radio and Television.

Presiding Officers of the Senate

The Senate Speaker

The Senate Speaker represents the Senate and guards its rights and dignity. He convenes meetings of the Senate and makes the agenda in consultation with the Council of Seniors. The Senate Speaker presides over the Senate meetings, invites Senators to take the floor, and carries out resolution voting.

The Senate Speaker manages the work of the Presidium of the Senate and presides over meetings of the Council of Seniors. He makes the Senate Chancellery's draft budget and supervises its implementation. The Senate Speaker is responsible for peace and order at the entire Senate premises. He also performs representative duties.

Deputy Senate Speakers

Deputy Senate Speakers act as deputies for the Senate Speaker in presiding over the Senate's meetings. They also perform the Senate Speaker's duties delegated to them by the Speaker himself or by the Presidium of the Senate.

The Presidium of the Senate

The Presidium of the Senate is composed of the Senate Speaker and the three Deputy Senate Speakers. The Presidium of the Senate convenes, as a rule, once a week. The Presidium meetings develop the Senate's general work plans and discuss issues related to current legislative work. The Presidium delegates to the Senate committees the examination of various matters. It also considers statutory matters related to the work of the Senate and the Senators.

The Presidium of the Senate is also responsible for the Senate's international relations. It approves Senators proposed by the Senate's caucuses as candidates for members of international parliamentary assemblies, *e.g.*, the Council of Europe, and selects Senators as members of delegations to other Parliaments and international conferences.

Performing the traditional Senate's role of supporting the Polish community abroad, the Presidium of the Senate allocates funds from the Senate Chancellery budget to Polish institutions abroad, *e.g.*, schools, organizations, publications, and welfare assistance. The Presidium of the Senate entrusts these tasks to competent institutions, first of all, to the Polish Community Association. The Head of the Senate Chancellery and persons invited by the Senate Speaker take part in meetings of the Presidium of the Senate as advisors. The Presidium of the Senate and the Presidium of the Sejm occasionally hold joint meetings.

The Council of Seniors

The Council of Seniors is composed of the Senate Speaker, the Deputy Senate Speakers and Senators representing the Senate caucuses. The Senate caucuses and circles can agree on appointing a common representative to the Council of Seniors. Parliamentary groups can have their representatives on the Council if they include at least seven Senators among their members.

During the Council of Seniors' meetings, the Senate caucuses co-ordinate the objectives and course of work of the Senate, *i.e.*, the agenda, dates of meetings, motions on the methods of conducting discussions, sessions, and other matters proposed by the Senate Speaker or the Presidium of the Senate.

Senate Committees

The core work of the Senate is done by its committees. Each law adopted by the Sejm is next delivered to the Senate committees. The committees also analyse laws initiated and drafted by Senators. The fourth term Senate has established standing committees for:

1. National Economy;
2. Culture and Media;
3. Science and National Education;
4. National Defence;
5. Environmental Protection;
6. Human Rights and the Rule of Law;
7. Rules and Senators' Affairs;
8. Family and Social Policy;
9. Agriculture and Rural Development;
10. Local Government and Public Administration;
11. Emigration and Poles Abroad;
12. Foreign Affairs and European Integration;
13. Legislation; and
14. Health, Physical Education and Sport.

Sub-committees can be established within the committees to consider more specific issues. As an example, the Sub-committee for Regional Economy was established during the third term Senate of the Republic of Poland within the National Economy Committee.

Special Committees

The Senate may also appoint special committees. One such committee, the Special Committee for Economic Legislation, worked for six months (from December 1989 to April 1990) during the first term Senate. On the last days of December 1990, the Special Committee for Mining Industry was established in connection with an extremely difficult situation in the mining sector. In the second term Senate, there was a special committee whose task was to evaluate a State Electoral Commission's report on the Senate election. Between April and October 1992, there was a special committee for the analysis of the law on the ratification of the European Treaty which established the association between the European communities and their Member States and the Republic of Poland. In January 1993, this committee was replaced by the Special Committee for European Integration. In connection with the difficult situation in the mining sector (strikes) the Special Committee for the Mining Industry was re-established in December 1992. In the third term Senate, the Special Committee for Legislative Initiatives met three times to discuss changes in the regulations on Polish citizenship.

Each Senator is required to work for at least one committee. Most Senators, however, sit on two committees. A Senator loses one-thirtieth of his salary and *per diem* for each day of unjustified absence from a committee meeting. A committee Chairman is responsible for the organization and overall results of its work. Candidates for the office of standing committee Chair are proposed by the Committee for Rules and Senators' Affairs, following a motion from a respective committee. They are elected and dismissed by the Senate. The Deputy Chair is appointed by the members of the given committee.

The Senate committees have from several to over a dozen members. The following committees had the largest membership (in June 1997): the National Economy Committee, sixteen members; the Foreign Affairs and International Economic Relations Committee, sixteen members; and the Committee for Emigration and Poles Living Abroad, fifteen members. The following committees had the smallest membership: the Committee for Culture, Media, Physical Education and Sport, nine members; and the Committee for Legislative Initiatives and Work, seven members.

Joint meetings of Committees

Committees sometimes work together. A joint meeting is presided over by one of the Chairmen of the committees involved. For example, joint meetings were held when the second term Senate was hammering out its legislative initiative called the Legal Protection of a Conceived Child. The following

committees worked together on the subject at that time: the Human Rights and the Rule of Law Committee, the Social Policy and Health Committee and the Legislative Initiatives and Work Committee. Joint meetings of the National Economy Committee and the Agriculture Committee were also rather frequent during that term (*e.g.*, a meeting on fuel subsidies for farmers).

The committees always hold a joint debate during a Senate recess. The recess is ordered by the Senate Speaker to help the committees co-ordinate their opinion on changes in a draft which were proposed earlier in the meeting when the committees had debated the draft separately.

Joint debates of the Senate committees and their Sejm counterparts are less frequent, although their closer co-operation has been encouraged occasionally. During the third term Senate the following committees held joint debates: the Senate Social Policy and Health Committee and the Sejm Health Committee as well as the Senate Foreign Affairs and International Economic Relations Committee and the Sejm Foreign Affairs Committee.

Senators and Sejm Deputies joined hands to work on the new Constitution as members of the National Assembly's Constitutional Committee. Ten Senators were elected to this committee at a Senate meeting on 22 October 1993.

Laws worked out by various committees are additionally sent to the Committee for Legislation and to the Legislative Office of the Senate's Chancellery for additional consultation. The principal task of Senators sitting on a given committee consists in developing the Senate's opinion on a law adopted by the Sejm. The Committee may suggest that the Senate:

- accept the law unchanged (unamended);
- make some amendments;
- reject the law as a whole.

Resolutions are adopted by a simple majority of votes in the presence of minimum one-third of the committee members. The proposed opinion of the Senate, drafted by the committees, is presented at the Senate meeting by a Senator-rapporteur who is appointed by the committee members. His report delivered at the Senate's plenary meeting should not be longer than twenty minutes. Senators may ask the rapporteur short questions about the committee work. Then a general debate and voting are held.

The adoption of the budget law follows a special procedure. A budget law adopted by the Sejm is sent to the Senate where all committees examine its respective parts. The committees submit their opinions to the National Economy Committee which prepares a draft of the Senate's position. Knowing the viewpoint of the National Economy Committee, the Senators must now decide within twenty days from receiving the law from the Sejm — whether they want any changes in the law or accept it in the shape adopted by the Sejm.

The Senate committees can also make their own draft laws. A proposal to make a new law can be reported to the Senate Speaker by a committee or a group of at least ten Senators. During the first reading at a plenary Senate meeting, the Senators decide on sending their draft to the respective committees, including the Legislation Committee. The Committees to which the draft has been delivered, work on it together and present their joint report to the Senate.

Legislation is the committees' principal but not all work. The committees also deal with topical "hot" issues relating to their competence by trying to make a diagnosis and identify solutions. In such cases, the committees invite guests representing various social, economic and political organizations and communities involved. Such debates were quite frequently held by the Human Rights and the Rule of Law Committee and by the National Economy Committee. These meetings are usually held by the Foreign Affairs and European Integration Committee and the Emigration and Poles Abroad Committee. The committees prepare plenary debates on topics the Senate considers particularly important for the life of the country. The first such debate took place at the turn of July and August 1989 and it related to local governments, the agricultural situation and the health care situation in Poland. The third term Senate had such a debate concerning Poles living abroad. The debate was prepared by the Emigration and Poles Abroad Committee.

The debates of Senate committees are open. Press, radio, and television can make reports on the Senate committee meetings. Senators who are not members of a given committee are allowed to take part in its meetings, even if it is held behind the closed doors. They can take part in the dispute, table motions, but cannot vote. Deputies, representatives of the Government and administration are also allowed to take part in Senate committees' meetings.

Sometimes there are also meetings behind closed doors to which guests are not invited. During the third term Senate the National Defence Committee held many such meetings and the Human Rights and the Rule of Law Committee did so several times. Meetings devoted to the State Protection Office UOP were also held behind the closed doors.

Each committee session is documented. A committee's secretary makes minutes of the meeting, signed by the committee's Chairperson. A shorthand report, a list of Senators present, a list of the invited guests, all draft resolutions and the final texts of resolutions of the committee are attached to the minutes.

How is Law made

Before a law is passed, its author must submit a legislative initiative to the Lower House called Sejm, *i.e.*, a draft law accompanied by a motion for its consideration by the House. Or, to be more precise and more in line with the Polish parliamentary tradition, the initiative must be submitted to the Sejm Speaker's staff.

The following entities are empowered by the Constitution of the Republic of Poland to start a legislative initiative: the President, the Government, the Senate, Sejm Deputies (a group of minimum fifteen MPs or a Sejm committee) as well as a group of at least hundred thousand citizens (the procedure in this last case will be determined by a separate Act). Depending on the author of the proposed law, the draft is called a President's draft, a Government's draft, a Senate's draft, a Deputies' draft or a citizens' draft. A draft law can propose changes in the currently binding law, *i.e.*, it can update the law, or it can be a proposal to adopt a completely new law.

The process of handling a submitted draft law, *i.e.*, a law-giving procedure, is defined by the Constitution of the Republic of Poland and the Statutes of the Sejm of the Republic of Poland. Draft laws are subject to a three-readings procedure. The author can widhdraw the draft only until the end of the second reading. The rule is that the first reading takes place at a meeting of the appropriate committee.

A representative of the draft authors (who propose the new law) presents the draft before the committee members who then examine it in a full-detail discussion. Drafts of the most important laws concerning, *e.g.*, changes in the political system of the country, the rights and freedoms of its citizens, voting rights, codes of law, taxes and finance must be first presented by the author to the Sejm. The author justifies the necessity of adopting the proposed draft law before the committee or the House. Then the draft is subject to a general debate over its fundamentals.

The draft debated in the Sejm is then sent to Sejm committees for a detailed analysis. The committees may either amend or totally change articles of the law. The committees often invite experts, *i.e.*, specialists in the fields to which the proposed law pertains. The committee meetings are open to press.

After the first reading of the draft law, the committee elects the rapporteur who presents the committee's report, *i.e.*, an agreed opinion on a given legislative initiative, at the plenary meeting of the House.

Next, the procedure of the second reading begins. This allows the Deputies, the Council of Ministers, or the draft's authors to table additional amendments to the presented report. If, during the second reading, any amendments and motions are proposed on which the committee has not expressed its opinion, the draft goes back to the same committee which examines the new proposals. The committee evaluates the proposals and motions submitted during the second reading in the presence of their authors and writes a document called additional report.

The rapporteur presents the committee's position at the plenary session, after which the Sejm proceeds to a vote. This phase is the third reading of a draft law. The House votes for or against each motion submitted thus adopting or rejecting them. The Sejm adopts laws by a simple majority of votes (more

yeas than nays) in the presence of minimum fifty per cent of all Sejm Deputies. The voting splits into the following phases:

1. Voting for or against the motion for the rejection of the whole draft (if such a motion was tabled);
2. voting for or against the amendments to particular articles, *i.e.*, the rejection of a part of the draft. Amendments whose adoption or rejection is decisive for other proposed amendments are subject to voting in the first place; and
3. voting for or against the draft as a whole in the wording proposed by the committees, including changes introduced by the previously adopted amendments.

When the draft law is passed, the Sejm Speaker submits it to the Senate for further consideration.

The procedure of handling the draft laws in the Senate is determined, like in the case of the Sejm, by the Constitution of the Republic of Poland and the Statutes of the Senate of the Republic of Poland. A law adopted by the Sejm is, first of all, analysed by appropriate (one or more) Senate committee(s) which have maximum two weeks to present their position in a report to the Senate. Then the law is debated by the Senate. The Senate has three options to decide the shape of the law. The future of such a legislative act depends on which of the following options is chosen:

1. The Senate can accept the law unchanged; in such a case the Sejm Speaker sends it to the President of the Republic of Poland to be signed;
2. the Senate can make amendments to the law; in this case the law is sent back to the Sejm which discusses these amendments; and
3. the Senate can reject the law as a whole; then it is sent to the Sejm with a note saying that the Senate is against this law.

If the Senate fails to assume its position on the proposed law within thirty days after its submission, it is considered as adopted in the shape given to it by the Sejm. The final decision as to the contents of the law belongs to the Sejm which can reject the Senate-proposed amendments or the Senate's resolution rejecting the law as a whole by a simple majority of votes. However, if the Sejm does not reject the Senate's amendments to the proposed law, they are considered as adopted. The Senate's rejection of the whole law becomes effective if the Sejm does not reject it by a simple majority (more 'yeas' than 'nays' + abstentions). In such a case, the procedure is closed, and further work on the given law can only start all over again.

After the law is passed, *i.e.*, after it has been passed through the Sejm and the Senate, the Sejm Speaker sends it to the President of the Republic of Poland to be signed. The President signs the law, if he has no objections to it,

and orders its publication in the Journal of Law ("Dziennik Ustaw"). Then, the law enters into force after fourteen days of its publication, unless otherwise stated in the same law.

The Constitution allows the President to refuse signing the law and to send it back to the Sejm within twenty-one days with a substantiated motion for a new evaluation of the law (the veto). Alternatively, the President can ask the Constitutional Tribunal to check the law's consistency with the Constitution. If the Constitutional Tribunal rules that the law is consistent with the Constitution, the President can no longer refuse his signature. If, however, the Constitutional Tribunal finds the new law inconsistent with the Constitution, the President does not sign it. If the Constitutional Tribunal finds that only some articles in the law run counter with the Constitution and rules that they are not inseparably connected with the analysed law, the President can, in exceptional cases,sign the law except for the unconstitutional articles or sent the law to the Sejm to be polished up.

If the President of the Republic of Poland vetoes the law, the final decision on the contents of the processed law is made by the Sejm which can reject the President's veto (by adopting the proposed law once again with a three-fifth majority). If the Sejm does not reject the President's veto, the legislative procedure is closed. If the Sejm rejects the President's veto, it means that the Sejm does not agree with the President's objections and demands his signature. In this case the President must sign the law.

The legislative procedure can be significantly accelerated (for example, by giving it an urgent status) or delayed (when the law "gets stuck" in the Sejm committees). The process can also be terminated in its early phase if the Sejm rejects the draft after the first reading.

As it can be seen from the above description, the law-making process is very complicated and usually rather time-consuming. Since many decisions must be made quickly, the institution of "urgent" draft laws has been introduced to the legislative procedure. It is called the "fast legislative track" and is intended to speed up and simplify the process of adopting new laws. If the Government wants to have its draft law adopted quickly, it can send it to the Sejm as "urgent". The Sejm is obliged to examine it in the first place, the Senate must make its opinion within fourteen days, and the President has only seven days to come up with his objections.

Senator's salary and other benefits

Like in any other democratic country, in the Republic of Poland one is entitled to receive remuneration for his work. This also applies to Senators. A Senator can be paid for his work in the Senate on condition that he gives up any other sources of income. At the beginning or at any time during the term, each Senator can decide whether he wants to be a "professional" Senator or continue his previous employment.

A Senator's salary is, however, only one of several benefits to which he is eligible throughout the term. The other benefits include *per diem*, a lump sum for running the Senator's office in the district he represents, franking rights, cost-free travel within the country, cost-free Senate stationery, and free copies of the official journals. A Senator who has given up all other employments is entitled to get a Senator's remuneration starting on the day of the first Senate meeting throughout the whole term of office.

To receive the salary, the Senators must work hard and perform their duties efficiently. One of their basic duties is to take part in the meetings of the Senate, the National Assembly, the Senate Committees and other Senate bodies. If a Senator is absent without a good reason from meetings of the Senate, the National Assembly or other Senate bodies, he will lose one-thirtieth of his salary for each day of unjustified absence.

Women in the Senate

There were seven women in the first term, eight in the second and thirteen in the third term of the Senate revived in 1989 (there were forty-four women in the Sejm of the previous term and sixty in the current one). This is less than thirteen per cent of the total number of Deputies and Senators. Poland is not alone in this respect, women are similarly represented in other countries as well.

In the current parliamentary term, a Women's Parliamentary Group was formed, with the aim of working together to protect women's interests in the emerging legislation, and to strengthen their position in the country's political and social life. Women's share in the work of Parliament, although still small, has not always been as evident as it is now.

The first official motions for equality appeared in 1865, when the British Member of Parliament, John Stuart Mill demanded voting rights for women. However, the first country to grant women this right was New Zealand in 1893. By 1919, women were enfranchised in Finland, Austria, Germany, Russia, Great Britain and elsewhere.

In the period when Poland disappeared from the map of independent states, there was no way in which women could fight for their political rights. They concentrated their energy on becoming educated and acquiring professional skills equal to those of men.

In Poland, formal demands for equality were put forward in 1917, and women got full political rights in 1918. In the twenty years between the world wars, a total of twenty-one women had seats in the Senate throughout its five terms. They came from various social strata and were mostly graduates of foreign universities. They included academics, activists deeply involved in the struggle for independence, and country schoolmistresses doing voluntary work among the very poor.

24

The Council of Federation of the Federal Assembly of the Russian Federation

V. A. NIKITOV

The Council of Federation is a chamber of the Federal Assembly, the Parliament of the Russian Federation which is the representative and legislative body of state authority of the Russian Federation.

According to part 2 of Article 95 of the Constitution of the Russian Federation, two Deputies from each subject of the Russian Federation shall be members of the Council of Federation: with one representative from the representative body and one representative from the executive state authority body.

The procedure for formation of the membership of the Council of Federation till 8 August 2000 was established by the Federal Law of 5 December 1995 # 192-FZ "On the Procedure for Formation of the Membership of the Council of Federation of the Federal Assembly of the Russian Federation" (the Collection of the Legislation of the Russian Federation, 1995, #50, art. 4869); the Chamber consisted of one hundred and seventy-eight representatives of the subjects of the Russian Federation — heads of legislative (representative) state authority bodies and heads of executive state authority bodies (*ex officio*). All members of the Council of Federation combined the exercise of their duties in the Chamber of the federal Parliament with the exercise of their duties in the respective subject of the Russian Federation.

On 8 August 2000 a new Federal Law "On the Procedure for Formation of the Membership of the Council of Federation of the Federal Assembly of the Russian Federation" #113-FZ of 5 August 2000 came into force (the Collection of the Legislation of the Russian Federation, 2000, #32, art. 3336). From now on the Chamber will consist of the representatives elected by the legislative (representative) state authority bodies of the subjects of the Russian Federation or appointed by the supreme executive authority persons of the subjects of the Russian Federation (the heads of the supreme executive bodies of state authority of the subjects of the Russian Federation).

The terms of authority of such representatives are determined by the terms of authority of the bodies that elected or appointed them, but the mandate of a representative may be withdrawn prematurely by the body that appointed him/her under the same procedure that was used for election (appointment) of that member of the Council of Federation. A member of the Council of Federation — a representative of a two-chamber legislative (representative) body of state authority of a subject of the Russian Federation shall be elected alternatively by each chamber for the half period of the terms of authority of the respective chamber.

The decision of a legislative (representative) state authority body of a subject of the Russian Federation to elect a representative to the Council of Federation from that legislative (representative) state authority body of the subject of the Russian Federation is adopted by a secret ballot and is formalized by a resolution of the aforesaid body, while the relevant decision of a two-chamber legislative (representative) body of state authority of a subject of the Russian Federation is made by a joint resolution of its both chambers.

The decision of the supreme executive authority person of a subject of the Russian Federation (the head of the supreme executive body of state authority of a subject of the Russian Federation) on appointment of a representative to the Council of Federation from that executive body of state authority of the subject of the Russian Federation is formalized by a decree (a resolution) of that supreme executive authority person of the subject of the Russian Federation (the head of the supreme executive body of state authority of the subject of the Russian Federation). The decree (the resolution) within three days shall be sent to the legislative (representative) body of state authority of the subject of the Russian Federation and shall come into effect, if at the next or extraordinary session of the legislative (representative) body of state authority of the subject of the Russian Federation, two-thirds of the total number of its Deputies do not vote against the appointments of that representative to the Council of Federation from the executive state authority body of the subject of the Russian Federation.

The members of the Council of Federation who are the *ex officio* representatives of the subjects of the Russian Federation shall continue to exercise their powers after the coming of the new federal law into effect till the coming into effect of the decisions on election (appointment) under the procedure stipulated by that federal law of the members of the Council of Federation who are the representatives of the legislative (representative) and the executive bodies of state authority of the respective subjects of the Russian Federation, but not later than 1 January 2002.

By the same date, election (appointment) of all members of the Council of Federation under the new Federal Law must be completed.

By the date when this article went to print, fifty-two members of the Council of Federation have been elected (appointed) in accordance with the Law of 5 August 2000, thus resulting in replacement of slightly over one quarter of the chamber's membership.

The Chairman of the Council of Federation and the Deputies of the Chairman of the Council of Federation shall be elected at a session of the chamber from amongst the members of the Council of Federation by a secret ballot by a simple majority of the votes of the total number of the members of the Council of Federation. The Chairman of the Council of Federation and his deputies shall not be the representatives of one and the same subject of the Russian Federation. At present, E.S. Stroyev, Head of Administration of the Orel Region, is the Chairman of the Council of Federation.

The Chairman of the Council of Federation heads the Council of the Chamber consisting of the Deputies of the Chairman of the Council of Federation, the Chairmen of all eleven committees of the Council of Federation and the Chairman of the Commission of the Council of Federation on the rules and parliamentary procedures. The following persons are entitled to participate in the sessions of the Council of the Chamber: a member of the Council of Federation as instructed by a committee (a commission) of the Council of Federation; the plenipotentiary representatives of the President of the Russian Federation and the Government of the Russian Federation in the Council of Federation.

The Council of the Chamber shall:

- draft the agendas of the session of the Council of Federation;
- coordinate the procedure for discussion of the issues at the sessions of the Council of Federation;
- discuss preliminarily the degree of preparedness of the issues introduced to the sessions of the Council of Federation; and
- draft the lists of the persons invited to make speeches at the sessions of the Council of Federation.

The main competence of the Federal Assembly is to adopt the federal constitutional laws and the federal laws the drafts of which are introduced to the State Duma and considered at the State Duma in three readings as the rule. If the State Duma adopts a law, it is sent to the Council of Federation.

The Council of Federation, as well as each of its members have the right of legislative initiative. (The same right is also vested in the President and the Government of the Russian Federation, the deputies of the State Duma, the legislative bodies of constituent entities of the Russian Federation, as well as in the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the High Arbitration Court of the Russian Federation, within their scope of reference.)

Draft laws are introduced to the State Duma and, as a rule, deliberated in the State Duma in three readings. When a law is passed by the State Duma, it is referred to the Council of Federation.

The Council of Federation may adopt or reject a federal law passed by the State Duma. If such a law is rejected by the Council of Federation, then in the majority of cases a conciliatory commission is created consisting of deputies of the State Duma and members of the Council of Federation who strive to bring the positions of the both chambers into an agreement. If a federal law is adopted by the Council of Federation, it is sent for consideration to the President of the Russian Federation.

If the President of the Russian Federation signs a federal law, it is officially published and comes into force. If the head of the state rejects a federal law, it is returned to the State Duma. The State Duma may adopt a new text of the law agreed upon with the President, or to overcome the veto of the head of the state with the majority of two-thirds of the votes and to adopt the previous version of the law again.

If the Council of Federation overcomes the veto of the President of Russia with the same qualified majority of the votes, then the head of the state is obliged to sign the federal law even if he does not agree with it.

If the Council of Federation has rejected a federal law adopted by the State Duma, the State Duma may overcome the veto of the Council of Federation with the qualified majority of the votes and send the federal law for consideration of the President of the Russian Federation.

A special procedure has been established for adoption of the federal constitutional laws: their drafts must be approved by a majority of at least two-thirds of the votes of the total number of the deputies of the State Duma and three-fourths of the votes of the total number of the members of the Council of Federation. In case of adoption of a federal constitutional law by both chambers of the Federal Assembly, it is subject to unconditional signing by the President of the Russian Federation.

The Council of Federation upon a presentation by the President of Russia appoints the Judges of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the High Arbitration Court of the Russian Federation, and it appoints or dismisses the Procurator General of the Russian Federation. Besides, the Council of Federation appoints or dismisses the deputy of the Chairman of the Accounting Chamber of the Russian Federation and a half of its auditors.

Within the exclusive competence of the Council of Federation there are the approval of changes of borders between the subjects of the Russian Federation, the approval of the decrees of the President of the Russian Federation on introduction of the martial law or the state of emergency, the decision of the question of a possibility of the use of the Armed Forces of the Russian Federation outside the territory of the Russian Federation, as well as the convocation of elections of the President of the Russian Federation and his impeachment.

The Council of Federation, as well as groups of its members comprising at least one-fifth of its total membership, have the right to initiate amendments

and revisions to the provisions of the Constitution of the Russian Federation. (Similar proposals may also be introduced by the President of the Russian Federation, the Government, the State Duma or groups of its deputies comprising at least one-fifth of its total membership, as well as by legislative bodies of constituent entities of the Russian Federation.) Amendments to Chapters 3 through 8 of the Constitution of the Russian Federation shall be adopted by the majority of at least two-thirds of the total number of deputies of the State Duma and three-fourths of the total membership of the Council of Federation, and enter into force after their approval by legislative bodies of at least two-thirds of constituent entities of the Russian Federation.

A dismissal of the Council of Federation is not envisaged by the Council of Federation under any circumstances.

The Council of Federation has the right to appeal to the Constitutional Court with requests as to the accordance to the Constitution of the Russian Federation in particular of the federal laws, the normative acts of the President of the Russian Federation, the State Duma, the Government of the Russian Federation, Constitutions, laws and other normative acts of the subjects of the Russian Federation.

The members of the Council of Federation constantly take into account the interests and demands of the population of the Russian Federation and turn with written interpellations to the members of the Government of Russia and the other officials concerning various issues. Representatives of the Government of the Russian Federation and other officials are regularly invited to that part of the sessions of the Council of Federation which is called "the governmental hour" to submit to the parliamentarians the information required and to answer their questions. During the discussions on the federal budget and the other key issues of the state policy the President or the head of the Government speaks at the sessions of the Council of Federation.

The Federal Assembly of the Russian Federation actively participates in the inter-parliamentary activities. The Inter-Parliamentary Group of the Russian Federation which is a member of the Inter-Parliamentary Union (IPU) is headed by the Chairman of the Council of Federation, E.S. Stroyev and the Chairman of the State Duma, G.N. Seleznev.

One of the priorities of Russia's foreign policy is our relations with member nations of the Commonwealth of Independent States. Both chambers of the Federal Assembly attach great importance to participation of their representatives in the Inter-Parliamentary Assembly of States-Members of the Commonwealth of Independent States, presided by E.S. Stroyev, Chairman of the Federation Council.

Both chambers of the Russian Parliament develop and strengthen the ties with the Inter-Parliamentary Union, the Parliamentary Assembly of the Council of Europe (PACE), the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (PAOSCE), the Parliamentary Assembly of the Black

Sea Economic Cooperation (PABSEC), the Parliamentary Assembly of the NATO (PANATO), the Assembly of the West European Union (AWEU), the Nordic Council, the European Inter-Parliamentary Assembly of Orthodoxy (EIAO) and the Asian Pacific Parliamentary Forum. Besides, the chambers of the Federal Assembly of the Russian Federation are represented by their observers in the Inter-Parliamentary Organization of the Association of East Asian Nations (AIPO).

The Council of Federation has been the initiator of big international initiatives. The Saint Petersburg Economic Forum held annually since 1997 in the Tavricheski Palace in the city of Saint Petersburg has become a remarkable event of the recent years. The Forum has been attended by Russian and foreign parliamentarians, representatives of business communities and financial structures and public figures.

In September 2000, the Baikal Economic Forum was held in the city of Irkutsk. The Forum provided an opportunity to have a wide representative discussion on assistance to the acceleration of the socio-economic development of the regions of Siberia and the Far East and to the improvement of Russia's economic cooperation with the states of the Asian Pacific region.

The Council of Federation
Russia, 103426, Moscow, Bolshaya Dmitrovka ulitsa 26,
phone (095) 292-19-97
e-mail:mvgir@gov.ru
http://www.council.gov.ru

25

The Senate of Spain

MANUEL ALBA NAVARRO

The History of Bicameralism in Spain

Spain's constitutional history has been long and eventful. Long because its first constitution dates back to 1812. Eventful because many constitutions of varying types and duration have followed quickly upon one another in this period of time.

This is not to say that Spanish history has been so vastly different from that of other Western European countries. It means simply that Spain opted for a plurality of constitutions texts, as opposed to the constitutional stability of other countries. It is true, however, that this sequence of texts can hardly be considered to be a reflection of constant and ordered progress. The ruling Constitution dates from 29 December 1978, making it statistically one of the longest-running constitutions of all.

2. All these constitutions have certain common denominators that reveal ongoing trends. One of these is the two-chamber parliamentary system. Of all the constitutions that actually came into force, only the 1812 constitution (which lasted for a total of barely five years in two different stages) and the 1931 constitution (again lasting for five years), opted for the unicameral solution. This excludes, of course, the texts pertaining to non-democratic or dictatorial regimes.

Barring the above exceptions, a Second Chamber has been a constant feature of Spain's constitutional history ever since its first appearance in 1834 as the *Estamento de Próceres* (Upper House). It cannot be claimed, however, that the reasons for its existence have been equally consistent.

In the beginning, and especially during the C19th, the Spanish Senate was a more or less faithful reflection of the typical aristocratic chambers of that century. As against the Lower House, the Senate stood as the bastion of the country's ruling elites. Its members came from the nobility, high-ups of the church or army, the richest of the bourgeoisie or even the intellectual aristocracy of universities and study centres; so it is true to say that any analysis of the power elites of the C19th in Spain would have to go hand in hand with an in-depth study of the make-up of the Senate.

The C19th Spanish Senate thus helped the monarch to curb any untoward uppishness from the Lower House, an elected body that was ostensibly more popular in nature. Even so, it should be remembered that not even the members of the lower chamber were elected by universal suffrage in the C19th.

The Senate's political capacity and influence were thus unquestionable in political life. The constitutions of a more liberal bent tried to introduce some sort of election principle for the chamber but its hard core remained the ruling classes that had traditionally been represented in the chamber.

The Senate was suspended and in effect dissolved after the *coup d'état* of General Primo de Rivera in 1923. The Republican Constitution of 1931, chary of the Senate's record in the previous century as the traditional ally of the crown, did not think fit to restore it. After the failure of the Republican experiment, legend has it that a high-ranking leader of the time lamented the constitutional mistake of not having provided for a Second Chamber to act as a check on the excesses of the single chamber. It is in any case hard to conform or refute this claim by now.

3. When H.M. Juan Carlos I came to the throne after the death of General Franco, one of the clearest goals in his own mind was the transformation of the country into a democracy. Given the circumstances, this process was complicated, tortuous and unsure. The subsequent success should not beguile us into underestimating the difficulty of this undertaking at the time.

As President of the Government, the King chose Adolfo Suárez to steer the country's course towards democracy.

A pivotal moment in this process came with the passing of the Political Reform Act (Ley de Reforma Politica) of 4 January 1977. Although, this was the last legal text drawn up in accordance with the legislation of Franco's regime, it was, in fact, the clearest sign of the political changes in the offing. It provided for a bicameral elected Parliament made up of the Congreso de los Diputados (Congress of Deputies) and a reborn Senate. The latter was to be an elected House whose members would be drawn from the popular classes, though the monarchy, as a concession to its role, was allowed the possibility of designating a shortlist of Senators from among leading figures of the political, social and cultural life.

This Act, crucial in the transition process, returned to the bicameral tradition of the Spanish Monarchy. But this return was no copy-cat affair. The Senate in question was new in concept, a democratic Senate in which the minorities and majorities depended on popular elections and were, therefore, attributed to the political parties that had taken part in the elections.

These chambers, elected on 15 June 1977, had no formal constituent powers; in theory they were not empowered to draw up a new constitution. This is exactly what they did, however, in a very evident manner. They, therefore, represented a fairly rare case in constitutional history of a bicameral constituent Parliament.

Furthermore, during the constituent process, the Spanish system was ruled by a perfect bicameral Parliament, *i.e.*, one in which the two chambers possessed equal powers in both constitutional and legislative aspects and in terms of the control of the government. It was hence a pure bicameral principle that ruled over the constitutional process.

4. It is generally known that the various bicameral parliamentary systems around the world have been adopted on very different grounds. Some of the second chambers are nobility-based or hereditary (the House of Lords, albeit less so after the reform); there are federal chambers of a territorial nature (the Senate of the United States) or chambers that are politically analogous to the Lower House (the Italian Senate is a good example).

A question mooted in the Spanish constituent assembly was whether or not to consolidate the bicameral structure of Parliament and, if so, what type of Senate was required.

The first decision was clearly positive. The Senate was confirmed as an irrevocable constitutional decision, not, it must be said, without some controversy. Some important political forces were in favour of a unicameral system on the grounds that the Senate was superfluous or distorted the political system. These forces accepted the second chamber on condition that the proportional representation system for the Congress of Deputies be confirmed, as, in fact, turned out to be the case.

Once the principle of the Senate had been accepted, there remained the question of what form it was to take. At the same time as this was going forward, the Constitution opted for a radical change in the territorial organization of the state. Spain changed from a highly centralised regime to a clearly decentralised system based on the existence of regional areas called Autonomous Communities. The previous principle of rigid uniformity gave way to an acceptance of the plurality of the peoples and territories of Spain.

Within this framework the Senate was set-up as the guardian of this plurality. As a counterpoint to the numerical or population-based representation of the Congress of Deputies, it was established in article 69.1 of the Constitution that "The Senate is the House of territorial representation." This is the precept most often referred to when speaking of the Spanish Upper House.

It should be noted, however, that provisions laid down in a law do not always lend themselves to perfect ratification in the real world. Moreover, the language of legal systems is naturally one of prescription rather than description. In attributing this territorial character to the Senate, the Constitution seems to be affirming what it would like to be the case but certainly not what really is the case. Even worse, in many cases the constitutional text does not furnish the legal data that would allow this reality to be confirmed.

The Spanish Senate — Make-up and Structure

1. All Senators are elected, either directly or indirectly. Each province elects four Senators by means of a majority-based, multi-candidate and restricted system. Voters can vote for up to three names, and the four candidates with the greatest number of votes are elected. Although electors can mix names of candidates belonging to different parties, the normal practice is for them to choose the names of the three candidates belonging to their favourite party, which appear in alphabetical order.

Due to the particular nature of the island provinces, the electoral constituency is the island. The three biggest islands (Mallorca, Gran Canaria and Tenerife) elect three Senators, while the smaller islands elect one each. This formula logically increases the number of island candidates in the House and favours the presence of Senators from small parties of an exclusively island scope.

There is also a number of Senators that are not elected directly but, as a reflection of the territorial basis of the Senate, are designated by the regional Parliaments and Assemblies of the Autonomous Communities. Each Autonomous Community, by right of being constituted as such, is entitled to designate one Senator. Each territory can then elect one more Senator for each million inhabitants living therein.

The Senators elected by this latter procedure account for about one-fifth of the chamber. It should be pointed out here that, despite the different designation system, there is no specific qualitative difference between the Senators chosen by one or the other method. Regardless of the election process, the Senators sit in the House under the political party they belong to rather than the territory from which they have been elected.

That said, there is the possibility of setting up territorial groups comprising Senators that, belonging to the same political party, have been elected or designated in the same territory. Nonetheless, this option has not been taken up on any grand scale in the chamber.

This electoral system results in a Senate of two hundred and fifty-nine members elected for a four-year term, unless the President of the Government exercises his/her right to propose early dissolution thereof. The Senators designated by the Autonomous Communities logically depend on the electoral vicissitudes of their home territories. In practice, there have normally been absolute majorities in the Senate. The party with a majority in the Congress of Deputies normally finds that this majority is seconded in the Senate as a result of the majority effect of its electoral system.

It is worth pointing out that even though article 115 of the Spanish Constitution recognises the right of the President of the Government to propose dissolution of each chamber separately and convene elections at different moments, this has never happened in practice and elections have, in fact, always been simultaneous in time.

2. As regards the organisational structure it should be remembered that the Senate forms part of a parliamentary complex called the Cortes Generales. The latter is a unique, bicameral Parliament, as laid down by article 66.1 of the Spanish Constitution:

> "The Cortes Generales represent the Spanish people and consist of the Congress of Deputies and the Senate."

Even so, the real situation and the constitutional text have favoured a wide-ranging autonomy for each chamber. Each one approves its own standing orders, elects its Speaker and Bureau and acts with ample liberty in all matters that are not common to both.

As part of this legislative autonomy the Senate approves its own Standing Orders, which constitute the basic institutional rules. The current Standing Orders are the revised text approved by the Senate Bureau on 3 May 1994, although it has subsequently been subject to partial reforms of a greater or lesser import.

Article 72.2 of the Spanish Constitution lays it down that "The Houses elect their respective Speakers and the other members of their Bureaus..."

In other words, there is a Speaker who presides over the Senate, whose basic functions are laid down in article 37 of the Standing Orders. It should be pointed out that the Standing Orders of the Senate are significantly more presidentialist than those of the Congress of Deputies, where the Speaker's powers are more circumscribed by the powers of the Bureau than of the Board of Spokespersons.

The main duties of the Senate Speaker are the following:

- to act as the Spokesman of the House and as its *ex officio* representative in all official acts;
- to convene and preside over the Plenary Sittings of the Senate and maintain the order of the discussions, direct the debates and summon and preside over the Bureau of the House;
- to convene and preside, if he or she considers it expedient, over any Committee of the Senate;
- to interpret the Standing Orders;
- to fill Standing Order gaps in liaison with the Bureau of the Standing Orders Committee; and
- to enforce parliamentary discipline.

In application of the provisions of article 72.3 of the Spanish Constitution, article 38 of the Senate's Standing Orders lays it down that "The Speaker shall exercise the supreme authority of the House in the Senate Palace and in all its other premises, adopt the relevant measures necessary to maintain order within its precincts, and release the appropriate orders to civil servants and security agents."

The Speaker is also responsible for establishing the daily agenda in agreement with the Bureau and after due consultation with the Board of Spokesmen (article 71.1). The authority of the Speaker's office is thus reinforced and rounded out at diverse points throughout the Standing Orders.

The Speaker also forms part of the Bureau of the House, the collective body made up by the Speaker himself/herself, two Deputy Speakers and four Secretaries. Article 35.1 of the Senate Standing Orders stipulates that "The Bureau, governing body of the Senate, acts under the authority and direction of its Speaker". It is thus a collegiate body elected in Plenary Session at the start of the legislature. Not all parliamentary groups have seats on the Bureau, but the latter plays an institutional and organisational role and is, therefore, less political in nature than the Board of Spokesmen, which we will deal with later.

The Bureau meets weekly and decides on the qualification and proceedings of all parliamentary initiatives as well as affairs of an administrative and internal management nature. The Bureau is advised and assisted by the Secretary General of the Senate, who is the head of its services and is accountable to the Speaker of the House.

Its role, therefore, is one of organization and distribution of the work in due accordance with parliamentary rules rather than political criteria.

There is also a Board of Spokesmen, made up by the Speaker, who convenes and presides over it, and by the Spokesmen of such parliamentary groups as may exist at any given time (article 43.1 of the Senate Standing Orders). Its meetings are attended by the government. The essential task of this body, which also meets on a weekly basis, is to collaborate in laying down the daily agenda. Its agreements are adopted on a weighted-vote basis, whereby each spokesperson represents the number of seats that he/she has in the House.

3. Article 75.1 of the Spanish Constitution stipulates that "The Houses will sit in Plenary Sessions and Committees."

The Constitution thus lays down the two main methods of parliamentary procedure.

The Senate Plenary brings together all Senators in a session called for that purpose with its corresponding agenda. Its sessions are convened and presided over by the Senate Speaker. These sessions are normally held every other week. These sessions are open to the public unless it be expressly agreed that their nature is secret; this can be done by the due parliamentary procedure or by an *ad hoc* agreement, though the latter procedure is extremely rare.

Besides the Plenary Sessions, the Senate also works in Committees. These committees may be Standing Committees or Special Committees.

Standing Committees are those defined as such in the Standing Orders and require no specific agreements to be set up. Standing Committees in turn may be legislative or non-legislative. The latter have no legislative powers and

deal with the following specific matters of the House (incompatibilities, requests, etc.); any matter to do with the Standing Orders (Standing Orders Committee); public petitions; Ibero-American affairs, examination of candidates for bodies that the Senate has to vote for (Appointments Committee) or new matters arising such as the Knowledge and Information Society.

The legislative Standing Committees, broken down into particular sectors (Defence, Overseas Affairs, Infrastructures, etc.), see to the control of the various Ministerial Departments and the processing of the legislative initiatives in each one of these areas.

Attention should be drawn here to a specific Senate Committee that has no opposite number in the Congress of Deputies: the General Committee of the Autonomous Communities. This is a very particular Committee in all its facets; not only Senators may take part in its work but also the Presidents and Regional Ministers of the Autonomous Communities. This represents a pragmatic and shrewd attempt to come up with a reasonable formula to enshrine the House's territorial character.

Under the Standing Orders this committee is also empowered to hold an annual debate on the State of the Autonomies, *i.e.,* on the scope and development of the territorial structure of the nation. In practice, the annual character of this stipulation has not been strictly adhered to.

Unlike the Standing Committees, the Special Committees require a Plenary Session agreement for their constitution. These committees may in turn be for study, survey or enquiry.

Enquiry Committees, provided for in article 76 of the Constitution, are set up to investigate any matter of public interest. Experience shows that the subject matter of their investigations, in fact, tends to be burning issues of political life bound up with real or alleged scandals. Unlike the other committees, the powers of the Enquiry Committees are backed up by the criminal law. Thus, people refusing to obey a summons of these committees run the risk of severe criminal action being taken against them. These committees are, therefore, theoretically the most powerful of all Senate committees.

The Study or Survey Committees are set up by the Senate to carry out an in-depth study of a current social phenomenon of special interest. By way of example, Study Committees have been set up to deal with violence in sport, forest fires, the pharmaceutical sector, television programmes, etc. These committees normally work by summoning leading figures from the area under study, gathering information on the matter at home and abroad and making study journeys, etc. Their final report on the matter in hand is submitted to a Plenary Session for approval or otherwise of its conclusions. These committees have often paved the way for legislative or other solutions to the specific problem under study.

Like the specific Senate Committees, there are also Mixed Senate-Congress Committees made up by members of both Houses. These mixed

committees may have been laid down in specific provisions or rules (*e.g.*, the Mixed Committee on Relations with the Ombudsman or the Court of Audit) or they may arise from specific agreements adopted at the same time in both chambers (*e.g.*, the Mixed Commission on Women's Rights, etc.).

It is also normal practice to set up small reporting groups within the committees. These are smaller bodies made up by several committee members to study a given matter — legislative or otherwise — and send in a written report thereon to the committee itself, which may then approve it as such, modify it or reject it. The smaller size and greater versatility of these small reporting groups make them very useful in the daily work of the chamber.

The Functions of the Senate

1. Legislative

As laid down in article 66.2 of the Spanish Constitution: "The Cortes Generales exercise the legislative power of the state..." In other words, the Senate together with the Congress of Deputies, is endowed with legislative powers, in principle with no other limitation than that of respect for the Constitution as the supreme law.

Subsequent wording of the constitutional text, however, converts the Senate into a second-reading chamber, barring very few exceptions.

And the fact is that almost all legislative initiatives start in the Congress of Deputies. The government is bound to submit nearly all bills to the latter House and it goes without saying that all initiatives stemming from the Congress of Deputies have their first reading in that chamber. Under the Constitution and its Standing Orders, however, the Senate has some legislative powers, namely the capacity of moving non-government bills that are then discussed and sent to the Congress of Deputies.

Normally, therefore, legislative initiatives pass through the Congress before coming to the Senate. The Senate is then bound to deal with these initiatives within two months (or twenty calendar days if the procedure is urgent). The procedural possibilities of the Senate are various:

(a) The Senate may, by absolute majority, veto the bill or non-government bill. In this case, the text is sent back to the Congress. The latter is then empowered to lift the veto forthwith by absolute majority or by simple majority two months after the veto was lodged. If the veto is never lifted the legislative initiative will have run its course without passing into law. If it is lifted, the legislative text will remain such as it was when originally sent from the Congress to the Senate, without any modification whatsoever.

(b) The Senate may also, by simple majority, move amendments to the text as sent by the Congress. These amendments, which may be of greater or lesser scope, are returned to the Congress in the form of a text (message with grounds) explaining the scope of the modifications. The Lower House may then vote to include some, all or none of the amendments in the legislative text. Experience shows that a very high proportion of Senate amendments are, in fact, accepted.

(c) The Senate may approve the legislative text in the same terms in which it has been received from the Congress, *i.e.*, without any modifications or additions. In this case, the text is sent directly for approval of H.M. the King and subsequent publication in the Boletín Oficial (Official State Gazette).

As we can see, the Spanish Senate plays a fairly subordinate role in this whole legislative process. The Congress always has the last word and it is only because of the innate soundness of the amendments moved or, more frequently, the mustering of broader agreement and support for the initiative during its passage through the Senate, that most amendments end up being accepted by the Congress.

2. International Treaties

The Spanish Constitution divides treaties or conventions into two major groups, depending on the parliamentary treatment thereof. Those dealing with matters coming under article 94.1 require the prior authorisation of the Cortes Generales before being ratified by the state.

These matters are the following:

- treaties of a political nature;
- treaties or conventions of a military nature;
- treaties or agreements affecting the territorial integrity of the State or the fundamental rights and duties laid down in Title I (of the Spanish Constitution);
- treaties or agreements that imply financial liabilities for the Public Treasury; and
- treaties or agreements that entail the modification or repeal of any law or which require legislative measures for their execution.

Remaining treaties or conventions imply only the obligation to inform the chambers once they have been concluded.

In this matter the powers of the two chambers are identical. In the event of failure to reach an agreement, a Mixed Congress-Senate Committee would be set up comprising an equal number of Deputies and Senators. The text drawn up by this committee would then be voted on by both chambers. Should disagreement persist, the Congress would decide by absolute majority.

3. Crown Affairs

Here again there is a certain parity between the two chambers, as article 74.1 of the Spanish Constitution states the following:

> "The Houses shall meet in joint session to exercise the non-legislative powers expressly conferred upon the Cortes Generales by Title II."

This is a very special procedure inasmuch as it provides for a solution in a single body: the joint session, an unusual feature in Spain's Constitution. In any case this formula avoids the classic shuttle procedure since the decision is adopted by a session including both Deputies and Senators.

4. The Territorial Function

It has already been pointed out that territorial representation is the main *raison d'être* of the Senate. It would, therefore, be logical to assume that this mission would be backed up by a hefty set of powers for the Upper House. This assumption is very far from being borne out by legislative texts; here lies, in fact, the weakest link in the constitutional system as far as it affects the Senate.

True, it is, that there are some special cases. For example, the so-called Fondos de Compensación Interterritoriales (funds designed to balance out inter-regional differences) are initiated, debated and processed in the Senate. In the event of disagreement the aforementioned Mixed Congress-Senate Committee would again be set up on a parity basis to find the solution.

The Cooperation Agreements and Management Conventions that the various Autonomous Communities can enter into between themselves are dealt with in a similar way when they require communication to the Cortes Generales or the authorisation thereof.

But in both cases it is a question of tasks and functions that usually turn out to be fairly low-key in practice.

More important is the provision made in article 155.1 of the Spanish Constitution, which runs as follows:

> "If an Autonomous Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way seriously prejudicing the general interests of Spain, the Government, after lodging a complaint with the President of the Autonomous Community and failing to receive satisfaction therefor, may, following approval granted by an absolute majority of the Senate, take the measures necessary in order to compel the latter forcibly to meet said obligations, or in order to protect the above-mentioned general interests."

This brings us up against an anomalous and truly exceptional situation in political life. Under the so-called "principle of federal intervention" the Senate would, in these cases, take measures of the most crucial import. The situations

are so exceptional, however, that these powers have never, in fact, been enforced during the current Constitution and it would be just as well if they were never enforced in the future. Hypothetically, therefore, these powers are of the most far-reaching scope but it would be undesirable for them ever to be applied in practice.

So much for the powers assigned to the Senate under the Constitution for exercising this grandiloquent task of "territorial representation". It is, hence, a paradoxical case of a function that is theoretically of the utmost importance but is not backed by any resources that would be remotely sufficient for the effective enforcement thereof. Hence, the ongoing great debate about a possible reform of the Senate.

The Senate reform debate

1. It could safely be claimed that the Senate reform debate dates right back to the very moment of approving the Constitution itself. Only the great impact of the new text quelled early doubts about the functionality of the House and its viability. But legal experts and jurists were already beginning to question the real constitutional role of the Senate.

From the early nineties onwards, the Senate reform began to find its way onto the agendas of the political parties without yet taking the centre stage. The debate as yet centred on the scope and extension of the reform. The overriding need for consensus in any constitutional reform meant that efforts focussed on the Senate's Standing Orders. After several years of work, a thoroughgoing reform of the Standing Orders was finally introduced in 1994. The main fruit thereof was the creation of a General Committee of the Autonomous Communities, through which regional governments were allowed to take part in the work of the Senate. An annual debate on the state of the Autonomous Communities was also set up and, more as a token gesture than anything else, permission was given on certain occasions for the use of languages other than Castilian Spanish that are recognised as co-official languages in the various Autonomous Communities.

The subsequent political development, however, has revealed an inability to turn the possibilities opened up by this reform to good account. It could thus be argued that the reform has in some ways turned out to be insufficient in practice.

2. So it is that, even though Spain's main political party has dropped the Senate reform from its manifesto, it still remains a live issue among jurists, albeit with widely differing opinions about how it should be brought about.

There are some who believe that the final result of the reform should offer a "more federal" Senate. In other words, the Senate should more clearly reflect the territorial plurality and diversity of Spain. Some nationalist strands of thought go one step further and claim that the Senate should reflect a much clearer distinction between the so-called "historical" or more traditional nationalities and those regions whose existence has been recognised only with the coming into force of the 1978 Constitution.

According to another line of thought, the Senate ought to apply itself to one of the most glaring shortcomings in Spain's constitutional development. Regional development has, up to now, been largely the result of the free bilateral interplay between each Autonomous Community and the State, especially in the case of the Basque Country and Catalunya. Instead of this action-reaction bilateralism, it is argued, there should be established mechanisms of coordination and integration to ensure the smooth development of regional affairs and especially the participation of each and every Autonomous Community in the matters that affect it most. Advocates of this line of thought believe that the Senate should play an integrative role by providing a regional forum of a parliamentary and overall character, one of the most deeply-felt lacks in the constitutional system.

Lastly, a third line of thought opts for a more evenly balanced Senate that would engender a better interrelation between the various parties that are loyally committed to regional development.

In all this affair, however, a salient feature of Spain's history should not be overlooked. It has always proven very difficult in Spain to secure a generally recognised legitimacy for constitutional texts. This has not been the case of the 1978 Constitution, which has enjoyed broad grass-roots support and has hence ushered in one of the calmest periods of most economic progress in Spain's history.

It is, therefore, often stressed that there should be an overwhelming consensus about both the reform of the Constitution and the text to be reformed. This is far from being the case today. As already pointed out, there is no degree of consensus about how the Senate should be reformed nor about whether this can be done in the short term. This is so, largely because the majority political party is no longer in favour of constitutional reform.

3. We should perhaps end this account with an overall reflection. When referring to the functional failing of the Senate it is usually affirmed that the House does not live up to its role of "territorial representation". And there the analysis generally ends. No study is usually made of whether it carries out its second-reading role correctly, nor whether the task of political direction assigned to its bodies is satisfactorily carried out. Neither is any consideration given to the level of satisfaction with the control exerted over the government.

I believe, however, that all these functions are satisfactorily carried out. The problem is that everything, absolutely everything, is measured by the yardstick of "territorial representation", precisely the task for which the Constitution endows the Senate with the skimpiest wherewithal. We, therefore, find ourselves up against the paradox of the Senate being asked to do most precisely where the means are most wanting. But this is simply not the fault of the Senate but rather the result of an obviously improvable system. Even so, this failing does not notably affect the sound operation of Spain's constitutional system and its Senate. What must be avoided at all costs is the tendency to

blame the Senate for lacks and defects in other areas of political and constitutional life. The Senate has contributed as far as its possibilities allow to the development of political life. Only those having biased views could blame the Second Chamber for the daily flaws that are evident in the operation of any constitutional system.

26

The Two Chamber System in Swaziland

D.S. MAGONGO

Parliament of the Kingdom of Swaziland has been bicameral since the country attained Independence in 1968. Both the Chambers were established by the Independence Constitution. The Establishment of the Parliament Order, 1978 inherited all the provisions relating to the establishment and composition of Parliament from the Independence Constitution, except for the increase in number of Parliamentarians. Likewise, the only effect of the Establishment of the Parliament of Swaziland Order, 1992 was to increase the number of Parliamentarians in both the Chambers.

The Parliament of Swaziland comprises ninety-five members — thirty from the Senate (Senators) and sixty-five from the House of Assembly. Out of the thirty Senators, ten are elected by the House of Assembly, and twenty are appointed by the King. Out of the sixty-five members of the House of Assembly, fifty-five are directly elected by the people — one member from each *Inkhundla* (constituency), and ten members are appointed by the King.

There are no specific provisions with regard to a place given to women, young people, religious groups, etc., but the Establishment of the Parliament Order, 1992 provides that those appointed by the King in either Chamber would include, *inter alia*, traditional leaders (Chiefs), members of the Royal Family (both categories are not eligible to stand for general elections due to their social positions in the Swazi Society) on a rotational basis and other special interests, which may include women, young people and members of religious groups depending on their representation in either Chamber of Parliament. The King appoints people with special knowledge or practical experience who will be able to represent cultural, economic and social interest and be able to contribute substantially to the good government of Swaziland.

The life of Parliament of the Kingdom of Swaziland is five years.

The Second Chamber has power to make laws as is the case with the other Chamber. Other than Money Bills, all legislation must be passed by both the Chambers. The Chamber does not have an independent budget.

The Independence Constitution created both the Chambers at the same time and this was prompted by the need to have a system that has in-built checks and balances. Each Chamber of Parliament acts as a check to the other Chamber.

The Chamber has, since its inception, been occupied by men and women of honour and have had fair representation of all societal interests. There have been Presidents and Senators with special knowledge and/or practical experience who have been able to represent cultural, economic and social interests and had contributed immensely to good governance in Swaziland.

The Chamber has not had much transformation except for the change introduced by the Establishment of the Parliament Order, 1978 on the number of Senators. In the Swaziland Independence Order, the House of Assembly elected six Senators and the King appointed another six Senators, while the Establishment of the Parliament Order, 1978 increased the number of Senators to twenty — ten elected by the House of Assembly and another ten appointed by the King. The Establishment of the Parliament Order, 1992, further increased the number of Senators to thirty — ten Senators elected by the House of Assembly and twenty Senators appointed by the King.

It is not envisaged that the Chamber could be abolished in the near future. The bicameral concept is *Idee recue* by all concerned. The two Chambers have maintained cordial mutual relationship. To have a two-Chamber Parliament is advantageous in that the system has its built-in checks and balances. It happens in some instances that the first Chamber commits an error or omits to include something very important in a Bill before it, only to find that the Second Chamber corrects error(s) or introduces amendments of vital importance, which would not have been part of that legislation, if there had been only one Chamber.

In Swaziland there is a future for the two-Chamber parliamentary system because all parties concerned are in favour of bicameralism. We would encourage African countries to experiment the Bicameral Chamber system so as to realize political stability. Swaziland owes its prosperity and political stability, partly to the bicameral Chamber system and political aspirants have not denounced or advocated for a change in the present two-Chamber arrangement.

All laws in Swaziland are enacted by the King with Parliament. Any piece of legislation has to be approved by both Chambers, and where there are disagreements, a joint sitting of both Houses is convened to enable both the Chambers to concur. A resolution of the Joint House Sitting becomes a resolution of Parliament whereafter the Bill is transmitted to His Majesty for Royal Assent. Both the Chambers of Parliament have got equal powers to enact laws except on Money Bills, including the Appropriation Bill over which the House of Assembly has more authority.

27

The Swiss Council of States

CHRISTOPH LANZ

Introduction

The Swiss Federal Constitution contains exactly one Article which is exclusively concerned with the Council of States (Art. 150). The powers attributed to the Swiss Federal Assembly, *i.e.,* to both Chambers of Parliament—the National Council and the Council of States — are dealt with in greater detail (Art. 148, 151—173). The explanation is simple: both Chambers have absolutely identical powers. This is probably the most striking characteristic of the Swiss bicameral system.

Composition of the Council of States

The Council of States consists of forty-six Deputies. In every canton, whether large or small, two members are elected to the Council of States. For historical reasons, there exist six 'half-cantons', namely, the two Basel, the two Appenzell, and lastly, Nid- and Obwalden, each of which sends but a single member to the Council of States. The composition of the Council of States corresponds to the American Senate.

The members of the Council of States are all elected by the people of their cantons. This was not always the case. Originally, in numerous cantons the cantonal parliaments elected Deputies to the Council of States. The election procedure is determined by cantonal law. Elections are based on the majority system, with the unique exception of the Canton of Jura which uses the proportional system.

The political composition of the Council of States corresponds to the majorities in the individual cantons. At present, the Radical Party sends eighteen members, the Christian Democrats fifteen members, the Swiss People's Party seven members and the Social Democrats, who represent the largest faction in the National Council, occupy six seats. The smaller parties to the left and to the right of the political spectrum which, in the National Council, enjoy representation as well, have no delegates in the Council of States. In this way, the Council of States differs from the National Council in that rural and

conservative electors are more strongly represented than the urban and progressive. On occasions, this fact has led to demands that the Council of States be done away with or changed. They have always been refused.

Tasks and functions of the Council of States

The basic powers and duties of the Council of States are set down in Art. 163 — 173 of the Federal Constitution. In the forefront are legislation, supervisory control of the Federal Council (government) and the Federal administration, approval of the budget, and approval of international treaties. All of these functions are shared by the Council of States and the National Council.

(i) Legislation

As in the past, legislation is and remains the central function of the Council of States. Here it is necessary to give a short description of the legislation procedure, since this also gives some indication about the relationship between the National Council and the Council of States.

As a rule, it is the Federal Council which submits to the Federal Assembly the draft of a new law or the revision of an existing law. Thereupon, the Chairperson (Speaker) of the National Council and the Chairperson of the Council of States decide in which of the two Councils deliberations on the bill should be conducted first. In doing so, they take into consideration the capacity of the standing committees as well as the distribution of a maximally balanced work-load to the two Councils. Next, the bill is assigned to one of the ten standing legislative committees. The bill is debated in committee within a deadline fixed by the relevant Council's Office, *i.e.,* the governing organ. The committee submits its proposals to the plenum of the first Council. Further to debate in the first Council, the bill goes to the second Council which holds consultations on the draft according to the same procedure. Quite often, the two Councils do not come to exactly the same decisions. If so, a procedure for resolving differences of opinion comes into play. All of those points on which there is disagreement between the two Councils, are then once again debated initially in the standing committee and subsequently in a plenary session of the first Council. The differences which still persist are taken up by the second Council. Draft bills can be dealt with a maximum of three times in the two Councils. Should disagreement still remain, a so-called conciliation conference is appointed. It has the same number of members from each of the standing committees, and is tasked with formulating a compromise proposal to be presented to the two Councils. In the last round, the two Councils can only make the decision whether to accept or to reject the compromise proposal. The legislative procedure ends with the two Councils' holding a final vote on the definitive text of the law which has in the meantime been re-edited accordingly.

Looking at the form which legislative procedure takes in Switzerland, you can see the extremely high value that is given to the equality of the two Parliamentary Chambers.

To complete the picture, I point out that the legislative procedure can also be set in motion by means of cantonal or a parliamentary initiative. A canton or a single member of Parliament can submit a general proposition or a concrete draft bill. In this procedure, it is the task of the standing committee to process the concrete draft bill, and to channel it to the plenum along with an accompanying commentary report. The Federal Council has the opportunity of expressing its position on the bill. In recent years, this procedure has been repeatedly applied with success.

The legislative function of the Council of States and the National Council can only be understood if we keep in mind Switzerland's political system. We refer to Switzerland, in fact, as a 'half-direct' democracy. With this, we touch upon our popular rights. Changes in the Federal Constitution are subject to a mandatory popular referendum, while changes in legislation are put to an optional referendum. In this way, the Federal Assembly, that is to say, Parliament, has the last say only in the so-called simple Federal Decrees, for instance, budget decisions. This naturally leads to a scenario in which interest groups and parties, namely the strong ones, begin to voice the threat of a referendum should the results not comply with their desires, already during the pre-parliamentary legislative procedures, and take up the same refrain during the parliamentary debates.

An initiative to amend the Constitution can also stem from the grass-roots level *via* a popular initiative. Parliament must then deliberate the matter within a given period of time, or it can confront it with a counter proposal which is put to vote at the same time.

Switzerland does not possess a parliamentary, but rather a 'half-parliamentary' system of government. For one thing, the government is elected for a fixed term of office, and the vote of no confidence procedure does not exist. Nor can individual members of the Federal Council be legally coerced to resign. Furthermore, the rights of the people have brought about a situation in which since 1959, the Federal Council is composed of a coalition of the four major parties. The history of the Swiss Federal State shows that the political groupings, which have acquired over a certain time a considerable potential to launch referenda, have been integrated into the government. In political practice, this implies that even the members of the government parties are not obliged to support governmental bills in Parliament. And so, different majorities and minorities are formed on a bill to bill basis. This is also the reason for the scant degree of factional discipline in the Swiss Parliament. At the same time, it explains the reason why the government's draft bills are so often modified, occasionally in key points.

Then too, it is significant that Constitutional Court jurisdiction with respect to decisions and decrees of the Federal Assembly is lacking. Till now, it has been refused primarily with the argument that it is inappropriate that a board of judges be able to declare a law null and void that has in certain circumstances successfully emerged from a popular ballot, or against which the people have consciously refused to seek a referendum.

Let us, therefore, keep in mind that as things now stand, the decrees of the Federal Assembly cannot be examined by the Federal Court as to their constitutionality. Just the same, the Federal Assembly is seldom the ultimate instance: the people hold the right to call a referendum.

(ii) Supervisory control

The Council of States together with the National Council has the further function of exercising supervisory control of the activities of the Federal Council and Federal administration. These activities are examined from two aspects, *i.e.,* with respect to the utilization of financial means, and with regard to the legality and the expediency of the work of the administration.

Every year, the Council of States approves the annual budget of the Confederation. In addition, there exists a continual control of finances. This task is conferred on the Finance Delegation, a board consisting of three members each from the Finance Committee of the National Council and the Finance Committee of the Council of States. The identical number of members from each of the two Councils once again provides you with an indication of the equality of the two Chambers. The Finance Delegation has the right to inspect any and all documents related to the budget and financial expenditures at any time, and to request information from the services and offices concerned. The Finance Delegation is supported by the Audit Office. This is a monitoring organ which is at the disposal of both the Federal Council for its supervision within the administration, and of the Finance Delegation for the financial supervision carried out by Parliament.

Supervision of the conduct of business by the Federal Council and the Federal administration also takes place on both a periodic and a continual basis. The Federal Council is obliged to submit to the Federal Assembly an annual report on its activities during the previous year. This business report is discussed by the Control Committees of the two Chambers, and subsequently approved in plenum by the Council of States and the National Council. A permanent scrutiny into the legality, expediency, efficiency, and effectiveness of administrative activities is similarly carried out by the Control Committees. They have a special right to consult documents and request information. For the interests of state security and intelligence, there exists a delegation of three members each from the Control Committees.

According to Swiss parliamentary regulations, it is possible to deploy a parliamentary investigatory commission to probe special events. This has happened four times up to present. Such investigatory commissions are set up by means of a Federal Decree of both Councils in which the mandate of the commission is also defined. Thus, there can be no investigatory commission set up by the National Council or by the Council of States alone. According to experience to date, the two commissions of investigation have always met together and submitted their proposals and their reports jointly to both Chambers. The investigatory commissions have a relatively broad legal scope of procedure. They are able to consult all documents and files, and they can interview both

officials and private individuals as sources or as witnesses. Just as with judicial procedures, the obligation to give evidence and furnish testimony can be implemented by threat of penal sanctions.

(iii) Approval of International Treaties

From the very beginning, the Council of States and the National Council have had the authority to approve international treaties. Approval is granted in a special decree. If need be, reservations can be attached to an approval.

There are certain types of international treaties which in usual practice are ratified by the Federal Council without the approval of Parliament. These include petty treaties, exceptionally urgent treaties, or administrative agreements. In figures, these even represent the majority of treaties entered into by Switzerland.

(iv) Approval of the Budget

Budget endorsement is still another important function of the Council of States and of the National Council. In the December session of Parliament, the Federal Council submits the budget for the coming year to both the Councils. There is a yearly rotation of first deliberating Council so that every second year, the Council of States is the first to discuss the budget. Once again you can see how strictly the equality of the two Chambers is observed in reality. Budgetary consultation follows the same course of procedure as for legislation. The Finance Committee makes proposals to the Council of States for eventual modifications or inclusions into the budget. After the budget has been dealt with for the first time in both the Councils, the resolution of differences takes place. Here too, after three shuttles between the Chambers, a conciliation conference is set up with the task of formulating a compromise proposal to be put before the two Councils.

(v) Evolution of the main functions of the Council of States

As time goes by, national legislation is more and more influenced by a multi-lateral legal standardization and by the laws set by the international organizations — keyword: globalization. Therefore, it is no longer sufficient for parliaments to approve an international treaty, as the latter can subsequently bias national legislation to a great extent. Consequently, the Swiss Parliament has established procedural laws, which are intended to provide it with a certain amount of influence in the international commitments which the Federal Council plans to negotiate. According to Art. 47bis a of the Geschäftsverkehrsgesetz, the Federal Council is obliged to inform the Chairperson of the Councils and both of the Foreign Affairs Committees on a regular basis and in a timely manner on the development of the foreign policy situation, on the projects being conceived in the framework of international organizations, and on negotiations with foreign states. With respect to negotiations on international treaties and those within the context of international organizations, the Federal Council must consult with the Foreign Affairs Committees before defining or changing the negotiations

mandate. The competence of the Federal Council to conduct the negotiations remains. There exists, however, a responsibility to inform and to consult, and this naturally has a political effect.

A second challenge emerges from the whole or partial autonomy being granted to heretofore state enterprises or administrative entities. In Switzerland, this development is known as the concept: New Public Management. The Swisscom, the Post, and the Swiss Federal Railways were already independent, public institutions. However, their budgets had to be approved by Parliament. They were also subject to the supervisory control of Parliament. Meanwhile, Swisscom has become privatized. The Post and the Federal Railways remain state enterprises although their operating freedom is being expanded. Their budgets are approved by the Federal Council — *i.e.*, the government, and no longer by Parliament. Some governmental offices of the central Federal Administration have also been granted autonomy (*e.g.*, the Swiss Meteorological Institute and the National Institute of Topography). They have been given an output mandate and a global budget.

As regards the global budgets, Parliament waives the right it normally has to exert its influence on the individual budget positions. But the supervisory control over autonomous administrative entities must also change. The procedures have not yet been found to ensure Parliament a sufficient influence in strategic decisions; neither can it be taken for granted that Parliament really wants to relinquish every bit of influence in the operational domain.

United Federal Assembly

We have repeatedly alluded to the fact that the National Council and the Council of States have identical powers and duties. This holds true with but one notable exception. For the election of the Federal Council, of the Federal Supreme Court, of the Chancellor of the Confederation and, in time of war, that of the Commander-in-Chief of the armed forces, both Councils meet in joint session known as the United Federal Assembly. This means that in the United Federal Assembly, the two hundred members of the National Council and the forty-six members of the Council of States sit together. Decisions are made on the basis of an absolute majority of the voting members, so that it is apparent that the members of the National Council predominate. The Chairperson of the National Council also presides over the United Federal Assembly, with that of the Council of States acting as vice-chairperson. The United Federal Assembly meets in the hall of the National Council, where every member of the Council of States also has a seat. Furthermore, it is the United Federal Assembly which has the authority to grant amnesty and pardon.

Relations with the cantons

The members of the Council of States are elected by the populations of their cantons; they are not the representatives of the cantonal governments. The Federal Constitution forbids the members of the National Council and those of the Council of States to vote according to instructions.

This rule was very consciously made part of the first Federal Constitution back in 1848. One of the weak points of former Diet of the cantons was precisely the fact that it was oftentimes incapable of making decisions since, at any given time, the cantonal deputies first had to receive instructions.

And so today, even though there exist no institutional contacts, there are indeed informal contacts between the members of the Council of States and the cantonal governments. In many cantons, the members of the Council of States are invited to a meeting with the cantonal government before the beginning of the parliamentary sessions. On such occasions, they discuss matters and issues which are of particular interest for the canton. In addition, further contacts naturally take place *ad hoc*.

Yet for the last few years, the cantons have demonstrated a strong need to be further drawn into a process of volition-building on the national level. In 1993, they founded a Conference of Cantonal Governments in order to foster cooperation and mutual agreement among the cantons and to enhance the interests of the cantons *vis-a-vis* the Confederation. Representatives of this Conference meet regularly with the Federal Council.

In a federalist State, it is imperative to draw cantons and the cantonal governments into the process of volition-building. The limit should be set at the point where the Federal authorities are obliged to act rapidly, such as in negotiations with foreign states or international organizations. In this respect, Switzerland is at present confronted with a great challenge regarding its relations with the European Union.

Future of the Council of States

The Council of States was created in 1848, in order to compensate the differences between large and small cantons, and to integrate both the winners and the losers in the civil strife known as the Sonderbund War into the new Federal State. The bicameral system was meant to ensure the need for a central organ of legislation on the one hand, and to guarantee the representation of the cantons on the other.

Is there a future for the Council of States? We believe there is. Switzerland still remains a conglomeration of minorities. Our population comprises four linguistic groupings, with an even larger number of dialects, and belongs to various religions. Switzerland consists of both rural and mountainous regions, as well as urban centres. Its economic strength varies from region to region. Federalism will continue to be one of the core principles of our Country in the twenty-first century as well. The Council of States can contribute to enabling the various minorities to keep participating effectively in the political process.

The Council of States is often referred to as the 'chamber of reflection'. Indeed, a more profound and more spontaneous debate is possible in the Council of States than in the National Council. This has to do with the fact that in view of the small number of Deputies and the homogeneous political composition,

there exist but few procedural limitations to the debates. Thus, floor time is unlimited, and the Council of States also finds the time to deal with personal motions and actions rapidly. Finally, we should mention the universal truth that four eyes see more and see better than two. There is a qualitative competition to be found between the two Chambers, plus a certain reciprocal control which, taken together, represent a clear advantage.

The existence of the Council of States would be a problem if elaboration of legislation were excessively drawn out or delayed. Now and then, it is argued that in today's fast-paced world, a bicameral Parliament is an unaffordable luxury. Studies have shown that the items of business are dealt with in the two Councils relatively quickly. It is only seldom that more than one procedural round is necessary in resolving differences of opinion. Naturally, it must be kept in mind that in Switzerland, there is more frequently a struggle for compromise since our government can, in fact, not reckon with a parliamentary majority. However, this is not a result of the bicameral system. Moreover, since many decisions must be confirmed by the people, it is worthwhile for bills to be thoroughly discussed in Parliament.

Conclusion

The challenge of the Council of States is the challenge of every Parliament in a modern democracy: to represent the population and to contribute to solve the problems of a country within a global environment.

28

The Role and Contribution of the Senate of Thailand

PHICHETH KITISIN*

Introduction

Since the promulgation of the first Constitution of the Kingdom of Thailand on 10 December 1932, Thailand has had now and then a Parliament of either unicameral or bicameral system.

Presently under the new Constitution which was promulgated on 11 October 1997, Parliament of Thailand is a bicameral system called the "National Assembly" which consists of the House of Representatives and the Senate.

The House of Representatives consists of five hundred members, one hundred of whom are elected on a party-list basis, and four hundred of whom are elected on a constituency basis. While under the said new Constitution, the whole two hundred members of the Senate are for the first time directly elected by the people.

Prior to the first General Election of members of the Senate in Thailand on 4 March 2000, all Senators were appointed by His Majesty the King with the recommendation of the Prime Minister, except the eighty indirectly elected senators on 24 May 1946 in accordance with the provisions of the Constitution of the Kingdom of Thailand, B.E. 2489 (1946).

Number of Senators

The present Senate of Thailand consists of two hundred members elected by the people.

The number of Senators for each Changwat (province) is calculated by having the total number of inhabitants of such Changwat divided by the determined number of inhabitants per one Senator.

*Article revised by Phicheth Kitisin

In the case where the office of senator becomes vacant for any reason whatsoever and an election of a Senator to fill the vacancy has not yet been held, the Senate shall consist of the remaining Senators.

Election and Constituency

In an election of Senators, the area of Changwat (province) shall be regarded as one constituency. There are seventy-six constituencies throughout the country (one Bangkok metropolis and seventy-five Changwats).

The person having the right to vote at an election of Senators may cast ballot, at the election, for one candidate only in that constituency.

A voter residing outside the Kingdom of Thailand has, for the first time, the right to cast ballot in an election in accordance with rules, procedure and conditions provided by the organic law on the election of members of the House of Representatives and Senators.

The election shall be by direct suffrage and secret ballot.

In the case where a Changwat can have more than one Senator, the candidates who receive the highest number of votes in respective order in the number of Senators that Changwat can have, shall be elected as Senators.

Candidacy Qualifications

(1) Being of Thai nationality by birth;

(2) being of not less than forty years of age on the election day;

(3) having graduated with not less than a Bachelor's degree or its equivalent; and

(4) having any of the following qualifications:

(a) having his or her name appear in the house register in Changwat, where he or she stands for election for a consecutive period of not less than one year up to the date of applying for candidacy;

(b) having been a member of the House of Representatives in Changwat where he or she stands for election, a member of a local assembly or a local administrator of such Changwat before;

(c) being born in Changwat where he or she stands for election;

(d) having studied in an educational institution situated in Changwat where he or she stands for election for a consecutive period of not less than two academic years before; and

(e) having served in the official service before or having had his or her name appear in the house register in Changwat where he or she stands for election for a consecutive period of not less than two years before.

Person being a member of or holding of other position of a political party has no right to be a candidate in an election of Senators.

Term of Office and Membership

The term of the Senate is six years as from the election day and membership of the Senate commences on the election day.

Termination of Membership

Membership of the Senate terminates upon :

(1) expiration of the term of the Senate;

(2) death;

(3) resignation;

(4) lack of any of qualifications to be a candidate in an election of Senators;

(5) being under any of the prohibitions to be a candidate in an election of Senators;

(6) being a Minister or other political official;

(7) acting in contravention of any of the following prohibitions :

(a) hold any position or have any duty in any State agency or State enterprise, or hold a position of member of a local assembly, local administrator or local government official except other political official other than Minister;

(b) receive any concession from the State, a State agency or State enterprise, or become a party to a contract of the nature of economic monopoly with the State, a State agency or State enterprise, or become a partner or shareholder in a partnership or company receiving such concession or becoming a party to the contract of that nature;

(c) receive any special money or benefit from any State agency or State enterprise apart from that given by the State agency or State enterprise to other persons in the ordinary course of business; and

(d) use the status or position of Senators to interfere or intervene in the recruitment, appointment, reshuffle, transfer, promotion and elevation of the salary scale of a Government official holding a permanent position or receiving salary and not being a political official, an official or employee of a State agency, State enterprise or local government organization, or cause such persons to be removed from office;

(8) the Senate passing a resolution for the removal of any senator from office by votes of not less than three-fifths of the total number of the existing members of the Senate or the Constitutional Court having a decision terminating his or her membership in accordance with the

provisions of the Constitution; in such case, his or her membership shall be deemed to have terminated as from the date of the resolution of the Senate or the decision of the Constitutional Court, as the case may be;

(9) having been absent for more than one-fourth of the number of days in a session, the length of which is not less than one hundred and twenty days, without permission of the President of the Senate; and

(10) having been imprisoned by a final judgment to a term of imprisonment except for an offence committed through negligence or a petty offence.

Main Functions of the Senate

Main functions of the Senate as provided in the provisions of the Constitution may be concluded as follows :

- to scrutinize bills approved by the House of Representatives;
- to watch over and control the administration of the State affairs;
- to approve important issues;
- to install qualified persons in independent organizations according to the Constitution; and
- to remove persons holding key political positions from office.

New Powers and Duties of the Senate

(a) To advice

The Senate has a duty to give advice to His Majesty the King for the Royal Appointments of the following positions :

(1) Election Commission : *a Chairman and four Commissioners*;

(2) Ombudsmen : *not more than three*;

(3) The National Human Rights Commission: *a President and ten members*;

(4) Constitutional Court: *a President and fourteen Judges of the Constitutional Court*;

(5) The National Counter Corruption Commission : *a President and eight members*;

(6) State Audit Commission : *a Chairman and nine members*;

(7) Auditor-General : *one*.

(b) To select

The Senate has a duty to select qualified persons of the following positions :

(1) Two members of the Judicial Commission of the Courts of Justice; and

(2) Two members of the Judicial Commission of the Administrative Courts.

(c) To approve

The Senate has a duty to approve qualified persons before appointment of the following positions :

(1) Appointment of qualified persons in the field of law or the administration of the State affairs as the Judges of the Supreme Administrative Court;

(2) Appointment of an administrative Judge as President of the Supreme Administrative Court; and

(3) Appointment of the Secretary General of the National Counter Corruption Commission.

(d) To remove from Office

The Senate has power to remove a person who is under the circumstance of unusual wealthiness indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law from office of the following positions :

(1) Prime Minister;

(2) Minister;

(3) Member of the House of Representatives;

(4) Senator;

(5) President of the Supreme Court of Justice;

(6) President of the Constitutional Court;

(7) President of the Supreme Administrative Court;

(8) Prosecutor General;

(9) Election Commissioner;

(10) Ombudsman;

(11) Judge of the Constitutional Court;

(12) Member of the State Audit Commission;

(13) Judge, public prosecutor or high ranking official in accordance with the organic law on counter corruption.

President and Vice-Presidents of the Senate

The Senate shall have one President and one or two Vice-Presidents who are appointed by the King from Senators in accordance with its resolution.

The President and the Vice-Presidents of the Senate hold office until the day preceding the date of the election of the new President and Vice-Presidents.

The President and the Vice-Presidents of the Senate vacate office before the expiration of the term of office under the previous paragraph upon :

(a) loss of membership of the Senate;

(b) resignation;

(c) holding a position of Prime Minister, Minister or other political official; and

(d) being sentenced by a judgment to imprisonment.

Powers and Duties of the President of the Senate

(1) To control and carry out the activities of the Senate;

(2) to be the Presiding Officer at the sitting of the Senate;

(3) to maintain order of the sitting of the Senate and its precincts;

(4) to represent the Senate in respect of its external affairs;

(5) to appoint the committees to carry out any beneficial activities to the Senate's affairs; and

(6) other powers and duties as provided by law or other functions stipulated in the Rules of Procedure of the Senate.

The Vice-Presidents have the powers and duties as entrusted by the President and act on behalf of the President when the President is not present or unable to perform his or her duties.

Senate Standing Committees

(1) Committee on Agriculture and Co-operatives;

(2) Committee on Communication;

(3) Committee on Finance, Banking and Financial Institution;

(4) Committee on Foreign Affairs;

(5) Committee on the Armed Forces;

(6) Committee on Tourism and Sports;

(7) Committee on Administration and Justice;

(8) Committee on Interior Administration;

(9) Committee on Labour and Social Welfare;

(10) Committee on Science, Technology and Energy;

(11) Committee on Education and Culture;

(12) Committee on Economics, Commerce and Industry;

(13) Committee on Public Health;

(14) Committee on Women, Youth and Elderly Affairs;

(15) Committee on Environment; and

(16) Committee for Checking the Minutes of the Sittings and for Considering the Disclosure of the Minutes of the Secret Sittings.

Distribution of Senators according to Gender

Men	179	89.50
Women	21	10.50
	200	100%

Distribution of Senators according to Age

40 - 44 years	28	14.00
45 - 49 years	28	14.00
50 - 54 years	27	13.50
55 - 59 years	25	12.50
60 - 64 years	62	31.00
65 - 69 years	22	11.00
70 - 74 years	4	2.00
75 - 79 years	2	1.00
80 - 84 years	2	1.00
	200	100%

Distribution of Senators according to Education

Bachelor's degree or its equivalent	104	52.00
Certificate over bachelor's degree or its equivalent	17	8.50
Master's degree or its equivalent	65	32.50
Doctorate degree or its equivalent	14	7.00
	200	100%

Distribution of Senators according to Profession

Pensioners	59	29.50
Former government officials	18	9.00
National or Local Politicians	17	8.50
Farmers	9	4.50

Lawyers	23	11.50
Social welfare workers or labour sector	9	4.50
Mass media	3	1.50
Commerce or Businessmen	35	17.50
Administrators	4	2.00
Independent private sectors	2	1.00
Doctors of Medicine or physicians	4	2.00
Teachers	5	2.50
Former state enterprise employees	3	1.50
Former military or police officers	4	2.00
Unknown or not specified	5	2.50
	200	100%

Distribution of Senators according to Religion

Buddhist	189	94.50
Muslim	8	4.00
Christian	3	1.50
	200	100%

Distribution of Seats according to Changwat (Province)

1. Krabi	1	13. Chiang Rai	4
2. Bangkok Metropolis	18	14. Chiang Mai	5
3. Kanchanaburi	2	15. Trang	2
4. Kalasin	3	16. Trat	1
5. Kamphaeng Phet	2	17. Tak	2
6. Khon Kaen	6	18. Nakhon Nayok	1
7. Chanthaburi	2	19. Nakhon Pathom	2
8. Chachoengsao	2	20. Nakhon Phanom	2
9. Chon Buri	3	21. Nakhon Ratchasima	8
10. Chai Nat	1	22. Nakhon Si Thammarat	5
11. Chaiyaphum	4	23. Nakhon Sawan	4
12. Chumphon	1	24. Nonthaburi	3

25. Narathiwat	2	51. Lop Buri	2
26. Nan	2	52. Lampang	3
27. Buri Ram	5	53. Lamphun	1
28. Pathum Thani	2	54. Loei	2
29. Prachuap Khiri Khan	1	55. Si Sa Ket	5
30. Prachin Buri	1	56. Sakon Nakhon	3
31. Pattani	2	57. Songkhla	4
32. Phra Nakhon Si Ayutthaya	2	58. Satun	1
33. Phayao	2	59. Samut Prakan	3
34. Phangnga	1	60. Samut Songkhram	1
35. Phatthalung	2	61. Samut Sakhon	1
36. Phichit	2	62. Sa Kaeo	2
37. Phitsanulok	3	63. Saraburi	2
38. Phetchaburi	1	64. Sing Buri	1
39. Phetchabun	3	65. Sukhothai	2
40. Phrae	2	66. Suphan Buri	3
41. Phuket	1	67. Surat Thani	3
42. Maha Sarakham	3	68. Surin	4
43. Mukdahan	1	69. Nong Khai	3
44. Mae Hong Son	1	70. Nong Bua Lum Phu	2
45. Yasothon	2	71. Ang Thong	1
46. Yala	1	72. Amnat Chareon	1
47. Roi Et	4	73. Udon Thani	5
48. Ranong	1	74. Uttaradit	2
49. Rayong	2	75. Uthai Thani	1
50. Ratchaburi	3	76. Ubon Ratchathani	6
			200

Secretariat of the Senate

The Senate's administration is headed by the Secretary-General of the Senate under the supervision of the President of the Senate.

In the performance of his or her duties, the Secretary General of the Senate is assisted by Deputy Secretaries General of the Senate, Assistant Secretaries General of the Senate and all directorates of the Secretariat of the Senate.

For further and general information, please contact the following addresses:

(a) Foreign Relations Division,
Secretariat of the Senate,
4, U-Thong Nai Road,
Khet Dusit, Bangkok 10300,
Thailand.

Tel: 66 2 244-1737 (Director)
Fax: 66 2 244-1562
E-mail: sfrd@parliament.go.th

(b) Documentation and Legislative Services Center,
Secretariat of the Senate,
4, U-Thong Nai Road,
Khet Dusit, Bangkok 10300,
Thailand.

Tel: 66 2 244-1756 (Director)
Fax: 66 2 244-1576
E-mail: dlsc@parliament.go.th

29

The Senate in Trinidad and Tobago

NORMA COX

The Senate of Trinidad and Tobago came into being by the 1961 Constitution prior to Independence in 1962, "in response to the wishes of those who desired that there should be 'checks and balances' to control possible excess or hasty legislation on the part of the elected representatives and, moreover, to extend opportunities for public service to the more conservative members of society who felt that, with the prevailing political climate, they were unlikely to gain representation *via* the ballot box."

The Constitution provides that a person is qualified for membership in the Senate if he is a citizen of Trinidad and Tobago of the age of twenty-five years or upwards.

Composition

Currently the Senate consists of thirty-one members, who do not face the polls in a general election but are appointed by the President of the Republic in the following fashion :

Sixteen upon the advice of the Prime Minister — Government Senators

Six upon the advice of the Leader of the Opposition — Opposition Senators

Nine in the President's own discretion — Independent Senators

This arrangement assures that the Government always has a majority of one.

A Government Senator can be appointed as a Minister or Parliamentary Secretary, with the exception of the position of the Prime Minister. A Government Senator may, however, act as the Prime Minister.

Senators vacate office upon a dissolution of Parliament and their appointments can be revoked by the President acting in his own discretion with respect to the nine Independent Senators or on the advice of the Prime Minister, the Leader of the Opposition, as the case may be.

The Presiding Officer in the Senate, the President of the Senate, is usually appointed from among the Government Senators.

Independent Senators

The Independent Senators, as the name suggests, do not vote along any party lines, but vote according to their own conscience. They are usually persons who have a great wealth of expertise in diverse fields of endeavour. Among the current Independent Senators are University Professors in Zoology and English Literature, Senior Counsel, a medical doctor and an economist. This expertise has often been instrumental in the passage of more effective legislation.

The Senate enjoys similar privileges to those of the House of Representatives. Legislation may be introduced in either House first. The only exceptions to this are "money bills", or legislation pertaining to finance, which must be introduced in the House of Representatives first.

Length of Debate

Members in the Senate do not enjoy the length of debating time as the House. Whereas members of the House of Representatives have forty-five minutes to debate, and an extension of thirty minutes if approved by the House, Senators have forty-five minutes in the first instance and an extension of fifteen minutes if approved by the House. This constitutes one of the greatest differences between the two Chambers.

30

The House of Lords: Britain's Second Chamber in Transition

J. M. DAVIES

The House of Lords is the United Kingdom Parliament's Second Chamber.[1] The long and eventful history of the British Parliament, together with the largely unwritten British Constitution, mean that the House of Lords has slowly evolved into a unique, complex, and interesting institution. The House of Lords is currently going through a process of major reform, so today is a particularly good time to examine its characteristics.

The House's main characteristics include:

- its non-elected membership;
- its long history and the evolution of its functions;
- its wide-ranging role as a legislature;
- the fact that compared to other legislatures it has few rules governing its procedures; and
- the fact that members (except for a few office-holders) are part-time and unpaid.

Membership of the House of Lords

One of the most distinctive features of the House of Lords is its membership. The number of members (about 700 at the time of writing this article) is large for a legislature; in contrast to most legislatures, members are not elected by the citizens of the country; and members remain members for life.[2] Most members are not professional or career politicians, many are at, or near, the end of their careers in other walks of life, and for others their membership is an honour and not a job.

Until the 1999 reform of the membership, the granting of a peerage automatically conferred membership of the House of Lords.[3] A peerage is an honour given by the Crown, normally on the recommendation of the Prime Minister of the day. Persons given a peerage have the title "Lord" or "Lady". There has always been a close connection between the House and the

aristocracy, dating from the days when it was believed that the upper classes and the landed gentry needed separate representation in Parliament.

Until 1958, all peerages[4] were hereditary; and the title and the right to sit and vote in the House of Lords passed from father to son. In 1958, life peerages were introduced, the title and right to sit in Parliament died with its holder and did not pass to his heirs. Since 1958, the House has contained both hereditary and life members, but the creation of life peers rather than hereditary peers soon became the norm. By 1999, the numbers of each type were approximately equal (six hundred and fifty-hereditary, five hundred and fifty-life). A reform of the House's membership in 1999 reduced the number of hereditary members to ninety-two, so today the vast majority of members are life peers (*see* Table 1).

The number of hereditary peers remained fairly constant over the years because most hereditary peers were succeeded by their heirs. But the number of life peers has increased enormously since 1958, to more than six hundred in June 2001. Fairly large number of new life peerages are created on a regular basis. These various factors explain why the total membership of the House is very large. Before the 1999 reform it was one thousand two hundred and ten in total. After the 1999 reform, it was six hundred and sixty-six. So, although the membership was cut by about half only two years ago, the House still has the largest membership of any chamber in the world.

Types of member

The House of Lords today is made up as follows:

- Life peers created under the Life Peerages Act 1958;
- Lords created for life under the Appellate Jurisdiction Act 1876 (as amended) to serve as Lords of Appeal in Ordinary;
- ninety hereditary peers elected by members of the House pursuant to the House of Lords Act 1999;
- the Earl Marshal;[5]
- the Lord Great Chamberlain;[6]
- the archbishops of Canterbury and York;
- the bishops of London, Durham and Winchester; and
- twenty-one other diocesan bishops of the Church of England according to seniority of appointment to diocesan sees.

All members must be aged twenty-one years or over.

Life peers

It will be seen from Table 1 that life peers now make up more than eighty-five per cent of the House. Life peers are persons drawn from many sections of society. They are usually persons who have achieved eminence in their chosen professions, and who are therefore, generally, middle-aged or older. Life peerages

are also given to politicians retiring from the House of Commons; and a tradition has grown up that former Cabinet Ministers and Speakers of the House of Commons are entitled to peerages on their retirement from the Commons. The power of appointment to the House of Lords is a significant source of patronage for a British Prime Minister. He usually invites the other party leaders to advise on nominations for peerages from among their own party ranks. Recently, a new independent appointments commission has been established to nominate non-political members of the House known as Crossbench peers.

Law Lords

Life peers created under the Appellate Jurisdiction Act 1876 are known as 'Lords of Appeal in Ordinary'. They are in fact the country's senior judges and sit in the House because the House has a judicial function as the supreme court. There are up to twelve Lords of Appeal in Ordinary at any one time but they must retire at the age of seventy. However, after retirement they remain as full members of the House and keep their right to sit and vote until death.

Bishops

The Church of England alone is represented by its senior clergy. While they are members of the House, the archbishops and bishops have all the rights enjoyed by other members. They take it in turns to read the daily prayers at the beginning of business. The archbishops and bishops are the only members of the House who are not members for life, as they are replaced upon retirement from their dioceses at the age of seventy.

Hereditary peers

The 1999 reform of the House's membership was embodied in the House of Lords Act 1999. The Act allowed ninety-two hereditary peers to remain as members of the House and these are now the only peers who are hereditary members. However, their heirs will not succeed them, as in the past. They make up 13.5 per cent of the House, in contrast to the situation before the Act, when hereditary peers accounted for 53 per cent of the House's membership (*see* Tables 1 and 2).

Table 1

Composition of the House of Lords analysed by type of peerage (as of 01/05/2001)

Life peers under the Life Peerages Act 1958	(106 women)	533
Life peers under the Appellate Jurisdiction Act 1876	(0 women)	28
Archbishops and bishops	(0 women)	26
Hereditary peers under the House of Lords Act 1999	(4 women)	92
Total:		679

Source: House of Lords Information Office

The House of Lords Act 1999 and the change in the basis of membership

The House of Lords Act 1999 removed the link between hereditary peerages and membership of the House, and changed the House's composition dramatically. The Act was another contribution to the long debate about the House's composition that has been going on for over two hundred years. As Tom Paine wrote in *The Rights of Man* (1791), "the idea of hereditary legislators is as inconsistent as that of hereditary judges; and as absurd as an hereditary mathematician or an hereditary wise man; as absurd as an hereditary Poet Laureate." Also, for at least the last hundred years, the majority of hereditary peers have been members of the Conservative party, who voted against legislation put forward by Liberal and Labour governments. The Conservatives had a significant majority in the House of Lords throughout the nineteenth and twentieth centuries; and even after the 1999 reform they remain the largest party.

After eighteen years of Conservative party rule, during which time there were no government proposals for Lords reform, the Labour party came to power in 1997. In their 1997 election manifesto the Labour pledged:

> "As an initial, self contained reform, not dependent on further reform in the future, the right of hereditary peers to sit and vote in the House of Lords will be ended by statute. This will be the first stage in a process of reform to make the House of Lords more democratic and representative. The legislative powers of the House of Lords will remain unaltered."[7]

The Labour government elected in 1997 introduced the House of Lords Bill at the beginning of the 1998-99 session. The bill stated that: "*No-one shall be a member of the House of Lords by virtue of an hereditary peerage*." The bill easily passed the Commons, where the government had an enormous majority. When the bill reached the House of Lords, where the government had no majority, it met with opposition from many of the six hundred and forty-seven hereditary members and from the Conservative party as a whole. Faced with these political difficulties and the threat of obstruction to the rest of the government's legislation, the government reached a compromise. A deal was struck by the Prime Minister and the leader of the Conservative opposition in the House of Lords, Viscount Cranborne. Under the deal (for which Mr Hague, the Leader of the Conservative party, dismissed him) Viscount Cranborne promised to restrain his party's attack on the government's legislative programme and to accept the House of Lords Bill. In return, the government would spare ninety-two of the hereditary peers until a more comprehensive, second-stage reform of the House was undertaken.

It was decided that of the ninety-two hereditary peers who would stay, two would be ceremonial office-holders: the Lord Great Chamberlain and the Earl Marshal. Fifteen would be elected by the whole House to act as deputy speakers, to sit on the woolsack when the Lord Chancellor[8] was absent, or to chair committees. The remaining seventy-five would be elected on a party basis by their fellow hereditary peers. The number of hereditary peers that each party or group[9] was entitled to elect reflected the party balance among the hereditary

members of the House who were to be expelled under the bill. Thus, the Conservatives were entitled to elect forty-two, the Liberal Democrats three, Labour two and the Crossbenchers twenty-eight.

Each hereditary peer wishing to remain was allowed to submit a statement of seventy-five words outlining why he or she should be chosen to stay on. On 27 and 28 October 1999, the whole House went to the ballot boxes to decide which of the thirty-three hereditary peers who had put themselves forward under the deputy speakers' category should remain. On 29 October 1999, the fifteen winners were announced. Some of those who were not successful went on to stand for the party-political places. On 3 and 4 November 1999, the hereditary peers in each party or group went to the ballot to determine which of them would stay. The result was announced in the Chamber on 5 November. Six days later, on 11 November 1999, the House of Lords Bill received Royal Assent and became an Act of Parliament.

Party membership today

The effect of the 1999 Act on the party balances in the House can be seen in Tables 2 and 3. The removal of the hereditary peers reduced Conservative numbers significantly. The Labour party went from having sixty per cent fewer peers than the Conservatives to having twenty-three per cent fewer. The subsequent creation of fifty-one new life peers, twenty-three of whom took the Labour whip, resulted in more of a balance between the two major parties (*see* Table 3). The ninety-two hereditary peers that remain in the House continue to take an active role in its daily proceedings. (It is interesting to note that fourteen expelled hereditary peers were among the fifty-one persons given life peerages.)

Table 2

Party composition of House at end of 1998-1999 session (before membership reforms)

Party	Bishops	Hereditary peers	Life peers	Total
Conservative	—	310	174	484
Labour	—	19	174	193
Liberal Democrat	—	23	49	72
Crossbench	—	226	129	355
Archbishops and bishops	26	—	—	26
Other (including members of minority political parties)	—	69	11	80
Total :	26	647	537	1210

Source: House of Lords Information Office

Table 3

Party composition of House at beginning of 1999-2000 session (after membership reforms)

Party	Bishops	Hereditary peers	Life peers	Total
Conservative	—	52	182	234
Labour	—	4	178	182
Liberal Democrat	—	5	49	54
Crossbench	—	31	132	163
Archbishops and bishops	26	—	—	26
Other (including members of minority political parties)	—	—	7	7
Total :	26	92	548	666

Source: House of Lords Information Office

Further reforms

While the House of Lords Bill was going through Parliament, a Royal Commission was examining further reform of the House. The Commission was chaired by Lord Wakeham, a former Conservative Cabinet Minister and Leader of the House of Lords. The Wakeham Commission's remit included examination of the composition, powers and functions of a Second Chamber that would complement, but not challenge, the House of Commons. The Commission took evidence from peers, MPs, academics and the public.

The Commission reported in January 2000. Wakeham recommended a new Second Chamber of around five hundred and fifty members. A significant minority of these would be 'regional members' chosen to reflect the balance of political opinion within each nation or region of the United Kingdom. Regional electorates would have a voice in the selection of these members of the new Second Chamber. But Wakeham recommended that the majority of members of the new House should be appointed on the nomination of an independent appointments commission whose remit would be to create a Second Chamber broadly representative of British society, including gender and race. The appointments commission would also ensure that the independent or Crossbench peers continued to make up about twenty per cent of the Lords. Wakeham recommended that the appointments commission should secure among the politically affiliated members a political balance to match political opinion in the country as a whole, as expressed in votes cast at the most recent general election. He envisaged that all existing life peers would become members of the new Second Chamber.

One immediate consequence of the Wakeham recommendations was that last year the government established an independent appointments commission. However, this commission has a more limited remit than that proposed by Wakeham: it is only responsible for nominating people to be Crossbench peers, and party nominations continue to be made by the Prime Minister. The new appointments commission invited applications from people who wished to be peers. This was a significant departure from the traditional method of nomination, as it was first time that people could put themselves forward. In April 2001, the first list of peers nominated by the appointments commission was announced. The list was criticised in some quarters on the ground that, although those on the list were very distinguished, they were not noticeably different from the type of people who had traditionally been nominated by the Prime Minister.

The Labour party manifesto for the 2001 general election stated that:

> "We are committed to completing House of Lords reform, including removal of the remaining hereditary peers, to make it more representative and democratic, while maintaining the House of Commons' traditional primacy. We have given our support to the report and conclusions of the Wakeham Commission, and will see to implement them in the most effective way possible. Labour supports modernisation of the House of Lords procedures to improve its effectiveness. We will put the Independent Appointments Commission on a statutory footing."[10]

It seems reasonable to assume, therefore, that further changes to the House of Lords can be expected.

Government and politics in the House of Lords

Members of the House of Lords can choose to take a party whip and sit as a member of one of the main political parties, or they can choose to be politically neutral and sit as a Crossbench peer. A consequence of peerages being held for life is that the party balance of the House does not reflect that of the House of Commons. It is possible for a party to have an overwhelming majority in the House of Commons but still be a minority party in the House of Lords. This is in fact what happened after the 1997 general election in which the Labour came to power. After this election the Labour party held four hundred and eighteen out of six hundred and fifty-nine seats in the Commons. This was two hundred and fifty-three more seats than the Conservative party. However the Conservatives still had their traditional majority in the House of Lords. In the period between the 1997 and the 2001 general elections, many new peerages were created on the recommendation of Prime Minister Blair and these redressed to an extent the party imbalance in the Lords between the government and opposition parties.

Government ministers in the Lords

After a general election, it is the party that has won most seats in the House of Commons which forms the government. The members of that party are also the ones to sit on the government benches in the Lords, even though they may be a minority in that House. A number of peers from the governing party are appointed by the Prime Minister to act as ministers and represent the

government in the Upper House. The Lord Chancellor and the Leader of the House of Lords are invariably members of the Cabinet. In the 2000-01 session, there were, in addition to these two Cabinet Ministers, twelve other departmental ministers in the Lords, plus five or six whips. Because of their smaller numbers, government ministers in the Lords often have to represent a number of departments and to be briefed on a wider range of issues than ministers in the Commons.

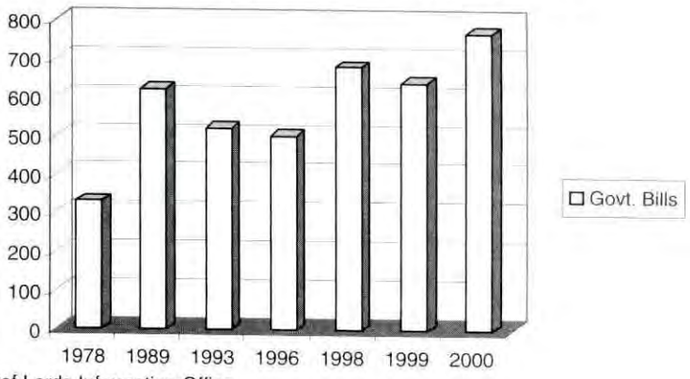
Party discipline in the Lords

The power of any government is weaker in the Lords than in the House of Commons because party discipline is weaker. Party whips in the Lords cannot expect the same levels of obedience or regular attendance from their backbenchers as in the Commons. This is partly because peers do not need to worry about getting re-elected, nor do they have to worry about their party deselecting them. Moreover, the attraction of ministerial office holds less sway in the Lords than in the Commons where most members are career politicians. So in the Lords backbench and cross-party rebellions are fairly common.

An important factor that reduces the government's power in the Lords is that none of the House's standing orders gives priority to government business over other business. In the Lords it is usual for about sixty per cent of sitting time to be taken for government business, but no time is formally put aside for the government's use. The government must win agreement among the other party whips and business managers for time for government business, although there is an understanding that the government should ultimately be able to get its business through. The reason for this will be explained later, when the "Salisbury Convention" is described. In the latter part of the twentieth century there was a trend for the government (regardless of its political complexion) to take more and more of the House's time for its own business (*See* Table 5). This was due in part to the increasing volume of legislation and in part to the shortage of time in the Commons to scrutinise and improve bills.

Table 5

Time spent in the Lords on government bills (hours)



Source: House of Lords Information Office

Business management

Behind the scenes many arrangements and compromises are made between the parties through a system known as the "usual channels". This phrase refers to the working relationship between the whips of all the main parties. It is through the usual channels that the timings of bills and debates are agreed, information about possible areas of disagreement is dispersed and other issues affecting the House are initially thrashed out. The agreement of the usual channels prevents many potential problems from coming before the House and taking up the valuable time that needs to be spent on revising legislation and scrutinising the executive. This arrangement is integral to the workings of a largely self-regulating chamber.

The functions of the House of Lords today

The House has four main functions (leaving aside its judicial function):

- to examine and revise bills brought from the Commons;
- to initiate bills, mainly of a non-controversial character;
- to delay the passing into law of a controversial bill so that the opinion of the nation can be expressed on it (especially one affecting the Constitution); and
- to scrutinise the executive, by its Committee work and by questions to Ministers and in debates.

Revising legislation

A main role of the House is as a revising chamber for legislation. With the increasing amount of legislation in modern times, there has come great pressure for more checking, scrutinising and debating of bills. This work would be a tremendous burden for one chamber but is more manageable for two. The House of Lords sits for approximately the same number of days a year as the Commons, but has no role in connection with finance and taxation. So it has time for other work, such as revising legislation. The Lords can also provide a different, more reflective atmosphere for the consideration of legislation than that provided by a predominately party-political chamber.

The work of the House of Lords as a revising chamber is highly regarded. In the 1999-2000 session, for example, the House spent 62.1 per cent of its total sitting time on consideration of public bills. In a typical year the House makes between 1,500 and 2,000 amendments, most of which the House of Commons accepts. The majority of amendments agreed to in the Lords are those proposed by the government. These often result from discussions on the bills in the Commons (where most large government bills are introduced). However, other amendments are proposed by backbench and opposition peers, whose experience and knowledge make them well qualified to scrutinise legislation. These amendments are sometimes accepted by the government.

The legislative procedures of the House are well suited to a revising function. There are no time limits or guillotines within which consideration of bills must be completed. There are no limits on the number of amendments that may be tabled. There is no selection of amendments, which means that every amendment that is tabled may be moved, debated and voted on. There are no restrictions on debate in committee of the whole house, where the bulk of legislation is considered. Amendments may be tabled not only at committee and report stage but also at third reading. Manuscript amendments of which no notice is given are also in order at committee and report stage. The main purposes of third reading amendments are to clarify remaining uncertainties, to improve the bill's drafting and to enable the government to fulfil undertakings given at earlier stages of the bill's passage. Such attention to detail fits well with the revising function.

Members of the House table a large quantity of amendments but the number of amendments actually made is much smaller. In the 1999-2000 session 10,982 amendments were tabled but only 4,736 amendments were made. The majority were government amendments to tidy up government bills. The government suffers few defeats compared to the number of amendments tabled. Only thirty-four of the amendments made in 1999-2000 were made as a result of a government defeat. Reasons for the few government defeats include the fact that the government often accepts opposition and backbench amendments and that many amendments are only tabled to probe the government. But there is nevertheless an important contrast here with the House of Commons, where a government defeat on a government bill is rare.

The initiation of legislation

Pressures of time in the Commons mean that the Lords can usefully initiate legislation. Bills may have an easier and speedier passage through the House of Commons if they have been fully discussed and put into a well-considered form by the Lords before being sent to the elected House. Here the Lords can complement the role of the Commons, can help to improve the quality of legislation, and can contribute to Parliament's work in scrutinising the government.

The delaying power

For much of the first six hundred years of the British Parliament, the House of Lords was either the more powerful House or an equal partner with the Commons. However, in the nineteenth century this changed as democracy grew, and the elected House of Commons began to gain dominance. The Commons' dominance is now recognised in statute (*see* below). Today the Upper House is seen as a chamber that complements in a worthwhile way the work of the Commons and does not normally challenge it. Nevertheless, with the exceptions described below, the agreement of the Lords is needed to all legislation. The House has the power to delay bills and can force the government to reintroduce a bill in a later session of Parliament. This is a valuable power.

However, it is rarely used. In modern times the power to delay has been used more as a threat to ensure that the lower chamber takes the upper chamber's revising role seriously than as a means of keeping the democratic chamber in check. This is not to say that the House of Lords has no role in providing a check on the powers of the House of Commons, but this check is today primarily concerned with stopping the lower chamber from carrying out dramatic constitutional changes without proper consultation and agreement. For example, the House has a veto over any legislation that would extend the life of a Parliament.

The Parliament Acts and limitations on the power of the Lords

The Parliament Act 1911 was the first statutory limitation of the powers of the House of Lords. It abolished the power of absolute veto on legislation that the House had previously held and replaced it with a power to delay legislation for up to two years. After that period, bills could become law without the consent of the Lords. The 1911 Act also formally limited the powers of the Lords over money bills, where the Commons' dominance had long been acknowledged by convention. The Act reduced the Lords' power to delay these bills to just one month. There were however a few types of legislation over which the House retained the power of veto: bills to lengthen the life of a Parliament, private bills and statutory instruments.

The Parliament Act 1949 reduced the period during which the House of Lords could delay legislation from two years to one. The passing of the Parliament Act 1949 was itself accompanied by heated debate in the Lords over reform of the House's composition (which was not affected by the final bill). Because of these disagreements the 1949 Act had to be passed under the provisions of the Parliament Act 1911, as the Lords could not agree to a version that the Commons would accept. The fact that the Parliament Act 1949 was passed in this way was controversial and has given rise to further controversy about the use of the powers under the 1949 Act, given the circumstances in which it was enacted.

The Salisbury Convention

In 1945 the Labour Party came to power with a large majority. Despite the fact that the Lords was still dominated by Conservatives, there was little disagreement between the two chambers. This was partly due to a set of new guidelines on the exercise of the Lords' powers. These guidelines are known as the Salisbury Convention because it was the then Conservative leader in the House of Lords, the Marquess of Salisbury, who expounded them. According to the Salisbury Convention, the Lords do not reject any legislation that has been supported by the electorate. Thus the House of Lords does not oppose at second reading (when the principle of a bill is decided) any government bill which has been outlined in government party's manifesto at the previous general election. The Convention was an acknowledgement of the old constitutional maxim that "the King's government must be carried on", or in more modern language, that governments, and the elected House which sustains them, must have the last

word. The Salisbury Convention continues to be observed today, although there has been debate about its future.

Debating important issues and scrutinising the government

Revising legislation is one aspect of Parliament's wider work of scrutinising the executive and calling it to account. There are several other scrutiny mechanisms: debates, oral and written questions to the government, and select committees. Table 5(A) shows how the House divides its time between these methods of scrutiny. Select committee work takes place off the floor of the House, but committee reports are debated in the House and so debates on committee reports are included in the Table under the same heading as more general debates.

Table 5(A)

Division of time on the floor of the House

	Percentage of time spent			
	1999-00	1998-99	1997-98	1996-97
Starred questions (short oral questions not leading to debate)	6.0	5.9	6.4	6.6
Unstarred questions (oral questions leading to full debate)	7.3	7.6	9.4	5.8
Debates	15.4	20.1	18.1	23.1
Statements	3.3	4.4	4.5	1.9
Public Bills	62.1	56.1	53.9	52.8
Private Bills	0.1	<0.1	0.2	0.6
Statutory Instruments	2.8	3.2	3.4	4.7
Other (including Church of England Measures, formal business, adjournments during pleasure and PNQs)	1.5	1.2	1.8	2.4

Source: House of Lords Information Office

Debates

Any member of the House may initiate a debate. Because there is no Speaker of the House with the power to call members to speak, the order of speakers is listed in advance. Debates are wound up with speeches from the opposition frontbenches and the final speech is usually given by a government minister, who sets out the government's position on the points raised in the debate.

A parliamentary session begins with a debate on the Queen's Speech delivered at the State Opening of Parliament. This debate lasts several days. The Queen's Speech sets out the government's plans for legislation to be introduced in that session. The debate on the Speech covers all the general areas of public policy (*e.g.*, health, home affairs, foreign affairs). This debate gives all members an opportunity to state their views on the government's general plans for the session.

Most other debates take place on motions, of which there are several varieties. Debates may also take place on unstarred questions, a form of mini-debate. The purpose of most motions is to allow a peer to draw attention to a topic and hear the views of others, particularly the government. But motions do not usually call for specific action by the government.

The House has few rules of debate, but the discussion must be relevant; and it is the House itself that decides what is relevant to a debate. Members may speak only once in a debate, and they are not allowed to read their speeches. Time is almost always found for debates and most Wednesdays are set aside for them. In many debates there is an overall time limit, say three, five or six hours. This means that speeches are limited to a specific number of minutes and speakers who take up more than their allotted time do so at the expense of other participants in the debate. The House has resolved that it is in favour of short speeches, and favours a maximum of fifteen minutes for most speakers (Ministers get longer).

The Wakeham Commission on the House of Lords reform reported that :

> "...the quality of debate in the House of Lords is often high and the able and distinguished members from diverse backgrounds who contribute to this work play a significant role in maintaining the effectiveness of the chamber's role in holding Government to account...the less 'party political' nature of the present House of Lords produces an environment which encourages rational analysis and objectivity."

The nature of the House's membership means that members can bring to debates a range of expertise and experience that career politicians may not have. A recent debate illustrates this point.

On a debate on anti-discrimination legislation on 25 April 2001, there were sixteen speakers. The peer who opened the debate was Lord Lester of Herne Hill, a leading British human rights lawyer and president of several human rights organisations, and the recipient of many awards for work on human rights. The next fourteen speakers included: the Lady Howells of St. Davids, a member born in Grenada who has a long record of work on equal opportunities and racial equality in London; Lord Dholakia, an Asian peer with a distinguished career in community race relations; Lady Gibson of Market Rasen, for many years a member of the Equal Opportunities Commission, who has published pamphlets on equal opportunities in the work place; the Bishop of Bath and Wells, with

long experience in inter-faith relations; Lord Avebury, a former Liberal Democrat spokesman on race relations and immigration and current spokesman on foreign and commonwealth affairs. The debate was concluded by a speech by the Minister of State for Education and Employment, Lady Blackstone.

Although the quality of debate in the House of Lords is widely recognized, some academics and others question how much impact the debates have either on government policy or on raising public awareness. The government certainly must listen to the debate and formulate its answer, and make sure the minister is well briefed. But most debates do not usually compel the government to take action. Moreover, press interest in the work of the Lords is usually less than in that of the Commons, and few Lords debates are reported.

Questions

Questions allow peers to probe the government on its actions and intentions. In the House of Lords there are three forms of questions: starred questions; unstarred questions and questions for written answer.

On each sitting day except Fridays, thirty minutes are set aside at the beginning of business for starred (*i.e.*, oral) questions. A maximum of four questions may be asked at question time. Notice of the questions is required. Any peer may ask a supplementary question on the subject of a starred question. On two days a week one of the four oral questions is a "topical" question chosen by ballot. Whereas ordinary oral questions may be tabled up to one month in advance, topical questions can be tabled only a few days in advance. Question time is when the House is most political and when attendance is highest.

An unstarred question is an alternative way of raising debate. It may be asked on any sitting day, although it is usual to consult the government whip's office and agree a date through the usual channels. Unstarred questions are time limited.

A third way of asking the government for information or about policy is to table questions for written answer. Peers may table up to six per day. On the day they are tabled, the questions appear in the orders of the day and, when they are answered, both the questions and the answers are printed in Hansard in a separate section from the verbatim report of debates. As the House has become more active and more party-political, so the number of written questions has risen significantly.

Committee work

Scrutiny of the executive also takes place through the mechanism of select committees. In the Lords, select committees examine legislation; broad policy areas such as European Union matters or science and technology; and specific subjects such as the penalty for murder or the Bank of England.

Committees that scrutinise legislation

Of the select committees that consider legislation, the most high profile is the Delegated Powers and Regulatory Reform Committee. This committee reports on the delegation of legislative power to the government, and on regulatory reform orders, a new type of order which allows the government to use delegated legislation for matters which would have previously been the subject of a bill. Many parliamentarians believe that the increase in statutory instruments is a worrying sign of a shift of power away from Parliament into the hands of the executive. The Delegated Powers and Regulatory Reform Committee plays an important role in ensuring that bills that are before Parliament do not grant delegated powers to an inappropriate degree. The Committee pays particular attention to what are popularly known as 'Henry VIII' clauses *i.e.*, clauses that provide for primary legislation to be amended by secondary legislation. The Committee meets and reports on a weekly basis while the House is sitting. Its work is highly valued and respected.

Other legislative committees include the Joint Committee on Statutory Instruments (a joint committee of both Houses) that examines the drafting and *vires* of secondary legislation; and a Joint Committee on Consolidation Bills (*i.e.*, bills which bring together conveniently into one statute various related provisions in numerous statutes).

In evidence to the Wakeham Commission the Delegated Powers Committee stated that :

> "The increased importance of secondary legislation in recent years means that parliamentary procedures that may have been satisfactory in the past are no longer adequate, and there is already a pressing need to change them."[11]

Effective parliamentary scrutiny of delegated legislation is difficult because it cannot be amended, its wording is complicated and there is an enormous volume of it. The House of Commons finds it difficult to find the time to debate delegated legislation. It was noted by the Wakeham report that the examination of statutory instruments is now an important role of the House of Lords. The Wakeham report concluded that :

> "Secondary legislation is increasingly pervasive and voluminous but currently subject to inadequate Parliamentary scrutiny. The House of Lords has shown a conscientious interest in the grant and exercise of delegated powers. The new second chamber should maintain and extend this function."

The report added that the Lords' absolute veto over secondary legislation should be modified so that, if a statutory instrument were voted down in the Lords, the Commons could override this decision after an interval.

The House has in recent years also appointed select committees to undertake the scrutiny of draft bills, *i.e.*, bills which have not been formally introduced into Parliament. This "pre-legislative" scrutiny allows the House to comment on proposed legislation earlier than usual; but the House considers the bill again after it has been introduced in the normal way.

Select committees that scrutinise policy

There are two permanent committees on broad areas of policy. The first investigates the activities of the European Union, the second examines science and technology. The Wakeham report said of these two committees:

> "The resulting reports are highly regarded and add considerable authority to Parliament at home and abroad. The quality of reports is due to a considerable extent to the expertise in the House of Lords when committee members are selected."

The European Union Committee was first set up in 1974 with a remit: "*To consider European Union documents and other matters relating to the European Union.*" It scrutinises and reports on proposed European Union legislation including white and green papers. Because there are so many proposals for legislation coming out of the European Commission (around eight hundred each year) the Chairman of the select committee operates a weekly sift, where he considers all new European Union documents and singles out the most important. The European Union Committee has six specialist sub-committees, each of which scrutinises a different area. These are split along the following lines: economic and financial affairs, trade and external relations; energy, industry and transport; common foreign and security policy; environment, agriculture, public health and consumer protection; law and institutions; and social affairs, education and home affairs.

The European Union Committee's Chairman refers all the proposals he has identified as needing attention during his sift to one of its specialist sub-committees. These examine each proposal in more detail. In order to prepare informed reports on the proposed legislation, each of the sub-committees calls for evidence from a range of witnesses, including government departments and European institutions. The sub-committees then prepare and agree a report that is sent to the select committee for approval. Each report contains a recommendation on whether it should be debated in the House and more than half of the reports are debated. The government produces a written response to each report within two months of its publication.

The European Union Committee is influential because it has a "scrutiny reserve". This means that the government has undertaken not to agree to any European Union proposal until it has been cleared by the Committee (except in exceptional circumstances, and in such circumstances the government must write to the committee to explain why they have not waited for their clearance).

The Science and Technology committee was first set up in 1980. Its remit is "*To consider science and technology.*" This is a very broad remit, covering any of the many places where science — in its widest sense — meets public policy. The committee has tended to consist of around fifteen members, from

all political parties, and including Crossbench peers. Membership is generally balanced between top scientists, and peers with an interest in science but no special expertise.

The committee operates by choosing a topic for inquiry and then setting up a sub-committee to conduct the inquiry, with a Chairman, and possibly some other members co-opted from the wider membership of the House to bring in necessary expertise. The sub-committee proceeds in the usual manner of parliamentary committees, issuing a call for evidence, conducting hearings, and producing a report. The range of the committee's interests can be seen from a list of its major reports in the last Parliament : digital images as evidence, resistance to antibiotics, cannabis, management of nuclear waste, science and society, air travel and health, complementary and alternative medicine, and human genetic databases.

The committee has no power to enforce its recommendations, but it is a widely respected body and has been found to have considerable influence in some areas. The committee's biggest success to date was identifying, in a report in 1988, the absence of a research function within the NHS. The Government responded by putting in place the NHS research and development strategy, worth £514m in 2000-01, headed by a Director of R&D with a seat on the NHS Executive. The committee's most conspicuous failure has been to persuade the government — so far — to legalise the use of cannabis as a medicine; but its report on this subject in 1998 is now routinely quoted in the continuing debate on this issue.

All of the permanent committees of the House are reappointed each session. Most of them are subject to a rotation rule so that every few years members must leave, to ensure a turnover of membership.

In session 2000-01, the House gained two new permanent committees, on the Constitution and on economic affairs. The new Constitution committee was recommended by the Wakeham Commission and has a remit to look at the constitutional implications of bills and at other matters relating to the Constitution.

"One-off" select committees

The House also appoints "one-off" or *ad hoc* select committees to examine and report on particular issues. As soon as they have reported, *ad hoc* committees cease to exist. In the 2000-01 session, the House appointed three such committees: to examine stem cell research and issues connected to human cloning, to examine the use of animals in scientific procedures, and to investigate the crash of a military helicopter which killed many senior intelligence officers. After the general election of 2001, these committees were reappointed to complete their work.

The committee work of the House is today one of its best-known characteristics. Thirty years ago, no such committee work took place. The growth in the House's committee activity reflects the greater role of the House today in

helping to scrutinise the government, and also the general growth in committee activity within Parliament as a whole as part of its "watchdog" function.

Judicial work

The separation of powers is a characteristic of many Constitutions. The executive, legislature and judiciary are distinct, and independent in their operations; and this separation is believed to promote the liberty of the citizen. De Tocqueville described the concept in 1835 in his famous book on *Democracy in America*. He found that a strict separation of powers existed in the United States and he mistakenly attributed the practice to the eighteenth century Britain. He was wrong about Britain. Since at least the Glorious Revolution of 1688, the separation of powers in Britain has always been more conceptual than real. Several examples of how constitutional powers in Britain are combined rather than separated can be found in the House of Lords. One such example is the office of Lord Chancellor, who is a Cabinet Minister, head of the judiciary, and Speaker of the House, thus combining in his office all three branches of the state. Another example is the House of Lords' judicial function.

In addition to its role as a Second Chamber, the House of Lords also acts as the supreme court for many legal cases. In theory the judicial function belongs to the whole House. In fact the judicial work of the House is entirely separate from the House's other functions and is carried out by professional judges. Ordinary members take no part in the judicial work. The judgments of the Law Lords are however still delivered on the floor of the House as a reminder of the theoretical position.

The Law Lords are full members of the House and the House places no restriction on their right to take part in non-judicial business. However, in view of their judicial role, the Law Lords consider themselves bound by two general principles when deciding whether to participate in non-judicial business or to vote. The first principle is that they do not think it appropriate to engage in matters where there is a strong element of party political controversy. The second principle is that they bear in mind that they might render themselves ineligible to sit judicially if they were to express an opinion in Parliament on a matter which might later be relevant to an appeal in the House.

At present there is debate over whether the judicial function should be disassociated entirely from the House. This is because of a perception that it may no longer be acceptable for judges also to be members of the legislature. This has become a more intense debate since the passage of the Human Rights Act, 1998, which imposes on the courts the duty of deciding whether United Kingdom legislation is compatible with the European Convention on Human Rights. Today it is possible for the judges to strike down United Kingdom legislation on the ground of its incompatibility with the Convention. In the opinion of some commentators, the fact that the most senior judges are also members of the legislature does not fit easily with that role.

Procedure in the House of Lords

Compared to most legislatures, the House of Lords has few standing orders and rules of procedure. Although the Lord Chancellor sits as Speaker, he has no power to maintain order in debate or give rulings on points of order. The House is self-regulating, and procedures are therefore flexible. The preservation of order and the rules of debate is the responsibility of all the members who are present. Each peer is expected to submit to the "sense" or mood of the House and behave accordingly.

Cases of serious disorder are regulated by a standing order dating from 1626 and this standing order is the strictest censure that can be given to a peer:

> "To prevent misunderstanding, and for avoiding of offensive speeches, when matters are debating, either in the House or at Committees, it is for honour sake thought fit, and so ordered, That all personal, sharp, or taxing speeches be forborne, and whosoever anserwth another man's speech shall apply his answer to the matter without wrong to the person: and as nothing offensive is to be spoken, so nothing is to be ill taken, if the party that speaks it shall presently make a fair exposition or clear denial of the words that might bear ill construction; and if any offence be given in that kind, as the House itself will be very sensible thereof, so it will sharply censure the offender, and give the party offended a fit reparation and a full satisfaction."

The only punishment available against a peer who persists in being out of order is the motion that "the noble Lord be no longer heard". If this motion is agreed to, the peer in question must stop speaking on the matter at hand. This motion is rarely brought before the House. It is of limited practical use since the motion itself is debatable and only requires the peer to stop speaking on the specific matter that is immediately before the House.

Although there are few standing orders, there has in recent years been considerable regulation of certain of the House's activities. The handbook on procedure has grown steadily thicker as previously unwritten practices have had to be written down.

The trend towards greater regulation can be seen in the expansion of the rules governing the asking of oral questions. It is during question time that the rules of the House are put under most strain. In 1958, there were few rules governing question time. No more than three questions could be asked on any sitting day, but the number of questions each peer could table was unlimited, as was the length of discussion on each question. In 1959, the number of oral questions each day was increased to the present limit of four. At that time a limit of two questions per peer on any one day was also imposed. However, there was still no limit to the number of oral questions a peer could have on the order paper at any given time or on the amount of time question time should take. By 1976, it had become obvious that some limit on the time spent on starred questions needed to be established. The committee that deals with the

House's procedures recommended a twenty-minute maximum. It also recommended that oral questions should be tabled at least twenty-four hours in advance of asking them. However, these recommendations were only guidelines and they were frequently ignored. In 1982, a limit of three starred questions per peer on the order paper at any one time was introduced. In 1987, this was reduced to two. By 1991, starred question time was increased to thirty minutes a day and this is now rigidly adhered to. In 1999, a limit of one starred question on the order paper, per peer, at any one time, was introduced. This is one example of increased regulation of the House's procedures.

Registration of financial and other interests

Another example is the registration of members' interests. For many years the House has required members to act on their personal honour and declare to the House any financial interests they might have in a subject on which they are speaking in the House. So far as can be judged, this practice ensured that the House enjoyed a high reputation for impartial judgment on issues of public policy. However, following some high profile parliamentary scandals during the 1990s, the House agreed to set up a register of Lords' interests. Registration is only compulsory where a member of the House holds a parliamentary consultancy or is associated with a firm of parliamentary lobbyists. In these cases, a member is barred from speaking, voting or lobbying ministers on the subject for which the member receives remuneration. Registration of all other interests is at the time of writing voluntary.

Recently, the voluntary character of the House's register of interests has been challenged by an independent review body on Standards of Conduct in Public Life. This body has recommended that the House should establish a comprehensive, mandatory register. While the House itself has yet to debate this recommendation, a small, all-party group of members of the House has considered it and reported in favour of the introduction of a mandatory register.

Among the reasons for increased regulation are: the great increase in the number of members attending the House each day (*see* Table 6); the increase in the amount of work members do; and the increasing party-political nature of the House. Whether traditional self-regulation can continue after reform of the House's composition and role is yet to be seen.

Table 6

Average daily attendance by calendar year 1990-1999

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000*
Average attendance	321	329	349	388	380	373	376	394	428	434	340

Source: House of Lords Information Office

* Although this attendance figure is lower it should be remembered that the membership of the House had dropped by over fifty per cent at the end of 1999 but the attendance figures did not drop by anything like fifty per cent.

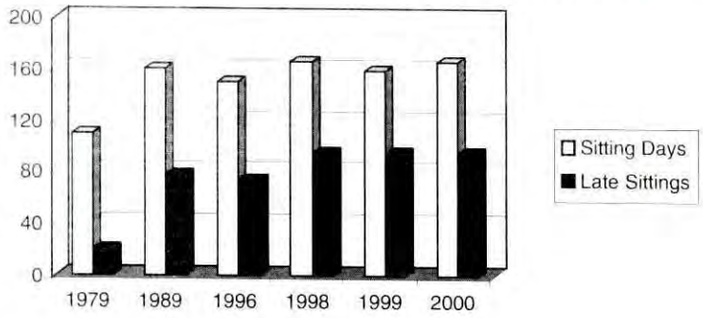
An unpaid and part-time House

Members of the House of Lords are not paid for carrying out their parliamentary duties (except for a small number who receive a salary as office-holders). However, peers can claim reimbursement of expenses incurred in attending the House. Those who employ a secretary in connection with their parliamentary duties may also claim some reimbursement. Currently, the maximum reimbursement is set at £84 per night for accommodation, £37 for day subsistence and £36 a day for secretarial assistance. But a review body has recommended that the maximums should be increased by about fifty per cent. Peers may claim expenses only on days when they have been recorded as either attending in the chamber or attending a committee meeting within the House.

Many peers have other jobs outside the House and attend the House on a part-time basis. It has been suggested that with the business before the House growing rapidly, and the pressure to attend increasing all the time, peers should be provided with a salary to allow them to give more attention to their parliamentary duties. The burdens of membership may be seen in Table 7, which shows the increase in sitting days and sittings after 10 p.m. in recent years.

TABLE 7

Increase in sitting days and late sittings in the House of Lords



SOURCE: House of Lords Information Office

Conclusion

The House of Lords has unique characteristics. History has moulded it into an energetic but unusual Second Chamber. The size of the House makes it the largest Second Chamber in the world. Membership is for life, which means that its demographic profile is unusual. It has many members expert in their fields outside the House who bring to its debates an array of experience which professional politicians may lack. On the other hand, most members are part-time and their contributions to the work of the House are selective.

The powers of the House of Lords are much reduced from previous centuries; but are considered by many to be adequate to fulfil its current role of revising legislation and scrutinising the executive. The House has changed dramatically in the last three years. It has a new membership profile, higher attendance, increasing rules, and an ever-increasing workload. The future is unclear. But one thing may be said with certainty: the House of Lords will be a very interesting place to watch over the next few years.

NOTES AND REFERENCES

1. The House of Commons is the first chamber and it is there that the Prime Minister and most of the government sit.
2. Except for the twenty-six bishops of the established Church of England.
3. After the 1999 reform hereditary peers did not qualify for a seat in the House. Thus, when the Queen conferred the new hereditary peerage of the Earldom of Wessex on her son Prince Edward in 2000, this gave him no right to sit in the House of Lords.
4. Except Law Lords.
5. House of Lords Act 1999, s 2(2).
6. *Ibid.*
7. Labour Party Election Manifesto 1997 as quoted in the report of the Royal Commission on the Reform of the House of Lords: *A House for the Future*. The Stationery Office, 2000.
8. The Lord Chancellor is Speaker of the House, as well as a Cabinet Minister and head of the judiciary.
9. The Crossbench peers do not constitute a political party but a non party-political group.
10. Labour Party Election Manifesto 2001: Ambitions for Britain.
11. The Royal Commission on the Reform of the House of Lords: *A House for the Future*. The Stationery Office, 2000, p. 68.

31

The Role and Contribution of the U.P. Legislative Council

S. D. VERMA

The present Parliament came into existence about fifty years ago when our Constitution was framed for the governance of the country. However, the Legislative Councils were established in India very much earlier and in Uttar Pradesh (then known as North-Western Provinces and Oudh) on 5 January 1887. The first meeting of Legislative Council of U.P. was held at Thorn Hill Memorial Hall in Allahabad on 8 January 1887, after the passing of the Indian Councils Act, 1861. Before 1919, province of U.P. was a class 2 province and a Lt. Governor was the head of the province. After the passing of the Government of India Act, 1919, U.P. became a class 1 province with Governor as its ruler. The Governor, in exercise of the power vested in him, passed and published an order in the extraordinary Gazette no. 3478-R, of 24-9-1936 and thereby made separate provisions for establishing two bodies, *viz.*, U.P. Legislative Council and Legislative Assembly. All legislative powers were vested in these two bodies.

In 1935, the Government of India Act came into force and a bicameral legislature came into existence in the United Provinces and the Legislative Council became the Second Chamber of Legislature. Section 61(3) of the Act provided that every Legislative Council shall be a permanent body not subject to dissolution but as near as may be one-third of the members thereof shall retire every third year in accordance with the provisions made in that behalf in the Fifth Schedule.

The Constitution of India came into force on 26 January 1950 and under the Constitution also bicameral legislature was provided for the United Provinces, now Uttar Pradesh. However, the structure of the Legislative Council was radically changed with the objective of fulfilling the needs and aspirations of the people. Previously, the Legislative Council was constituted with a view to accommodating representatives of different communities (Hindus, Muslims, etc.) but such communal shape of the Council was not in accordance with the secular and impartial character of the Constitution of 1950. And, as such, amendments were made and provisions were incorporated for electing/nominating members

to the Council purely on the basis of merit, specialised knowledge in particular fields including art, music, science, politics, etc.

This new complexion of the Council is fully in keeping with the principles of secularism and impartiality without any bias regarding gender or social status. Many eminent citizens of U.P., namely, Pandit Motilal Nehru, Govind Ballabh Pant, Madan Mohan Malaviya, C.Y. Chintamani, Sir Tej Bahadur Sapru, Mahadevi Verma, Sampurnanand and Ganesh Shanker Vidyarthi, were members of the Council and they served the people of the State by their meritorious and brilliant contribution during debates and polemics on crucial issues of national importance.

The Council's role in legislation

When we turn the pages of history we find that since 1950 the Legislative Council of U.P. has deeply considered, debated and passed a number of bills, relating to land reform and development, which later became laws of the State.

On 7 February 1950, the Uttar Pradesh Language Act was cleared by the Council which provided that the Bills submitted before the Council shall be in Hindi, in Devanagari script and thereafter the Uttar Pradesh Official Language Act was passed, adopting Hindi in Devanagari script as the language to be used for official working in the State.

In 1950, the Legislative Assembly passed the Uttar Pradesh Zameendari Abolition and Land Reforms Bill and thereafter referred it to the Council for consideration and approval. The Bill was of unprecedented importance as it deprived the *Zameendars* and *Talukedaars* of their feudal proprietary rights over the agricultural land which was actually tilled and cultivated by the *Kashtkaars*. The Council deeply considered and debated the bill from 11 to 16 September 1950.

The Bill was later considered clause-by-clause during October and November 1950 for twenty-seven days and about five hundred amendments were made in the Bill. The Bill was passed by the Legislative Council on 30 November 1950. Almost all the amendments proposed by the Legislative Council were agreed to by the Legislative Assembly. This was a historic legislation in Uttar Pradesh in the area of land reforms. A Bill amending this Act which came up before the Legislative Council from the Legislative Assembly a couple of years later, was extensively discussed and amended by the Legislative Council. These laws did immense good to the agriculturists who were thereby freed from the bondage of landlords.

During 1952—56, about twenty Bills, which related to different areas, were referred to Joint Select Committees of the two Houses in which Legislative Council made its due contribution.

The Uttar Pradesh Legislative Council has also on record the example of expeditious disposal of legislation when the Legislative Council referred the Allahabad University (Amendment) Bill, 1954, to a Select Committee of the

House, which was transmitted by the Legislative Assembly. The Bill was amended in the Select Committee in a couple of days and the Legislative Council passed the Bill with amendments the next day. The Assembly concurred with all such amendments and the Bill became law. Another instance of expeditious disposal of bills is the Uttar Pradesh High School and Intermediate College (Payment of Salaries of Teachers and other Employees) Bill, 1971, which was referred to a Select Committee of the House on 12 August 1971. The Committee met during the *Janamashtmi* holidays and reported the bill back to the House on 17 August, with extensive amendments and the Council passed the bill the same day.

There have been occasions when the Legislative Council met till past mid-night and passed important legislations and thereby helped in enacting laws which proved to be of great utility to the masses. During 1952—86, about thirty non-official Bills were also discussed and passed in the Legislative Council. Out of which some Bills, after being passed, were enacted into law.

The Committee system

Besides the Council House Committees, there are six Joint Committees also in which members of both Houses of the U.P. Legislature are represented. Out of these six committees, members of two committees are nominated by the presiding officers of the respective Houses. These committees are (i) Awaas Joint Committee (six MLCs and twenty MLAs) and (ii) Legislature Library Advisory Committee (five MLCs and twenty MLAs). The members of other four committees are elected by the respective Houses. These are (i) Public Accounts Committee (five MLCs and twenty MLAs), (ii) Public Undertaking Committee (ten MLCs and twenty MLAs), (iii) Subordinate Legislation Committee (four MLCs and fifteen MLAs) and (iv) Scheduled Castes, Scheduled Tribes and Denotified Tribes Committee (four MLCs and twenty-one MLAs).

Apart from the above committees, *ad hoc* committees are also constituted for specific purposes and for a specific period which may extend from time to time depending upon the work before the committee. In addition to this, members of the Legislative Council are also elected in the Standing Committee of which the Minister concerned is the Chairman.

It may be mentioned here that the Council as also its committees have no administrative or executive powers but make very valuable contribution in enacting public welfare legislation. This way the Council (Upper House) and its committees exercise great influence over the legislative process and they have assured great importance and have earned full faith and goodwill of the masses.

It is said that Second Chambers are by their very nature orthodox and conservative and act as a stumbling block in the implementation of progressive legislation. But as far as the U.P. Legislative Council is concerned, so many subjects on which resolutions were given notices of, or moved or even adopted in the House would show that it has positively taken initiatives and given a lead

in promoting progressive ideas and thereby promoted interests of the people of U.P.

Lastly, mention may be made of the standards of optimum decorum and etiquette set up by the Legislative Council of U.P. During its existence as a Second Chamber since 1937, there have been very rare occasions when the Chair had to reprimand any member for unparliamentary behaviour.

It may be stated generally that the Second Chambers in India have set very high standards of parliamentary activities and have helped in sustaining the confidence of the people in parliamentary democracy.

The Upper Houses, *i.e.*, the Vidhan Parishads are an integral part of State Legislatures and the way in which they have discharged their legislative duties for the last over fifty years has proved that they are a boon for the legislative structure in any democratic set up. The bicameral shape of the State Legislature deserves to be maintained and strengthened for the good of the people.

32

The Senate of the United States

RICHARD A. BAKER

Historical Images

In 1787, the Framers of the United States Constitution created the Senate as a safeguard for the rights of states and minority opinion within a federal system. They modeled the Senate on colonial-era governors' councils and on the state Senates that had evolved from those bodies in the late 1770s and 1780s. James Madison, the "Father of the Constitution", explained that the Senate's role was "first to protect the people against their rulers [and] secondly to protect the people against the transient impressions into which they themselves might be led." The Framers gave the Senate ample powers with which to accomplish these fundamental responsibilities. They provided, for example, that no legislative act may be sent to the President for approval until both the Senate and the House of Representatives have agreed to it in precisely identical language. While the Constitution confers exclusive responsibility on the House for initiating revenue-raising measures, it allows the Senate co-equal power to revise and amend such legislation. Unlike the House, the Senate has sole authority to approve or reject treaties and presidential nominations. The Senate's constitutional prerogatives, relatively small size, permissive rules, and tradition of unlimited debate have guaranteed its standing among the world's "greatest deliberative bodies".

To balance power between the large and small states, the Framers agreed that states would be represented equally in the Senate and in proportion to their populations in the House. Further preserving the authority of individual states, the Constitution writers provided that state legislatures would elect Senators. To guarantee Senators' independence from short-term political pressures, the Constitution assigns them a six-year term, three times as long as that of popularly elected House members. James Madison reasoned that longer terms would provide stability. "If it not be a firm body", he concluded, "the other branch being more numerous, and coming immediately from the people, will overwhelm it." Responding to fears that a six-year Senate term would produce an untouchable aristocracy capable of conspiratorial behavior, the Framers specified that one-third of the terms would expire every two years, thus combining the principles of continuity and rotation in office.

Over the past two centuries, Senate observers have employed many images to describe the institution's purposes and operations. Among their rich vocabulary of descriptive terms are "saucer", "fence", "sanctuary", "citadel", "burial ground", "anchor", and "cave". President George Washington is said to have explained to Thomas Jefferson, who had been out of the country during the Constitutional Convention, that the Framers of the Constitution created the Senate to serve a function like that of a saucer to a teacup. Washington observed Jefferson pouring his hot tea into a saucer and seized the analogy. "Why did you pour the tea into your saucer?" "To cool it", the Virginian responded. "Just so!" exclaimed Washington, according to Senate lore, "That is why we created a Senate; to cool the work of the House of Representatives." James Madison regarded the Senate as a "necessary fence" against the "fickleness and passion" of the House, whose members would be subject to changing public moods and fashions.

With the passing years, others coined memorable expressions. As Vice President Aaron Burr stepped down as the Senate's constitutional presiding officer in 1805, he described the Senate as a "sanctuary; a citadel of law, of order, and of liberty." The French aristocrat Alexis de Tocqueville visited Washington in 1832. On his trip to Capitol Hill, he first looked in on the House of Representatives, whose members he considered mostly "obscure individuals", "village lawyers", and "persons belonging to the lower classes of society". Then, he moved to the Senate Chamber. There, Tocqueville observed "within a small space a large proportion of the celebrated men of America." The Senate, in his opinion, was "composed of eloquent advocates, distinguished generals, wise magistrates, and statesmen of note, whose arguments would do honor to the most remarkable parliamentary debates of Europe."

Of course not all observers over the decades have subscribed to Tocqueville's flattering view. Presidents and members of their administrations, frustrated by the delays and redundancies inherent in a government of separated branches and divided powers, have routinely characterized the Senate as a "burial ground" of presidential initiatives. Looking to its tradition of unlimited debate, others have likened the Senate to a blustery "cave of the winds".

As a potent national legislature, the Senate will always evoke strong positive and negative feelings. At the time of its bicentennial in 1989, however, there was at least common acceptance of Senator Robert C. Byrd's characterization of this Upper House as "the anchor of the Republic, the morning and evening star in the American constitutional constellation, the sure refuge and protector of the rights of a political minority."

Today's Senate

Representation

Today, the Senate is the only deliberately malapportioned legislative body in the United States. While court decisions in the 1960s required every state legislature to structure its membership to allow all citizens equal representation, the U.S. Constitution maintains an unbalanced representational system within

the national Senate. That charter apportions seats in the House of Representatives according to population, but it gives each state — from California with thirty-three million residents to Wyoming with less than half a million inhabitants — two seats in the Senate. The Constitution guarantees that this system will never be changed through its provision that no state may be deprived of its equal representation without its consent. Consequently, the nation's fifty states are represented in the Senate by one hundred members, while their delegations in the four hundred and thirty-five member House of Representatives range from California's fifty-two to Wyoming's one.

Election

Selection of Senators by State legislatures worked reasonably well from 1788 until the 1830s. In that latter decade, national political parties became stronger and more united than ever before. This growing partisan strength caused deadlocks between the Upper and Lower Houses of state legislatures in contests to select Senators. These deadlocks, throughout the remainder of the nineteenth century, delayed other state legislative business and often created extended Senate vacancies that deprived states of their full representation in the national Upper House.

By the start of the twentieth century, a constitutional amendment providing for direct popular election of Senators had become a major objective for progressive reformers who sought to remove control of government from the influence of special interests and occasionally corrupt state legislators. Over the fifteen years prior to the ratification of this amendment, a significant number of states — particularly in the West — developed their own informal methods for allowing popular sentiment to influence the state legislative election of U.S. Senators. Many adopted preferential primaries to determine the public's support of various U.S. Senate candidates. Although not legally bound to the results of these primaries, most state legislators paid careful attention to their results and voted for the candidate who attracted the most votes. Consequently, when the new constitutional amendment, ratified in 1913, went into effect with the general elections of 1914, it did not result in a dramatic change in the personal profiles of those subsequently elected to the Senate.

Today, residents of each state elect two Senators to serve staggered six-year terms. To create staggered terms, the Constitution requires placement of the Senators from each state into two of the three senatorial "classes" first established in 1789. California, for example, has a Senator assigned to Class One and another to Class Three. Class One includes thirty-three Senators geographically distributed throughout the country with no more than one member per state. In the year 2000, the seats of all Class One Senators were subject to renewal by election. In 2002, the thirty-three Senators of Class Two must renew their terms or leave office; and in 2004, the thirty-four Class Three Senators are obligated to follow the same course. This system provides continuity by exempting two-thirds of the Senate from campaigns in the even-numbered

election years, and responsiveness to public opinion by requiring biennial renewal of the remaining one-third.

When death or retirement causes a seat to become vacant before the expiration of its term, state governors, according to provisions of state law, may appoint individuals to serve until the next special or general election. (In the House of Representatives, vacancies are filled only by popular election.)

The Constitution contains no limits on the number of successive terms a member may seek. In today's Senate, one out of every five members has served more than twenty years, while more than half have been members for fewer than ten years. In recent decades, the median tenure of all members has been nearly twelve years, or two six-year terms. The current Senate includes thirteen women, a significant increase from the average of only two female Senators customary from the 1940s through the 1980s. One-half of today's Senators previously served in the House of Representatives. This represents a significant increase over the twentieth century historical average of one in every three Senators per Congress with former House service.

Leadership

The Constitution designates the Vice President of the United States as President of the Senate. In the Vice President's absence, the Senate may choose a President *pro tempore*. Historically, the Senate has been reluctant to assign significant responsibilities to its constitutional presiding officer. Unlike the Speaker of the House, who is elected by a majority of that body's members, Vice Presidents do not owe their office to the members over whom they preside. Consequently, the Vice President has only one substantive and seldom-exercised duty: to decide tie votes. With the exception of announcing the outcomes of roll-call votes, Vice Presidents seldom address the Senate and before they do so, they must obtain the Senate's permission. Given these highly restricted duties, Vice Presidents serving since the end of World War II have shifted their focus from the Capitol to the White House, where they now exercise major responsibilities that would have amazed their pre-1950s predecessors.

The Senate President *pro tempore* is customarily the senior member of the Chamber's majority party. That Senator signs legislation in the absence of the Vice President and appoints other majority-party members to preside in his absence. (In early 2001, when the Senate's membership was evenly divided between the two political parties, members of both parties shared the duties of temporary presiding officer.)

There is a common saying that the House of Representatives is led from its dais, while the Senate is led from its floor. The posts of majority and minority floor leaders are not included in the Constitution, as are those of the House Speaker and Senate President. Instead, party floor leadership has evolved out of necessity. During the nineteenth century, the Chairmen of the two party conferences and Chairmen of major standing committees regularly exercised floor leadership responsibilities. This diffused leadership pattern began to change

early in the twentieth century. In 1913, to help enact Democrative President Woodrow Wilson's ambitious legislative program, the Chairman of the majority Democratic Conference took on duties that resemble those of the modern-era majority leader. In 1919, when Republicans returned to the majority, the Republican Conference Chairman also acted as floor leader — setting the legislative agenda and proposing unanimous consent agreements. Not until 1925, however, did Republicans officially designate a majority leader, separate from the Conference chair. (Five years earlier, the Democrats had specifically named their floor leader.)

Elected at the beginning of each Congress by their respective party conferences, the majority and minority leaders serve as spokesmen for their parties' positions on the issues. The majority leader also has responsibilities for speaking on behalf of the entire Senate. Working with the Chairman and senior minority party member of each committee, the majority leader schedules business on the floor by calling bills from the calendar and keeps members of his party advised about the daily legislative program. In consultation with the minority leader, the majority leader fashions unanimous consent agreements by which the Senate customarily agrees to limit the amount of time for debate and divides that time between the parties. When time limits cannot be agreed on, the majority leader has the option of filing a petition to shut off debate. Occupying the front-row desks on the Chamber's center aisle, the two leaders coordinate party strategy and try to keep their parties united on roll-call votes.

The leaders spend much of their time on or near the Senate floor to open the day's proceedings, keep legislation moving, and protect the rights and interests of party members. Majority leaders seek to balance the needs of Senators of both parties to express their views fully on a bill with the pressures to move the bill as quickly as possible toward enactment. These conflicting demands have required majority leaders to develop skills in compromise and mediation.

Although party floor leadership posts carry great responsibility, they provide few specific powers. When several Senators seek recognition at the same time, the presiding officer, under an important practice established in 1937, will call on the majority leader first, then on the minority leader, and then on the managers of the bill being debated, in that order. This right of first recognition enables the majority leader to offer amendments, substitutes, and motions-to-reconsider ahead of any other Senator. Former Majority Leader Robert C. Byrd called first recognition "the most potent weapon in the Majority Leader's arsenal."

To assist party leaders in their growing responsibilities, each party conference has created the post of assistant floor leader. The assistant leaders, or party whips, work to ensure that party members will be present to cast votes on legislation for which the party has taken a position.

Committees

In its earliest years, long before the evolution of party floor leaders, the Senate relied on temporary committees to fashion specific legislative language

after the entire body had reached a consensus regarding a measure's general objectives. Once a committee had completed its work, it dissolved, although the Senate tended to choose many of the same members to handle identical or related subjects when it established successor committees. This system often produced an uneven workload for the Chamber's most active and engaged members, who invariably ended up on a proportionally larger number of these special panels than their less-engaged colleagues.

Emergency conditions brought on by the War of 1812 and the resulting need for the consistently available expertise to be found only in permanent committees caused the Senate to abandon its reliance on temporary panels. In 1816, the Senate formalized the changes that had developed during wartime by establishing its first system of standing committees. It organized the twelve new standing committees according to the broad categories of legislative requests contained in the President's annual message.

Senate committees proliferated throughout the late nineteenth and early twentieth centuries. At a time when the only way for a Senator to obtain office space and clerical staff was to chair a committee, the number of committees grew to nearly equal the number of members. In major reform efforts following both world wars, the Senate eliminated many redundant and inactive panels. Since the 1950s, the Upper House has provided significant professional staff resources to its committees and has established reforms to "democratize" committee operations.

Today, Senate rules spell out the specific jurisdictions of each standing committee. Despite this effort for jurisdictional clarity, however, there is considerable overlapping within broad subject areas. As many as half of the committees, for example, claim jurisdiction in fields associated with foreign economic policy. The Senate's presiding officer determines which committee should receive a newly introduced bill. Often, bills contain language specifically devised to ensure that they are referred to a sympathetic committee. Some bills are referred to several committees, either simultaneously for concurrent consideration, or successively for sequential review.

Today's Senate maintains sixteen standing committees and four select committees (Indian Affairs, Intelligence, Ethics, and Aging). Most committees include from four to seven sub-committees. The Appropriations Committee divides the federal government's budget into thirteen agency and subject areas, with one sub-committee for each of these areas. For purposes of member assignment, committees are designated as "Class A" or "Class B" panels. Each Senator is entitled to serve on two Class A and one Class B committees, as determined by that member's political party conference. Within the Class A committees, there are four highly coveted "Super A" panels (Appropriations, Armed Services, Finance, and Foreign Relations).

Each of the two political parties is awarded seats on all committees in proportion to its ratio of overall Senate membership. In the early months of

2001, when the Senate's membership stood at fifty Democrats and fifty Republicans, each party controlled an identical number of members on all committees. In that rare circumstance, the Senate assigned chairmanships to those in the party of the Vice-President because of that constitutional officer's power to decide tie votes. In June 2001, when the Democrats gained a one-vote overall majority, they took all the chairmanships and added an additional member of their party to each committee. The average authorizing committee consists of twenty members; the Appropriations Committee includes twenty-eight members. Unlike the House of Representatives, whose Appropriations Committee members serve on no other standing committee, members of the Senate Appropriations Committee may also serve on several authorizing committees.

Each Senate committee establishes and publishes its own rules in conformity with the standing rules of the full Senate. Committee rules set regular meeting dates; provide for special meetings, including those requested by a minority of members; establish procedures for conducting hearings; and provide guidelines for voting, quorums, and staff operations.

Members gain specific committee assignments according to the recommendations of their respective Senate party conferences. Once on a panel, a Senator may remain there in successive Congresses, unless he or she chooses to switch to a more prestigious committee, or one with greater importance to the member's home-state constituency. In moving to a new committee, a member starts at the bottom of that panel's seniority ladder. Eventually, the combination of a regular re-election and the retirement of more senior members will allow a long-serving member to move to the highest seniority rung.

Chairmanships are customarily awarded, by secret ballot of the party conference, to the majority party committee member with the greatest seniority on that panel, except that under a Senate rule, no Senator may chair more than one committee. In 1995, the Senate Republican Conference adopted a rule that established six-year term limits for their party's committee Chairmen as well as for those who hold the position — when their party is in the minority — of senior "ranking" committee member. The Democratic Conference has no such requirement.

From the early decades of the twentieth century, Senate committees have taken on a greater investigative role. Among the most notable special committee investigations have been oil leasing in the 1920s, securities regulation in the 1930s, war profiteering in the 1940s, organized crime in the 1950s, the Vietnam war in the 1960s, Watergate in the 1970s, covert intelligence operations in the 1980s, and campaign finance in the 1990s. Through its combined investigative and legislative powers, the Senate has sought to preserve its constitutional balance with the presidency, supporting presidential initiatives, while concurrently maintaining vigilant oversight of executive branch operations.

Housing

The Senate of the First Congress convened on 4 March 1789, in an elegant second-floor chamber of New York City's newly remodeled Federal Hall. In the second session of that First Congress, beginning in January 1790, the Senate turned to legislation providing for a permanent seat of government within a special federal district. Both Houses eventually agreed to move the government some two hundred miles to the south, to the Potomac River, near the home of President George Washington. While that site was being prepared, Congress agreed to locate the Government in Philadelphia, Pennsylvania, beginning in December 1790. During its ten-year residence in Philadelphia, the Senate conducted its proceedings in the second-floor Chamber of that city's recently reconstructed Congress Hall. That Chamber witnessed a phenomenon that the Framers had failed to anticipate — the rise of political parties as the principal determinants of legislative debate and accomplishment.

A clash in 1794 between Federalist and Anti-federalist party members over the seating of a newly elected Pennsylvania Anti-federalist Senator brought a partial abandonment of the Senate's policy of conducting all sessions behind closed doors. Like the Constitutional Convention, but in contrast to the House, the Senate in 1789 had decided to hold its sessions in secret. In 1794, however, members of the Federalist majority feared that their likely rejection of the Pennsylvania Senator-elect's credentials in Philadelphia — then that state's capital city — on constitutional grounds that some might consider questionable would, if done in secret, trigger charges of arbitrary behavior. Opposition to the closed-door policy over the past five years of the Senate's existence had come principally from the state legislatures, whose members argued that they could not effectively assess the conduct of the Senators they had elected if they operated away from public view. Press coverage of the House of Representative's open sessions had helped citizens understand that body's role and accomplishments. The Senate realized that it was in danger of becoming the forgotten Chamber. (The same attitude played a part nearly two centuries later when the Senate, in 1986, decided to allow full and continuous television coverage of its floor proceedings seven years after the House began broadcasting its sessions.) Consequently, the Senate voted to open its doors for all legislative business, while keeping them closed for so-called "executive sessions" on presidential nominations and treaties. (It maintained that policy, with occasional exceptions, until 1929.)

On 21 November 1800, the Senate took up residence in a ground-floor chamber of the unfinished Capitol at Washington D.C. In the following decade, the body moved to a grander chamber on the Capitol's second floor, where it remained until 1859. This large, semi-circular room, with its plain walls and low-vaulted domed ceiling, provided an ideal setting, both acoustically and dramatically, for the Senate as it moved into its so-called "golden age" of great oratory.

Today's one hundred Senators meet in a large chamber on the second floor of the Capitol's north wing. This chamber, along with that of the House of Representatives, was constructed in the 1850s to make room for the increasing number of members from newly admitted states. (Between 1845 and 1876, the Senate's membership increased by fifty per cent.)

All but the most junior members of today's Senate also have small "hideaway" offices in the Capitol, conveniently located near the Senate floor. Each Senator, regardless of seniority, maintains a primary office in one of three ornate twentieth century office buildings connected to the Capitol by tunnels with subway cars. The Senate opened its first permanent office building in 1909. Growth of staff in the years following World War II led to the construction of a second building, which opened in 1958, and a third in 1982.

Staff

The Senate currently employs seven thousand staff aides. Individual Senators are assigned funding for staff and other operational expenses according to the populations of their states. Senators representing the smallest states are entitled to staff of approximately twenty-five persons, while those from the largest states generally employ as many as sixty aides-and therefore occupy the largest office building suites. Each Senate office includes staff who perform constituent services — helping with problems related to military service, veterans' benefits, health claims, and other matters within the jurisdiction of federal executive branch agencies — and those with responsibilities for advising Senators on legislative and policy issues. To assist with committee work, the Senate provides members several additional staff aides. If a member happens to chair a committee or sub-committee, or serve as ranking minority party member on that panel, he or she gains further staff support. Consequently, some senior Senators may command seventy or more professional and technical staff aides. While the magnitude of these staff resources may surprise members of other national Parliaments, they are a direct consequence of the separated structure of the government under the U.S. Constitution. For the two Houses of Congress to meet their responsibilities to check and balance the executive and judicial branches, they require adequate resources to obtain independent information and expertise. The annual appropriation for all Senate operations currently amounts to approximately $500 million.

Advice and consent

In the early weeks of the Constitutional Convention, the Framers had tentatively decided to give the Senate sole power to make treaties and appoint federal judges and ambassadors. As the convention drew to a close, however, they moved to divide these powers between the Senate and the President, following one delegate's reasoning that "as the President was to nominate, there would be responsibility, and as the Senate was to concur, there would be security." Consent to the ratification of a treaty would require a two-thirds vote, reflecting the concern of individual states that other states might combine against

them, by a simple majority vote, for commercial or economic gain. In dealing with nominations, Senators as statewide officials would be uniquely qualified to identify suitable candidates for federal judicial posts and would confirm them, along with Cabinet Secretaries and other key federal officials, by a simple majority vote.

Nominations

The U.S. Constitution provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for." This provision, like many others in the Constitution, was born of compromise, and, over the more than two centuries since its adoption, has inspired widely varying interpretations.

Nearly five hundred positions in fourteen Cabinet agencies and other bureaus are subject to presidential appointment. The vast majority are routinely confirmed, while a very small — but sometimes highly visible — number fail to receive action. The importance of the position, the qualifications of the nominee, and the prevailing political climate combine to influence the nature of the Senate's response to each nomination. Opinions on the Senate's "proper role" range from the narrow view that the body is obligated to confirm unless the nominee is manifestly lacking in character and competence, to a broad interpretation that accords the Senate power to reject for any reason a majority of its members deems appropriate. Just as the President is not required to explain why he selected a particular nominee, neither is the Senate obligated to give reasons for rejecting a nominee.

Executive branch appointments customarily end with the departure of the President who made them — except for those independent agencies whose officials have fixed terms. Judicial appointments, however, are for life and can be terminated only through the time-consuming congressional impeachment process. Historically, Supreme Court nominations, in great disproportion to their number, have attracted Senators' close attention. While the Senate has explicitly rejected fewer than two per cent (nine of more than five hundred) of all Cabinet nominees since 1789, it has blocked eighteen per cent (twenty-seven of one hundred and forty-eight) of all Supreme Court nominations. (During the nineteenth century, the Senate killed thirty-five per cent of all Supreme Court nominations.)

Generally, when the President and the majority of the Senate belong to the same political party, the Senate tends to approve the President's choices, although one or more determined minority party members can significantly slow the process. Less-than-expedited approval can be expected when the nominee appears to lack competence or personal integrity, and when judicial appointees are sent for Senate review in the final year of a President's term. In this latter category, Senators who are not members of the President's party

are likely to stall for time hoping to reserve the judicial vacancies for a successor President from their own party.

Throughout the nation's history, appointments to judicial posts below the Supreme Court have generated little controversy. Senators consider lower court judges to be less potentially mischievous because they are more closely constrained by precedent than are Supreme Court justices, and they do not have the final judicial say on significant issues.

With the exception of appointments to Cabinet departments and the Supreme Court, most rejections in modern times have taken place at the committee level, either through inaction, or by a vote not to send the nomination to the Senate floor. Before the 1860s, the Senate considered most nominations without referring them to the committee holding jurisdiction over the vacant post. The Senate rules of 1868, for the first time, provided for the referral of nominations to "appropriate committees". Not until the middle of the twentieth century, however, did those committees routinely require nominees for major positions to appear in person.

Presidents have occasionally circumvented the confirmation process by making so-called "recess appointments" when the Senate is in adjournment between sessions, or in recess within a session. As provided by the Constitution, such appointments expire at the end of the following congressional session, but may expire earlier in certain circumstances.

Treaties

The Constitution states that the President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur." The Framers gave the Senate a share of the treaty making process for several reasons: to curb Presidential power, to give the President the benefit of the Senate's counsel, and to safeguard state's sovereignty by placing treaty decisions in the Senate where each state is represented equally. The effect of the "super-majority" requirement is that successful treaty making can never be a partisan affair, since only under the rarest circumstances has a party ever enjoyed a two-thirds majority in the Senate. Treaties must reflect a broad national consensus.

On 22 August 1789, President George Washington and his War Secretary presented the Senate with a series of questions relating to treaties with various Indian tribes. The Senate voted to refer these to a committee rather than debate the issue in the presence of the President, who seemed to overawe many of the Senators. As a result of this experience, Washington decided that in the future he would only send the Senate written communications regarding treaties, setting the precedent that all of his successors have followed.

The Senate had been in existence for only five years when, in 1794, it rejected an Indian treaty. In 1825, for the first time, the body refused to approve an international treaty, turning down, by a vote of zero to forty, a convention

with Colombia for the suppression of the slave trade. The Senate has formally rejected relatively a few of the hundreds of treaties it has considered since then, but many others have died in committee or been withdrawn by the President in the face of certain defeat.

One vexing issue that has surfaced many times is whether Senators should be involved in the actual negotiation of treaties. During the War of 1812, a Senator was included in the delegation to negotiate the Treaty of Ghent. His presence raised the question of whether having Senators on the negotiating team would make the Senate more favorably inclined to approve the treaty, or whether it would violate the separation of powers principle. That debate has gone on for many generations without being resolved.

Noting the frequency with which the Senate had rejected treaties during the last quarter of the nineteenth century, President William McKinley shrewdly named three U.S. Senators to negotiate a peace treaty with Spain in 1898. Senators from both parties deplored his action, but the Senate ultimately approved the resulting treaty. A generation later, Senators criticized President Woodrow Wilson for not including members of their Chamber in the delegation that negotiated the Treaty of Versailles, ending World War I and establishing the League of Nations. This omission contributed to the defeat of that treaty, which the Senate twice rejected.

Presidents Franklin Roosevelt and Harry Truman involved the Chairman and the ranking Republican member of the Senate Foreign Relations Committee in the creation of the United Nations. This action spared the U.N. the fate of the League of Nations as the Senate approved its charter with a nearly unanimous vote.

When the Senate receives a treaty from the President, it has several options. The body may approve or reject the treaty as it has been submitted. It may make its approval conditional by including in the resolution of ratification various amendments to the text of the treaty, reservations, understandings, interpretations, declarations, or other statements. The President and the other countries involved must then decide whether to accept the conditions and changes in the legislation, renegotiate the provisions, or abandon the treaty. Finally, the Senate may choose to take no definitive action, leaving the treaty pending in the Senate until withdrawn at the request of the President or, occasionally, at the initiative of the Senate.

Legislative process in the Senate

In the Senate's earliest decades, its select committees customarily introduced legislation in response to a Senate order to explore an issue and to prepare suitable legislative text. Individual Senators also introduced bills, but only with advance permission of the Senate. Today, the process is somewhat reversed with Senators taking the lead in bill introduction. The presiding officer, on the advice of the official Senate parliamentarian, refers each bill introduced by a member or received after being passed by the House of Representatives,

to one or more committees. Committees then schedule major bills for public hearings. After the committee receives and examines witness testimony, it may revise or consolidate the pending measure. At the conclusion of this process, the committee votes to report the measure to the full Senate. In the absence of such committee action, the full Senate may vote to discharge the committees from further consideration with an order to return the measure to the Senate floor. The Senate majority leader, in consultation with the minority leader, decides when to schedule legislation for floor debate. Any Senator may introduce amendments at this stage. Among a Senator's most prized weapons is the right to amend legislation on the Senate floor. In many legislative situations, the amendments do not need to be germane to the bill to which they are attached. These rights give Senators great tactical leverage, allowing them to bypass the recommendations of the reporting committees. The House of Representatives offers its members no such latitude.

Senate procedures allow persevering members to debate issues at great length. (In the much larger House, members are generally limited to five minutes, or less.) Debates of unusually extended length are commonly known as "filibusters". Until 1917, the Senate had no effective means of ending a filibuster. When conducted in the hectic days prior to a scheduled adjournment, filibusters offered a potent weapon for forcing compromise on contentious issues.

In 1917, under pressure of the nation's impending entrance into World War I, the Senate adopted its first rule designed to cut off debate on a pending measure. That so-called "cloture" rule proved cumbersome and was employed successfully on only five occasions over the next forty-five years. Since the mid 1960s, however, in a modified form requiring sixty votes out of one hundred to cut off debate, the cloture rule has been used more frequently. In recent times, the Senate has conducted an average of sixty cloture votes per year, and has succeeded in ending debate in about half of those attempts.

The legislative process concludes when the Senate and House pass a bill or resolution in precisely identical language. That uniformity of language can be forged in committee, in the Chamber, or in a House-Senate conference committee. Often one House will accept the language agreed to in the other, either because the measure is non-controversial or there is little time remaining in the session for an extended battle. One out of five disputed measures—usually controversial and complex legislation — require action by specially appointed conference committees. To reconcile the differences, each House names members who have voted for the measure and have expertise in the legislation under review. Bargaining in the conference is a high legislative art form. As soon as all matters are resolved by a majority of the conferees from each House, the legislation is returned to both Chambers. If accepted there, House and Senate officials sign the final enrolled act and send it to the President for his approval. If he vetoes the measure, each House must approve it by a super-majority vote of two-thirds for it to become law.

Legislative rules and procedures

The cloture rule described above offers a good example of the general protections available under the Senate's rules for the rights of determined minorities. Several of the current forty-three rules date back to more than two centuries. Although their language has evolved to meet the changing needs, in places the text is identical. Despite their proliferation and elaboration, the Senate's modern rules address the same basic issues that have concerned legislators for hundreds of years. These issues encompass standards of members' conduct, including regular attendance, civility, and ethical behavior; the need for timely but not hasty legislative action; clearly stated floor procedures; and open channels of communication with members' constituencies.

The Senate has formally re-codified its rules on only seven occasions in more than two hundred years. The infrequency of these changes, however, should not suggest that the formal rules lack importance or general interest. To the contrary, the Senate has added and changed rules between codifications and it has actively debated and rejected other proposed changes. In addition to the rules, there are other authoritative texts that guide the Senate's proceedings and make frequent revision of the rules unnecessary. They include the U.S. Constitution, statute law, non-statutory standing orders of the Senate, rulings by the presiding officer, and established practices.

Ethical guidelines and discipline

Throughout most of its history, until the mid-twentieth century, the Senate seemed reluctant to establish formal rules of conduct for members. Rather, it chose to deal, on a case-by-case basis, only with the most obvious acts of wrongdoing — those clearly inconsistent with the trust and duty of a member. This attitude reflected the inherent difficulty of enforcing ethical standards in an institution whose members are selected from outside its precincts. Whenever possible, Senate leaders chose to leave the ultimate judgment of a Senator's fitness to the electorate. In extreme instances, however, the Senate has exercised its constitutional power to expel a member by a two-thirds majority. Although the most recent expulsion took place one hundred and forty years ago, several members have since resigned under the threat of certain removal. The Senate may also censure a member by simple majority vote. This action, taken on only ten occasions in more than two centuries — but as recently as 1990, serves as a formal reprimand, but brings no tangible penalties.

In 1964, as a result of several conflict-of-interest cases involving members and staff, the Senate established its first permanent internal disciplinary committee. After fifteen years of experience with this new structure, the body revised its rules of conduct in 1979 and created the Select Committee on Ethics to apply them in an informed and equitable manner. Ten of the Senate's forty-three rules serve as a code of ethics for all members, officers, and employees. They provide for public disclosure of financial assets, outside earned income,

and gifts received. They also set guidelines to help members avoid conflicts of interest in the conduct of their constitutional responsibilities and in election campaigning.

Relations with the House of Representatives

Over the past two centuries, the Senate and House of Representatives have developed separate and profoundly different traditions, rules, precedents, and customs. Initially, despite their co-equal constitutional powers, the Senate proved to be the more passive of the two bodies. This accorded with the Framers' notion that the House would serve as the principal workshop for crafting legislation, while the Senate would review the Representatives' handiwork, polishing and reworking it in consideration of what were presumably the nation's broader and longer-term interests. Beginning in the 1820s, however, the Senate moved out of the shadow of the larger and more boisterous House to a position of genuine equality. By 1833, the Senate's membership had risen to only forty-eight, compared with two hundred and forty-two in the House. With its fewer numbers and balanced representation among the nation's regions and states, the Senate offered a forum better suited to lively and discursive debate. Over the years, the Senate's small size relative to the House has fostered a tradition of virtually unlimited debate and nurtured rules that greatly enhance the power of a determined minority. In the House, a simple majority can pretty much do what it wishes; in the Senate, a determined minority can bring proceedings to a halt.

Senate Officers

As a large and complex governmental institution, the Senate relies on its elected officers to oversee its day-to-day operations, under the general guidance of the Senate President, the President *pro tempore*, the Committee on Rules and Administration, and the party floor leaders. The Senate elects five non-member officers: the Secretary, Sergeant at Arms, Chaplain, and the two party Secretaries. Duties of the first three are herewith summarized.

Secretary of the Senate

The Secretary of the Senate is the body's chief administrative, legislative, and financial officer. Elected by the full membership on the recommendation of the majority leader, the Secretary supervises a two hundred member staff organized into twenty-eight departments. The First Secretary was chosen on 8 April 1789, two days after the Senate achieved its initial quorum for business. From the start, the Secretary has been responsible for keeping the minutes and records of the Senate and for transmitting enacted legislation and official messages to the House of Representatives and the President. As the Senate grew to become a major national institution, the Secretary acquired numerous other duties. That officer's jurisdiction now encompasses clerks, curators, and computers; disbursement of payrolls; acquisition of stationery supplies;

education of the Senate pages; and the maintenance of public and historical records. The Secretary also coordinates major technology initiatives to bring state-of-the-art efficiency to management of legislative and financial information.

Sergeant at Arms

The Sergeant at Arms is also elected by vote of the full membership on the majority leader's recommendation. That officer serves as the Senate's chief law enforcement and protocol officer and is the principal manager of non-legislative support services. In size of staff and budget, the office of Sergeant at Arms is the largest employing unit within the Senate. The office includes the Computer Center, Post Office, Recording and Photographic Studio, Service Department, Telecommunications Department, News Media Galleries, Cabinet Shop, Hair Care Services, Parking Office, Human Resources, Facilities Management, and Financial Management. The Sergeant at Arms also shares joint responsibility for the U.S. Capitol Police, the Senate Page Program, and the Capitol Guide Service.

Chaplain

On 25 April 1789, the Senate elected the Episcopal Bishop of New York as its first Chaplain. Since then, the Senate has been served by Chaplains of various religious denominations, including Episcopalians (nineteen), Methodists (seventeen), Presbyterians (fourteen), Baptists (six), Unitarians (two), Congregationalists (one), Lutherans (one), and Roman Catholic (one). The Senate has also appointed guest Chaplains representative of all the world's major religious faiths. In addition to opening the Senate each day in prayer, the current Senate Chaplain's duties include spiritual care and counseling for Senators, their families, and their staff.

Conclusion

The United States Senate is the one institution within the federal government that the Framers of the Constitution, after more than two centuries, would most likely recognize. They would understand its passion for deliberation, its untidiness, its aloofness from the House of Representatives, and its suspicion of the presidency. They would probably wonder why its proceedings had been opened to the public, both in person and through the medium of television. The Framers would certainly be aghast at the three ornate office buildings and the seven thousand staff members who fill them, yet they would understand the Senate's capacity for meeting the changing circumstances inherent in the nation's twentieth century rise to world-power status. They would sympathize with continuing calls for reform of Senate procedures just as they would acknowledge the force of precedent that makes those changes so difficult. Above all, they would most likely be delighted that the Senate, and the Constitution that created it, had endured for two centuries.

LITERATURE

For more information, consult the Senate World Wide Web site at <*http://www.senate.gov*> and check the following printed sources:

Bacon, Donald C., Roger H. Davidson, and Morton Keller, eds. *The Encyclopedia of the United States Congress*. Simon & Schuster, 1995. 4 volumes.

Baker, Richard Allan. *The Senate of the United States: A Bicentennial History*. Krieger, 1988.

Silbey, Joel H., ed. *Encyclopedia of the American Legislative System*. Charles Scribner's Sons, 1994. 3 volumes.

U.S. Congress, Senate. *The Senate, 1789—1989: Addresses on the History of the United States Senate*, by Robert C. Byrd. Senate Document 100-20, 100th Congress, 1st session, 1988-1994. 4 volumes.