Association of European Senates

The Senates and the Quality of Legislation

Debating Chamber of the Belgian Senate

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Participants

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Mr. Gernot Mittler, Secretary of State, Vice-President of the Commission for European Affairs in the German Bundesrat

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Mr. Petr Pithart, President of the Senate of the Czech Republic

Mr. Christian Poncelet, President of the French Senate

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Mrs. Françoise Saudan, President of the Swiss Council of States

Mr. Alfred Schöls, Chairman of the Austrian Bundesrat

The Association of European Senates was founded in Paris on November 8th 2000 by delegations of the Upper Houses of 12 countries with the aims of promoting bicameralism in the framework of parliamentary democracy, and strengthening of European identity and awareness. By setting up a strong cooperation between these assemblies, this initiative will support candidate countries in their accession process to the European Union.

The following bicameral countries are the founders of the Association: Austria, Belgium, the Czech Republic, France, Germany, Italy, The Netherlands, Poland, Romania, Slovenia, Spain and Switzerland.

The first meeting was held in Paris on June 6th 2001 and addressed the following theme: “Senates and Representation of local authorities”.

Presidency: Mr. Armand De Decker, President of the Senate

Morning session

The Chairman. — Dear colleagues, I am very happy that the Belgian Senate is able to welcome you here today, to the *Palais de la Nation.*

Thanks again to our colleague, Mr. Poncelet, President of the French Senate, for the initiative of creating our association which is proving all the more important as in some of our countries, the High Assemblies are at times called into question.

If, right from the founding meeting of our association, I have presented the Belgian Senate as the organiser of this meeting, it was not only because I enthusiastically believe in the statutory aims of our association, but also for two specific reasons. This year, the Belgian High Assembly celebrates its 170th anniversary, ranking it among the oldest in Europe. Moreover, Belgium presently holds the presidency of the European Union and, as Mr. Christian Poncelet said with good reason during the founding meeting of our association, the construction of the European Union leads us to compare our institutions and legislative systems. This allows us, as in any international exchange, to consider things in a new light, to broaden the range of legal instruments and refine concepts. Indeed, the mediæval lawyers taught us already that nobody is a lawyer without being a comparatist at the same time. This surely also applies to contemporary legislators. We know the advantages of bicameralism or bicamerism. During our meeting on June 6 at the *Palais du Luxembourg*, we studied one model in-depth, that of a representation of local communities. Today, we shall discuss the contribution of bicameralism to the oldest of all parliamentary tasks, that of law-making.

In our West-European democracies there has been talk of regulatory crises for decades. The diagnosis is always the same: there are too many laws and their quality is often mediocre.

The first aspect of the crisis is thus the amount of legislation. To get an idea of what is meant by the actual inflation of legislation, you only have to read the French decree of the 14th of Frimaire (the third month of the French revolutionary calendar) of the year II, a text published in 1794. This decree stipulated that each new law should be announced in the municipalities by drum rolls or trumpet calls. Furthermore, all laws in force must be read out once every ten years in a public place in each municipality. Dear colleagues, no doubt there is no parliament today which would dare subject its citizens to such an ordeal. Our statute books have become much too voluminous and technical for such methods.

The causes of the present legislative avalanches are well-known. Today's regulations aim not so much at stating but rather modifying the law, a process that could be summarised by the formula "from codification to modification". Presently it

is said that the law has the authority to make changes that have been deliberately set as objectives. In addition, the emergence of the welfare state and scientific and technical progress obliges the authorities to intervene more. The consequence of this is the emergence of legislation relating to the environment, developments in biotechnology or consumer protection, for example.

There are many people, however, who think that too many regulations are a problem. Indeed, inflation also means devaluation. The citizen is lost in the legislative maze. When the law holds forth, the citizen only listens half-heartedly. Worse still, the law is no longer perceived as a protection but rather as a menace. Roman Herzog, the former President of the Federal Republic of Germany and a brilliant lawyer, assessed present-day legislation with a formula that was both concise and to the point: "*des Guten zuviel*" — "too much of a good thing".

The second aspect of what I called "the crises of the regulatory function" is qualitative. The laws are often drafted in haste and their editorial quality suffers. At times they are difficult to apply in combination, if not contradictory …; they are often worded in obscure terms, too technical, incomprehensible and inaccessible for citizens who are not qualified lawyers.

Some laws are continually modified, without mentioning the numerous errata subsequently published. The stability of the law is no longer guaranteed. Francis Bacon wrote that "Certainty is the foremost dignity of the law". This common sense very often eludes those who presently preside over law-making.

Finally, numerous outdated laws are left dormant and nobody thinks of rescinding them. Unlike our demography, our legislation is characterised by a high birth rate and a mortality rate of virtually zero.

These two evolutions — the legislative overproduction and the decline in legislative quality — have a direct negative impact on the quality of our democratic constitutional state because they lead in particular to ignorance of the law and legal uncertainty.

Doubtless the institutional system offering the most guarantees in terms of legislative quality is that of bicameralism. Two readings of a bill by two separate assemblies composed of elected representatives of different profiles ensures the citizens' best protection against the risk of arbitrary action by the government or against legislative improvisations for reasons of expediency. The to-and-fro between the houses of parliament improves the quality of legislative drafting because it ensures a greater respect of the adversarial principle, leaves time for things to mature and takes account of more different views. The fact that a second chamber may analyse a text of law in a new light without prejudice or favouritism is therefore not a luxury.

True, bicameralism may sometimes slow down the decision process. This is a typical criticism of our age where all human activities are measured in terms of productivity. But the law is not and must not become an industrial product subject to market forces. Democracy takes time.

Moreover, bicameralism, by definition, opens the door to specialisation. It permits one of the two assemblies, less dependent on political contingencies, to devote itself to the continued and laborious task of reflecting and controlling the quality of legislation.

If the coexistence of the two assemblies in itself instills reflection and wisdom into the legislative process, there is nothing that prevents the assemblies from putting up additional defences capable of ensuring greater respect of the quality of legislation.

Thus, Belgium set up a Supreme Administrative Court in 1946, which has the function of legal adviser to the Government and the houses of parliament. The Court issues opinions of a non-compulsory nature on all bills emanating from the Government and, optionally, bills submitted by a member of parliament.

The Belgian Senate also has some characteristics enabling it to concentrate on the quality of legislation. These characteristics concern the composition, legislative procedure and internal organisation of the Senate.

Already since 1922, some senators have no longer been directly elected, but co-opted. Thanks to co-optation, the constituent hopes that the Senate's recruitment will give priority to the factor of experience and competence. I regret however that this goal has not been reached systematically.

The category of co-opted senators was maintained during the thorough reform of the Belgian Senate in 1993. At present, ten of the 71 senators are co-opted.

The reform of 1993 made the supervision of legislative quality one of the principal missions of the Senate. This mission gave rise to a new legislative procedure. Until 1993, Belgium had a classic integral bicameral system, under which a text could not become law until the Chamber and the Senate had adopted it. Today, this pure and integral bicameralism only remains in force for part of the legislation: the Constitution and laws concerning the organisation of the State, the institutions, jurisdiction and international treaties that must moreover be examined by the Senate as a matter of priority.

For the remainder of the laws, however, an entirely new procedure has been devised, which was conceived bearing in mind the Senate's task regarding the quality of legislation. In these matters, if the Chamber has adopted a bill it needs no longer automatically be transferred to the Senate. The Senate has a period of fifteen days to summon it for review. In order to do so, it is sufficient that fifteen senators out of the 71 should make the request, which enables notably the opposition on its own to

summon a bill which will then be submitted to the Senate. It may adopt it as is or amend or redraft it, which has already happened. The Chamber has the final say in these legislations. Due to this attenuated form of bicameralism, the Senate no longer has to deal with every bill but can make a strict selection of the texts it would like to examine.

In such selection, the Senate may be guided by quality criteria. It may also base its decision to summon the bill or not on the opinion of a “reading committee”, that is a unit consisting of Senate officials who examine the bills adopted by the Chamber as to their linguistic quality — we live in a bilingual, even trilingual country — from a juristic and technical legal viewpoint. This evolution of Belgian bicameralism has enabled our Senate, by using its right to summon bills for review wisely, to expand its role as the chamber of reflection, that is a chamber that takes the time, by contrast with current affairs which are rather a matter for the Chamber of Representatives, to analyse fundamental legislation and the major issues in society such as, recently, the delicate issue of bioethics. This is, by definition, a typical issue which is easier dealt with by the Senate than by the Chamber of Representatives.

The Senate has however found it necessary to push legislative control beyond editorial quality, formal legislation or the classic requirements of legal certainty and equality. These days, we also expect the legislator to clearly define the objectives of intervention and to verify if they may not be reached by other means, less restrictive than a law. The legislator is expected to make laws that are applicable, effective and efficient. In short, it is expected that it should observe the principles of good legislation, as the Government is obliged to observe the principles of good administration and the judge that of good administration of justice.

With this in mind, the Senate created last year an in-house legislative evaluation service whose role is to effect a preparatory technical evaluation of planned legislation and of existing legislation in light of the principles and requirements I mentioned. The service carries out its tasks at the request, instruction and under the authority of the Bureau of the Senate. The evaluation itself which implies choices of appropriateness and therefore political choices remains, of course, the exclusive prerogative of the senators and the Senate. Furthermore, the service is supposed to provide the Senate with analyses of texts, revealing legislative imperfections. As an example, I can cite the annual reports drawn up by the judicial authorities, the decisions by the Court of Arbitration establishing the unconstitutionality of a law or the decisions of the Court of Justice of the European Communities or the European Court of Human Rights. Finally, the service has the task of tidying up the legislative scene, to check whether laws are outdated and whether the legislative arsenal may be slimmed down. By creating this service, the Belgian Senate has now given a structured character to legislative evaluation and made it an important and permanent mission.

Dear colleagues, I outlined how the Belgian Senate intends to exploit the structural advantages inherent in bicameralism to ensure the quality of legislation. This task is truly intensive, takes place far from the public eye and does not involve much mileage from the electoral point of view, which sometimes bothers my colleagues. But it is indispensable. In fact, it is professional integrity itself which demands it. “There is no comparison”, wrote the French professor Esmein, “between the danger of having one good law less than having one more bad law”. The quotation from Descartes, according to which “When handling the law one should do so with trembling hands” also appears full of wisdom and deserves meditation.

We shall continue our discussions, dear colleagues, so as to be able to compare our respective experiences in terms of democracy. I wished that our meeting this morning had been open to the public, to demonstrate in an objective manner the importance of bicameralism in the legislative domain. This afternoon, we shall debate any subject you like, as we decided to do from our first meeting, in June.

Before handing you over to the first speaker, I would like to present apologies from the new president of the Upper House of The Netherlands, Mr. Gerrit Braks. He would have liked to attend, but was detained by a session of his assembly today which is hosting a very special event. This also explains the absence of the vice-presidents of the Dutch Parliament.

Mr. Brian Mulloly, President of the Irish Senate, also sends his apologies. In his letter to us he expresses his interest in our institution, which is something new, as well as his regret not to be able to attend our session. It is thus possible that our Irish colleagues will attend our next meeting which will be held in Slovenia.

Mr. Gernot Mittler, Secretary of State, Vice-President of the Commission for European Affairs in the German Bundesrat. — First of all, Mr. President, allow me, in the name of the Bundesrat’s President, who is also the Mayor of Berlin, to thank you very much for your invitation. Our President, who will take up his new functions at the beginning of next month, is going through a very hectic period at the Senate. He greatly regrets being unable to attend in person.

For my part, I am very happy and honoured to represent the President of the Bundesrat once again.

The issue we are dealing with today is of great importance. It should rightfully concern all those who strive to draft and apply the law.

Life in society is governed by the rules it sets itself. The ever-increasing complexity of life, be it at the level of society or of individuals, international interdependence and integration into the European Union are facing us, as legislators, with new challenges.

Therefore, it is increasingly important that we look into the quality of our laws and regulations and envisage the possibility of improving them in the EU Member States where legislators often have to make do with transposing a European Directive into national law. It should however be considered to what extent these legislations may influence the quality of the legislative process.

Please allow me to briefly explain the functioning of the Bundesrat and the attention it pays to the quality of legislation. Article 15 of our Constitution stipulates that, via the Bundesrat, the Länder participate in the elaboration of laws and the discussion of European Directives. In 1949, we opted for the federal parliamentary principle. Indeed, apart from the usual division, we wanted another type of sharing of powers in order to avoid all abuse. Without neglecting the important competences of the Länder, legislation is first foremost a matter for the Bund.

However, the application of the laws is basically a competence of the Länder. The Bundesrat, representing the link between the Bund and the Länder, is an organ of the Bund composed of representatives of the Länder. It is a legislative organ, but is composed of representatives of the Länder's executive, since only the minister-presidents of the Länder, the mayors and senators may be part of the first organ. Thus the Bundesrat, according to its structure, organisation and tasks, is absolutely unique as compared to other chambers and finds its origin in German tradition. Indeed, the Constitution of the Assembly of Frankfurt in 1848 intended to create a Reich on a democratic basis and foresaw a House of States.

But let us return to the present-day situation. The Bundesrat may exert great influence on the Bund. This is the second legislative chamber. According to our Constitution, the Bundestag is, literally, the legislative organ. The basic law stipulates that the Bundestag adopts laws whereas the Bundesrat participates in their drafting. The Bundestag speaks for the people whereas the Bundesrat speaks for the Länder. The Bundesrat does not have the same powers as the Bundestag, but by virtue of the votes represented, it is equally important as far as framing of laws is concerned.

Apart from the right of initiative, i.e., to propose laws to the Bundestag, its task mainly consists of examining bills. The Bundesrat is the first organ allowed to intervene in parliamentary discussions. It may discuss the proposals, which it does without exception. The representatives of the Länder may, at an early stage consider the bills of the Federal Government and propose amendments. The Bundestag and the Government must consider the Länder's opinion in the subsequent procedure.

This is where that quality control comes in, as well as in the deliberations, the experiences gathered by the different administrations of the Länder in the application of the law. The control function of the Bundesrat in the federal system is therefore very clear. As the executives of the Länder are close to the grass roots and the citizens, it is obvious that the examination of the texts of law is the special

responsibility of the Bundesrat in terms of general quality and application. The position of the Bundesrat does not yet bind the Federal Government and the Bundestag at this stage of the legislative process. However, its opinions may not be ignored as they are an important signal and an indication of the Bundesrat's final say during the subsequent stages of the procedure. The Federal Government issues its opinion on the Bundesrat's position in writing in a contrary opinion. The bill, the opinion and the contrary opinion are then submitted to the Bundestag.

The Bundesrat's role is not limited to control at the administrative level. It very often comments on constitutional questions. In this way, for example, it ensures that the Bund uses legislative competence well to rule on the matter and that the original rights of the Länder are not infringed, that the distribution of competences foreseen in the Constitution between Bund and Länder is respected or that the basic rights of citizens are not jeopardised. The effect of a legislative initiative on the finances of the Länder may also give rise to amendment proposals.

All legislative decisions taken by the Bundestag have to be submitted to the Bundesrat. If the latter does not agree it may refer the matter to the mediation committee. This committee is foreseen in the Constitution and is composed of an equal number of members of the Bundesrat and Bundestag. Each Land has a vote in it. Its task is to find a compromise if a bill is contested. This compromise has to carry a majority in the Bundestag and Bundesrat. If it concerns a law particularly affecting the interests of the Länder and for which their agreement is indispensable for it to work efficiently, this law may never be enforced if the Bundesrat does not agree, which shows the important role the Bundesrat plays in law-making.

Please allow me also to comment on the role of the Bundesrat in European issues. As I already had the occasion to mention, our national law, due to the growing integration of the European Union, is increasingly influenced by the thought processes and arrangements made in Brussels. The Council of Ministers takes the decisions at this level. It is foreseen that the Federal Government informs the Länder in detail and at the earliest stage possible of all projects of the European Union. The Bundesrat may then, after deliberation in committee, give its opinion. Where the rules of European law concern issues falling under the legislative competence of the Länder or the organisation of their authority and administrative procedure, the Bundesrat's opinion is decisive. That means that the Constitution confers on the Bundesrat the right of the final say.

That means basically that the Bundesrat has the final say in determining the opinion to be submitted by Germany to the Council of Ministers. It is, of course, obliged to consider the interests of the whole of the Bund. In the absence of a common position of Bundesrat and Bundestag, the Bundesrat shall have the final say, provided that the decision is taken by a two-thirds majority.

I tried to explain the role of the Bundesrat. I am convinced that, at the national level as well as at the level of the European Union, we shall discuss this issue for some time to come. In view of the growing European integration, we should also examine our procedures, working methods and collaboration. We should give it serious thought. Therefore, a meeting like this where we can exchange our views on our very different systems is of the utmost importance.

The Chairman. — Thank you, Mr. Mittler, for this explanation which highlights the advantage of bicameralism in a federal system. It is very interesting to see how you arrived at these techniques of compromise between Bundestag and Bundesrat. The fact that in Germany the Länder are involved at a very early stage in the process of the drafting of European standards is very instructive.

Mr. Alfred Schöls, Chairman of the Austrian Bundesrat. — Allow me to thank you, Mr. President, for inviting us, the representatives of the second chamber and thus to give us the possibility to participate in this exchange of experiences at a time when precisely at the European level the issue of finances, national debt and the possibility of saving money arises.

It is not only the members of the populist party who want to save money in certain circumstances. The issues should be examined from different angles. In my country — but I am sure that others experience similar situations in their countries — the issue is often approached from the financial angle. Some question the “luxury” of a bicameral system. The previous speaker representing Germany has pointed out the importance of the European Union and the role played by our respective organs within it. Therefore, it is very important that we, the representatives of the second chamber, meet to elaborate common strategies with a European dimension. We cannot afford to make the mistake of only dealing with our own issues and ignore what goes on behind the walls of our own backyard.

I am glad indeed that this conference could take place. In my speech, I will of course give priority to the specifically Austrian features and I would like to elaborate on the questions put to us before the meeting.

The Austrian Bundesrat, in its actual form, does not have the tradition of other senates or the German Bundesrat. In Austria, after the war and after 1954, we attempted to recreate a bicameral system which, however, encountered difficulties from the start. We knew that we could not satisfy everybody. Our President criticised the Austrian Bundesrat on several occasions. However, nobody doubts the quality of Austrian legislation and the Bundesrat has contributed a great deal.

The Bundesrat also accomplishes tasks for the Länder, thereby aiming to ensure that the Länder, having their own legislation, may remain autonomous and make it unnecessary to modify the Constitution which would lead to the creation of a central organ.

The Bundesrat is an organ of the Bund. Its members are nominated by the regional parliaments. Their mandate runs between four and six years. Our country's Constitution also foresees that the presidency of the Bundesrat changes every six months, by rotation in alphabetical order. Thus, the Land of Lower Austria holds the presidency at the moment and a representative of Upper Austria will be the next President. The members of the Bundesrat benefit from immunity. They may also veto any law adopted by the Bund, with the exception of budgetary laws. Thus we have a veto right. If we use it, the first chamber has to deliberate on the issue again. The Bundesrat may, however, only use it against laws in their entirety. The decisions taken by the National Council may not be modified. Thus the Bundesrat has a certain influence on the quality of legislation and has to verify the principle of subsidiarity.

We parliamentarians are of course very concerned about the quality of legislation. Therefore, the presidents of the three fractions represented in the Bundesrat have submitted an initiative to the National Council — we have the right to introduce such an initiative — for the purpose of collaborating in the legislative process during the negotiations for the National Council. We do not want to intervene when the procedure is concluded at the National Council but at the outset.

The Bundesrat should have the possibility to voice its opinion and to justify it. After the veto, when the decision has been taken by the National Council, we will have a very important instrument at our disposal. But that requires a modification of the Constitution and the internal rules of the National Council. For the time being, negotiations are under way to ensure that this view will be taken into account.

Mr. President, at the start of the conference, you said something very important. We find ourselves in a world of experts and are in the same situation as many other senates. In fact, nobody wants to see the other's position strengthened. I believe that all the groups represented in the Austrian Bundesrat have a task. We have to convince the Government, regardless of its composition and the colleagues of the first chamber. This is about the quality of legislation. It is a long and difficult road and I hope that during one of the next conferences the Austrian representative may announce that important progress has been made.

The Chairman. — Thank you, Mr. Schöls, for your explanations clarifying the role the Bundesrat has to play to ensure that the Länder conserve their autonomy.

I did understand that you have a veto right concerning the legislation voted by the other chamber but I did not understand whether you had the right or not to directly amend yourself the texts adopted by the other chamber.

Besides, I am slightly concerned that your personal presidency only lasts six months, a fact which must render your situation very uncomfortable.

Mrs. Esperanza Aguirre Gil de Biedma, President of the Spanish Senate. — I would like to thank President De Decker for his invitation to participate in this second meeting of the Association of European Senates.

Before tackling the theme of the debate proposed for this second meeting, I would like to remark on the aspects severely affecting our liberty and the defence of our basic values.

On May 31, I had the honour to chair a delegation of the Spanish Senate visiting the Belgian Senate. The latter approved a very important declaration considering that the violence and the terror of ETA run counter to the political values of the European Union. This resolution, which moreover called on the Belgian Government to persevere in its policy of condemnation and refusal to compromise with extremist groups using violence as a political means, is for us transcendental and exemplary. This chamber has made this decision well before September 11th.

Mr. President, we in Spain very much appreciated your attitude and I would like to reiterate before this association my sincere thanks for the sensitivity of the chamber that you preside towards the terrorist attacks in Spain.

We believe there are no good or bad terrorists. Terrorism as a means to obtain political results must always be condemned. You have said so explicitly and solemnly in this Senate at the initiative of senator Paul Galand of the Ecolo Party, and approved with 51 votes in favour and five abstentions. I would like to underline this because this took place well before we could imagine the horror and suffering that some fanatics were going to inflict on the cities of New York and Washington.

I would now like to comment on the subject of the debate proposed for this meeting. According to our Constitution, the *cortes generales* represent the Spanish people and are composed of the Deputy Congress and the Senate. Furthermore, they exercise the legislative power of the State, approve the budget and control the Government.

According to Article 69, the Senate is the chamber of territorial representation, but it is also a chamber of a parliamentary nature endowed with legislative power. Even if the Deputy Congress and the Senate share legislative power, they do so under different conditions. The Senate is a second chamber. As such and according to our Constitution, as soon as a proposal or a bill has been approved by Congress, i.e., the first chamber, its president must report to the president of the Senate who shall submit this initiative to the Chamber for deliberation. The legislative procedure in the Senate follows a pattern very similar to that of the Chamber, but with some particularities.

The first particularity is the inflexibility of the deadlines. Our Constitution specifies a maximum period for the Senate of two months to exercise its legislative function. We have the right of amendment. This may be reduced to 20 days in case of

an urgent procedure. This delay is fixed and we may not be accused of adapting the delay to individual laws since the maximum is two months and the minimum 20 days.

The second characteristic is what we may call concordance and consensus as an inspiring element. I know, dear colleagues, you believe that consensus is not always a guarantee of quality of legislation. That is correct, but it is also true that the intervention of the Senate coincides with the desire to act in a way that the final result should be as close as possible to unanimity. Thus, we look for common ground, especially by submitting conciliation amendments. These have to be signed by four groups of the Chamber which represent at least the absolute majority. We are looking for consensus in committee meetings as well as plenary sessions. This particularity leads us to another important characteristic of the Senate's legislative procedure, that of the intention to technically improve legislation.

This improvement in quality is one of the objectives of the parliaments and particularly the senates which, as a rule, examine legislative texts in the second place, in a context of lesser political confrontation and away from the limelight of the media. The Senate is more of a chamber of reflection.

Moreover, the Spanish Senate is aware of the necessity to search for parliamentary procedures that fulfil the requirements of European legislative quality. It is therefore indispensable to encourage setting up instruments for the exchange of legislative information between our parliaments, by means of the new technologies available.

Traditionally, the Spanish system has always loyally defended bicameralism. Like the Belgian Senate, we have a tradition of bicameralism. But we are the second chamber and that does not take away the Senate's function in the Spanish constitutional system because we have our own powers. The Senate is the chamber of territorial representation but it also intervenes in the legislative procedure.

The advantage of dividing legislative power between two chambers is due to the fact that the second chamber may play the role of an organ meditating on and finalising legislative proposals by the first chamber.

Allow me, dear colleagues, to conclude by congratulating the Senate of the Kingdom of Belgium and President De Decker for the initiative. In fact, this meeting gives us the possibility to confirm the importance of the second chamber in Europe for the improvement of the quality of our laws.

The Chairman. — Thank you, Madam President, for this communication. I also thank you for having been so kind as to recall the initiative taken by the Belgian Senate, via its senator Paul Galand, of having a resolution adopted in May condemning terrorism as a pseudo-political act.

The solidarity of our nations concerning countries that, like yours, are the victims of savage and blind — and I was going to add criminal, even mindless — terrorism,

must be complete. The events that followed have shown even more how extensive and absolute this solidarity should be.

During our meeting this afternoon — when everybody will have had the opportunity to comment on the subject on the agenda — I propose to have an exchange of views on this important matter of our solidarity with countries suffering from and our fight against terrorism. Traditionally, we speak about issues of European interest, well this is one among others we can discuss later.

Thank you again, Mrs. Aguirre, for your explanations on the role of your Senate which is in your country the chamber of territorial representation in the framework of its role of chamber meditating and finalising legislation.

I will now hand you over to our founder president, Mr. Christian Poncelet, whom I congratulate first of all on his re-election to the presidency of the Senate a few weeks ago. We are happy to welcome him and to tell him how grateful we are for having had the good idea of "creating" us.

Mr. Christian Poncelet, President of the French Senate. — Mr. President, allow me to address you, due to our good relationship, as "Dear Armand", I would first like to thank you for the kind words you said when we first started our collaboration and I appreciated your mentioning me in connection with the declaration you just made echoing the statement of our colleague and friend, the President of the Spanish Senate, on terrorism. I totally agree with what you said and support you entirely.

Dear friends and presidents, first I would like to say, dear colleagues, how much I enjoy seeing you all here in Brussels for this new meeting of our club, the Association of European Senates which is now a reality.

We have to thank our friend Armand De Decker for this friendly reunion, who courageously volunteered to take over from our "Paris meetings" — as it had become necessary to decentralise!

We thank him warmly for the quality, efficacy and generosity of his welcome.

We also congratulate him on the choice of subject on the agenda of this second meeting of our association, that of the second chambers playing a role in the improvement of the legislative quality. The relevance of this subject becomes evident if you remember our session during the Forum of World Senates which I organised in Paris on March 14, 2000 It was revealed that one of the principal features of the common heritage of our second chambers, beyond our differences in nature, configuration and competences, lies precisely in this decisive contribution to the quality of legislative co-production guaranteeing a second look at the law. What I just heard only confirms this.

Evidence *a contrario* to this assertion is provided by the example of countries having only one chamber. In fact, to return to this essential function of new

deliberation in the framework of determining legislative standards, these mono-dimensional democracies have no hesitation in setting up a shuttle service between two committees created in their midst or to oblige their single assembly to deliberate again on a text after a certain period of reflection. They realise that a second analysis of the law is necessary.

Finally, a last proof of the relevance of our theme of the day resides, needless to say, in the vitality of the current phenomenon of senates springing up in all corners of the world whose first motivation is doubtless the quest for better legislative efficiency: to make better laws.

Thus it happened that just recently, on November 7, the Tunisian President, Mr. Ben Ali, announced the creation of a second chamber in his country for the simple reason of, I cite, “the enhancement of the legislative function and political life in general”. This certainly is, and we can but welcome it, the beginning of a broader democratisation.

Having set out the backdrop, I would like to get to the heart of the matter which is to speak about the contribution of the French Senate to the improvement of the quality of legislation: how do we operate?

Admittedly, concern over the quality of legislation did not play a decisive role in the establishment of bicameralism in France more than two centuries ago.

That was not the essential motivation. The establishment of a second chamber had the main objective of putting an end to the excesses committed by a single chamber, the Convention, which had instilled terror. Only afterwards, but very quickly, bicameralism emerged as guarantee for democratic efficiency, notably due to its effect of improving law-making.

Let me explain now how the Senate of the French Republic, today’s Senate, the Senate of the year 2001, effectively and efficiently contributes to the improvement of French legislation. The document on the participation of high chambers in the elaboration of the law, drawn up with a view to this meeting by the European Affairs service of the French Senate facilitates my explanation. In fact, this comparative table of European Senates underlines the original position of the French Senate in the galaxy of second chambers. It is situated, on the one hand, between the Italian Senate, elected by direct universal vote and which has powers equivalent to those of the Chamber of Deputies, and, on the other, the German Bundesrat, direct representative of the Länder, which has a competence as to subject matter.

The Constitution of 1958 grants the Senate a specific dual mission: to represent the territorial communities and to represent French citizens abroad, who are often working in a job that bolsters the French economy. These specific missions are a constitutional dual bonus on top of the prime vocation of the Senate, a full

parliamentary assembly. As such, the Senate is a legislator in its own right and even more an excellent guardian of the law. As a legislator in its own right, the Senate, just like the National Assembly, has general legislative competence which is neither limited to issues of local communities nor problems of particular concern to French citizens abroad. It is competent for all texts. The Senate's powers vary according to the different law categories: constitutional law, organic law, ordinary law. As concerns constitutional law, i.e., revisions of basic law, the Senate has the same powers as the National Assembly. In fact, the project or the proposal for revision has to be voted by the two assemblies in identical terms before being approved by referendum or by Parliament meeting in Congress at Versailles. In this respect, the Senate makes reasonable use of its veto right. In fact, it has only vetoed one single amendment, in August 1984, on the extension of the referendum in the domain of enjoyment of political rights as such extension would have had the indirect consequence of by-passing the control of constitutionality exercised by the constitutional Council. In general, the Senate has always striven to maintain the dialogue with the National Assembly, mostly for the different amendments which became necessary due to progress made in the construction of Europe.

The construction of Europe obliges us to adapt and, consequently, modify certain provisions of basic law.

In this case, the Senate succeeded in 1992 in incorporating into the Constitution the power for the two assemblies to vote resolutions on drafts or proposals of community acts including provisions of a legislative nature. This is a good example of the proper use of the deterrent power that the veto right of the Senate represents in constitutional matters.

Finally, I want to stress a point which is too often ignored: the Senate approved the introduction into the Constitution of equality between men and women in politics. No matter what has been said or written on this subject, the definitive text of the amendment is the result of the paper adopted by the Senate on its second reading. The Senate modified the initial text and then amended and completed it. This text was submitted, in Congress, to the Parliament meeting in Versailles

Concerning organic laws, which are similar to the implementing orders of the Constitution, bicameralism is also better balanced.

When these organic laws do not specifically concern the Senate, they are subject to common law legislative procedure with its associated bad habits: declaration of urgency, meeting of a mixed joint committee and, if the case arises, the "final say" of the National Assembly. As a reminder: The mixed joint commission consists of seven senators and seven deputies, who try to find common ground for law-making. However, if the two assemblies disagree, the text may only be adopted during the last reading by the National Assembly by an absolute majority of its members.

Bicameralism, however, becomes egalitarian for “organic laws relative to the Senate”, which have to be voted on the same terms by the two assemblies without the possibility of a “final say” by the National Assembly.

For ordinary laws, the Constitution puts the National Assembly and the Senate on an equal footing. Thus, article 34 of basic law stipulates, in its first paragraph, that “the law is voted by Parliament”, i.e., by the National Assembly and the Senate, which are the two branches.

Moreover, article 45 of the Constitution states that “any bill is examined successively by the two assemblies of Parliament with a view to the adoption of an identical text”. We may conclude from this reaction that for the constituent of 1958, the pursuit of the — sometimes long — toing-and-froing until agreement is reached between the two assemblies was the normal procedure to adopt laws.

As a consequence, the “accelerated procedure”, with the meeting of a mixed joint committee, at the Government’s request and, in case this committee should fail in its task, the final say by the National Assembly, could only be exceptional.

But it has to be said that practice has decided otherwise: the exception became more frequent, due to the eagerness of Governments of all political persuasions, to have their texts adopted as quickly as possible.

Definitively, French bicameralism is egalitarian … as long as the Government does not decide otherwise.

But this trend should not be exaggerated. In fact, statistics show that for the volume of laws, apart from international conventions, which were adopted since 1959, the National Assembly had the final say in only 13% of cases, for a total of 2,800 laws. The laws voted by the two assemblies remain thus the rule and the “final say” the exception, due to the reasonable attitude of the legislator.

Over a long period of time, the French two-chamber system may reasonably be qualified as “balanced bicameralism” or “flexible bicameralism”.

During their examination by the assemblies, the texts are discussed article by article: each senator, in the same way as each deputy, may present amendments to improve, complete and even delete provisions of the text under discussion. Year in, year out the Senate examines over 5,000 amendments.

The acceptance rate of senatorial amendments by the National Assembly — and the Government — which is one of the principal indicators of the Senate’s contribution to the good health of bicameralism, varies, according to the circumstances, between 45% and 90%.

Senatorial initiatives are not limited to the improvement or enhancement of governmental texts, i.e., bills. Furthermore, like the deputies, senators have the right

of initiative, that is the power to submit bills. This power is not allowed to fester in a corner, and the Senate makes regular use of it, especially since the establishment of monthly sessions reserved at the Parliament for submitting proposals or discussing different issues. These sessions are informally called parliamentary “windows” or “niches”. Thus, there have been 29 laws of senatorial origin since 1995.

Generally, one law in ten had its origin in a senatorial bill.

Essentially, laws put forward by senators deal with everyday concerns of French men and women in areas clashing with the resistance or inertia of the ministries. Some examples of senatorial laws illustrate this: the introduction of electronic tagging instead of short prison terms or temporary detention, the organisation of health checks in the food sector, the prevention of the sectarian phenomenon, legalisation of palliative care, the institution of the first benefits for long-term care, the reform of compensatory benefits in divorce cases, the redefinition of criminal liability of public decision-makers — either elected or private, for unintentional offences …

Far from being conservative, the Senate often plays an avant-garde role, the role of incubator and accelerator of reforms.

In general, and as one of my renowned predecessors, Jules Ferry, said: The Senate “is not against novelties nor audacious initiatives. It only asks that they be studied with more care”.

Thus, with the exception of the PACS (Civil Solidarity Pacts), to which it preferred a legislation of all kinds of cohabitation, if I may say so, the Senate has adopted all the important laws affecting society that precede or accompany changing life styles, like lowering the voting age to 18 years, divorce reform, equal rights between husband and wife, voluntary abortion, emergency contraception, the abolition of the death penalty and the equality of the sexes in politics.

The Senate is thus not a chamber of systematic opposition: it makes a positive contribution to law-making. A legislator in its own right and an independent parliamentary assembly, the Senate is also a good servant of the law.

Beyond the clichés sometimes circulated by certain media, the Senate enjoys in fact the positive image of a lawsmith. Several factors explain this reputation which I think is justified.

Firstly, the proximity of the senators who, elected by indirect universal vote by locally elected mayors, town councillors, deputies, general councillors and regional councillors, who are closest to the reality of local events and maintain a certain distance vis-à-vis present circumstances and political contingencies.

This is so true that, in France, a candidate for the Senate may not, as commonly said, be parachuted or dropped into a departmental appointment by political parties. He must have regional roots, know the people of the region to be able to understand

their problems, their situation and to legislate well. This is not the case of the deputies.

Close to reality but far from the everyday political froth, the Senate is a permanent assembly which is stable, a symbol of serenity. The French Senate obviously exercises a function of moderator in the long-term.

Secondly, work in a committee system, which in our country is a larger component of the institutional culture of the Senate than of the National Assembly. Each text is thoroughly scrutinised by the committee and often preceded by various hearings and investigations.

To make good laws is also to render them more intelligible and more accessible to our fellow citizens who are supposed not to be unaware of them.

The Senate is working towards this goal, with a Benedictine zeal, in the codification process of our laws.

To make good laws, make them accessible but also to enforce their application. In this respect, the Senate ensures an attentive follow-up of the laws by keeping a close watch on the issuance of implementing orders whose application may eventually misrepresent the initial intention.

To make good laws, to render them accessible, to enforce their application but also, finally and foremost, assess their effects. In order not to tire you, I will not elaborate on these three points. I will answer any questions you might have on the subject.

This is, Mr. President, dear colleagues, dear friends, my modest contribution to the subject which so opportunely brings us here today. We should discuss these issues, above all if, as begins to be admitted now, we may have to envisage one day the construction of a European Senate.

Obviously, the law is an act too important to be entrusted to one assembly alone. But a good law is also a text taking into account the real aspirations of society. To do so, it is necessary to know these aspirations because the citizens have to recognise themselves in the legislative work of their representatives.

The Parliament may achieve this with growing recourse to the new information technologies allowing, by multiplying contacts between citizens and their representatives, to instill some amount of participation in democracy.

This approach is important because I would conclude by citing Jean-Jacques Rousseau, that “if you want laws to remain in everyone’s mind the first creative standard of the constitutional State, make them likeable”.

The Chairman. — Thank you, Mr. Poncelet, for that declaration of faith in bicameralism which we have come to expect from you. Thank you also for stressing

that bicameralism is doing well worldwide. The number of bicameral parliaments is growing steadily. There were about 40 at the end of the ‘seventies, and nowadays there are over 70 Senates. You told us that Tunisia is about to set up a second chamber, which underlines its wish for greater democratisation of its system. You said earlier that Peru and the Ukraine were considering setting up a second chamber. This should be remembered and underlined.

I would also like to thank you for the remarkable document the services for European Affairs of the French Senate drew up on the participation of the high chambers in the elaboration of laws. This working document, which explains the role of the high assemblies in all our countries will be particularly useful for all of you and each of our parliaments.

I finally thank you for having reminded us of the essential role the French Senate played in the elaboration of a certain number of important laws. I was astonished by the fact that the Belgian Senate often had a similar attitude. In our country, the important laws in the area of filiation, adoption, divorce, decriminalisation of abortion and, more recently, laws on palliative care, euthanasia, right to asylum and equality between men and women were each time texts initiated by senators. Each time the debate was opened at the senators’ initiative. This contribution to our assemblies is worth emphasising.

Mr. Lamberto Dini, Vice-president of the Italian Senate. — I have found the working paper prepared by the French Senate extremely helpful for this meeting, since it usefully summarises the participation of the Upper Chambers of the thirteen Member Countries of this Association in the law-making process.

This document explains that in Italy, as is also the case with Romania and Switzerland, the two Chambers have exactly the same powers, in the sense that they both have the right to initiate the legislative procedure and amend bills, and that no bills can be enacted without adoption by both Chambers.

I will therefore not dwell on this aspect, but only on the actions undertaken in my country over the last decade with a view to improving the quality of legislation, under the impetus of OECD as part of the debate on over-regulation in advanced societies, deregulation and privatisation.

Previously, in Italy, the issue of the quality of legislation as such was not given the same political and legal consideration and Italy was regarded — and rightly so, I believe — as an over-regulated country. Perhaps exaggerating, the historian Paul Ginsborg had written that Italy was bogged down in a marsh of 100,000–150,000 acts of Parliament. It is nonetheless true that, until recently, the Italian Parliament continued to pass acts also in sectors that other countries would regulate through secondary norms.

Since the late 90's, Italy has been undertaking a series of parliamentary initiatives to reform and streamline the regulatory system. The OECD itself has acknowledged, in the report entitled "Regulatory Reform in Italy", published in April 2001, that Italy, which had been lagging behind many other countries, devoted the 90's to catch up in the field of economic and institutional reforms, reaching the most advanced OECD countries. The same report also states that the scope, speed and depth of the structural reforms carried out by various governments have been really remarkable. Now Italy still progresses more swiftly than many other countries towards the completion of the reform programme.

What are the steps actually taken within the process of regulatory reform, which is, by the way, closely linked to the parallel deregulation and privatisation processes?

Italy has worked in different sectors using different tools. I will simply mention:

– the transfer of State functions to the Regions and local governments;

– the re-organisation of the legislation through a programme of codification (consolidated texts) of the pre-existing stock of legislation;

– the informatisation of and IT access to the existing legislation (which is a process still under way), in order to make up for the lack of an official collection of the acts and regulations in force and make the retrieval and consultation of texts easier, thus improving the knowledge of legislation;

– "de-legiferation" and streamlining by issuing regulations in sectors previously regulated by acts of Parliament;

– the actions undertaken in the legislative process, experimenting what are known as regulatory impact analyses (RIA's) and technical regulatory analyses (TRA's).

The tool extensively resorted to over the last years has been the law-making delegation to the Government, which has been used with an unprecedented frequency and scope, to such an extent that, in the latest Parliament (1996-2001), the number of legislative decrees — issued as a result of a delegation conferred upon the Government — was practically equal to that of the acts of Parliament.

The transfer of regulatory functions from Parliament to the Government is common to most OECD countries.

In this context, however, the OECD report underlines that in Italy, more than in most OECD countries, Parliament has played an active role in the regulatory reform policy started by the Government.

The Italian Senate does not have a specific function, specific tasks in relation to the quality of legislation, but co-operates with the Chamber of Deputies and Government with a view to improving it. I would like to stress that, in Italy, the

Government plays an important role as far as the legislative initiative is concerned, in the context of the fulfilment of the ordinary legislative function.

It is precisely in the framework of the legislative reforms of the late 90's, however, that the orientation and guidelines expressed by Parliament have had a specific impact.

The Rules of Procedure of the Senate, that set the procedures for the legislative function, do not specifically mention the quality of legislation. The Senate, however, aims at this objective having established two instruments:

– Firstly, the Presidents of the Chamber of Deputies and Senate have adopted a code of "Rules and Recommendations for the technical drafting of legislative texts (20th April, 2001), primarily aiming at guaranteeing "the certainty of the regulatory provisions", which is considered a value of paramount importance for the rule of law, whereas the easy comprehension of the wording has a lesser importance. The adoption of this code clearly shows that the "quality of legislation" is set as the primary objective of politics.

– Secondly, in March 2001, the Senate introduced a reform in its internal Administration. This extremely innovative reform is aimed at strengthening the structures that support the law-making process, namely the technical and legislative departments of the Senate entrusted with drawing-up the bills. In particular, the former Drafting Department created in 1989 with the task of carrying out the technical drawing up of texts — including what is known as technical regulatory analysis, that is the study of the impact of the proposed norm on the existing legislation — has been transformed into the Department for the Quality of the Laws, and it has been entrusted with fulfilling two new functions closely linked to the quality of legislation through:

  1. an office intended to study the regulatory impact analyses (RIA's) prepared by the Government, with the purpose of clarifying the objectives aimed at by the new laws, the reasons for the regulatory instruments chosen and the information on which they are based;

  2. an observatory monitoring the implementation of the regulatory instruments and following up the effects of such implementation.

In conclusion, the logical structure underlying the recent reform of the Senate Administration provides for a background against which the new tools and procedures designed to improve the quality of legislation are set, along a path that takes from the tabling stage (identification and explanation of objectives, choice of instruments — RIA and TRA) to the drafting of texts and subsequent follow-up of the results achieved (Observatory).

I hasten to add that the terms and forms in which such reform will actually be implemented are still at the drawing board stage.

Therefore, as far as the use of new tools is concerned, we must still keep the sign "Men at work". Such new tools, in line with what has already been made in other countries, will certainly lead to an improvement in the quality of the Italian legislation.

I am sure that today's exchange of experiences on the actions taken by the Senates of some Member-Countries of our Association will result in an enrichment of each and everyone of us.

The Chairman. — It was very interesting to learn how Italy wants to improve the quality of the legislation and to learn about codifying the stock of laws. Indeed, most of our countries are confronted with that kind of problem.

In the Belgian Senate we hope, by means of our legislative evaluation service, to be able to propose as soon as possible the rescission of outdated and obsolete laws. This is obviously a long and tedious task requiring extensive analyses, all the more complex as it is done "from the bottom up". Nevertheless, we will need the support of the Chamber of Deputies and the Government. Coordination is necessary if we want to "abolish laws". Your speech was obviously very interesting in this respect and that of the code of assembly presidents, which inspires me …

Mrs. Jolanta Danielak, Vice-president of the Polish Senate. — I am very pleased to speak to you about the role of the Polish Senate in the legislative process of my country. In some countries like Poland, the debate has been re-launched about the Senate's function as the second chamber of Parliament and the appropriateness of maintaining two parliamentary levels. Yet, in Poland, the Senate has proved to be a necessary institution. It has shown its indispensable character in the legislative process.

The Senate keeps an eye on the quality of the law, corrects legislative errors and allows a thorough examination, without emotion, of the positive and negative points of laws. All criticisms addressed to the second chamber are usually of a political nature. There are few remarks as to substance of little importance since it is difficult to contest facts clearly justifying the existence of the Senate. The opponents of the second chamber also present arguments of a financial nature but the Senate's maintenance costs, compared to those caused by the absence of the Senate in the legislative process, if laws are adopted without correction, are indisputably lower.

I shall try to present this theory by basing myself on the example of the Polish Senate which is proud of its 600-year tradition. However, it was dissolved after the Second World War to be reinstated in 1989, when the political system was first reformed. The reasons for such reform were partly political. One had to proceed to

free elections in at least one chamber as, at the outcome of the agreements of the round table, 65% of mandates in the Diet were beforehand reserved for representatives of the factions then in power. The reinstatement of the Senate also had substantial reasons. Mechanisms had to be put in place to make better laws by replacing the mono-cameral by a bicameral Parliament. It was thus decided to bestow on the Senate rather modest tasks with the concept of "chamber of reflection". Nevertheless, the Senate has proven that its role largely exceeded the model of a Senate as the guardian of the law.

The most important competences of the Senate related to its legislative participation and consisted of giving it the right of initiative in this area and to approve, modify or reject laws voted by the Sejm. The latter could however reject the Senate's opinion with a two-third majority and in the presence of at least half the number of statutory deputies.

At present, the Sejm may reject the Senate's position by an absolute majority of votes in the presence of at least half the number of statutory deputies. In 1997, a new Constitution was adopted in Poland and the place of the Senate has been maintained in the system.

In the present constitutional state, its tasks are, among others: the right of legislative initiative, agreement on the convocation by the Sejm of the President of the Supreme Chamber of control and the mediator, i.e., ombudsman, the influence of a series of personal decisions regarding important state functions, examining information from the constitutional court on important problems resulting from the activity of this court and its jurisprudence and, finally, examining the annual reports of the National Council of Broadcasters and the mediator as concerns the activity of these organs. The Senate also approves the ratification of important international agreements and may also waive the immunity of senators and adopt resolutions.

The Senate exercises the majority of competences with the Sejm and the President of the Republic and thus represents a very important element of legislative power in Poland. The fact that the participation in the legislative process is the Senate's fundamental duty is particularly important in countries which, like Poland, are reforming their system by progressive methods. If we add to that Poland's aspirations in the international arena and the accession negotiations, which are linked to the radical change of the law in all walks of life, we get the complete picture of the tasks the Senate has to accomplish. Presently, the number of legislative objectives which presented themselves in 1989 has already been reached. But a considerable number of legal acts still have to be adopted.

Allow me to cite some figures. During the four legislatures of the Senate — and just recently we entered the fifth — the Parliament examined more than 1,000 laws: 250 during the first legislature, more than 100 in the second, nearly 500 in the third

and more than 650 in the fourth. All these texts passed through both chambers of Parliament. But the Senate only intervenes in the legislative process after the Sejm has concluded its work on the laws. It may initiate the legislative procedure on its own, which certainly reinforces its role in the activities undertaken to improve the constitutional state which is Poland.

The bills presented by the Senate are examined upon a motion from the Senate's committee or ten senators.

A motion is submitted by oral request to the Marshal of the Senate and is examined in three readings. It should be underlined that the committee's report, which is the basis of the second reading, contains information on the conformity of the bill with Community law.

In practice, it is rare that the Senate uses its right of legislative initiative. Up to now, it has submitted 70 bills. It must be underlined, however, that certain bills issued by the Senate became milestones in the reform process. This phenomenon is illustrated in Poland by the bill elaborated by the Senate in 1990 restoring local powers to the local authorities.

The most frequent form of interference by the Senate in the law-making process lies in the submission of amendments not limited to corrections. Often they completely change the text proposed by the Sejm.

If during the preparation of a law, the committee of the Senate considers that it needs to introduce legislative changes going beyond the scope of the law under examination, it may submit a motion to this effect.

In practice, the Senate often takes advantage of the possibility of presenting amendments to laws voted by the Sejm. Nearly half the laws — in the fourth legislature, this rate even reached 56% — are returned to the Sejm with the amendments.

The number of laws amended by the Senate and entirely rejected by the Sejm is minimal. By contrast, the number of amendments submitted by the Senate and adopted by the Sejm is constantly increasing. During the last legislature, more than 70% of the amendments submitted were adopted. This shows the good quality of the Senate's work, its competences and the substantial force of its arguments.

Apart from the possibility to introduce amendments to laws voted by the Sejm, the Senate also has the right to reject these laws entirely, but seldom has recourse to this possibility. This only happened about thirty times during the last legislature.

The statistical data I just mentioned do not entirely reflect the concrete image of the Senate's role as an organ ensuring the quality of legislative function.

It should be borne in mind that many laws are adopted in haste under pressure from a society looking for rapid solutions to concrete problems through the adoption of a new law or through amending existing laws.

There are many examples of laws containing irreparable errors which were adopted without the participation of the Senate.

This was the case with the law that regulates the principle of taxation, to which the Senate added the possibility of deducting from gross taxable income — the tax base — costs relating to the education of children and, for example, the law amending the labour code, which equalises the legal situation of men and women raising children until the age of four.

It should be added that sometimes the Sejm adopts a law anticipating that the Senate will introduce amendments. This procedure must accelerate the legislative process, particularly for laws liable to create controversy within the Sejm, like the law on the new administrative division of Poland. To conclude this review of the Senate's legislative possibilities, I should mention that the Senate also intervenes in the eventual modification of the Constitution. If the Sejm adopts a law that modifies the Constitution, the Senate will examine and adopt it by an absolute majority of the votes, in the presence of at least half the statutory senators.

Ladies and Gentlemen, the present work of the Polish Senate enables me to certify that the second chamber has an important place in each mature democracy. The Polish Senate plays its role well. It increases the population’s confidence in the voting right and guarantees a rigorous legislative process. Besides, it actively participates in this process, which is the most important, and tries to act in a way that the decisions are “inspired” as little as possible by political parties.

The Polish Senate always follows the reason of state, the welfare of the people and its own convictions worked out on the basis of substantial studies of the issues concerned. There is a strong feeling of autonomy in the Senate vis-à-vis the Sejm, which has positive consequences. The second chamber should strive to conserve its independence, not yield to pressures of the Government or the Chamber of Deputies. In this way it will obtain the recognition of the other organs of the State and the support of public opinion.

The Chairman. — Thank you, Mrs. Vice-President, for your speech which shows how eager the countries that returned to democracy were to rapidly improve their institutional systems and legislative procedure by setting up a second chamber, a Senate, which in your country for example already plays a very fundamental role after ten years. I believe you are right to insist on the necessity of the second chambers keeping their independence from the other chamber as well as the Government.

Mr. Paul Pacuraru, Vice-President of the Senate of Romania. — Dear colleagues, I shall restrict myself to presenting a synthesis of the situation in Romania since the parliamentary systems of the different countries have already been largely described.

In Romania we have two chambers, the Chamber of Deputies and the Senate, or the Upper Chamber. This is a classic integral system without differentiation in the assignments of the two chambers. This organisation is mainly due to political tradition as Romania has functioned on the basis of bicameralism since 1864. We find it appropriate to have a legislative filter between the two chambers. Furthermore, the wish to offer the political groups of the two chambers the possibility of a counterbalance to accommodate their respective points of view on various bills has been another argument in favour of a bicameral system. Finally, it was necessary to forget the mono-cameral system established by the Communist Party in which the Great National Assembly was there purely for show.

Romania has 140 senators and 330 deputies, elected in the same constituencies but by a varying number of voters. Their competences are identical. As concerns the legislative procedure, each Chamber may reject a bill. A bill is definitively abandoned after it has been rejected twice by a Chamber. There is also a mediation system between the two chambers to which contentious texts are submitted — a mediation committee composed of seven senators and seven deputies charged with obtaining a common text.

As concerns the quality of legislation, the option chosen by Romania was similar to that of Poland and a good many other, mostly Eastern countries because it was necessary to radically reform the law and the social and institutional organisation. The need for new legislation was immense, which explains the considerable number of legal acts — more than 1,600 — approved by the two Chambers during the last eleven years. This obviously raises the question of the reliability of the laws and the quality of legal acts. In this respect, I will expose the difficulties with which we are presently confronted.

The first difficulty stems from the relations between the executive power and the legislative power. In Romania, the legislative initiative belongs principally, as in many other countries, to the Government.

There is also a constitutional regulation concerning legislative delegation. All Governments, regardless of their political colour, nowadays make too many urgent decisions which are only subsequently debated in the two Chambers. This is a problem because the bills introduced by the Government are not in fact always of good quality. I have to mention here the ministerial bureaucracy as well as the administrative machinery itself which does not always find the best solutions and formulae. If the number of texts is very high this causes additional problems with the evaluation and possible corrections which have to be made.

Another aspect influences the quality of legislation: the senators and deputies themselves. Our electoral system is based on the existence of lists accessible to the "faithful" of each party. They are not necessarily the best experts. Therefore, Parliament is not always viewed favourably by the population. In ten years we have made much progress but the system of electoral lists does not further the quality and the commitment of parliamentarians to their work.

We are also faced with a problem of internal procedure. The senators and deputies have the right to introduce amendments to bills but this right is limited in the framework of the final debate in plenary session. The efficacy of the legislative process is enhanced since a great number of bills may thus be examined during each session, but this is at the expense of quality. As you yourself stressed, Mr. President, legislative activity may not be assessed in terms of production but, rather and foremost, in terms of quality.

That means that improved wording or a better solution cannot be introduced into a bill if the MP in question has not been able to take part in the ad hoc committee, as amendments can only be submitted in committee. In fact, the number of legislatative acts submitted to the Senate is very large. That means it is not always materially possible to read and amend the texts. However, in the plenary session, not only is work limited to general debate, but also it is only senators whose amendments were rejected in committee who can defend the modifications they propose.

I would like to draw your attention to another matter of internal organisation. As Senators — we have to acknowledge this — we are dependent on the technical skills of the Chamber. Those skills — both for the Chamber and the Senate — are difficult to train, because what is required is expertise and capabilities in legal, organisational, institutional and linguistic matters. We still have some problems in this regard.

The debate today is very important for us. In fact, the Romanian Senate is calling for a major organisational and administrative reform. However, the Italian experience seems very appealing to us. In addition, we are currently considering setting up a constitutional commission of both houses, in order to amend our constitution. In fact, in the space of ten years, the social and institutional transformations in Romanian society have been very substantial indeed.

The issue of bicameralism is part of this overall process of reflection. This system is subject to criticism, some of which have also been expressed here: slowness, miscellaneous complications, etc.

Personally, I am a supporter of bicameralism, but I think that the two houses must have different competences, which avoids certain disadvantages. The experience of parliaments based on different powers and responsibilities for the two houses will doubtless be useful for us. I think that we shall discuss these very important questions in depth over the next year.

The Chairman. — Thank you, Mr. Deputy Chairman, for that speech which raised many issues, particularly that of the quality of bills. Our parliaments are often criticised, but there is little mention of the self-criticism that governments ought to display sometimes. However, the quality of bills submitted is often debatable, and it is at that stage that one can already see emergent problems of legislative quality. Ministers support texts that have often been drafted by very junior staff with relatively little experience. I know that because I was one myself, and that exercise taught me a great deal, though it was sometimes rather worrying.

Incidentally, you raised the issue of the type of elected representative, and expressed the regret that your party-list based elections bring into parliament the most loyal members of the party, but not always the most talented. That is where the issue of particracy comes in. One could think of the way in which our Senates are chosen. For example: the French procedure of indirect election seems to me to reduce the influence of the particracy and strengthen the clout of the elected members themselves. I suppose that it is not very easy to go through this route as a candidate to the French Senate; one needs genuine support.

Mr. Christian Poncelet, President of the French Senate. — But we are still confronted with the list system, which leads to the deficiencies emphasised by our Romanian colleague. It is the institutions that impose the system and the sovereign people have hardly any possibility of choice. The majority two-round ballot seems preferable to me, because anyone can give it a try.

The Chairman. — You also mentioned my remarks made earlier, that the law is not an industrial product. I would add that the law cannot be a means of communication. Sometimes, we have the feeling that political groups or parties, or ministers, consider the introduction of a bill as a means of communication, as if adding laws to laws were by definition positive, an assertion that has absolutely not been proven. That is also worth thinking about.

As to the slowness of bicameralism, it is an important subject. In Belgium, for example, it is rarely the Senate that is the reason for the slowness of the adoption of an act. The greatest slowness in the process of drafting a bill lies within the government. In a coalition government, the first thing that is required is that the partners have to agree before consulting the Supreme Administrative Court, which is compulsory. After that, the text returns to the government where it is again subject to amendment. Then it goes to the Parliament. When it leaves the Chamber, it arrives at the Senate. The Senate has a relatively short period to scrutinise it, i.e. two months, and it is very rarely the Senate that is behind legislative deadline. In my opinion, it is a fallacious argument, when criticising the Senates, to use the argument of the slowness of bicameralism.

Finally, you raised the question of the specialisation of the houses. Perhaps we could discuss that among ourselves later. Until 1993, we used the Italian system: the two houses had exactly the same competences. But now the houses have specialised somewhat, and I think that is the right decision. Is it really essential, for example, to submit budgets to two assemblies? We need to think about this question, as well as other very important and interesting subjects.

Mr. Tone Hrovat, President of the National Council of Slovenia. — First of all, I would like to tell you how pleased I am with this association of the Senates of Europe, created on the initiative of Mr. Poncelet. This gives us a start in order to work in greater depth on bicameralism and guarantee a higher level of democracy. I would like to thank Mr. De Decker for the very warm welcome he has given us in Brussels, the Belgian and European capital.

Today's meeting is particularly important for a country which has only recently enjoyed democracy, but at the same time is preparing to join the European Union.

Madam Vice-President of the Polish Senate said that Senates have mostly been criticised for political reasons. I believe that the reasons are also pragmatic. The government is very efficient if the ministers are very competent, if the coalition is good and if the second house is absent. In this case, however, democracy is also absent.

Among the countries that have only enjoyed democracy in recent times, like Slovenia, it is very important to perceive here a sign of the necessity of subsequent strengthening of democracy, a subsequent deepening of bicameralism, the possibility of submitting the legislation to a second opinion and to make amendments.

Now I would like to give you a presentation of the Upper House of the Slovene Parliament and the National Council which only has a recent tradition. In fact, it has only been in existence for ten years.

I would like to raise a few problems concerning the way it functions, but also the way the National Council works, in this period during which legislation has to be adopted rapidly with a view to joining the European Union. These changes require not only modifications to the legislation, but also a revision of the Constitution, which may form a pitfall. With a view to achieving the formation of a more pragmatic government, we could get rid of some items which do not guarantee a higher level of democracy.

Since we have given you a comprehensive document on the subject of our system, I will settle for drawing your attention to a few points. The Constitution of the Republic of Slovenia defines the legislative power with two houses: the National Assembly and the Upper House, the National Council. The National Assembly is the assembly of members elected by lists, and have a four-year term. The National

Council, on the other hand, is elected according to interest groups, and its representatives have a five-year term. The National Assembly represents individuals, citizens. On the other hand, the National Council represents the whole of life in the territory of Slovenia.

Under Article 97 of the Constitution, the National Council may propose initiatives for bills to the National Assembly. It can require the National Assembly to deliberate again before finally adopting bills. It can require the National Assembly to hold a referendum on questions that are regulated by law. It can also demand that an investigation be launched into matters of public concern, and the adoption of a compulsory clarification of the law. The legislative initiative of the National Council is aimed primarily at correcting the existing legislation as well as contributing to more effective operation.

The majority of bills introduced before the Supreme Administrative Court and adopted in the legislative procedure are blocked, because the debate on a bill cannot be started while the scrutiny of the previous text is not completed. This is one of the problems of our system. When the text moves into the other assembly, the members can continue to block initiatives emanating from the Senate.

The National Council also issues opinions, which are then submitted to the National Assembly, but its main role is to defend the interests of all the groups represented.

Despite the debates on laws and other legislative acts, the Committees of the National Council are also informed. The Council and its institutions collaborate with the working institutions of the Assembly. This collaboration is very efficient during the adoption of legislation. The article on the suspensive veto is very important. This veto is under the competence of the National Council and is defined in the Constitution.

The National Council has a period of seven days to ask the Assembly for a final deliberation on a bill before it is promulgated. It has used this competence on approximately forty occasions. In the majority of cases, after deliberation in the National Assembly, the laws were not adopted. Partisans were placed in a minority by an absolute majority.

The suspensive veto completely stops the law, even if the Members of the National Council are of the opinion that it is only partly deficient or incomplete. However, as the National Council does not have the right to amend, it only holds a suspensive veto to mark its disagreement with decisions of the National Assembly.

The legitimacy and efficacy of the suspensive veto can be evaluated in two ways, either by the number of occasions when the veto has not been placed in a minority by the National Assembly, or by the number of constitutional disputes where it has been

shown that the objections of the National Council have been justified by the opinion of the Constitutional Court. So this is positive with regard to the position of the National Council. The latter has the option of initiating constitutional disputes. It is interesting to note that over half the requests relating to constitutional disputes have been submitted to the Council after the National Assembly has adopted the law.

The National Council has taken up this option in 13 cases before the Constitutional Court. Most of the time, the latter recognised that the provisions of the laws for which the National Council had called for a review were grounded. This result shows the relevance of the suspensive veto and constitutional disputes initiated by the National Council. The Constitutional Court has only rejected the arguments of the National Council in three cases.

What problem does the veto of the National Council pose? The veto procedure is governed by the internal rules of the National Assembly; on the other hand, it is not adequately governed by the Constitution. Therefore, an organic law is required that would define this function of the National Council more clearly.

The National Council should have more competences concerning its own way of acting. The proposal that we have submitted to the National Assembly was not adopted by it. Furthermore, the cooperation and sharing of competences between the two houses of parliament are only organised under the rules of one of these two houses. This also poses a problem. Moreover, this veto right lacks flexibility. The National Council may only propose to amend a few of the provisions of a bill, but using its veto right, it can reject the entire law. We think that the internal rules should not represent an obstacle to the expression of the right of veto.

The treatment of constitutional disputes is another function of the National Council. However, there is another tool that is very important: the possibility of initiating a legislative referendum. However, it is possible that this competence may be taken away from us. The law relating to the National Council also governs the legislative referendum. Grounds must be given for the request and it must be submitted in writing to the Council. A majority can adopt it there. The legislative referendum, in its preliminary form as well as in its later confirmation form, can be initiated at the request of the majority of members of the National Council, the majority of members of the National Assembly or at least 40,000 voters.

The National Council has not made much use of this competence. This is a very indirect initiative. In practice, it may have considerably more clout than the suspensive veto. It can be used to generate very strong pressure on the Assembly. This competence enables the National Council to make its will known to the National Assembly.

Among the proposals for revision of the Constitution, some proposals aim to abolish the powers of the National Council that enable it to call for a legislative

referendum. In this way, the possibility of citizens exercising influence would be diminished, and that would also mean a decline in democracy. That is one of the problems that I wanted to present to you.

The National Council has a number of other functions: initiative of parliamentary inquiry, the presentation of compulsory laws, etc. Apart from debates during its sessions, the National Council also organises various discussions, seminars or conferences. It also participates actively in the development of our society, in the economic, social, political and cultural spheres, and it endeavours to settle various technical or professional questions.

The activities are very diversified. The Council of State issues various opinions on the legislative initiative. These initiatives are presented in the Court Reports. There are about a hundred organisations and associations. In this way, the National Council tries to include the broadest circle of society in the various debates held in the fields of social life, in order to achieve a high level of democracy. It also organises the Youth Council.

Thanks to its legislative functions, the National Council participates in the legislative procedure with a direct transfer of the opinions of the various interests that it represents. Thanks to its operation, it has a very considerable reputation in society among representatives of various activities. If offers new possibilities through participation by citizens in various forms of work, in debates on the strategy for the development and on the future of the nation. In subsequent developments of democracy, it will represent a gateway between the people and the constitutional bodies.

Dear colleagues, I would like to say how pleased I am about our meeting on 5 June in Slovenia on the theme of the possibilities of Senates in the new democracies. In the latter, thanks to the modifications in the legislation, the bicameral system could be introduced quite quickly.

The Chairman. — I would like to thank Mr. Hrovat for his speech, which reminds us just how much bicameralism is a guarantee of good democracy in the new democracies.

I also think that your system is very interesting, Mr. Hrovat, and it could serve as an inspiration for other Senates. In fact, your Senate, consisting of professional groups, and therefore of representatives of civil society, leads you to organise conferences, consultations, colloquia on topics which are then subject of legislation. Some of our Senates work in this way, while others behave more like the Chambers of Deputies which often do without these hearings, colloquia and consultations with civil society and professionals. Your system has aspects which are very appealing to us, as are your various systems for opinions, the suspensive veto, the evaluation of the constitutionality of laws and the legislative referenda.

We thank you again for your invitation, since the next meeting will take place in your country next June.

Afternoon session

Mrs. Françoise Saudan, President of the Swiss Council of States. — Mr. Chairman, dear colleagues, first of all, I would like to thank you, Mr. Chairman, for your invitation. Above and beyond the importance of the subjects we dealt with — both in Paris last year and in Brussels — for strengthening our democracies, these meetings give us the opportunity to meet, and that is particularly important and valuable in my opinion, given the troubled times the world is passing through.

Parliaments have many functions. One of the most important is the legislative function. The legislative process has intensified. How can the quality of legislation be maintained? What is the special contribution of the Conseil des États in my country?

The two houses that form the Swiss Parliament, the Conseil des États which is elected on the majority system and the National Council elected by proportional representation have identical legislative competences. The legislative process sometimes starts in the Conseil des États, while other times it starts in the National Council, depending on the decision taken by the respective Presidents of the two councils. We do not have what you have in many countries, a form of hierarchy between the various legislations.

This perfect bicameral system means that each council examines the legislative work of the other and is thus able to improve it. It also leads to a so-called shuttle procedure, which is also familiar to you. The special feature of our Swiss system is that in a way, we are forced to agree, failing which the law is not adopted or not amended. One could say with a touch of humour that four eyes see more acutely than two!

In addition, the composition of the two houses is different. That means that the second council examines the laws in a different way. In fact, your approach is not the same if you are elected via a system of proportional representation, where your political allegiance is more important than if you are elected, like me, on the majority system, and you represent a canton.

But that also means, as I said, that we need to agree, and in the last instance, we have a conciliation commission which brings together the commission members from the Council of State and the National Council who have to reach agreement in order for a law to be amended or adopted.

I will reassure you immediately: since I have been a member of Parliament, we have always reached agreement and, according to my Secretary General, it has only happened three or four times in the history of the Confederation that the Conciliation Commission has not found a solution acceptable to both houses.

In a country like ours with exceptional diversity - we have four national languages, which are German, French, Italian and Romansch, three of which are official

languages - the need for legal certainty requires us to set up a body which examines, from the purely formal viewpoint, the legislation which comes out of the debates in the chambers. This drafting committee has twelve members: six members from each council — the first balance that needs to be respected — at the same time as four members representing each of the official languages, i.e. four elected representatives who speak German, four who speak French and four who speak Italian. Perfect proportions are respected at this level. This drafting committee cleans up the legislative texts, particularly when the chapters and clauses of a draft have been considerably amended by proposals from MPs. The correct usage of expressions and the consistency of the texts in the national languages are of great importance for legal certainty.

Another specific feature that you all know is that our Parliament consists of “reservists”. As a result, almost all of them continue to carry on their professional activities. So, the First Vice-President of the Council of States is a lawyer, the second, whom you will almost all have the opportunity to meet since, as you know, we only stay in our function for a year, is a physics teacher, and I run a family business alongside my husband.

At the Council of States, however, there are a very large number of lawyers. I would like to emphasise that, in general, this conception of militia enables us to make a substantial contribution and a different approach to the legislative process from a parliament exclusively consisting of professionals. In the context of the legislative process, we contribute our vocational experience, our experience in the field. So the parliament is not only dependent on preparatory work carried out by the government and the administration, which often results in practice in the filing of amendments, either at the committee stage or in the plenary session.

The Council of States is often described in Switzerland as the Chamber of reflection. I noticed that this expression was also used for the Belgian Senate, and for a number of other Senates also represented here today. In Switzerland, there is a pronounced difference between the debates in the National Council and in the Council of States. The procedures followed during parliamentary debates are far more rigid in the National Council, given that this consists of two hundred members. In the Council of States, we have the advantage of only having 46 members, and having a much more streamlined procedure for dealing with legislative texts in plenary session. As a result, everyone has great freedom to speak, and can intervene freely in debates, and opinions are often formed during debates in plenary session. I would dare to claim that this also improves the quality of the legislation.

We know that legislation is never perfect. The application of laws highlights deficiencies and, sometimes, errors. That is particularly true in a federal country like Switzerland, a multicultural and multilingual country. Sometimes that causes

problems, especially as it is the territorial authorities, the cantons, which are charged with the application of federal laws. That is why our new Federal Constitution of 18 April 1999 contains an express competence of the parliament in its Article 170. This provision imposes a duty on parliamentary committees in future to take more account of the practical aspect of matters, i.e. the application of laws. Within the services of the parliament, we have set up a small team of scientists charged with parliamentary scrutiny, particularly of the evaluation of the efficacy of laws. It is a modest team, consisting of five people, which examines the way in which federal laws are applied in all the regions of the country. It prepares proposals to amend the legislation, addressed to the management committees. The committees, and the individual members of parliament, have the right to demand legislative revisions from the government. They can also propose their own drafts.

And the last special feature is that we do not have a Constitutional Court. Our highest legal instance, the Federal Tribunal, does not have the possibility of examining the constitutionality of federal laws. That is justified by the fact that a referendum can be requested against federal laws. One of the characteristics of the Swiss institutional system is the right of initiative. The people can ask us to legislate or to amend a law. The people can also oppose legislation adopted by the parliament. That is not entirely unproblematic, as sometimes the legitimacy of the federal parliament, elected by the people themselves, is opened to challenge. Therefore, we take great care in the procedures for amending laws or framing new legislation, as the latter are always the subject of a wide-ranging consultation procedure upstream of the work in the parliament. In our institutional system, it is not considered acceptable that a court of a few people might rule a law adopted by the majority of the electors invalid. The quality of the legislation is therefore even more important in our opinion.

I am personally convinced that Switzerland’s bicameral system contributes significantly to the quality of the legislation. The Council of States and its members take their role as legislators very seriously.

Dear Colleagues, I was particularly happy to hear you, because I realised that this concern is shared by all Senate members. I was pleased to hear our Czech colleague and our Luxembourgish colleague again.

Mr. Chairman, thank you for your invitation. I am taking part in one of these meetings for the second time. I consider these meetings to be of fundamental importance and very rewarding.

The Chairman. — Thank you for your presentation, which I also found very worthwhile. The fact that your Senate only has forty-six members, and that in your opinion, that contributes to improving the quality of your work is, for example, an important argument for us. The fact that your plenary sessions consist of such a small number of senators enables you to hold quality debates with great freedom may

comes as a surprise to parliaments — I am thinking of the Italian and French examples — which have very many representatives.

The drafting committee is also an interesting element. The French Senate has a committee for concertation with the National Assembly, the joint mixed committee, which meets when there are disagreements about amendments.

Mr. Christian Poncelet, President of the French Senate. — Absolutely. It has seven senators and seven deputies.

The Chairman. — Are the representatives always the same?

Mr. Christian Poncelet, President of the French Senate. — No, they vary depending on the subject.

The Chairman. — Another interesting element is what you refer to as "reservist" politicians, i.e. not professionals, with a profession outside the Senate. Your assembly has about 50% of lawyers. As a lawyer, I find that particularly flattering, and I feel that it is important, in view of the work that we have to carry out.

Finally, your comment on the right of initiative of the population also drew my attention. It is one of the subjects dealt with by the Political Renovation Committee, which I preside with a colleague from the Chamber. For the moment, in Belgium, only the parliament and the government have the right of initiative. Broadening that right is an interesting step, which deserves some consideration.

Mr. Petr Pithart, President of the Senate of the Czech Republic. — There are probably only three fundamental reasons with different modifications and combinations why there should be a second Chamber. The first reason lies in an attempt to ensure a more diversified representation of the society, be it the representation of the Member States, of the federation, of the regions, of the national language or religious minorities, or possibly professions and corporations. The second reason is based on the argument of the division, control and balancing of power. Finally, the third reason is the quality of the legislation.

In Czechoslovakia, the second chamber was established in 1920, in 1968 and in 1992 — in the third case, it was created for the newly established independent Czech Republic. Only in 1968, when the till then unitary Czechoslovakia was federalised on the basis of two republics set up from above and composed of two — as the saying went at that time — "brotherly nations" of Czechs and Slovaks, was the decision to have a second chamber strengthened by the argument of representation, or, more precisely, representation of constituting nations. Also, the name of the second chamber was symptomatic — the House of Nations.

In the process of foundation of Czechoslovakia following the World War I and, likewise during the establishment of the independent Czech Republic the first and third arguments took over — whilst the quality of legislation was more in the focus of

the debate eighty years ago, the balancing of powers was the main issue in the beginning of the nineties. However, the emphasis on the quality of the legislation was at least the second biggest argument in favour of the creation of the Czech Senate.

Those advocating the establishment of the Senate in 1992 were often Hayek's admirers, that is why some aspects of the Senate's constitutional status were adapted to Hayek's ideas about the division of labour between the legislative assembly and the government assembly. The Senate was then to concentrate mainly on the rules concerning human behaviour — hence the exclusion from the debate on the state budget and the non-accountability of the Cabinet to the Senate. I think that Hayek was also the source of inspiration for, amongst others, the "Bozzi Committee" on the reform of the Italian parliamentary system.

The focus of the Senates' activities is legislation, with very few exceptions to the rule. Here, we can distinguish its two main roles — the first being that of a stabilising force pressing for the search of a broad consensus on the basic rules of governance in the country. This role has been exercised during the debate over bills that need to be passed by both houses — namely constitutional bills and electoral bills. The second role is to act as a corrector of the Chamber of Deputies — the lawmaking chamber — by drawing its attention to imperfections in the tabled bills and, as Lord Bryce put it, ask the Chamber to reconsider its decision.

The legislative process in the Czech Republic is fairly simple. All bills are tabled first to the Chamber of Deputies including those initiated by the Senate which can only submit bills as a whole. Over less than five years of its existence, the Senate has used this opportunity twenty times. The Chamber of Deputies hands over the approved bill to the Senate which has in principle only thirty days to take its decision: it can pass the bill, reject it or send it back to the Chamber of Deputies with amendments, or still, it can decide not to deal with the bill or does not deal with it *de facto*. Once the thirty days have elapsed, the bill is considered as approved, unless the Senate resolves otherwise.

The institute of "not reading the bill" is another echo of Hayek's theses. It should have given the Senate a possibility to pre-select bills with the aim of being able to concentrate more on some of them. However, the role of the legislative corrective force does not allow this: the change of the legal and political culture has driven us from carefully prepared bills that would then pass through a political filter in the legislative assembly with only partial amendments towards a legislative tornado. Every year, hundreds of bills and amendments are read, a process which is amplified not caused, by the approximation of our legislation with that of the EU. Before an amendment to a concrete tax legislation leaves the Parliament, a new draft amendment to the same piece of legislation is already tabled to the Chamber. Theoreticians criticise the decline of the traditional principles of building a system of

law and the impossibility to stabilise legal conscience whilst on the contrary many lawyers are quite happy to be able to navigate through such troubled waters. In any case, bills are usually redrafted by the Chamber of the Deputies which of course entails a high risk of blunders. And this is what makes it impossible for the Senate to ignore entire categories of acts, since an act can then still be stopped by the veto of the president of the republic, but it can not be corrected.

Let us go back to the individual decisions of the Senate: we are interested by the decision to reject the bill or to send it back with amendments. The rejected bill is again put to vote in the Chamber of Deputies. It is passed if the absolute majority of the deputies has voted in favour. In the case of an amended bill, the Chamber of Deputies can pass the draft adopted by the Senate by a simple majority or it can approve, by absolute majority, its own original text. If neither of the above mentioned decisions is passed, the bill is not approved.

It is clear that this model is not very demanding. Instead of searching for the consensus and removing errors by both chambers — after all, senators can make mistakes, too — it is either yes or no. The deputies must either approve the amendments by the Senate or none.

The Constitution sets out the framework for a more complicated model of "the shuttle" at least when bills require the approval by both houses, i.e. when the thirty days period does not apply. However, we are still negotiating the implementing legislation. It would seem that the deputies do not miss it too much. So if we send such a bill back to them with amendments, they only vote on the Senate's proposal and if they do not pass it, the legislative process has ended unsuccessfully.

The Senate conducted a long-term analysis of the Constitution and the present parliamentary practice. From December 1996 until the end of September 2001, the Senate has altogether dealt with 379 ordinary bills, of which 102 were sent back to the Chamber with amendments and 16 were rejected. Contradictions between the two houses arose in 118 cases, that is in almost one third of the tabled bills. The success rate of the Senate during repeated voting by the Chamber on bills sent back is 60% (64 bills) and on rejected bills less than 40% (6 bills). Even though we are doing quite well in comparison to other upper houses, there is still room for improvement.

A special constitutional committee of the Senate has therefore prepared a bill on the relations between the two houses in which it has tried, among other things to fine-tune the "shuttle" system for constitutional and electorate bills, a system which is limited by the duration of the term of the Chamber of Deputies. But in particular, several weeks ago, we have tabled our own substantial proposal on changes to the Constitution regarding the status of the president of the republic, the Constitutional Court, the Supreme Control Office, the Czech National Bank, but also both houses of the Parliament.

We propose to introduce a category of organic acts implementing the constitution with regard to the status of constitutional bodies, the approval of which would require the consent of both houses. Constitutional and organic bills could be submitted by both houses, they would be processed by means of the "shuttle" possibly in combination with the conciliation procedure. The time limit to deal with ordinary bills could be extended by thirty days. We recommend introducing a qualified form of the Senate's refusal of a bill which would then require the voting not by the absolute but by the three-fifths majority of the deputies. An act vetoed by the president of the republic would be sent back to both houses — at present it is examined only by the Chamber of the Deputies.

We are not seeking a fundamental change in relations between the two houses, but we want the Senate equipped with a slightly more efficient set of instruments for its legislative activity which is its main field of action. This applies especially to the definition of rules of governance of which, of course, our concise Constitution does not include the full scope. Hence we have come back to the beginning, to our efforts to correlate the balancing of powers with the care for quality in legislation.

The Chairman. — Thank you for your speech. It is interesting to see how much the new Senates are fighting to obtain recognition and respect, and to become accepted in their country. The fact that over 60% of the amendments that you adopt are accepted by the Chamber show not only the quality of the work carried out by your Senate, but also show that the Chamber recognises that.

Now I shall hand over to our observer member who, on the initiative of President Poncelet, has been taking part in our work from the outset, and quite rightly so. The Council of State of the Grand Duchy of Luxembourg is not a legislative assembly, but plays a very important role in framing legislation in Luxembourg. I would like to thank Mr. Marcel Sauber, President of the Council of State for being here with us together with the Secretary General, Mr. Marc Besch, whom we already heard in Paris.

Mr. Marcel Sauber, President of the Council of State of Luxembourg. — I wish to express the gratitude of the Luxembourgish Council of State at being able to participate, in an observer capacity, in the exchanges of views and in the work within the framework of the Association of Senates of Europe. That gives us the opportunity today to benefit from the experience acquired abroad in a field that also concerns us very closely, i.e. the quality of legal texts.

The first democratic Constitution in Luxembourg, which dates back to 1848, did not adopt the institution of a Senate, due to the small size of the country. Nevertheless, in the awareness of the weakness due to the absence of a body to scrutinise the legislative text, the authors of the Constitution provided for a legislative committee within the Parliament. However, that system soon proved inadequate and inefficient,

and the mission of working on the improvement of laws necessitated the creation of a specialised and independent body, i.e. the Luxembourgish Council of State, which was set up in 1856.

The basic idea of this institution was that — and here I quote an extract from the preamble — "for legislation, the Council of State will take the place of a second chamber. Its actions will become a guarantee for the maturity of laws". The quality of legislation was therefore, from its inception, one of the missions of the Council of State.

What are the powers and responsibilities of this Council of State, and how does it operate? Since 1 January 1997, the Council of State has no longer had its juridical function in administrative matters. Since the same date, it has been given the explicit mission of *a priori* control of the conformity of bills and proposed for regulations to the norms of higher law. The *a posteriori* of the constitutionality of laws was transferred at the same time to a Constitutional Court. The Council of State issues its opinion on all drafts and proposals for laws, on their associated amendments, and any other matters referred to it by the government or by laws. So its mission is very broad.

If the Council of State considers a bill, a proposal for a law or a draft Grand-Ducal regulation contrary to the Constitution, international conventions and treaties, as well as the general principles of law, it must mention this in its opinion. Of course, it does not overlook the aspect of quality of the legal texts in its opinion.

As far as the right of initiative is concerned, to the extent that the Council of State can draw the attention of the government about the appropriateness of a new law, new regulations or amendments to be introduced into existing laws and regulations, it has a *sui generis* power in legislative and regulatory matters.

Furthermore, the Prime Minister has the right to convene conferences between the government and the Council of State on questions of legislation and high administration.

What are its powers and responsibilities on legislative matters? In principle, the opinion of the Council of State is requested by the government before a draft law is presented to the Chamber of Deputies. This opinion is given in a reasoned report, containing general considerations, an examination of the draft text, and if appropriate, a counter-proposal also containing an analysis of the form and substance of the text.

In theory, all the drafts and proposals for laws must undergo two successive votes in the Chamber of Deputies on the whole law. Between the two votes, an interval of at least three months is required. However, the Chamber may waive the second vote on the texts, but this provision only becomes effective if the Council of State agrees, which is usually the case. In fact, the Council of State has a suspensive veto for three months.

In principle, in regulatory and administrative matters, draft regulations for the implementation of laws and treaties can only be submitted to the Grand Duke after the Council of State has issued its opinion. In case of emergency, at the discretion of the Grand Duke, the government may dispense with the opinion of the Council of State. Of course, this is not the case if the law formally requires the opinion of the Council of State.

As far as the composition of the Council of State, I like the term “reservists” used by the President of the Swiss Council of States. We have 21 members appointed for fifteen years by the Grand Duke, eleven of whom must be lawyers. The 21 councillors all have another profession. State Councillor is not a profession in its own right. The relatively long term of office and the vocational experience of each one contributes to greater independence of members in comparison with the parliament and the government, which is reflected in opinions.

We draft our own opinions. We do not have any staff to do it. That is the contribution of the Council of State to the legislative work in Luxembourg.

The Chairman. — Thank you for that presentation, which redefines your exact role. This is a little ambiguous to the extent that you can go as far as drafting a counter-proposal, which is a step of a quasi-political or quasi-legislative nature. Furthermore, your procedure provides for two votes in your single chamber three months apart which you can, if appropriate, “waive”.

First of all, dear colleagues, I propose that you ask your questions. Then we shall move on to the second part of our work, which will enable us to discuss with our Slovene friend about the forthcoming meeting and its theme. Finally, we could raise any other topics. I had proposed to organise an exchange of views and to devote it to terrorism and the role that our Senates can play in the fight against terrorism.

Would anyone like to ask a question?

Mr. Christian Poncelet, President of the French Senate. — Our colleague and friend from Luxembourg has explained to us that the State Councillors were appointed for a fifteen-year term. That makes me rather envious, of course, even if I am elected for nine years. But during those fifteen years, is there a possibility of dismissal or dissolution?

Mr. Marcel Sauber, President of the Council of State of Luxembourg. — It is a fixed term of fifteen years. That does not mean that the Grand Duke, who appoints us, cannot dissolve the Council of State. But for that to happen, serious grounds would be required.

The Chairman. — I presume that some Councillors can resign for personal reasons.

Mr. Marcel Sauber, President of the Council of State of Luxembourg. — It is very rare. It is a function that requires a lot of work, but also carries a certain distinction.

Incidentally, the Council can dismiss a member of the Council of State if he is no longer worthy of the function.

The Chairman. — I think that this debate on the contribution of the second chambers to the quality of legislation was particularly fruitful. I am already looking forward to publishing, editing and distributing it. It will be very useful in a large number of countries.

Our next meeting will take place in Slovenia, in June and July. So I will gladly hand over to Mr. Hrovat who will take over the chairmanship of our association from today.

Mr. Tone Hrovat, President of the National Council of Slovenia. — Dear Colleagues, I am pleased that you have entrusted me with this mission, and the organisation of our meeting next year. We initially planned the meeting for the start of June, but we realised that it would be better to organise it at the end of June or at the beginning of July.

I would be very pleased to receive your suggestions and proposals for themes. The theme of the meeting that we were considering is “The problems of bicameralism in new democracies”. We feel it is very important to concentrate on the problems that are inhibiting bicameralism and democracy, especially where this is very recent. There is much to do to deepen and develop democracy. I am looking forward to your cooperation on the day of the meeting, but I would also like to introduce you to our little country, our Slovenia, that some of you already know.

The Chairman. — Thank you for your invitation to visit your country outside the framework of the meeting itself, and I think that many of us would be delighted to renew acquaintance or discover your country which has the reputation of being particularly beautiful and hospitable.

Mr. Christian Poncelet, President of the French Senate. — I would like to point out that we shall be meeting in a young republic that does not belong to the European Union, and that is a deliberate step on our part. We have already met in a Western republic, we shall be meeting in a republic of Central Europe and we shall then return to the West because we shall be hosted by Spain. We want to show our intention to associate all the Senates in Europe, without limiting ourselves to the European Union, and to see those on the periphery join us as soon as possible to build the Europe that we described this morning as democratic, strong and prosperous, for the benefit of all its peoples. The theme announced seems to me to be a little limited.

The Chairman. — Our colleague is proposing as a theme: “The problems of bicameralism in new democracies”. I understand your remark, Mr. Poncelet. It is true that new democracies will be happy to be able to express the difficulties that they face in establishing bicameralism. However, I fear that others will find the subject too

limited in relation to their own concerns. Perhaps one could deal with a broader subject, which gives the opportunity to new democracies to explain their own problems, but broadening the definition of the theme. I suggest speaking, but it is up to you to decide, Mr. Hrovat, about Senates in their relationship with the powers in their country.

All too often, the problem of new Senates resides in their relationship with the Chamber of Deputies, with the Cabinet and with a Judicial Court or, sometimes, a Constitutional Court.

That would broaden the title of the subject, while meeting your concerns.

Mr. Christian Poncelet, President of the French Senate. — I would support that suggestion, that would broaden the debate because it is about the Senate's role in the democracy.

The Chairman. — The role of the Senate in the balance of power.

Mr. Christian Poncelet, President of the French Senate. — Its role can be different, while being part of democracy and its development.

Mr. Tone Hrovat, President of the National Council of Slovenia. — We proposed dealing with this theme because we believe that democracy is primarily guaranteed by the multipartite system and then by bicameralism. Your proposal to broaden the theme is therefore perfectly consistent with our initial proposal.

The Chairman. — If there are no objections, the theme for discussion could be: "the role of the Senates in the balance of democratic powers".

Mr. Petr Pithart, President of the Senate of the Czech Republic. — I am one of the representatives of a Senate of a new democracy and I fully share the viewpoint expressed.

The emphasis is placed on the Senate's task in new democracies and I believe that we could talk about the Senate in a system of balance and control. That seems to me to be a subject close to everything that has been said here.

The Chairman. — I think that we are unanimous on this. That is what we will do, and I thank you for it.

Mrs. Aguirre wanted to address the meeting on the subject of the next meeting, which after Slovenia, will be held in Spain.

Mrs. Esperanza Aguirre Gil de Biedma, President of the Spanish Senate. — When I heard you asking if there were candidates for the next meeting, I noticed when reading the procedure that it had already been decided.

We will be very pleased to welcome you to Spain.

Mr. Gernot Mittler, Secretary of State, Vice-President of the Commission for European Affairs in the German Bundesrat. — If you will allow me, I would like to make a comment on the theme that we chose for our next meeting, a theme that I consider very interesting, and inform you about a concern.

I wonder if we are being sufficiently concrete. Today and during the previous meetings, we talked about a subject. Can the theme of the next meeting be considered as an extension of what we have discussed until now? A number of countries which are not yet members of the European Union, which are referred to as "young democracies" are represented here. They have a specific problem, which is defining the competences at the various levels.

If we want to help these countries progress, we must act along these lines, but beyond the meeting which will take place in Slovenia, we need to see whether we can go any further ourselves. I fear that we cannot. I believe that in the very near future, we could lose sight of the fact that we are starting out from different points, which is why it is necessary to see where we want to head, and define the objective of this meeting of the Senates.

The meeting in itself is tremendously valuable. It is also an opportunity to establish personal contacts from one country to another. However, I believe that we should try to be more concrete in the definition of our tasks, our objectives, and the way of achieving them.

I have no concrete proposal to put to you. I would like to limit myself to a suggestion: we could call on the Chairman of this Assembly and to the future Chairman who will receive us, to ask them and Mr. Poncelet to meet by the next meeting, so as to specify the future tasks of our association.

I believe that, in this way, we could go beyond exchanges of experience, which I consider as being highly important. This would be a way of determining the content of objectives, the goals, and the instruments for achieving them. I think that it would be a way of making progress. That is the only comment I wanted to make to this meeting.

The Chairman. — I quite understand our German colleague's concern. It is true that our first two themes were relatively academic. However, we are politicians who have to deal with more concrete problems than the relations between powers.

I believe that we could schedule two themes for each meeting, a first theme, specific to the nature of Senates, and a second and much more political theme. For example, I would like us to deal with the question of terrorism now. The next meeting, which will be held in Slovenia, could comprise two themes, i.e. the one that we have already decided and another theme, which we could choose on a date closer to the meeting, depending on the topical issues of the moment. Our association is

pursuing several objectives: defending bicameralism, helping new democracies to enter the democratic and institutional debate, helping concretely in the construction of Europe. This last aspect could lead to specific themes. For example, if a majority of us supported it, we could evoke European bicameralism. In any case, we could add any theme that we consider useful in the context of the political situation prevailing at the time of our meetings. We are, by definition or by nature, a democratic institution. So I invite you to express your feelings about this proposal, in my opinion justified, by our German colleague.

Mr. Tone Hrovat, President of the National Council of Slovenia. — I recently proposed, in my capacity as the representative of a young democracy, to examine the foundations of democratic regimes. I gambled on the courage of democracies established for a certain time in debating the democratic norms in the member states of the European Union. This theme interests me enormously. I believe that Mr. Poncelet also showed his wish to raise this very topical theme. Nevertheless, I am also disposed to look favourably on Mr. Mittler's suggestions.

Mr. Christian Poncelet, President of the French Senate. — I find the idea of our colleague from the Bundesrat very appealing. We should actually invite the representatives of the young democracies of Eastern Europe to our work as observers. They could see how we work, and the nature of the relations that we are creating between ourselves; they could assess the pros and cons of bicameralism. All that should encourage them to act in their own countries with a view to establishing Senates.

The question of bicameralism at European level should, in my opinion, be placed on our agenda without too much delay. I have heard several important Heads of State, including Mr. Schröder, talk about the European Senate. In France, we have also raised this question. So we ought to devote part of our work to this subject, which is not encountering any opposition at present.

The Chairman. — I note the remark by our German colleague, and will remain in contact with the Chairman to develop the agenda for the next meeting. For example, as Mr. Poncelet suggests, we could invite representatives of those East European countries which operate without bicameralism as observers.

I propose that we now address the question of the fight against terrorism. Following on from the remark made this morning by Mrs. Aguirre, and in the context of the tragic events in the United States, such terrorist acts challenge all defenders of a certain form of democracy and liberty, so in my opinion, it would be interesting for us to devote part of our discussion to the fight against terrorism and the way in which Senates could make their contribution. Of course it is an enormous subject, but an exchange of view, albeit limited, might already bring forth a number of interesting ideas.

I prepared the text of the resolution which was adopted last May, here in your presence, Mrs. Aguirre. That resolution concerns the political struggle within the European Union against recourse to violence and terrorism, particularly in the Spanish Basque Country, which was uppermost in our minds at the time. We should continue to bear it in mind, because we should not forget that almost every week, democrats are assassinated in Spain by terrorists who claim to be pursuing political objectives through murder and terrorist attacks. That is a totally indefensible attitude, which deserves that we should focus all our minds on this question.

I shall ask for the text to be distributed for information. It would perhaps be useful that a debate should be held on this subject in your respective Senates, on the initiative of a member or a political group, to show active solidarity with a EU country which is enduring terrorism of a particularly savage kind.

Mrs. Esperanza Aguirre Gil de Biedma, President of the Spanish Senate. — I would like to start by re-iterating my thanks to you, Mr. Chairman. It is very important for us that a country like Belgium should have decided to approve this declaration, and by a very large majority.

During the discussions that we had in committee, with your colleagues, we explained to them that the terrorist organisation ETA came into existence under the military dictatorship of Franco, which lasted for forty years. During that period, 35 people were assassinated. However, since Spain has been a democratic country, i.e. only for the last 22 years, we have suffered 880 assassinations. Last week's victim was a judge in Bilbao. The previous one was a democratically elected — Basque — representative of the socialist party. These people were assassinated for not having supported the radical nationalists.

When our democracy was born in 1978, we thought that a large measure of autonomy granted to the Basque government was a solution. We should not forget that the Basque country has an elected legislative assembly which has decision-making powers in all fields except defence and foreign affairs.

Sometimes, it may be tempting to consider ETA as a separatist or independentist organisation, as the American newspapers did rather curiously last week. Of course, it is, but it is also a terrorist organisation because it aims to impose its objectives through violence and assassination. There is a temptation to compare the Basque problem with that in Northern Ireland. But we should not forget that in that case, there are two parties fighting each other, which has not been the case here for 22 years. In our country, only one party is attacking the other, by killing democrats of the Popular Party and the Socialist Party, judges, police officers, etc.

I would like to thank the Belgian parliament for the position it adopted last May. It was the first time that it had shown us its solidarity and — perhaps it was a premonition — it came long before the terrorist actions of September 11th.

The Chairman. — In the past, Belgium was not always exemplary in its response. At certain times, governments refused to extradite terrorists or accomplices of Basque terrorists to Spain, while it was already a member of the European Union. That attitude was totally unacceptable.

Mr. Christian Poncelet, President of the French Senate. — It was not only the case in Belgium.

The Chairman. — That is true. So I am very happy that the Belgian Senate was able, through that vote, to correct previous errors. We should perhaps reflect about the initiatives that our assemblies could take in the field of national legislation on terrorism. There are many subjects involved: arms trafficking, money laundering and all sorts of related criminal activities. We could participate in the search for solutions.

One of the first things that we could do, whether or not we are already members of the European Union, is to try to have a common definition of terrorism. The highest instance of the European Union has decided that it would attempt to reach a common definition of terrorism, although this exercise may prove relatively difficult from the legal viewpoint.

This common definition is indispensable so that we can, for example, carry out extraditions more easily as part of judicial investigations, to facilitate the action of the national prosecutors' offices or lead to the creation of a European prosecutor's office devoted to fighting terrorism. The Senates of the European Union could work along these lines together with those whose countries are not members of the European Union but are also concerned by terrorism.

I am thinking of some countries in particular. Like Germany, which at one time was afflicted by very serious political terrorism. Italy lived in fear, and sometimes still does. Some of our colleagues, like Mrs. Aguirre, have to be accompanied by bodyguards at all times.

Mrs. Aguirre, is it not true that you are always accompanied by three or four bodyguards? Every important official in your country has to live with bodyguards at all times.

Mrs. Esperanza Aguirre Gil de Biedma, President of the Spanish Senate. — The Basque Parliament has 95 members. All the elected representatives of the Socialist Party or the Popular Party have bodyguards around the clock. Curiously, that is not the case of the Basque government.

The Chairman. — You see the influence that terrorism can have on daily life and on people's thinking: being forced, as a democratic representative of a democratic country, to live under threat. Such a situation is unacceptable. We should help each other to find the most effective answers.

Mrs. Esperanza Aguirre Gil de Biedma, President of the Spanish Senate. — Spain will hold the Presidency of the European Union from 1 January 2002. One of our priorities will be to adopt measures aimed at defining a common area of liberty, security and justice. That means that if we mutually recognise that our countries are democratic, as well as each other's judicial systems, extradition will perhaps not be necessary in all cases.

On the bilateral front, we have already signed extradition agreements with Italy, France and the United Kingdom. Our government is working on the bilateral front, but I think it would be good if, once the definition of terrorism is adopted, that throughout the European Union, a criminal whose extradition is requested by another country should immediately be handed over to the judicial authorities in that country.

Mr. Christian Poncelet, President of the French Senate. — Certain steps need to be taken quickly. Madam President of the Spanish Senate has just said that certain countries have signed extradition agreements. Some of them have signed those agreements since September 11th.

Mrs. Esperanza Aguirre Gil de Biedma, President of the Spanish Senate. — All of them.

Mr. Christian Poncelet, President of the French Senate. — Therefore, September 11th had a psychological effect. It accelerated the process. Knowing that our memories can be short, as citizens of Europe we must urgently take the measures required while this event is fresh in our memories.

France has just taken important measures in the context of its administration: extradition, freezing of bank accounts, opening of safety deposit boxes, continuing controls of the population. That has not been achieved without difficulty, but has nevertheless just been adopted. We are heading towards a definition of terrorism but this judicial and democratic space is indispensable so that any terrorist discovered can be sanctioned immediately.

The Chairman. — I think that it has been decided that, if governments have not found common ground in the definition of terrorism before the Laeken Summit, the Heads of State and Government would do it during the Summit itself.

Once the Heads of State and Government have decided it, our parliaments will have to ratify that decision and transpose it into the legislation of our countries. In this respect, we have a special role to play so that that happens as efficiently and quickly as possible.

Mrs. Françoise Saudan, President of the Swiss Council of States. — Our country, Germany and Italy are not concerned by the same form of terrorism as Spain, Ireland or even France and Corsica. In some countries, terrorism has a much more pronounced political aspect. We have not experienced that kind of tragic event, but

we have known a community which no longer wanted to form part of a territorial community. Shots were fired but nobody was injured. It took a very long process before the 26th territorial entity was created in our country, i.e. the canton of Jura. That procedure, which was not foreseen by our Constitution, took time and was a real learning process.

Defining terrorism is one thing, but if we do not put in place common instruments which function in the common judicial area and outside the European Union, we shall remain at the good intentions stage whereas the situation is very serious.

I was struck by the fact that it was necessary to wait for the attacks of September 11th before our British friends, who are always very quick to give lessons to the whole world in some fields, started to reflect about their judicial system which had blocked the extradition of a person under legitimate suspicion. For my country, it is an enormous area for reflection, because we absolutely have to integrate ourselves into such a system. Should we do this by means of judicial mutual assistance, or do we have to move up a gear to be effective? We are very attentive about the fields where we can intervene.

For example, immediately after having received information from the American government, we froze all the accounts and searched companies close to Al-Qaeda. These are acts of goodwill that must be effective.

Mrs. Esperanza Aguirre Gil de Biedma, President of the Spanish Senate. — As I said this morning, it is difficult to distinguish between types of terrorism, particularly terrorism that is not very political from that which is, but all types use violence to impose political decisions, and are therefore equally to be rejected.

Mr. Gernot Mittler, Secretary of State, Vice-President of the Commission for European Affairs in the German Bundesrat. — I think that there is no way to justify the use of violence, whether it is religious, nationalist or ethnic. We should not forget that Spain has had to contend with terrorism for twenty years.

I try to compare the Spanish situation with that in my own country. In my country, hysteria would have reigned for a long time already. We note that Spain, a young democracy, has taken up the challenge and is resisting, because innocent people are being threatened and assassinated.

Faced with this unprecedented attitude, I believe that we should show solidarity, above and beyond the decision taken by the Belgian Senate.

I am in favour of such a position, but at the present time, and in particular after September 11th, the media are crammed with messages of solidarity. The perpetrators of the attacks do not seem to react to them. If our Spanish friends consider that it would support them, then we could express our solidarity.

We had a fundamental debate previously about political terrorism, but I return to my starting point, which is that there is no means of justifying or legitimising terrorism. As democrats, I believe that we should refuse to participate in debates that attempt to establish differences between levels of terrorism.

There is no means of evaluating terrorism, although we know that different circumstances may lead to it. We are always the defenders of someone else's liberty. Some defenders of liberty only have the opportunity to draw attention to themselves by perpetrating acts of violence. In member countries of the European Union, in countries that respect democracy and whose numbers have grown over the last twelve years, we must remain firm and democrats must absolutely not break ranks.

The Chairman. — That was an important contribution. We should remember what Mrs. Aguirre said a short while ago: since democracy has returned to Spain, over 880 people have been assassinated for reasons of a pseudo-political struggle. It is unimaginable, and the President of the Bundesrat is right to emphasise the admiration that we should have for a democracy that resists acts of such barbarism and which are so unacceptable.

Mr. Christian Poncelet, President of the French Senate. — After the remarks by our German colleague, I think it is difficult for us to leave without saying a word. In fact, the subjects that we have dealt with here are very interesting in the context of the development of our respective democracies, but there is one great topical issue which is that of terrorism. The Constitution of certain countries, including France, prevents us from voting on resolutions. But there is nothing to stop us, as an association of Senates of Europe, from drafting a motion condemning terrorism and calling for all necessary measures to be taken to combat this 21st century plague, this modern barbarism, by the most effective democratic means.

The Chairman. — I was thinking about that. We have not prepared any text. However, we could adopt the principle. We could make a more widely-applicable version of the proposed Belgian resolution, which dealt particularly with the Basque country.

Mr. Christian Poncelet, President of the French Senate. — In my opinion, it would be pretentious to want to draw up a text now. We could announce to the press that the principle of a motion has been decided and that we will write the text later.

The Chairman. — Then it will be sent to you, and we will publish it as soon as we have agreement from everyone. This will be a very general text.

Mr. Christian Poncelet, President of the French Senate. — Very concise, very firm and very simple.

Mr. Alfred Schöls, Chairman of the Austrian Bundesrat. — I do not have a precise wording to propose to you. However, I believe that we should indicate in this motion

that we accept different cultures and religions. Those differences cannot be a justification for terrorism. You know what I am referring to. It is an important observation for the European Union.

Mr. Christian Poncelet, President of the French Senate. — So it must include the concept of respect of cultures and religions.

The Chairman. — Absolutely. I will send you a draft text tomorrow. I would be grateful if you would send us back your agreement or your amendments as fast as possible.

Thank you for your participation in this second meeting of our association. I look forward to meeting you all again in Slovenia next summer.

Association of European Senates

The Presidents of the Upper Chambers of Austria, Belgium, the Czech Republic, France, Germany, Italy, Poland, Romania, Slovenia, Spain and Switzerland,

during their meeting on November 13, 2001,
in the Belgian Senate under the presidency of Mr. Armand De Decker,

unanimously

– condemn acts of terrorism committed in Europe and in the world;

– ask the respective governments of their member states to enhance the means for their democracies to fight terrorism, while respecting different cultures and religions, by strengthening co-operation between the judiciary and police and intelligence services;

– commit themselves to work in their respective parliaments for the adoption of legislation that is useful in the fight against international terrorism.