

# Constitutional and Parliamentary Information ASGP



**Independent Members**

**Independence and Neutrality  
of the parliamentary service**

**Induction programmes for  
new Members**

**Reform of Parliament**

# **INTER-PARLIAMENTARY UNION**

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## **Aims**

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

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

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

## **Membership of the Union (May 1994)**

Albania, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Cape Verde, Central African Republic, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, France, Gabon, Germany, Ghana, Greece, Guatemala, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea (Dem. P. R. of), Korea (Rep of), Kuwait, Laos, Latvia, Lebanon, Liberia, Libya, Lithuania, Luxembourg, Malawi, Malaysia, Mali, Malta, Marshall Islands, Mexico, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Rwanda, San Marino, Senegal, Singapore, Slovak Republic, Slovenia, Spain, Sri Lanka, Sudan, Surinam, Sweden, Switzerland, Syrian Arab Republic, Tanzania, Thailand, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Associated members: Andean Parliament, Latin American Parliament, Parliamentary Assembly of the Council of Europe.

## **Structure**

The organs of the Union are:

1. *The Inter-Parliamentary Conference* which meets twice a year.
2. *The Inter-Parliamentary Council*, composed of two members from each affiliated Group. *President*: Sir Michael Marshall (United Kingdom).
3. *The Executive Committee*, composed of twelve members elected by the Conference, as well as of the Council President acting as *ex officio* President. At present, it has the following composition:

*President*: Sir Michael Marshall (United Kingdom)

*Members*: Mrs. H. Castillo de Lopez-Acosta (Venezuela); D. Cavayé Yeguie (Cameroon); T. S. Darsoyo (Indonesia); S. Ericson (Sweden); L. Fischer (Germany); M. Jalal Essaid (Morocco); J. Komiyama (Japan); Mrs. Nazihah Mahzoud (Tunisia); L. McLeay (Australia); S. Paez Verdugo (Chile); G. L. Papp (Hungary); Z. Thaler (Slovenia).

4. *Secretariat of the Union*, which is the international secretariat of the Organization, the headquarters being located at: Place du Petit-Saconnex, CP 438, 1211 Geneva, Switzerland.

*Secretary general*: Mr. Pierre Comillon.

## **Official publication**

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

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# Constitutional and Parliamentary Information

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# I. Independent Members

## 1. Introductory note by Dr. Rudolf Kabol (Secretary-General of the Gorman Bundestag)(December 1991)

1. The special questions raised by the presence of independent Members in the German Bundestag are due to the fact that the parliamentary groups play a decisive role in parliamentary work.

Pursuant to the Rules of Procedure of the Bundestag, parliamentary groups are associations of not less than 5 per cent of the Members of the Bundestag, who either belong to the same party or to parties which, on account of similar political aims, do not compete with each other in any of the 16 Laender, or federal states, of the Federal Republic of Germany. Since there are currently 662 Members of the Bundestag, the minimum number required for parliamentary group status is therefore 34.

Since, under German electoral law, only parties whose lists obtain at least 5 per cent of the vote are represented in the German Bundestag, certain parties regularly have the above-mentioned minimum number of Members required for parliamentary group status (the special situation resulting from German unification is described below). In theory it is possible for a candidate who is independent or stands for election independently of his or her party to be directly elected in a constituency and thus to become an independent Member of the Bundestag. However, this has never occurred in practice. Rather, Members subsequently become independent because they leave or are expelled from their parliamentary groups in the course of an electoral term.

2. The Rules of Procedure do not contain any special provisions with respect to independent Members, apart from those concerning their appointment as members of committees.

Pursuant to the Rules of Procedure, individual Members - whether independent or not - cannot exercise essential parliamentary rights and rights of participation on their own. Rather, under the Rules of Procedure the following rights are reserved for parliamentary groups - or at least 5 per cent of the Members of the Bundestag, regardless of whether they belong to a parliamentary group:

- introducing bills;
- moving motions;
- submitting interpellations addressed to the Federal Government;
- demanding that a discussion on matters of general topical interest be held in the plenary;
- exercising specific procedural rights in order to influence the course of plenary sittings, such as
  - moving a motion that a member of the Federal Government be summoned;
  - demanding a vote using voting cards bearing Members' names;
  - expressing doubts about the presence of a quorum in the plenary;
  - moving a motion for closure of a debate or for adjournment of the discussion of an item on the agenda or of the whole sitting;
  - demanding that a general debate be held during the first, second or third reading of bills.

Moreover, only the parliamentary groups appoint, in proportion to their relative strengths, the members of

- the Council of Elders, which, inter alia, proposes the agenda of the plenary and the type and duration of debates and discusses important issues concerning the Bundestag as a whole;
- permanent specialized committees;
- committees of investigation; and
- study commissions.

The parliamentary groups receive funds from the Bundestag budget for their work.

3. An individual Member, whether he or she belongs to a parliamentary group or not, has the right to:
  - move amendments concerning the second reading of a bill or the deliberations on a motion;
  - address individual questions to the Federal Government for oral or written reply;
  - attend the meetings of almost all the committees without taking part in the proceedings;

- move procedural motions for which no specific quorum is required (e.g. an amendment to the agenda of a plenary sitting agreed in the Council of Elders; a motion that the individual parts of an issue on which a vote is to be taken be read out separately).

4. As regards the special situation of independent Members, the following forms of participation in parliamentary work are possible in the German Bundestag;

- Independent Members may only introduce bills, move motions, submit interpellations and demand that a debate on matters of general topical interest be held in the plenary if they have the support of a further 33 Members.
- An independent Member is entitled to sit on one committee. The Member concerned may move motions and speak in committee but does not have the right to vote. Taking the interests and relevant qualifications of the Members concerned into consideration, the President appoints non-attached Members to specific committees, thus increasing the number of their members.
- Where the Council of Elders proposes a specific duration for plenary debates, the speaking time is divided among the individual parliamentary groups, including the Federal Government, in line with a formula decided at the beginning of the electoral term; independent Members have the possibility of speaking for an appropriate amount of time (e.g. three minutes in a one-hour debate).
- Independent Members do not receive any financial compensation for the specialist support and assistance available to Members who belong to parliamentary groups. Where necessary, they may make use, to an appropriate extent, of the services and facilities provided by the Bundestag Administration.

© 5. If there are several independent Members in the same electoral term, they are not automatically grouped together in a particular organizational form. Under the Rules of Procedure, Members who wish to join forces but do not have the minimum number of Members needed for parliamentary group status may be recognized as a "grouping". However, the rights of such groupings have not been laid down in general, with the exception of a few provisions which are not of relevance here.

The elections to the first all-German Bundestag on 2 December 1990 were governed by special legal provisions, under which parties could be repre-

sented in the Bundestag if they obtained 5 per cent of the vote in the territory of either the former GDR or the Federal Republic. As a result, there are two groupings comprising 15 and 8 Members respectively in the 12th German Bundestag. On the basis of a special resolution adopted by the Bundestag, their legal status has been approximated to that of a parliamentary group, without the written Rules of Procedure being amended. This is, however, not perceived as a model for any groupings which may form in future for other reasons.

## 2. Topical Discussions Extract from the Minutes off the Yaoundé session (April 1992)

Mr. WINKELMANN (Germany) introduced the paper on Independent Members on behalf of Dr. KABEL. He spoke as follows:

"Dr. Kabel, the Secretary-General of the German Bundestag, was to have spoken at this point. However, he was unfortunately unable to come to Yaoundé. He has therefore asked me to open the topical discussion on independent Members in his place.

In our view this is an interesting subject because there are often a few independent Members in the German Bundestag. As a result we face new questions from time to time or have to think again about problems which we believed we had already solved. (We therefore hope that, in the course of our discussions at this conference, ways of dealing with current and future problems in this field will be suggested.)

Why does the presence of independent Members of the Bundestag raise problems at all? This has to do with the structure of our Parliament, which is characterised by the existence of parliamentary groups. Parliamentary groups are associations of at least five per cent of the Members of the Bundestag, who pursue similar political aims. The parliamentary groups play a decisive role in parliamentary work. This does not only apply to everyday parliamentary business. It is also reflected in the Rules of Procedure. Thus parliamentary groups enjoy important parliamentary rights but individual Members do not. Let me



mention only the right to introduce bills. With the parliamentary groups playing such an important role, the Bundestag differs in particular from parliaments geared to the individual Member. However, I presume that the subject of independent Members is of relevance in these parliaments too. Even if individual Members enjoy all major parliamentary rights, the fact that they belong to a larger grouping is no doubt important for the way in which Parliament deals with their initiatives.

Let me first make a few brief remarks about how independent Members come to be in Parliament. In our country they are not elected as such. After the elections the members of the individual parties form parliamentary groups. Candidates for election are nominated by the political parties. Since a party needs to obtain 5 per cent of the vote to be represented in Parliament, the elected Members regularly belong to parties which have the minimum number of Members required for parliamentary group status. Individual candidates who are not affiliated to a particular party and even stand against their party could in theory be elected, but in practice they stand virtually no chance of entering Parliament. Independent Members therefore initially belong to a parliamentary group, and subsequently leave of their own accord or are expelled by the parliamentary group. Currently three of the 662 Members are independent Members. Incidentally, they all left their parliamentary groups of their own free will. This is different from the situation described yesterday by our colleague from India. They remain a Member of Parliament but usually they are not elected during the next election.

Our Rules of Procedure contain hardly any provisions governing independent Members. In practice, however, certain principles have evolved that are largely based on a judgement handed down by the Federal Constitutional Court. In 1988 an independent Member brought his case before this court, since he wanted to obtain exactly the same rights in practice as a parliamentary group. Though he was largely unsuccessful, the Constitutional Court did lay down a few principles governing the rights of independent Members.

In contrast to the situation in some other parliaments, there are as yet no provisions for independent Members to be automatically grouped together in a certain organisational form, such as a parliamentary group. However, independent Members could, under certain circumstances, form what is known as a grouping. The Rules of Procedure expressly state that Members who wish to form an association but do not reach the prescribed minimum strength for parliamentary group status - currently 34 Members - can be recognised as forming a group by the Bundestag. Since this has only occurred for a short period 30 years ago, the rights of such groupings have not been specified in the Standing Orders. The question to what extent they would enjoy the same rights

as parliamentary groups has thus not been settled. In the German Bundestag an independent Member therefore acts on his own.

Let me also point out that an independent Member may join another parliamentary group as a Member or as a guest. In both cases the typical questions which arise in connection with independent Members no longer apply.

Let me now turn to the question of how an independent Member can participate in parliamentary work. I should like to mention a few areas which seem to illustrate the situation particularly well. I shall not, however, repeat everything listed in the introductory note.

As I have already mentioned, bills which are not introduced by the Government or the Bundesrat, which represents the Länder, or federal states, by Members of Parliament are drawn up by the parliamentary groups. It is also possible for Members to introduce a bill independently of a parliamentary group, but they need the backing of at least five per cent of the Members of the Bundestag to do so. However, this possibility, which is in any case very seldom used, does not provide a real alternative for independent Members. They never make up the requisite five per cent of Members and would hardly ever gain the necessary support. This five per cent hurdle is high, but one should bear in mind that in the Bundestag minority rights ensure that legislative proposals are considered to a certain extent regardless of who has submitted them.

Every bill is debated in a first reading, followed by a committee stage and report. Afterwards there will be a second reading ending with a vote. In addition I would like to point out that there are no regulations offering so called Private Members the possibility to table bills or motions.

In the course of the deliberations on any bill, an independent Member may - like every other Member - move amendments during the decisive second reading in the plenary. The plenary must then vote on these amendments.

Let me turn to the committees. They deal with bills, motions, and also EC matters or other questions that fall within their terms of reference. Members are appointed to committees by the parliamentary groups in proportion to their relative strengths. This would exclude independent Members from participating in committee work. They are therefore appointed to a committee by the President. This does not affect the voting arithmetic in this committee: though they may move motions and speak, they may not vote. In selecting the committee, the wishes of the Member concerned are taken into consideration to a large extent. But, according to the ruling of the Constitutional Council, independent Members may only demand to sit on only one permanent committee. By

contrast, other Members may serve on several committees and also on special committees, committees of investigation or study commissions, if their parliamentary group so decides.

A second point is the regulation of debates in the plenary. The duration of plenary debates is limited in the German Bundestag. The Council of Elders proposes a specific form of debate. Either representatives of all the parliamentary groups and of the Government speak for five or ten minutes each, and the independents may speak for three minutes; or as the second specific form of debate, the overall duration is agreed upon, with the speaking time being divided among the parliamentary groups and the Federal Government in line with a particular formula. If, for example, the Council of Elders agrees on a debate lasting one hour, the governing majority is allotted a speaking time of 36 minutes in all. The opposition parliamentary group is given 20 minutes and the two smaller opposition groupings, which are a special feature of the current Bundestag resulting from German unification, are allotted 5 minutes each. If an independent Member wishes to take the floor, he is given 3 minutes in a one-hour debate. This is in addition to the allotted speaking time and is not deducted from the speaking time of the others.

A problem could arise if several independent Members wanted to speak in the same debate. This could distort the agreed distribution of speaking time, but so far this has never occurred in practice. Therefore we have so far not considered introducing a joint speaking time for independent Members.

The work of the Bundestag is determined to a decisive extent by the Council of Elders which comprises the President, the Vice-Presidents and 25 more Members appointed by the parliamentary groups in line with their relative strengths. The Council of Elders proposes the agenda of the plenary and the form of debates. Moreover, it deliberates on all matters concerning the Bundestag as a whole. Independent Members are not represented on this body. Rather, the Council of Elders seeks, where necessary, to take their interests into consideration as well.

And finally the money. The parliamentary groups receive funds from the Bundestag budget for their work. This also benefits the individual members of the parliamentary groups, of course. Independent Members ask for, but do not receive any financial compensation for this, however. To obtain the support they need, for example information on certain issues, they may make use of the services of the Bundestag Administration, which are available to all other Members too."

Mr. HADJIOANNOU (President) (Cyprus) said that in Cyprus, as in Germany, it was almost impossible under the electoral system for an independent

member to be elected. However Members of the House who were independents because they had left or been expelled from other parties had the same rights as other Members, including that of introducing Bills. They were represented on Committees and could form a political group if they comprised 12% of the House.

Mr. DA VIES (United Kingdom) said that while the House of Lords was an unelected Chamber it had independents in the form of "Crossbenchers", so called because they sat on benches between those occupied by Government and Opposition supporters. They were technically the second largest organised group in the Chamber, although their organisation was very loose and its principal purpose was to obtain basic briefing information for its Members. They fully participated in all the work of the House and the Committees of the House where they could be very influential. On the rare occasion they were all moved to vote the same way they could bring about the defeat of a Government Bill. He was interested to know why independent Members in Germany did not have the right to vote in Committees.

Mr. KLEBES (Council of Europe) noted that in the parliamentary assembly of the Council there were two kinds of situation which could arise in respect of independent Members. First there were independent Members proper, that is those who were deliberately unaffiliated to any of the groups in the Assembly. These had no privileges of any kind. Secondly, there were Members who held the same view in a group but did not form sufficient numbers to be recognised as such. The minimum required number was 15. This had financial implications since only political groups could get finance. He sought clarification on how funding was granted to political groups in the Bundestag and on how far the groups were accountable for the use of the money.

Mr. HJORTDAL (Denmark) said that in Denmark also independent Members found it very difficult to get elected but there were independent Members in the Parliament following departures from existing parties. Independent Members suffered in that they got only the individual Members' funding and allowances and not the group funding. However, they tended to get the floor to speak relatively often compared to other private Members.

Mr. NDIAYE (Senegal) said that in his country also there were no elected independent Members, but that Members could become independent if they resigned from their group. In such a case he would keep all the rights of other Members because he would be considered authorised by his constituency. He noted that Mr. Winkelmann had said that 34 Members were required to form a group; he wondered what the position was if a group of 34 Members lost just one Member.

Mr. KAITOUNI (Morocco) said that in the period since the 1972 Constitution there had been many changes in the arrangements amongst the majority and minority parties, with many of the traditional parties being in opposition. Some Arab countries had seen fundamentalist groupings arise under the guise of groups of independents. He noted that particular electoral systems could preclude or prevent the emergence of independents. For example a strong party list system would make it very difficult for independents to enter parliament and could provide for the replacement of an existing Member by another Member of the party automatically. He wondered whether the examples throughout the world of the emergence of smaller parties, for example the Greens in some European countries, and even the Hunters Party in the recent French regional elections, suggested that there was a change going on in the way the party system operated.

Mr. SOELAKSONO (Indonesia) noted that Mr. Winkelmann had indicated a number of advantages of being a member of a group and wondered what it was that made members leave a group. He also wondered whether any rule changes were being considered to assist independents. He noted that in Indonesia, again, there were no independents and all members were members of recognised factions; this had administrative advantages.

Mr. WINKELMANN, replying to the debate, said that it was recognised that the right not to vote in committee, raised by Mr. Davies, was somewhat unusual. It reflected the requirement for the majority in a committee to be the same as that in the plenary as a whole. In a recent case before the Courts a minority opinion had concluded that the provision was wrong.

On the point raised by Mr. Ndiaye as to the position of a group which lost its 34th member, he reported that there was provision for the plenary to agree to make an exception. As for the reasons for leaving a group this would normally reflect a Member's disagreement with the principal policies of his group. The point raised about financing of groups was an interesting and complicated one but which was perhaps relatively little discussed because parties did quite well under the existing system. The Federal Audit Office had access to certain basic information about the way in which the money was spent, under confidential arrangements, and there were some restrictions on what it could be used for. There were no plans to introduce improvements for the status of independent Members, though this could be done relatively simply. To do so, however, would be a major change in the way the whole system operated.

It was *agreed* that a draft questionnaire should be prepared on this issue for consideration at the next session.

ANNEX: Mr. Mahran (Egypt) submitted the following speech in writing:

*Introduction:*

Independent parliamentarians do account for an effective and essential element in forming Egyptian political life. Nevertheless they do not constitute a parliamentary group like others affiliated to political parties, in compliance with the Assembly Rules of Procedure.

As the phenomenon of independent parliamentarians gains access in the presence of political parties, the Egyptian parliamentary life has attested to such a phenomenon - during the post 1952 Revolution era - under the 1976 elections conducted for the first time within the context of three political organisations on individual basis.

Independents in these elections won 48 seats amounting to 14% of a total of 360 seats, against 81.8% for the Arab Socialist Party, 3.6% for Liberal Socialists and 6% for the Unionist Progressive National Gathering Party, whereas in the 1979 elections independents got 10 seats in Parliament.

Because the 1984 Parliament had come into being according to the by-list election system, the Independents were not up to nomination, a matter the State virtually discerned under the 1987 Parliament, where the Independents were entitled to take up 6 seats plus one filled through appointment.

When the latest People's Assembly elections held in 1991 had shifted to the single election system, a good many independents ran for election, with 45 independents winning, that is 9.9% of the total Assembly members numbering 454.

As a general rule, all Assembly members enjoy equal rights and duties. Therefore, what applies to Independents applies as well to representatives of other parliamentary groups without discrimination. They are commissioned to legislation and control as vested in them in compliance with the Constitution and the Assembly Rules of Procedure, through their work in permanent committees or in the Assembly as a whole.

In line with the ensured equality of rights and duties, all Assembly Members are duly entitled to:

1. Parliamentary immunity; it is not admissible, except in cases of being caught red-handed, to take any criminal procedures against MPs, without an advance permission released by the Assembly. Because of such rights, there are duties to be undertaken by Parliamentarians: for example, they should pay due respect to the State constitutional institutions

and not infringe upon the Constitution, the Law or the Rules of Procedure.

2. At the level of legislative action, all MPs maintain the right:
  - To propose amendment, deletion, introduction, or dividing articles or modifications while considering bills.
  - To submit draft bills and motions.

At the level of monitoring work, MPs have the right to put questions to the Prime Minister, his deputies, ministers, and deputy ministers as well as other government officials, concerning issues falling within their jurisdiction for inquiry into matters the Member is unfamiliar with or for getting better acquainted with a particular question or for ascertaining the government reaction and attitude towards specific items.

- To present motions of information to the effect of notifying the Premier and other government officials of a general and urgent matter that falls within the competence of the official concerned.
  - To address interpellations to the Premier, his deputies, or ministers and deputy ministers to call them to account vis-à-vis affairs relevant to their competences.
  - To forward motions carrying a wish relating to public interests for submission to government on the part of the Assembly or to present a motion for resolution which the MP seeks to have adopted by the Assembly within its jurisdiction.
3. The Assembly Rules dictate the membership of every Parliamentarian in one of the specific permanent committees, while granting him the right to become a member of a second committee with the approval of the Assembly Bureau, in a bid to avail of his expertise in the field of the activity of the Committee.
  4. The Independents, though ostensibly representing respective independent lines of thought, mostly form an incorporated group.
  5. On the basis of providing in practice for the chance of effective and actual representation by the Independents through their actions in the Assembly, the Rules stipulate for their representation upon the setting up of the following committees:
    - The General Committee, the leading committee in the Assembly, normally formed at the beginning of every ordinary annual Session under

the chairmanship of the Assembly Speaker and membership of the two Deputy Speakers, Chairmen of the Assembly committees and representatives of the parties' parliamentary groups plus five Members to be chosen by the Assembly Bureau provided one at least is from the Independents should their number as parliamentarians be not less than 10.

- The Values Committee, authorised to consider violations attributed to MPs which constitute a breach of religious, moral or social values or fundamental political and economic principles governing the Egyptian community, in keeping with the Constitution, the Law or the Rules.
- The Ad-Hoc Committee set up to study the statement made by the President of the Republic at the inauguration of the new parliamentary session.
- The Ad-Hoc Committee assigned to review the government statement put to the Assembly at the outset of its term.
- Fact-finding Committees to probe questions of special significance or involving a matter of state of a public interest, public authority, local administration unit, public sector, executive or administrative body or any of the public projects within the controlling area of the Assembly.
- Committees on Reconnaissance and Confrontation in respect to items of significance within the Assembly competence.

The Rules emphasise that the Independents' representation in the said two Committees, if their number was not less than 10, should be observed and taken into consideration.

6. Practically speaking, the General Committee in the current Assembly includes two Independents whereas the Values Committee has only one Independent Member. The Executive Committee of the Egyptian Parliamentary Group has among its members two independent parliamentarians.

Besides, Independents are significantly meant to be included in parliamentary delegates at the foreign level and are given the right to speak and express views. While the rule is that heads of parliamentary groups are given priority to take the floor, some Independents, however, by virtue of their intellectual weight and contribution, may gain this credit, since the Speaker (who is empowered to grant the right to speak) is more or less faced with the necessity of finalising the deliberation on a proposed issue, thus entailing prompt discussion that abounds in diverse viewpoints and outlooks irrespective of who is to be given priority of speaking."



### **3. Report prepared by Dr Rudolf Kabel, Director of the Bundestag of Germany (adopted at the Canberra session, September 1993)**

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##### Concluding remarks

Annex (Proportion of independent Members when the questionnaire was answered)

#### **Introduction**

1. The questionnaire on which this Report on independent Members is based was adopted at the 1992 autumn session of the Association in Stockholm. In a topical discussion the Association had previously dealt with this subject during its 1992 spring session in Yaoundé and charged the rapporteur with preparing a draft questionnaire. The First Draft Report was considered at the 1993 spring session in New Delhi, the Second Draft Report at the 1993 autumn session in Canberra. This Report was adopted in Canberra.

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2. Replies to the questionnaire have been received from the following parliaments:
  - Australia (both houses)
  - Belgium (both houses)
  - Cameroon
  - Canada (House of Commons)
  - Cyprus
  - Denmark
  - Egypt
  - European Parliament
  - France (both houses)
  - Greece
  - Italy (both houses)
  - Japan (both houses)
  - Jordan
  - Korea (Republic of)
  - Netherlands (Second Chamber)
  - Norway
  - Poland (Senate)
  - Portugal
  - Spain (Congress of Deputies)
  - Suriname
  - Sweden
  - Switzerland (both houses)
  - United Kingdom (both houses)
  - Uruguay
  - USA (Senate)
  - Zambia
  
3. From the answers, some of which are very detailed, it is clear that the role played by independent Members in the various parliaments differs widely. This is probably due in particular to their overall number, the role of parliamentary groups or parties in the parliamentary process, the provisions of electoral law, and parliamentary tradition. With these basic consider-

ations in mind, an overview will be given below of the existence, organization and parliamentary rights of independent Members and, where applicable, the support they are given. (The order within these sections does not correspond to the order of the questions in the questionnaire.)

The definition of independent Members given at the beginning of the questionnaire also applies to the Draft Report. "Independent Members" are defined as Members of Parliament who, as a result of parliamentary elections, or because they were subsequently excluded from or leave a parliamentary group or for other reasons, do not belong to a traditional parliamentary group.

## A. Existence of independent Members

1. The existence of independent Members is generally considered possible. In the parliaments of several countries, however, such Members cannot continue to exist in isolation; rather, they automatically form a separate organization. Thus, in Italy (Chamber of Deputies and Senate) there are no independent Members, since all Members have to join a parliamentary group, and those who do not declare that they are joining a specific parliamentary group automatically belong to a so-called mixed group. Similar regulations exist in the Spanish Congress of Deputies and the French Senate.

The U.S. Senate states that it does not have any "independent Members" as defined in the questionnaire. Since the individual questions do not apply to the United States system, the questionnaire was not answered.

Under the Rules of Procedure of the Second Chamber of the Netherlands a single Member, and thus also an independent Member, may constitute a parliamentary group, so in this case there is no difference between independent Members and a parliamentary group.

In Germany there may be independent Members only in the Bundestag, but not in the Bundesrat, through which the 16 Laender, or federal states, participate in the legislation and administration of the Federation. The Bundesrat consists of members of the Land governments, with each Land having between three and six votes, depending on its size; each Land may cast its votes only as a block vote. In practice, this rules out the formation of parliamentary groups and the existence of independent Members.

- 2a) As regards the reasons for the existence of independent Members listed in the questionnaire (election results, leaving or being expelled from one's parliamentary group), practically all the replies mention Members leaving or - more rarely - being expelled from their parliamentary group.

Only in Zambia does this possibility not exist, since under the Zambian constitution a Member who leaves or is expelled from his parliamentary group must vacate his parliamentary seat. (Cf. the topical discussion on this issue introduced by Mr. C. K. Jain, Lok Sabha (India), during the 1992 spring session in Yaoundé.)

In Portugal Members lose their mandates under the constitution if they join a different party from the one which put them up as candidates for election. By contrast, the French Senate - and this is doubtless representative of the constitutional situation in other countries too - emphasizes the unrestricted freedom of Members, based on the prohibition of a binding mandate, to decide whether they wish to join a parliamentary group or not.

- b) In this connection one should also mention those Members who have left a parliamentary group but have not yet joined another, which means that they are independent Members for a transitional period only. Only the French Senate mentions this possibility, which has also occurred in the German Bundestag, for instance. Depending on the duration of this transitional period, this is probably without any major practical significance for parliament and need therefore not be considered here.

Belgian Senators who have been directly elected and not appointed by provincial councils or co-opted by other Senators may not join any other parliamentary group.

Instead of joining a parliamentary group, other weaker forms of association are also conceivable. In the French Senate, a Senator who is not registered on the list of a parliamentary group, may associate himself with this parliamentary group or join it for administrative purposes. Similarly, in the German Bundestag an independent Member may join another parliamentary group as a "guest", which has certain advantages for both the guest and the parliamentary group.

- c) Several countries (e.g. Spanish Congress of Deputies) also mention the dissolution of a parliamentary group as a reason for the existence of independent Members. In such a situation a Member may either continue to hold a parliamentary mandate as an independent Member or join another parliamentary group; where the relevant provisions so permit, it is also possible to form a new parliamentary group.

- d) In the majority of replies the results of elections are confirmed as being one reason for the existence of independent Members. It seems, however, that in many cases this is more a theoretical possibility, which never or hardly ever occurs in practice. In Switzerland, for instance, small parties win seats in large cantons on account of the system of proportional representation applicable to elections to the National Council. Since no minimum percentage of the vote is required for parliamentary representation, approx. 3 per cent is sufficient to win a seat.

The questionnaire was based on the assumption that a candidate is elected to parliament but, once elected, cannot form a parliamentary group together with other Members or join an already existing group. This is conceivable particularly where the Member concerned was the only successful candidate of his party or had run as an independent or even where - given only a small number of independents - the pertinent provisions do not permit the formation of a parliamentary group because the minimum number of Members was not reached. Since this report deals only with the situation in parliament following an election, the question pertaining to electoral law of whether someone can stand for election independently of a political party or on a party list without belonging to the party concerned will not be considered here.

In the last elections to the German Bundestag in 1990 not all parties reached the minimum number of Members required to form a parliamentary group. As a result of special electoral arrangements for the first all-German elections following German unification in 1990, it was sufficient for representation in parliament to poll at least five per cent of the vote in the territory of either the Federal Republic or the former German Democratic Republic. In the current 12th German Bundestag two "groupings" elected mainly or exclusively in the territory of the former GDR are represented in parliament. They have 17 and 8 Members respectively, i.e. far fewer than the 34 Members (5 per cent of the total) required for parliamentary group status. Both have been expressly recognized as so-called "groupings" by decision of the plenary and granted certain parliamentary rights. In many respects they therefore have the same status as parliamentary groups in the Bundestag. Their members are not considered to be independents.

According to two replies, the result of an election cannot be the reason for a Member being independent. In the Belgian Senate a single Senator can form a parliamentary group consisting of only one person. The British House of Lords is not elected. The membership of the House of Lords consists of peers appointed for life; peers given hereditary titles; peers who

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have succeeded as hereditary peers; peers who have been appointed as Law Lords; and 26 archbishops and bishops of the Church of England.

- e) Another reason for Members being independent is that they are presiding officers (Speaker of the British House of Commons, President and Vice-President of the Japanese House of Councillors).

In Nepal ten of the 60 Members of the National Assembly are appointed by the King and have the same rights as the elected Members.

- 3a) The current number of independent Members - as given at the time the replies were written (mostly in November or December 1992) - differs widely as the appended table shows.

Seven parliaments have no independents whatsoever, in ten parliaments their number does not exceed 2 per cent of the total number of Members, while in another thirteen parliaments it amounts to up to 5 per cent of the total. In only three parliaments is this percentage exceeded.

Both this data and the following survey of the last four electoral terms cover not only the independent Members occurring in isolation but also those Members who are automatically grouped together in so-called mixed groups. The figures given do not take account of those who have either joined another parliamentary group or voluntarily formed an autonomous parliamentary group or similar grouping.

- b) The data available for the last four electoral terms reveals that seventeen parliaments have consistently had independent Members (Australian Senate, Canadian House of Commons, Cyprus, Denmark, Egypt, European Parliament, France (both houses), German Bundestag, Greece, Italian Senate, Jordan, Korea, Spain, Switzerland, United Kingdom (both houses) - and presumably also the Belgian Chamber). However, not all the data covers the same reference period, since some of the replies refer to the four electoral terms preceding the present one, while others include the current term.

In the vast majority of cases there have been no significant fluctuations in the number of independent Members over the period under review up to and including the current electoral term. By contrast, the Belgian Senate, the Second Chamber of the Netherlands and Portugal have not had independent Members in all electoral terms.

Moreover, there are a few parliaments which have independents for the first time during the period under review. This applies to the Australian House of Representatives, Norway and Sweden.

## B. Organization of independent Members

1. Only a very few parliaments have rules of procedure or other legal provisions that expressly regulate the status and rights of independent Members. In many cases the absence of such specific regulations is probably due to the fact that independent Members hardly ever create special problems in practice and that individual issues can be resolved through parliamentary practice or the decisions of steering bodies. Moreover, there will be no need to adopt specific regulations where the rules of procedure, in assigning specific parliamentary rights for instance, do not refer to parliamentary groups but to the individual Member, regardless of his membership of a parliamentary group.

By contrast, the European Parliament has, in its Rules of Procedure, adopted extensive provisions applicable to non-attached Members. They regulate the participation of such Members in meetings of the Enlarged Bureau, the provision of a separate administration and a secretariat, the calculation and allocation of speaking times and committee membership. The Rules of Procedure of the French National Assembly contain provisions concerning seating arrangements in the plenary chamber, committee membership and participation in plenary debates.

The French Senate, Italy (both houses) and the Spanish Congress of Deputies - in all these parliaments several independent Members are automatically grouped together, particularly in "mixed groups" - have adopted a number of provisions, and so has Norway.

The Australian House of Representatives and the German Bundestag merely regulate the question of committee membership, and the Canadian House of Commons Standing Orders mention independent Members only in a section regarding the placement of a Member's name on the Register of Paired Members.

- 2a) For parliament, the existence of independent Members raises the question of how these Members can be integrated into the parliamentary process. Conversely, the independent Member faces the question of how he can effectively pursue his own interests and exercise his parliamentary rights. One possibility consists in grouping independent Members together in a separate parliamentary group or a similar body or in allowing them to form such a body on a voluntary basis, if necessary under certain conditions.

- b) Only a few parliaments automatically group independent Members together in a separate "mixed" group, namely Italy (both houses) and the Spanish Congress of Deputies. In the French Senate the independent Members form a "réunion administrative". It cannot be compared with a traditional parliamentary group, which must comprise at least 15 Members and express shared political convictions in a declaration to this effect. A "réunion administrative" serves in particular to make arrangements regarding certain rights of independent Members (assignment to parliamentary bodies, participation in debates).

One cannot speak of a grouping being formed automatically where independent Members are treated as a parliamentary group only with regard to certain parliamentary activities (membership of committees and other bodies), as is the case in Greece, for example.

- c) In ten parliaments, by contrast, independent Members may form a voluntary grouping without any specific conditions having to be met (in particular a minimum number of Members for parliamentary group status, shared political objectives). This applies to the Australian House of Representatives, Denmark, the Second Chamber of the Netherlands, Norway, the Polish Senate, Suriname, the United Kingdom (both houses), and Uruguay (Senate).

In the British House of Lords there is a large group of independents known as "crossbenchers", who sit on the crossbenches, whose ties are informal and who do not seek a common policy.

In Norway such a "group" does not have the same status as a "party group", which is formed by members of a registered party that has presented a list of candidates in at least one third of the constituencies.

The Australian House of Representatives makes another distinction by granting the Leader of a party special remuneration only if the party concerned consists of at least 10 Members.

In ten parliaments a voluntary grouping may be formed only under certain circumstances, since, under the rules of procedure, the formation of a parliamentary group is dependent, for instance, on a minimum number of Members and/or a common political background or common political aims.

A minimum number of members are required for parliamentary group status in the Belgian Chamber, Cameroon, Cyprus, France (both houses), the German Bundestag, Korea, Switzerland and Zambia; in the Canadian House of Commons a minimum number of Members are required for certain participatory rights (e.g. membership of specific bodies).



In addition to a minimum number of members France, for instance, requires a political statement signed by all members of the parliamentary group and submission of a list of members, giving the name of the chairman of the parliamentary group.

In the Belgian Chamber and in Switzerland a parliamentary group must not only comprise a minimum number of Members. Its Members must also have stood for election for the same party or campaigned for the same political objectives. This also applies to the German Bundestag.

In this connection the Belgian Chamber expressly points out that a parliamentary group formed for the sole purpose of obtaining the advantages associated with parliamentary group status without its members sharing common political aims is not recognized. The situation is similar in the German Bundestag. However, under the Rules of Procedure of the Bundestag, the plenary may, on the basis of an express resolution - this last occurred in 1957 - recognize an association of Members as a parliamentary group even if the conditions for the formation of a parliamentary group are not met. Otherwise a parliamentary group is formed without the the plenary being involved. The exception referred to applies above all to Members who form a parliamentary group but do not belong to the same party. Of greater importance in practice is another possibility mentioned in the Rules of Procedure, of which use was last made in 1991 following the 1990 elections, the first after German unification. In line with the relevant provisions, an association of Members comprising fewer Members than are required for parliamentary group status may be recognized as a "grouping" by decision of the plenary. The Rules of Procedure do not equate a "grouping" with a parliamentary group. In fact, the "groupings" have been granted certain parliamentary rights in the current electoral term on the basis of a decision of the plenary to this effect, which did not involve an amendment to the Rules of Procedure and was the result of discussions with the Members concerned.

- d) Four parliaments (Belgian Senate, Egypt, Japan - both houses -, Portugal) state that their independent Members cannot form a separate organization either automatically or voluntarily. In Sweden Members who have left a parliamentary group or have been expelled from it can only form an informal grouping, which does not entail official status or any financial or other advantages.

### C. Parliamentary work of independent Members

With reference to several important aspects of parliamentary work, the following section attempts to show the possibilities which independent Members have of participating in the parliamentary process, as compared with the members of parliamentary groups and the parliamentary groups themselves. Differences exist in particular where specific rights can be exercised only by a parliamentary group or a minimum number of Members. Theoretically, the individual independent Member has the same status as the individual member of a parliamentary group. However, the members of a parliamentary group presumably stand a better chance of being able to make use of certain parliamentary rights for which a specific quorum is required.

Many replies appear to indicate that under the rules of procedure or in line with parliamentary practice certain rights are granted to the individual Member and that no distinction is therefore made between those who belong to a parliamentary group and those who do not; however, the chances of a member of a parliamentary group realizing his political objectives are generally considered to be greater. On the other hand, one should not forget that an independent Member who does not form part of a larger grouping can express his personal views more freely at parliamentary level (as expressly stated by the Australian House of Representatives) or may, for obstructive purposes, make skilful use of rights to which he is entitled (British House of Commons).

#### 1. Bills and amendments

- a) In twenty-two parliaments both independents and the members of parliamentary groups may introduce bills or amendments to bills. In the Australian House of Representatives the notice for a private Members' bill must be seconded, as must the second reading motion in respect of such a bill; in the Polish Senate a total of ten Senators are required to second a bill, in the Japanese House of Representatives at least 20 Members, in the Japanese House of Councillors at least 10 (in the case of bills requiring budgetary action the numbers required are 50 and 20 respectively), in Korea the minimum number of members of a parliamentary group are required. In the Spanish Congress of Deputies and in the German Bundestag bills may only be introduced by the parliamentary groups or the number of Members equivalent to the minimum number required for parliamentary group status, with the second alternative being the rule in Spain and the first being the rule in the Bundestag. As regards the Bundestag, moreover, the two "group-

ings" that have been recognized in the current electoral term enjoy the same status in this respect as the parliamentary groups and may thus introduce bills.

If an individual Member is entitled to introduce bills, the question of what legal or real chances there are of Parliament considering the bill still remains open. In the French National Assembly, for instance, independent Members who are not represented in the Conference of Presidents cannot demand the inclusion of a bill in the agenda.

- b) Specific requirements for the seconding of amendments, such as those which, as stated above, exist in some parliaments in connection with bills, were mentioned only by Japan, Korea and the Australian House of Representatives, where in theory this rule could work against an independent Member but in practice it would probably be possible for an independent Member to secure the support of another Member to second an amendment.

In the German Bundestag independents and individual Members alike make hardly any use in practice of the possibility of tabling amendments; by way of exception, one independent Member tabled more than 400 amendments to a bill in 1990.

## 2. Motions on specific issues and procedural issues

- a) Many replies point out that, as in the case of bills, an independent Member has the same rights as regards motions on specific issues and procedural issues as a member of a parliamentary group.
- b) In the Australian House of Representatives motions on specific issues need to be seconded by at least one other Member; in the German Bundestag they need to be seconded by a parliamentary group, by the number of Members equivalent to the minimum number required for parliamentary group status, or by one of the above-mentioned "groupings". In the Spanish Congress of Deputies only the "mixed group", and hence not the individual independent Member, may table motions like a parliamentary group; in the European Parliament an individual Non-attached Member may introduce a motion for a resolution or submit a written declaration on a matter falling within the sphere of activities of the Communities, but he may not propose a candidate for the office of President of the European Parliament.
- c) Where rights which enable influence to be exerted on the course of parliamentary proceedings are granted not to the individual Member but only to a parliamentary group or a specific quorum, this is as a rule presumably due

to the fact that the time available for the conduct of parliamentary business is generally limited and that both the parliamentary majority and the government have an interest in items which they consider to be particularly important being dealt with rapidly.

By way of example, a number of parliaments mention possibilities which, at least in the parliament concerned, are not open to the individual Member. Thus an individual Member may not move the adjournment or termination of a debate (French National Assembly, Portugal), or a motion to close the questions or the debate or for disciplinary action (Japan), express doubts about the presence of a quorum (French National Assembly, German Bundestag) or request a vote by roll call (European Parliament) or a vote using voting cards bearing Members' names (France, German Bundestag). Only in Sweden is the situation different.

As regards the possibilities of influencing the course of parliamentary proceedings, it also becomes clear from the replies that a distinction needs to be made between the parliamentary groups on the one hand and the "réunion administrative" of the French Senate and the "groupings" of the German Bundestag on the other. In contrast to the parliamentary groups in these two parliaments, the "réunion administrative" and the "groupings" may not, for example, request a vote using voting cards bearing Members' names or a general debate in connection with one of the readings of a bill, with the exception of bills which they themselves have introduced (German Bundestag); moreover, they may not object to a vote without debate or demand, or object to, the setting up of a special committee (French Senate).

### 3. Parliamentary questions

- a) The vast majority of replies emphasize that, just as in the case of the aspects of parliamentary work dealt with above, an independent Member enjoys the same rights as a member of a parliamentary group as regards questions addressed to the government.

A few interesting details should be mentioned as regards questions which the government answers orally in Question Time. Both houses of the Australian Parliament and the Canadian House of Commons point out that independent Members are given opportunities to ask questions in the relevant plenary sitting in proportion to their numbers in the House.

In the Belgian Chamber of Representatives this concept is applied from the very start, i.e. when the questions are tabled: while large parliamentary

groups may put two questions per week and small parliamentary groups only one question per week, independent Members may put one question only every second week.

In the French National Assembly the Conference of Presidents lays down at the beginning of every session the conditions under which independent Members may participate. Thus, in the last electoral term independent Members were able to ask one question every four periods of oral questions and questions addressed to the Government. As regards so-called "questions-crible", a procedure under which an individual minister is questioned for an hour about matters within his competence, independents may - depending on the session - ask two or three questions, but only one per sitting.

In the German Bundestag every Member may, regardless of whether he belongs to a parliamentary group, table two written questions for oral reply for each week of sittings. During Question Time, which is limited to a total of two hours per week of sittings, the questions are not called in proportion to the relative strengths of parliamentary groups but in a varying sequence of the ministries concerned. In addition to Question Time, in every week of sittings questions may be put to the government for thirty minutes following the weekly cabinet meeting on Wednesdays; the President decides who may put questions, which need not have been tabled in writing in advance. In principle the President calls upon speakers from the government and the opposition parties alternately but the subject under debate and the interest expressed in this subject by the Members wishing to put questions are also taken into account.

In the Belgian Senate, by contrast, independent Members have no possibility of tabling questions for Question Time, since the large number of questions has resulted in the time available being divided up among the parliamentary groups in proportion to their relative strengths. In the French Senate, the situation is similar as regards debates on oral questions concerning European issues, since only one speaker from each parliamentary group is given the floor, unless the question has been put by an independent Member.

In Japan independent Members may put questions in writing; according to precedents, questions on speeches delivered by Ministers of State, and other oral questions (including questions of an urgent nature) are put only by members of political parties and groups.

- b) While the replies received deal with written questions put by individual Members, only a few of them expressly refer to other forms of questioning

the government, such as interpellations. In contrast to the above-mentioned oral questions, interpellations are often answered by the government in the form of extensive written statements, which may be followed by a debate and, where appropriate, a decision on a motion for a resolution. In Portugal and in the German Bundestag interpellations may be tabled only by the parliamentary groups and, in the case of the Bundestag, by the groupings as well. In the Second Chamber of the Netherlands an interpellation must be approved by parliament, i.e. the majority.

In the Italian Senate each parliamentary group may table one interpellation per month, which is placed on the agenda fifteen days later. As regards the "mixed group", this right is enjoyed by every faction represented in the group.

#### **4. Participation of independent Members in the work of committees**

- a)* The participation of independent Members in the (permanent or standing) committees is an issue of crucial importance for the activities of Members in many modern parliaments based on a division of labour. The decisions taken by the plenary are often prepared in the committees. They provide a platform for influencing policymaking and - particularly in the case of committee meetings that are open to the public - an opportunity to gain publicity for oneself and highlight specific issues.

From the replies it appears that independent Members' possibilities of participating in committee work differ widely. Apart from the cases in which they are completely excluded, their possibilities of participating in committee work range from their having a chance, at least in theory, of participating to their enjoying the same status as their colleagues who are members of a parliamentary group. In some cases their involvement is governed by provisions dealing specifically with the situation of independent Members.

- b)* Independents cannot become regular members of a committee with all the attendant rights where only the parliamentary groups may, in line with their relative strengths, determine the appointment of committee members (Belgium, German Bundestag, Portugal and Switzerland).
- c)* In all the other parliaments it is basically possible for independents to become members of permanent or standing committees. In this connection

some of the replies merely state that independents have the same status as their colleagues from a parliamentary group.

In Norway this is borne out by the fact that every Member serves on a committee, while in Egypt every Member must serve on at least one committee.

In the Japanese House of Representatives every Member serves on at least one permanent committee; independents are not members of special committees, however. In principle the same applies to the Japanese House of Councillors; however, the fact that independent Members do not serve on four permanent committees (Committees on Budget, Audit, Discipline, and Rules and Administration) is expressly mentioned.

In the French National Assembly every Member may serve on one of the six permanent committees. The seats which remain after the parliamentary groups have appointed committee members in line with proportional representation are distributed among the independent Members on the basis of an agreement reached among themselves and, if no such agreement can be reached, on the basis of age. No more than two independents may sit on special committees set up to consider a bill; only by way of exception do they serve on other, smaller committees, e.g. committees of inquiry.

- d) Where the independent Members are automatically grouped together in a mixed group, they participate in the work of the committees in proportion to their numbers (Spanish Congress of Deputies, Italy (both houses)). The same applies to the members of the "réunion administrative" of the French Senate, who like every Senator, serve on a permanent or standing committee, with their assignment to the various committees being the result of an agreement reached between the chairmen of the parliamentary groups and the spokesman of the "réunion".
- e) In Greece independent Members are regarded as a parliamentary group as far as the nomination of committee members is concerned; if they have expressed any preference for particular committees, the President, within whose competence this matter falls, takes these wishes into account.

In the European Parliament the Bureau submits proposals to Parliament on the composition of the committees; these proposals are designed to ensure fair representation of Member States and political views. The Non-attached Members too nominate candidates for membership of the various committees.

In the British House of Lords there is an informal agreement that the composition of committees should reflect the composition of House parties

by including a good proportion of independents. In the Australian House of Representatives non-government Members are nominated by the Opposition Whip or Whips in consultation with any minority group or other non-government Member. In the event of a disagreement in respect of the nominations the House determines the matter.

- f) The German Bundestag does not treat independent Members as a group but grants each of them the right to be a member of one permanent committee, where they may speak and move motions but are not entitled to vote. While the members of parliamentary groups are nominated for permanent committees by their respective parliamentary groups, independent Members are appointed to a permanent committee by the President, who is competent to determine this matter and takes the specific interests of the independent Members into account. An independent Member who serves on a permanent committee may not sit on any other permanent committees, subcommittees, committees of inquiry and study commissions. Irrespective of their size, the two "groupings" of the German Bundestag are entitled to send one of their Members to each permanent committee, where he enjoys all the rights of a committee member.
- g) In the British House of Commons independents hardly stand a chance of becoming a committee member. As a rule, only one seat on each committee is reserved for Members who do not belong to one of the two largest parties. This seat is almost always assigned to the second largest Opposition party or to representatives of regional parties. The only case in recent history of an independent serving on a committee arose because the individual concerned had left his party.

The Canadian House of Commons also points out that no independent currently serves on a committee. However, several independent Members are on the list of "Members at large", from which substitutes for committees and members of subcommittees can be chosen. But this is only a theoretical possibility because the process of substitution is controlled by party whips.

In several parliaments it seems to be possible for independent Members to become committee members only in theory, since the composition of the committees should reflect the relative strengths of parliamentary groups or the number of independents is too small (Belgian Senate, Denmark and Sweden). However, under the Standing Orders of the Danish Folketing an independent Member too can benefit from a provision according to which Members who belong to a party which, because it comprises only a small number of Members or has not entered into a coalition with other parties for



the purpose of securing seats on committees, may sit on two committees, enjoying the rights of a substitute. Such committee members are not entitled to vote, but since, as the Danish Parliament points out, the committees do not normally take decisions but typically only gather information in order to make recommendations, there is no big difference between a committee member and a substitute.

- h)* In addition to the above-mentioned possibilities of participating in committee work, independent Members may also exercise the rights which every Member enjoys in respect of committees on which he does not himself serve. In the Belgian Chamber, the Canadian House of Commons, in Cyprus and in Portugal Members may attend the meetings of other committees, where they may speak without being entitled to vote; in some cases specific committees are exempted in general or on the basis of a resolution to this effect. In the British House of Commons this possibility of attending committee meetings applies only to the committees that consider delegated legislation and EC documents.

In the German Bundestag Members may attend committee meetings without being entitled to speak. In the Belgian Chamber of Representatives and in Switzerland it is also possible for Members to submit to the appropriate committee written statements or proposals on the relevant item on the agenda.

Finally, the Belgian Chamber of Representatives and the German Bundestag grant the principal author or sponsor of an item the right to participate in the committee deliberations on this item without being entitled to vote.

## **5. Involvement of independent Members in bodies which plan and organize parliamentary work**

- a)* In most parliaments, independent Members are not taken into consideration as regards the composition of bodies that plan and organize parliamentary work (e.g. Bureau, Presidium, Conference of Presidents, Council of Elders). This does not mean, however, that these bodies do not look after the interests of independent Members as well (e.g. in Cyprus). In the French National Assembly independent Members may ask the President to express their views at the Conference of Presidents. In the German Bundestag particular care is taken to ensure that independent Members are informed

without delay about important agreements reached, such as the items to be included in the agenda).

- b) In several parliaments it is in theory considered possible for independent Members to be represented on steering bodies but often their number is too small in practice (Netherlands (Second Chamber), Sweden). By contrast, independents may become members of steering bodies where this is prescribed under the rules of procedure so as to ensure that the numerical strength of parties is reflected (European Parliament: Enlarged Bureau, as well as the meetings between Speakers and parliamentary group leaders devoted to specific tasks; Cameroon, Greece, Korea). In some parliaments a minimum number of independent Members are required (Egypt, Sweden). The two "groupings" in the German Bundestag have been expressly granted the right to be represented on the Council of Elders. In this body parliamentary issues are settled through a consensus reached among the parliamentary groups; an objection raised by a grouping does not invalidate this consensus.
- c) Where independent Members are automatically grouped together, this can also result in participation. In the Spanish Congress of Deputies, for example, the "mixed group" participates in the Conference of Spokesmen, a body responsible, *inter alia*, for setting the agenda on the basis of a weighted voting system. The "réunion administrative" of the French Senate may attend the meetings of the Conference of Presidents in line with parliamentary practice.

In Zambia, finally, independents are taken into account in such bodies on merit.

- d) Where it is not a matter of becoming a member of institutionalized bodies but of attending the meetings and talks on important issues between the representatives of parliamentary parties, the British House of Lords draws attention to the attendance of a representative of the so-called "cross-benchers".

On the other hand, the Canadian House of Commons states that the spokesman of a group of independent Members repeatedly objected to the fact that his group had not been consulted on matters of House business and consequently denied unanimous consent when the Government attempted to waive the rules to move or introduce items with the consent of the House. (Following a recent amendment to the Standing Orders, it is now possible to achieve unanimous consent despite an objection lodged by individual Members, if no more than 24 Members lodge an objection when the same matter is dealt with again (so-called mitigated unanimous consent)).

## 6. Participation in plenary debates

- a) As the replies of various parliaments show, a number of issues play a significant role as regards plenary debates. They range from debates without a time limit and limited speaking times for the individual speakers to the fixing of the overall duration of a debate. In the latter case some parliaments allocate speaking times in accordance with the numerical strength of parliamentary groups, while others proceed on a basis of parity. In many parliaments it is a distinctive feature of plenary debates that certain speakers (e.g. members of the government, parliamentary group chairmen and the initiators of items for discussion) benefit from special rules (priority over other speakers, extended duration) or that certain rules specify how often a speaker may be given the floor on the same item on the agenda.
- b) In many of the replies received no distinction is made between independent and non-independent Members. Where a maximum speaking time has been fixed for the individual speaker, this also applies to independent Members (e.g. in the Polish Senate: 10 minutes; Sweden: 6 minutes). Extended speaking times for certain representatives of the parliamentary groups (e.g. Denmark, Norway) must be accepted by independent Members in the same way as provisions governing the order of speakers under which the Government or the parliamentary group spokesmen are given the floor before other speakers (e.g. Canadian House of Commons, Norway).
- c) Independents are completely excluded from participating in plenary debates only in Japan; in specific circumstances they are excluded in a few other parliaments. In the Belgian Senate this applies to the treatment of certain issues such as matters concerning the agenda or the wording of a question to be put to the vote. As already mentioned, in the French Senate independent Members may not participate in debates concerning European affairs.

The Norwegian Parliament is the only parliament which differentiates between independent Members as the result of an election and those who have left or been expelled from their parliamentary group: the latter are allocated only a minimum speaking time.

One parliament whose regulations on speaking times distinguish between different types of business is the French National Assembly. If the Conference of Presidents decides to hold a general debate on legislative texts, the total speaking time available to independent Members is in proportion to the number of independents, whereas the parliamentary groups are allocat-

ed the same minimum speaking time. Where individual clauses are discussed, each Member may speak for five minutes. An independent Member may not make a statement on a vote. In the case of a government policy statement followed by a debate, a general policy statement and a motion of no confidence, the independent Member who first requested leave to speak in the debate is entitled to speak for 10 minutes.

- d) Where an overall speaking time has been fixed for a debate it is often allocated to the parliamentary groups either wholly or partly in line with their numerical strength, with independent Members being taken into account as well (e.g. European Parliament, German Bundestag, Netherlands, Portugal, Switzerland). In this connection the speaking time reserved for independent Members is less than that to which the smallest parliamentary group is entitled (Switzerland); depending on the issue to be discussed it amounts to between 3 and 5 minutes in Portugal.

In the German Bundestag the Presidium has adopted certain guidelines which do not have the same status as the Rules of Procedure and under which independent Members are entitled to speak for 3 minutes in a one-hour debate, for example. If several independent Members were to ask for the floor in such a debate, their speaking times, taken together, could in theory exceed the speaking time allocated to a parliamentary group and thus raise the question of whether the speaking time should be reduced. In practice, however, this problem has not yet occurred in the German Bundestag.

- e) Only very rarely are efforts made to improve the situation of independent Members by more favourable provisions governing speaking times and in particular to recognize that within their ranks different political views may be held. One example is Rule 83, paragraphs 2 and 3 of the Rules of Procedure of the European Parliament:

"2. The President shall allocate speaking time in accordance with the following criteria:

- (a) a first fraction of speaking time shall be divided equally among all the political groups;
- (b) a further fraction shall be divided among the political groups in proportion to the total number of their members;
- (c) the Non-attached Members shall be allocated an overall speaking time based on the fractions allocated to each political group under sub-paragraphs (a) and (b).

3. The speaking time of Non-attached Members, calculated in accordance with paragraph 2, shall be doubled so as to take account of the great diversity of political views among them and enable, as far as possible, each such view to be expressed. Each Non-attached Member shall be accorded the same speaking time. If he does not wish to use his speaking time he may assign it to another Non-attached Member."

In the British House of Commons it is customary for the Speaker to give more than their strict mathematical entitlement of debating time to minority groups at plenary sittings of the House; there are no other possibilities of being given the floor in the plenary, however.

Mathematically and in proportion to their numbers, independent Members are at an advantage also where a specific minimum speaking time is allocated to them (German Bundestag, Portugal, Switzerland), since this minimum speaking time regularly exceeds the ratio between the overall speaking time and the total number of Members. Moreover, in the German Bundestag the number of speeches given by independent Members is well above the average number given by the individual member of a parliamentary group.

- f) In those parliaments in which independent Members form a mixed group (Italy (both houses), Spanish Congress of Deputies) or "réunion administrative" (French Senate) these associations are largely treated in the same way as parliamentary groups.

In the Italian Senate, moreover, in debates on bills the speaking time for the mixed group is not allocated by the Conference of Presidents to this group itself but to the representatives of the different political views within this group. This also applies to explanations of vote and debates on the above-mentioned interpellations (cf. C 3 b)).

In the German Bundestag the two "groupings" receive their share of the speaking time in line with a special formula. In a one-hour debate they are allocated five minutes each, in debates lasting several hours several times this amount. Often so-called five or ten-minute rounds are arranged, in which the parliamentary groups, the government and the "groupings" can each nominate a speaker, who takes the floor for five or ten minutes.

## **7. Participation in official parliamentary visits**

- a) In most parliaments independent Members also take part in official parliamentary visits, though the replies reveal that the extent to which they do so differs widely. The replies received from the French Senate, Italy and Spain, for example, emphasize that all Members are treated in the same way without specifying in what way and to what extent independent Members in particular participate.

Several other replies proceed on the understanding that places for such visits are assigned with the total number of Members being taken into account and independent Members being given their share of the places (e.g. Australia, European Parliament, Greece, Korea, Netherlands, and presumably also Cameroon and Poland).

- b) Only in Belgium and Switzerland are independent Members excluded from any participation whatsoever, the reason given being that the places available are distributed in proportion to the relative strengths of the parliamentary groups.

In Canada's House of Commons it is theoretically possible for independents to participate in such visits but in practice this never happens because such participation is controlled by the party whips.

- c) In the British House of Commons, in Norway and in Sweden independent Members' chances of participating in official parliamentary visits appear to be fairly small. In the House of Commons participation in parliamentary delegations is on the same proportional basis as for committees, which means that independents only have few opportunities of taking up one of the few places "reserved" for the minority parties. In Norway and Japan they are, in practice, considered only if they are members of a committee.

In Sweden the Speaker nominates the members of a delegation upon the proposal of the parliamentary groups, though other decisions could be taken as well.

In the German Bundestag independents may be members of a delegation only if a parliamentary group assigns one of them a place on the delegation to which it is entitled in line with proportional representation. By contrast, independent Members stand a better chance of travelling on their own at the expense of the Bundestag. Such visits can be approved by the President within the limits of the budgetary funds available either if the chairman of

the committee on which the independent sits confirms that the planned visit is in the interest of the committee or if the President, by way of exception, grants permission for the visit. However, the total cost of visits made by independent Members should not exceed the average cost of official visits made by Members in accordance with the funds appropriated for this purpose.

- d) In Australia independent Members as a group are given a choice of delegations in the years in which they are entitled to be offered a position. They must decide between themselves which Member will take the position and that Member must choose between the delegations offered.

In the German Bundestag the "groupings" receive grants, in line with their relative strengths, towards the cost of visits abroad which they do not make on behalf of the German Bundestag but which are in the interest of parliament. As regards the composition of delegations, an agreement with the parliamentary groups should first be reached, in which connection the "groupings" may be given a place from the quotas of one of the three parliamentary groups. If no consensus is reached, the groupings may apply to the President for an additional place and have to work out an agreement between themselves on who will take this place.

## 8. Support for independent Members

- a) Most replies emphasize that independent Member receive the same support as any other Member. In addition, parliamentary groups receive support to varying degrees to assist them in their parliamentary work.
- b) In several countries an independent Member may claim all the financial benefits to which a parliamentary group would be entitled in respect of one of its members over and above a basic allowance or basic facilities, for instance. In the Belgian House of Representatives this applies above all to secretarial expenses; in the Second Chamber of the Netherlands funds are made available to help meet the cost of staff and office equipment. In the Belgian Senate the sums involved are not disbursed to the independent Member but either remitted to his party or to a "service d'études" indicated by him to the President of the Senate.

In the British House of Commons financial assistance is available to the Opposition parties to assist them in carrying out their parliamentary business. To be entitled to this assistance there must either be two Members in the House who contested the General Election as members of the same

party or, in the event of there being only one Member, his party must have polled at least 150,000 votes in the General Election.

By contrast, the independent Members in the German Bundestag do not receive any compensation for the support which the parliamentary groups receive in terms of finances, technical assistance and staff. Rather, an independent Member may, like any other Member, make use of the services provided by the Administration of the German Bundestag, particularly the Reference and Research Services, to assist him in his parliamentary work.

In the Canadian House of Commons several Members who had broken away from the officially recognized parties and joined together to promote a specific cause did not succeed in 1990 when requesting that they be given the same additional research funding offered to the recognized parties and that their leader be granted the same additional budget offered to other party leaders.

- c) In the French National Assembly a joint secretariat has been set up on the initiative of the independent Members to coordinate requests for speaking time and liaise with the parliamentary services. In Switzerland independents are provided with offices in proportion to their total number. They are given no additional administrative support. In the French Senate the "réunion administrative" is entitled to an office of its own in the same way as the parliamentary groups.

The "mixed groups" in the Italian Chamber of Deputies and in the Spanish Congress of Deputies are given the same support as the parliamentary groups, with Spain emphasizing in its reply that this support is in proportion to the total number of independents.

The two "groupings" in the German Bundestag receive, in proportion to their relative strengths, the same support as the parliamentary groups in terms of finances, technical assistance and staff. They receive 50 per cent of the basic allowance to which all parliamentary groups are entitled as well as the supplementary allowances in proportion to their relative strengths, including the special allowances for the opposition, without any deductions being made.

### Concluding remarks

1. The replies show that in most parliaments there are independent Members, even though to a varying extent and over varying periods. At the same time, their existence does not appear to give rise to any extraordinary difficulties



as regards the conduct of parliamentary business in particular. This does not rule out the possibility of individual independents making excessive or obstructive use of their participatory rights and thus making parliamentary work more difficult. Independents are not integrated into a larger group which naturally requires the members of such a group to work out internal agreements and to take the internal opinion-forming process into consideration; while this gives independent Members a greater chance of making public their personal views by parliamentary means, it also reduces their chances of realizing their political objectives.

2. The participatory rights granted to independent Members under the Rules of Procedure or in parliamentary practice differ widely in the various parliaments. This applies in particular where parliamentary rights are not granted to a parliamentary group or a specific minimum number of Members but to the individual Member, whether he belongs to a parliamentary group or not. On the basis of the information available it is impossible to say with complete accuracy whether such a focus on the individual Member of Parliament gives independents a greater chance of finding parliamentary support for their initiatives and bills as a basis for further deliberations and ultimately the success of their efforts.
3. Where independent Members are automatically grouped together in a separate organization ("mixed group", "réunion administrative") or where they are considered to form a unit in respect of certain matters (e.g. appointment of committee members, speaking time in the plenary) this raises the question in each individual instance as to whether they are treated in the same way as parliamentary groups and whether the wide variety of political views among independent Members is taken into consideration.

Annex

Proportion of independent Members when the questionnaire was answered

|                            |   |  |
|----------------------------|---|--|
| 0 per cent                 | Belgium (Senate)<br>Netherlands (Second Chamber)<br>Uruguay (Senate)<br>U.S. Senate<br>Zambia<br>Germany (Bundesrat)<br>Switzerland (Council of States) |  |
| up to 0.5 per cent         | United Kingdom (House of Commons)<br>Germany (Bundestag) <sup>2</sup>   | 2 <sup>1</sup> out of 651<br>3 out of 662                                  |
| up to 1 per cent           | Denmark<br>Sweden   | 1 <sup>3</sup> out of 179<br>3 out of 349                                  |
| up to 1.5 per cent         | Norway<br>Portugal<br>Australia (House of Reps)<br>Switzerland <sup>4</sup> (National Council)  | 2 out of 165<br>3 out of 230<br>2 out of 148<br>3 out of 200               |
| up to 2 per cent           | Cyprus<br>Japan (House of Representatives)  | 1 out of 56<br>8 out of 511  |
| up to 2.5 per cent         | European Parliament<br>Greece<br>Republic of Korea<br>Belgium (Chamber of Reps)   | 12 out of 518<br>7 out of 300<br>7 out of 299<br>5 out of 212              |
| up to 3 per cent           | France (Senate) <sup>5</sup><br>Poland (Senate) <sup>6</sup><br>Japan (House of Councillors)  | 9 out of 321<br>3 out of 100<br>7 out of 252                               |
| up to 4 per cent           | Italy (Senate) <sup>7</sup><br>Cameroon<br>Canada (House of Commons)<br>Australia (Senate)  | 24 out of 326<br>6 out of 180<br>11 <sup>8</sup> out of 295<br>3 out of 76 |
| up to 5 per cent           | France (National Assembly)<br>Spain (Congress of Deputies) <sup>7</sup>   | 24 out of 577<br>16 out of 350   |
| 7.9 per cent               | Egypt   | 36 out of 454  |
| 20 per cent                | Jordan  | -  |
| 23.6 <sup>9</sup> per cent | United Kingdom (House of Lords)   | 288 out of 1220  |

<sup>1</sup> Speaker, and one member from Northern Ireland as the only representative of his party.

<sup>2</sup> 24 members from two "grouping" are without parliamentary group status.

<sup>3</sup> Elected on the Faroe Islands.

<sup>4</sup> Further members who, as representatives of their party or lists, do not reach the minimum number required for parliamentary group status have joined other parliamentary groups to avoid having the status of independent members.

<sup>5</sup> Automatically forming a "reunion administrative".

'In addition, 7 senators form a club of Independent senators, which has the status of a parliamentary group.

<sup>7</sup> Automatically forming a "mixed group".

'Including smaller parties with fewer than 12 members.

'Rises to 45.6 per cent if the members of the informal "crossbenchers" organisation are added to those who do not belong to any party.