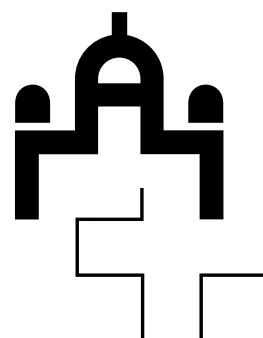


XVIIth Meeting of the Association of European Senates

20 and 21 October 2016



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Thursday, 20 October 2016

Seminar:

Combatting terrorism in Europe.
Extending governments' powers to gather
intelligence and extraordinary rights:
What is the role of Parliament?



*Raphaël Comte, President of the Council of States
of the Swiss Federal Assembly, President of the XVIIth Meeting
of the Association of European Senates*

On behalf of the Swiss Council of States, I warmly welcome you to the XVIIth Meeting of the Association of European Senates. It is a great honour for me to open this assembly, as the Swiss Council of States attaches much importance to international dialogue. We are convinced that it is through dialogue that we can solve problems that may exist among and between countries. I particularly welcome Claude Hêche, who was President of the Swiss Council of States in 2015 and who took the initiative to invite you to Berne.

Before we start with our deliberations, let me say a few words about the Federal Palace, in which we are assembled today and tomorrow. The Federal Palace has been built with material from all cantons and hence symbolizes Switzerland's federal system. Both Chambers of Switzerland's perfectly balanced bicameral system are sited in it. We will go to the chamber of the Council of States tomorrow, but for our seminars we had to take refuge in the larger chamber of the National Council. This is where the Swiss Federal Assembly meets – i.e. the Members of both Houses – as it does for example to elect the Members of the Federal Council. The large mural in front of you represents the mythic past of Switzerland: the Rütli meadow, where the Three Confederates – the founders of the Swiss Confederation, allegorically speaking – swore loyalty to one another.

Next year, we will be meeting in Slovenia; in 2018 the assembly will take place in Romania. Candidates for the XXth Meeting in 2019 are welcomed to step up.



Presentation: Parliament's supervision of governmental activities, the example of the Finance Committees and their Delegation

Jean-René Fournier, Councillor of States, member of the Finance Committee of the Council of States of the Swiss Federal Assembly, former president of this committee, and member of the Delegation of the Finance Committees of the Swiss Federal Assembly

Before I turn to the central issues of intelligence, state protection, and prevention of terrorism, I would like to explain, as briefly as possible, how the Swiss federal system works and how Parliament deals with finances.

One important parameter of the Swiss political system is the principle of subsidiarity. Switzerland has an ascending state structure: from the more than 2,000 municipalities to the 26 cantons to the Federal State. Hence, the Confederation has to be vested with the necessary powers, as they are laid down in the Federal Constitution, if it wants to take on new responsibilities. The Constitution can only be amended if a majority of both the people and the cantons are in favour of it. This means that the tiny cantons, too, have a say.

A second important parameter of the Swiss political system is direct democracy. Switzerland is the country in which the greatest number of votes are conducted. 50,000 citizens can request a referendum about a law drafted by Parliament. This is a unique phenomenon. Direct democracy allows the people a great deal of influence on the legislative process. Therefore, when drafting a law, Parliament is well advised to take care that people will not ask for a referendum, or that, if they do, the draft will be accepted by a majority of the people and of the cantons.

Swiss Parliament is made up of the National Council and the Council of States, with both Houses having exactly the same rights, duties, and responsibilities. The National Council comprises 200 MPs, the number of MPs per canton depending on the number of its inhabitants. The Council of States has 46 Members, i.e. two representatives from every canton. An exception are the former half-cantons, each of which, regardless of the number of its population, has one representative. The example of the canton of Uri with 35,000 inhabitants and two Members of the Council of States makes clear how powerful a tiny canton may be if it comes to an amendment of the Constitution or to a referendum about a federal law. What is more, according to the Federal Constitution, the cantons have the right to draft the rules for the election of its representatives in the Council of States. Most cantons have opted for a majority system.

Let me now briefly describe the relationship between Parliament and Government. Items that have been put on the agenda by Parliament cannot be withdrawn by Government. Parliament has its own administration, the Parliamentary Services, which allows it to remain independent from Government. Parliament drafts bills and elects the Members of Government, whose term of office is four years. Parliament also takes final decisions regarding the budget. Finally, Parliament oversees the Federal Council and the Federal Administration. In dealings with the special delegations of supervisory committees that are established under the law, official secrecy does not apply. This shows how much power Parliament has in this respect.

Among the supervisory committees of the two Houses are the Finance Committees, in charge of preliminary examination of the federal budget and of federal accounts as well as of financial planning. They also have the task to ensure that other committees follow the financial rules and

that in bills the necessary financial instruments are provided for. To take a closer look at certain issues, subcommittees are set up.

A body that plays a particularly important role in intelligence matters is the Control Committee of each House. Like the Finance Committees, it has the right to see classified decisions taken by Government. Three members from each Finance Committee make up the Finance Delegation. Members are appointed according to the power of parliamentary groups, so that all four Government parties are represented. In case of emergency credits for which Government cannot turn to Parliament within the usual budgetary discussion, the Finance Delegation comes into play. This happened after the grounding of the Swiss airline company Swissair in 2001 following serious mismanagement problems. The State had to come in very quickly and to grant a credit of more than CHF 1.2 billion to transfer operations to a new company – a decision that afterwards was approved by Parliament. The Finance Delegation also came into play in the UBS case in 2008, following failures by the bank in the context of the worldwide financial crisis. Government, the Swiss National Bank, and oversight authorities came to its rescue, with the Swiss National Bank granting important loans. The rescue turned out to be a rather sound investment and did not cost the Swiss tax payers a single franc.

Finally, I would like to say a few words about the central issue of intelligence, state protection, and the prevention of terrorism. Obviously, the budget of the Federal Intelligence Service (FIS) has to be approved by Parliament; nonetheless, classified information is kept secret. In advance, the FIS budget is looked over by the two Finance Committees and their subcommittees, which report to the Finance Delegation as well as to the Control Delegation. More often than not, the FIS budget is approved without major discussions. Secret domains are dealt with by the Finance Delegation, since it has unrestricted access to information.

The cooperation between the Finance Delegation and the Control Delegation has been intensified as a result of the poor planning and execution of the intelligence gathering system ONYX. The administration had decided to tranche the credits for ONYX in order to maintain confidentiality and avoid systematic oversight. Once a report by the Federal Audit Office had drawn attention to the project, the two Delegations decided to work together to remedy the situation. An agreement was set up to ensure closer cooperation the two Delegations in the area of intelligence and state protection. This agreement is publicly available. Another example for the intensified cooperation between the two Delegations is the monitoring of the steps taken to merge the domestic and the foreign Swiss intelligence services by creating the FIS. The Parliamentary control bodies helped to resolve the conflicts between the Heads of the two existing organisations and the Heads of the respective Departments. The important role the two Delegations played in this conflict has had considerable influence on the relations between Parliament and Government in matters of security, so that nowadays Swiss Ministers are much more apt to accept the influence of Parliamentary control bodies – a development the Council of States obviously welcomes.

Presentation: Influence of the Council of States on the drafting of the Intelligence Service Act

Anne Seydoux-Christe, Councillor of States, member of the Control Committee of the Council of States of the Swiss Federal Assembly and of the Control Delegation of the Swiss Federal Assembly

The Council of States, the Swiss Senate, has had considerable influence on the drafting of the Intelligence Service Act. A part of Parliament's oversight tasks are entrusted to the Control Delegation, a body composed of six Members, three Members from the Control Committee of each Chamber. In this Delegation, the five biggest political parties are represented – four governmental parties and one non-governmental party – yet its small size makes sure that confidentiality is abided. According to Article 169 of the Swiss Constitution, the Delegation has unrestricted access to confidential governmental information. It oversees the Federal Intelligence Service (FIS), a civil service, and the Military Intelligence Service (MIS) as well as all governmental activities that need to be kept confidential in the interest of the State.

Regarding intelligence legislation, important steps have been taken since the 1990s. In 1989, the so-called secret files scandal was revealed: police organs had kept files about hundreds of thousands of individual citizens considered to be a threat to the State. In my canton, the canton of Jura – the Confederation's fledgling – advocates of independence were also regarded as a threat to the State and therefore filed.

In 1995, the Armed Forces Act was adopted, and in 1997 the Internal Security Act with the aim to guarantee homeland security. Following 9/11, various European countries extended the powers of their intelligence services, allowing them to broadly gather information. Switzerland did not follow in that vein, as Parliament rejected such a project in early 2009. However, given growing international threats, the Control Delegation started to deliberate on drafting legislation for the Civilian Intelligence Service Act in 2007. The bill was adopted by both Chambers in autumn 2008. On that basis, the Federal Council in 2010 created the FIS. Government also presented to Parliament draft legislation on domestic and foreign intelligence. The Federal Assembly accepted this new legislation in September 2015, the Swiss people, following a referendum, did so in September 2016.

Thanks to its oversight activities, the Control Delegation has vast insight into intelligence service matters. As a result of its inspections, it knows what improvements need to be made and what gaps need to be filled. All its meetings are attended by the Head of the Federal Audit Office. This close cooperation greatly benefits both sides.

In spring 2014, the Delegation presented an exhaustive co-report to the National Council Security Policy Committee on draft legislation regarding intelligence oversight. The Delegation proposed thirty modifications of specific regulations and made various recommendations in order to establish a coherent regulation of political oversight and control. In spring 2014, the National Council, the first Chamber to discuss the draft, approved about a third of the proposals but explicitly rejected certain demands essential to the Delegation. The Council of States, however, supported the Delegation's demands to: firstly, maintain the oversight powers by the executive and legislative bodies of the cantons, which in Switzerland's federalist system play an important role; secondly, emphasize the Federal Council's unrestricted duty to inform the Delegation; thirdly, make the Federal Council directly responsible for allowing sensitive activities of intelligence servic-

es, particularly in cooperation with foreign services; fourthly, fill the gaps in data protection regulation, particularly regarding data storage and the transmission of data to foreign authorities.

When it came to resolving the differences between the two Chambers, the Council of States was able to convince the National Council to accept its version in all these issues. Therefore, the Council of States succeeded in maintaining cantonal oversight powers over cantonal homeland security bodies, which the Federal Council had wanted to limit in its draft project in spite of the authorities of a dozen cantons explicitly being against such a limitation. Following the Delegation's proposals, the Council of States maintained the cantons' competencies regarding arrests by police forces and regarding foreigners on their territory. Thanks to the Council of States' decision, Government continues to inform the Control Delegation in the matter of fictitious identities created by state authorities. What is more, the Council of States was able to ensure that all FIS treaties with foreign intelligence bodies must be approved by Government. Our Chamber also made sure that Swiss intelligence services only have access to foreign information systems after having consulted with the Federal Council's Delegation on Homeland Security and that intelligence services can take certain measures in cyberspace only with governmental approval. On the proposal of the Control Delegation, our Chamber worked out regulation on the transmission of data obtained by FIS abroad that was in line with the Council of Europe's convention on homeland security. The new law also provides for comprehensive protection of data handed over to foreign states. Finally, the Council of States saw to it that FIS data is subject to efficacious quality control and that non-relevant data is deleted after ten years while relevant data may be kept as long as necessary.

In all this, the Council of States' three Members in the Control Delegation – Alex Kuprecht, Paul Niederberger, and Claude Janiak – played an important role. Alex Kuprecht had been a Member of the Delegation for many years and in 2015 also was Chairman of the Security Policy Committee, the body entrusted with discussing the draft legislation before it was debated by the Chamber. Paul Niederberger was chairman of the Control Delegation up to 2015 and defended the Delegation's position before the Control Committee. He brought several new elements into the debate and saw to it that legal dispositions were in line with the Armed Forces Act. Claude Janiak launched the idea of creating an independent oversight body to oversee the FIS. Based on these proposals, a detailed wording was worked out and accepted without modification.

These examples show how many important ideas were brought forward in and by the Council of States. After discussing many aspects of the draft in depth, our Chamber made sure that in the end an act was passed in which FIS competencies on the one hand and the powers of oversight bodies on the other were well balanced. In this way, we largely contributed to the fact that – in a context in which the secret files scandal had left its traces – the Act was accepted in the popular vote.

Presentation: The French experience: The role played by the Senate in combatting terrorism

Gérard Larcher, President of the Senate of the French Republic

France, together with Belgium, has been a main target of terrorism. Both the Senate and the National Assembly have understood the seriousness of the situation and have risen to the challenge. Three days after the Bataclan massacre in Paris, on 16 November 2015, President François Hollande brought together Representatives and Senators in Versailles to announce measures and propose a draft to revise the Constitution. In fact, faced with terrorist threats, a democracy best responds by uniting the nation and by uniting the people. The bringing together of the two Houses was a symbol for this unity, a symbol all the more powerful as the two Houses do not have the same political majority.

The Senate represents the Nation, as does the National Assembly, and has full parliamentary powers. Apart from this agreement, which made the state of emergency legitimate, the Senate has played its part as a house of reflection, making sure that the rule of law is respected, and striving for a balance between security and freedom. Safety and security are the first of all rights; in a constitutional state, citizens are entitled to feel safe and secure. This is why the Senate was able to convince Government and the National Assembly to adopt measures to combat terrorism without calling into question our republican values. The contribution by the Senate was considered all the more important as we represent local authorities. It was the mayors who had to deal with the aftermath of terrorist attacks and to reassure the people who flocked to town halls in need of information. It is the mayors who have to cooperate with municipal police and with the armed forces. Finally, given the rise of uncertainty and the general lack of respect for politicians in our country, it is the mayors in whom our citizens fully trust. Therefore, I also talk to you as a representative of the 35,000 mayors who have to take on heavy duties and responsibilities.

Let me first talk about what we do in terms of prevention. The current state of emergency was declared on 13 November 2015. Provisions for states of emergency go back to the relevant law passed in 1955, the time of the so-called events in Algeria. This law enables the administrative authorities to place citizens under house arrest and to license house searches without first getting green light from the judiciary. With these measures, we are at the limits of the rule of law. The Senate has several times permitted the extension of the state of emergency, one time unanimously, three more times by an overwhelming majority.

When we did so, we amended a number of rules applied in states of emergency. The Senate wishes to preserve the key role played by the judiciary in cases of a house search leading to the detection of a criminal offence. However, in order to improve the efficiency of prevention measures, we want to increase the prerogatives of the administrative authorities during states of emergency, i.e. we want to give prefects the power to: forbid any meeting if they are not able to guarantee the safety of those taking part; close down places of prayer where people are incited to hatred or violence; authorize ID checks as well as vehicle and luggage searches without having to justify them – as is the case in normal times – by specific circumstances which put the public order at risk.

The Senate has not been able to make it an offence staying in a country in which terrorist groups are active; however, who comes back from such a country may be put under house arrest for three months instead of for one month. This measure is of great importance as no fewer than

600 French nationals are active for Daesh. When they come back from war, they are in a state which, morally and intellectually speaking, is not at all in line with the values of the French Republic.

By taking strong measures, the Senate has tried to enhance the safety and security of citizens and to protect them from arbitrary decisions by preserving the role of the judiciary. The Senate wants to control the implementation of the state of emergency on a daily basis because we want to check the efficacy of measures and to see that civil liberties are respected. With this goal, the competent committee has set up a monitoring commission made up of seven Senators, one per political party, whatever its size. Week after week, this commission keeps a close eye on what Government is doing. It carries out hearings and checks security measures on the spot.

Furthermore, the Senate carries out its control duties through the bicameral Intelligence Services Delegation set up in 2007. It is made up of Members of both Houses and led alternately by a Representative or by a Senator. Having access to certain classified documents, the Delegation has observed the increase of the terrorist threat as well as the way in which the intelligence services have evolved. As a result, additional means have been made available to fight terrorism, both in the field of new technologies and in the field of human intelligence.

We sincerely asked ourselves how far we could go and still comply with the rule of law. With this objective in mind, I approached the Constitutional Council and asked it to ensure that the Intelligence Act is in compliance with the principles of the French Constitution that are based on the Declaration of the Rights of Man and of the Citizen from 1789, the preamble to our Constitution. This is a very important task but also a very delicate matter.

In fighting terrorism, we above all have to call on our police and our armed forces. Since January 2015, they have been looking after citizens twenty-four hours a day, seven days a week, with tens of thousands of members of the three forces deployed in the streets. In order to support them, we have convinced Government to increase the reserve of the national police force, to prolong the availability of reserve corps, and to make it easier for prefects to arm municipal police forces. It was mainly after a recommendation by the Senate that the President of the Republic decided to set up, within two years, a National Guard made up of 85,000 men and women, which has to be done with a close eye on our republican values.

Following the Bataclan massacre, our anti-terror legislation has been reinforced in agreement with both Houses, many of the new measures having been initiated by the Senate. Among others, these measures comprise the following: the extension of house searches, whatever the time of day; the seizing of electronic mail unbeknownst to the person involved; the wire-tapping of mobile phones in investigations on organized crime; the deradicalization of former and of would-be jihad fighters; an extension of the period of unconditional detention of terrorists; higher penalties in cases of misprision of terrorist crimes. In all these cases, the Senate fully performed its tasks as legislator by ensuring that these measures do not infringe the rule of law. This undoubtedly is one of the merits of bicameralism: it prevents the legislator from acting too hastily and therefore from going too far.

Furthermore, we came to an agreement with Government as to avoid placing certain people under house arrest. In France, 400 people are either under house arrest or classified as suspects and closely monitored. However, if we are to comply with the principles of the rule of law, such measures cannot be extended forever.

A delicate topic on which the President of the Republic and the Senate do not agree is the deprivation of citizenship. According to the legislation in force, this measure is applicable only in

cases of a crime against the French nation and to people with dual citizenship after having acquired French nationality. The President of the Republic proposed to extend this measure to people with dual citizenship who were born French. The majority of the National Assembly did not want to stigmatize people with dual citizenship and therefore wanted to extend the measure to all French citizens. It also decided to apply the measure to people who caused serious harm to the French Nation not by committing a crime but by committing an offence. However, the Senate does not want to create stateless persons and could not accept such an extension. The Senate's attitude in this matter was in accordance with its traditional wisdom according to which we only amend fundamental laws with a trembling hand. Given that our House, in constitutional terms, has exactly the same powers as the National Assembly, the President of the Republic decided to withdraw the draft.

When fighting terrorism, we also have to keep in mind the European dimension. The European Affairs Committee, in charge of monitoring European initiatives, is in favour of reinforcing the cooperation between states faced with a terrorist threat. It wants to do so by better protecting the borders of Europe. This was the meaning of the joint declaration issued by the Presidents of the European Affairs Committees of the French Senate and the German "Bundesrat" in 2015.

We fully take into account the international dimension by approving the intervention of our armed forces in Syria and in Iraq and by developing parliamentary diplomacy. I am convinced that even in worst-case scenarios we should never give up the hope for peace. This is why in the first forum of parliamentary cooperation with the National Council of the Algerian Republic, President Bensalah and I stated the need to reinforce Euro-Mediterranean cooperation in the fight against terrorism. Together with our Italian, Spanish, Greek, Tunisian, and Moroccan friends, we want to turn the Mediterranean Sea, which now is a sea of war, again into a sea of peace. Of course, we do not want to take over the task of the executive branch, nevertheless we want to contribute as much as possible.

We all ask ourselves urgent questions: when will the terrorist threat be over, when will we go back to normal? We cannot fight terrorism only by increasing security measures, we also need to create a stronger social fabric and must encourage a debate between the different faiths. How can we counter the radical attitude of young men and young women? These are truly societal questions. In France, where the fundamental principle of laicism is enshrined in the Constitution, we want to see an "Islam made in France", an Islam in keeping with our republican values.

It is the goal of the French Senate to maintain our constitutional identity, to maintain the rule of law, and to strive for stability. This is what General de Gaulle asked for in his founding statement in 1946. It holds all the more true in uncertain times like ours and in times of forthcoming elections. We want to introduce measures, but we also want to avoid hasty decisions. This is the extraordinary challenge that our Houses have to take on.

Discussion: The role played by parliaments in general and by senates in particular in combatting terrorism in Europe

Pietro Grasso, President of the Senate of the Italian Republic

The European continent is facing upheavals and grave challenges as a result of overlapping internal and external causes. These causes comprise: conflicts on our borders; geopolitical instability owing to the fragmentation of states and territories; flows of migrants and refugees; an economic downturn; inequalities that threaten social cohesion; population decline; international terrorism; and the crisis sweeping through political alliances and organizations at regional and international levels. To my mind, the feelings of impotence and impending catastrophe that are being exploited by nationalist and populist movements are dangerous, yet unfounded. The only way to cope with these challenges and to prevent a general geopolitical marginalization of Europe is multilateralism, political cooperation and diplomacy.

The kind of terrorism we are facing is, in many ways, a new development. It is territorially rooted in the Middle East and closely intertwined with geopolitical disputes and “proxy wars”; it is fed by criminal trafficking and enjoys external backing; it gives leverage to a rhetoric that is based on global communication and that has proven to be fertile ground for the radicalization of those who feel marginalized and left behind in our European societies. Combatting this kind of terrorism requires a strategy that spans a plurality of actions and geopolitical, information-based, investigative, criminal-justice, financial, and social tools. This kind of undertaking is by no means the exclusive domain of governments; it also involves parliaments, as they are responsible for overseeing government policies and ensuring that these policies comply with the nation’s founding rules and values.

The two Chambers of the Italian Parliament are facing two challenges. They have to ensure that the right balance is struck between security and liberty when new legislation is passed, as well as between the confidentiality required by security-related policies and tangible scope granted to legislative assemblies when overseeing the work carried out by governments. This includes participation in drawing up political guidelines for governments in order to ensure that citizens’ interests are accounted for.

Coping with the first of these challenges, the Italian Parliament last year approved a law that criminalizes actions preparatory to committing acts of terrorism such as joining an organization with the intention of committing acts of terrorism abroad or tangibly planning violent acts by acquiring information on the use of weapons and explosives. This law envisages new investigative tools such as preventative wire-tapping, electronic and web-based surveillance, as well as interrogation of prisoners able to provide information that is of use to preventing terrorist crimes. Last but not least, the new law enables authorities to expel non-European citizens who participate in preparatory acts to support terrorists.

Italy’s system to prevent and fight terrorism is completed by the Anti-terrorism Strategic Analysis Committee, a permanent round table established by information services and police forces in order to share and assess information on domestic and international terrorist threats. The Committee is linked with a crisis unit. Its meetings are also attended by a representative of the National Anti-Mafia and Anti-terrorism Prosecutors’ Offices, whose task it is to coordinate investigations carried out on Italian territory. We hope that this system can be extended and implemented in

Europe and worldwide. In spring 2015, the analyses of international terrorist threats enabled us to pass the legislation mentioned before.

With regard to parliamentary oversight, to Government disclosures in the Chambers and in Committees responsible for foreign policy, defence, and security-related issues, our system has the benefit of a particularly significant tool: the Parliamentary Committee for Security. This bicameral body systematically checks, on an ongoing basis, that activities undertaken by the security information system are performed in full compliance with the Constitution and with the country's laws as well as in the exclusive interest of the Italian Republic and its institutions. The Committee has wide-ranging fact-finding powers which it exercises by hearing the Prime Minister or the Member of Government delegated to the security sector, by hearing ministers sitting on the Inter-ministerial Committee for the Security of the Republic, the senior management of the three intelligence agencies, and indeed by hearing anybody who is in a position to provide useful information. The Committee also acquires and collects copies of documents and deeds regarding criminal proceedings and parliamentary inquiries as well as items of information in the possession of the security system or of Government. The Committee may access and visit security information system offices; check spending-related documents for operations that have already been concluded; and is empowered to confirm the Government's decision to declare certain documents confidential. The Committee submits an annual report to Parliament and, when necessary, provides Parliament with information before the yearly report is presented.

Recently a law has been passed that allows the Committee to express a prior opinion on provisions under which the Head of Government gives the go-ahead for intelligence operations outside Italy that involve assistance from defence special forces in situations of crisis or emergency affecting domestic security or the security of Italians abroad. Subsequently, the Committee reports to the Chambers on the effectiveness of new legislation. Neither confidentiality nor the doctrine of state secrecy may be invoked against the Committee. When checking whether the conduct of security services complies with their institutional duties, it takes its decisions unanimously. If unlawful or irregular conduct is found to have taken place, the Committee reports to the Head of Government and the Presidents of the Chambers. The Committee is duty-bound to secrecy and works pursuant to methods that ensure uttermost privacy.

In conclusion, I am convinced that interparliamentary cooperation as we are pursuing it today has a great potential still to be explored. I further believe that joint analysis and an exchange about transnational topics are particularly important and fruitful. In my time as National Anti-Mafia Prosecutor-in-Chief, I participated in international investigations and personally experienced how important it is that governments and legislators understand the needs of information-based judicial and police cooperation in fighting criminal phenomena that span multiple nations. Oversight of the work carried out by security services and of policies for fighting terrorism is of vital importance because it lies at the very heart of our work: representing citizens' rights by striking the right balance between security, freedom, and democracy.

***Valentina Matvienko, President of the Federation Council
of the Federal Assembly of the Russian Federation***

I am glad to see all of you once again to have a dialogue on one of the most pressing problems that is also of concern for our voters: terrorism. We need to exchange experiences and try to listen

to one another. For our communication and with regard to the international situation, this dialogue here is especially important. Parliamentary dialogue plays a special role.

As for the agenda of today's meeting, I would like to stress once again that international terrorism is not just a challenge and a threat but it is the *major* danger humanity has faced since the end of World War II. Terrorists have declared war on our values and on the idea of a world civilization. In order to defeat it, we need the common understanding of the goals, of the consolidation of efforts, and of the merits of cooperation which the allies in World War II demonstrated in their fight against Nazism.

Thus, I would like to ask whether we are ready to face this war as we see it unfolding, a war which could be really difficult. Do we have an understanding that it is impossible to come to an agreement with the terrorists, but that we can only eliminate them as a political and military force? Do we agree that in order to defeat this evil, we will have to put aside all disagreements? Unfortunately, the answer to these questions is no. A year ago, the President of Russia, Vladimir Putin, addressing the participants of the 70th Session of the UN General Assembly, called to establish a truly broad international anti-terrorist coalition which would be able to stand firm against those who hate humanity.

In November 2015, the Federation Council of the Federal Assembly of the Russian Federation, which I represent here, approved an appeal towards the parliaments of foreign countries and towards international parliamentary organizations. We urged to put aside all political disagreements and to establish broad and effective interparliamentary and interstate cooperation in the domain of the fight against international terrorism. This position reflects the strong consensus and the national unity in Russia, because we know the cruelty of terrorism very well. I, like thousands of other citizens, remember the cruel terrorist acts in Paris. I, too, was present in front of the French embassy in Moscow in order to express my condolences and solidarity to the people of France in general and the citizens of Paris in particular. I also remember that after these terrorist acts, our military pilots fighting against terrorists in Syria wrote the phrase "This is for Paris" on their missiles.

Let us be honest and answer the following questions without politicizing: How have organizations like ISIS emerged, who is arming them, and who is financing them? Because they did not just come to us from another planet; they were created here. The answer is evident: the preparation, training, and use of radical terrorists for overthrowing some regimes as well as the organization of counterrevolution in the Arab Spring have led to the appearance of ISIS and similar organizations. And these organizations have become an international terrorist organization which claims to have its own statehood.

Libya and Iraq were, of course, not examples of democracy as we understand it, and there was maybe a necessity to inspire changes in these countries in order to encourage reforms – but this should have happened through political and diplomatic measures. The violent interference with the affairs of these and other sovereign states and the attempts to impose so-called democracy without taking into account national, historical, and religious peculiarities have led to the situation as we see it today. Libya has ceased to exist as a state and Iraq is full of terrorists. Every day, thousands of innocent civilians are dying and children, women, and men are being wounded. Millions of people have become refugees, havoc and hunger prevails, and hospitals, schools, and whole cities have been destroyed. Why do they do this? Where is the democracy we all wanted

to see in those countries? Today, we can only see the results of all that has happened in this region of the world.

Neither Libya nor Iraq were a terrorist threat to the world and we did not have any right to let this happen in Syria as well. The requirement of the Western countries that Bashar al-Assad step down is inadmissible, because only the Syrian people may decide on the fate of their own country by choosing their president through democratic elections. And we all together have to try to create the conditions under which this is possible. It is also evident that if al-Assad steps down, this will lead to chaos and havoc, which would be favourable to terrorists and would only lead to their strengthening. At the requests of the Syrian authorities, Russia has decided to provide help to the Syrian army and to support their fight against terrorists, so that this tumour, this cancer will not spread to our countries, cities, and villages.

Unlike the operations of the Western coalition, the actions of the Russian Aerospace Forces are legal and comply with the UN Charter of International Law. Despite unfounded accusations of Russia striking against civil objects, we have a significant impact on the war on terrorism. ISIS has lost a quarter of the territories they used to control, and we have destroyed a lot of the military infrastructure with which ISIS and other terrorist organizations used to finance their actions. The main point, however, is that we have ensured access for the regime to establish the cessation of hostilities in more than 790 villages in Syria – and we did this by way of agreements. We also sent tons of humanitarian aid goods to the population. Finally, the whole world has seen the concert of the Mariinsky Theatre Symphony Orchestra under the direction of Valery Gergiev in the liberated and demined city of Palmyra. From the first days of our operation in Syria, Russia has tried to establish a practical cooperation in counter-terrorist actions with all the partners, including the USA. In order to reach what we see as our common goal, we have always tried to find good decisions, we have made concessions, and we have engaged in long negotiations, because we thought that the most important objective is to pull all sides to the table and launch the political process. By now, everyone understands very well that there is no military solution to the intra-Syrian conflict. We have suggested to our Western partners to distinguish between terrorists and the so-called moderate opposition and to coordinate our efforts and air strikes against ISIS and other terrorist groups accordingly. Unfortunately, this has not been achieved, and neither has there been any positive feedback from our Western partners.

The city of Aleppo, standing very much in the focus right now, is currently held mostly by Jabhat an-Nusrah (formerly Al-Nusra Front), which was put on the list of terrorist organizations by the UN, along with some other groups. But we cannot let them use people as human shields and control these areas. On 18 October, Russia announced the cessation of air strikes and interventions of the Syrian armed forces in Aleppo in order to avoid civilian casualties and allow for the preparation of a humanitarian pause. This humanitarian pause, which began today at 8 a.m., was created so as to guarantee safe passage through six special humanitarian corridors and to evacuate the wounded from the western parts of Aleppo. We also proposed to allow Jabhat an-Nusrah fighters and other combatants to leave the city through two special humanitarian corridors. Now we address our Western partners who have an influence on these terrorist structures that they should try to convince the fighters to take this opportunity and leave Aleppo.

If you are interested in this topic, you can refer to the website of the Russian Ministry of Defence, which contains a live broadcast from inside the humanitarian corridors.

However, the groups of terrorists wanting to leave the city were stopped by Jabhat an-Nusrah, and some terrorists were killed in the ensuing military combat. Jabhat an-Nusrah would also not let the civil population leave Aleppo and has not yet evacuated the western parts of the city. Thus, we are now asking our Western partners: Do you really want to fight against terrorism or do you want to fight against the al-Assad regime in order to make him step down? Who will win in this situation? Let us first defeat the terrorists and create the conditions for the political process which can lead up to elections. Unfortunately, we do not see what we expected to see. Nevertheless, the Russian President Mr Putin has announced that he is ready to prolong this humanitarian pause as long as necessary, or until the terrorists once again resume their military resistance. Because it is evident that they are currently trying to regroup and that they use the humanitarian aid flowing through the corridors in order to rearm themselves. If this is the case, we cannot let it happen and have to force them out of Aleppo. The operation in Aleppo is similar to what the Western coalition plans to do in the city of Mosul in Iraq. The approach is the same: it is proposed that the terrorists leave the city so there will not have to be any air strikes against it.

Believe me, dear colleagues, that Russia is sincerely willing to continue to make efforts so that the resolution adopted by the UN Security Council as well as the Russian-American Agreements can be implemented. Despite the informational war against Russia, which did not exist during the Cold War, our goals in Syria are still the same. We will continue to fight international terrorism and to try to establish conditions for political solutions for this intra-Syrian conflict.

We are open to cooperation with all the countries of the world who share these goals. We believe that international counter-terrorism cooperation should be based on existing international legal frameworks, including the UN Security Council's resolutions and the UN Global Counter-Terrorism Strategy. We have to enhance our joint parliamentary efforts in order to agree on the UN Comprehensive Convention on International Terrorism, which is currently deadlocked. On the interparliamentary level, we can also undertake further joint steps and efforts towards the same goal – not to speak of all the other international interactions and mechanisms of the fight against terrorism. However, the key role should be held by national institutions, and the preservation of national sovereignty as well as the right of states to independently determine their form of participation in anti-terrorist operations, whether they be carried out on their own territory or abroad, is beyond doubt. The anti-terrorist policy of the Russian Federation is built upon this very approach.

We can say that we have done much and achieved a lot. Our legislation attaches criminal responsibility to the participation in terrorist communities and terrorist activities, notably for going through respective training. We have cancelled the statute of limitations for terrorist crimes and there is a criminal responsibility for the proliferation and dissemination of terrorist materials. Early this year, we approved a law which introduces a responsibility for any assistance in taking hostages and for the public justification of terrorism, including on the internet. While enforcing our anti-terrorist legislation, we nevertheless do not cross the line behind which there is the risk of violating human rights, which are enshrined in our Constitution, in the European Convention on Human Rights, and in other international documents. We are cooperating with the Council of Europe and are also considering the best practices of other European countries.

The Association of European Senates is a good platform for the exchange of experiences and for the streamlining of counter-terrorism legislation. We can already see the results of this work. For example, take a look at how the situation has changed in the northern Caucasus and particu-

larly in the Chechnya region, which in the 1990s was totally destroyed and in flames. Chechnya was one of the main platforms for international terrorism, and thus, Russia was maybe the first nation to really feel the influence of international terrorism. Today, the Chechen Republic is one of the flourishing regions of the Russian Federation, with all the necessary conditions provided for a normal life of its citizens. Of course, there are still foreign forces intent on penetrating into the northern Caucasus, but we are fighting against them.

We parliamentarians have powerful information and international, political, and legal resources at our disposal for making our contribution to global counter-terrorism actions. Now it is high time to use these resources. There can be no justification to any inaction or lack of effort of coordination in the fight on terrorism, so we would like to call once again on all our colleagues to join forces in order to fight this evil.

Pio Garcia-Escudero, President of the Senate of the Kingdom of Spain

In the light of recent terrorist attacks in Paris, Nice, and Brussels, and of those in the past years in other European countries, including Spain, we find ourselves seriously concerned about the eruption of a new type of terrorism: one that targets populations indiscriminately and recruits citizens from different European countries.

“Terrorism is a threat to all States and to all peoples. It poses a serious threat to our security, to the values of our democratic societies and to the rights and freedoms of our citizens, especially through the indiscriminate targeting of innocent people.” So says the European Union Counter-Terrorism Strategy. I believe that this analysis is applicable to all countries in our vicinity.

To fight terrorism in a region like Europe – a region that is increasingly open, and in which internal and external aspects of security are closely intertwined – concerted and collective action is essential. Hence, our situation of geographic proximity compels us to understand each other when it comes to establishing diverse initiatives aimed at greater control of borders and exchange of police information.

In this context, and in line with the Bratislava Declaration of 16 September, Spain has declared the need, within the EU, to advance in the following areas: greater judicial and police cooperation as well as information exchange; greater control of the external borders of the Union; the prevention of radicalization and hate speech. Likewise, we have defended other measures such as the fight against illegal arms trafficking and the strengthening of measures to fight terrorist financing. We believe that the fight against terrorism should have a judicial and a policing as well as a political dimension.

Is it possible to end terrorism? It is, as Spain’s experience in counter-terrorism demonstrates. Five years have passed since the end of the terrorist activities of the Basque separatist group ETA. In more than forty years, ETA activists killed more than a thousand Spaniards. We put an end to ETA terrorism by putting it under pressure on all fronts, in particular by pursuing international cooperation. Thanks to the cooperation between the French and the Spanish judicial system as well as between French and Spanish police and security forces, thanks to the rejection of ETA terrorism by the two States, thanks to political cooperation between the two Governments, I am now able to say: five years ago, ETA stopped the killing.

There has been cooperation between nearly all governments in the European Union, Interpol, and other information services, even services from outside the Union. An essential decision was promoted by Spain and taken at the heart of the European Union: the European Arrest Warrant

and the immediate extradition of terrorists. This example shows that the measures mentioned by the former speakers are not only taken to prevent but also to fight terrorism. And it makes clear that such measures work.

With regard to the political dimension of the fight against terrorism, it is important to stress the necessary parliamentary supervision of activities carried out by governments in the area of security and intelligence, despite all the precautions demanded by matters that fall under the category of official secrets – precautions that justify the creation of ad hoc parliamentary bodies such as the Official Secrets Commission in the case of Spain's Congress of Deputies.

I would also like to recall some of the initiatives implemented in Spain: the reform of the Criminal Code in 2010 in order to address terrorism and again in 2015 to integrate the requirements of the UN Security Council Resolution on Foreign Terrorist Fighters; the continued and ongoing cooperation with neighbouring countries, mainly with France and Morocco; the encouragement of dialogue between cultures through the UN Alliance of Civilizations; and the support of the UN Secretary-General's Plan of Action to Prevent Violent Extremism.

To end the impunity of terrorist crimes, Spain has proposed, as a joint initiative with Romania, the creation of an international counter-terrorism court, to be led by the Ministries of Foreign Affairs of the two countries. Similarly, we would like to promote, within the framework of the UN, a binding international standard for the specific purpose of protecting the rights of terrorism victims, which, as our own experience has shown, should always be a central concern.

I firmly believe that it is our common objective to seek mutual support to confront the phenomenon of terrorism in a coordinated manner. We have expressed our concern about terrorism in similar forums before, and I have just had the opportunity to explain in what way we can put an end to a certain type of terrorism. We have reason to be positive and to be optimistic because we are stronger if we work together.

Ankie Broekers-Knol, President of the First Chamber of the States General of the Kingdom of the Netherlands

Over the last ten years, Europe has been confronted by numerous acts of terror. Some cities barely got the chance to recover before being attacked once again. And even though we have yet to identify the perpetrators of these attacks, their goal is crystal-clear: it is the spread of fear. Whether they are groups or individuals: using the only method they seem to master, i.e. violence, terrorists hope to disrupt and dismantle our free democratic societies.

Today we discuss what role senates can play in combatting terrorism in Europe. In my view, the most important thing senates can do is to stand firm in upholding the rule of law and respecting human rights. This is a principle we as Parliamentarians must all stand for, even – or especially – when it is easier to look the other way and allow to pass legislation that undermines it. In the past two years, there has been a risk of weakening the rule of law with a range of anti-terrorism legislation. The fear of terror has led to an ever louder call to take measures that infringe basic human rights such as the right to privacy, freedom of religion, and non-discrimination. Often the measures neglect basic legal principles such as non-retroactive penalization and habeas corpus.

Although the need for safety and control of the situation is understandable, I must stress that it is in our common interest to uphold the rule of law and human rights. If we fail to do so, we will lose the very thing we are trying to protect. Gérard Larcher spoke of this when he mentioned the initiative taken in his country to strip dual citizens of one citizenship if they fall into the cate-

gory of terrorists or jihadists. The same proposal has been brought forward in the Netherlands, followed by the same discussions as in France. This kind of legislation provokes many difficulties because it discriminates between people with single and people with dual citizenship and because people with only one citizenship cannot be stripped of it. I therefore believe it is of the utmost importance that we can work together and discover what other countries think of such measures.

Upper houses provide an invaluable platform for debate about anti-terrorism laws and international safety – keeping in mind checks and balances. In many cases, upper houses even play a role in the decision to deploy armed forces.

In the Senate of the Netherlands we have initiated a yearly policy debate on international safety. In addition to terrorist attacks, we address subjects such as the struggles and the instability in the Middle East and in Africa, and the influx of refugees. Debates like these are highly important to share our knowledge of these often complex issues.

Although there evidently is a joint responsibility to ensure peace and stability, we have to ask ourselves what we as Parliamentarians can do to contribute to that goal. I believe the keyword is cooperation. To optimize and intensify our cooperation is one of the most important steps we as Parliamentarians can take to contribute to peace and stability.

Speaking about this subject today and hearing how other senates deal with this issue is of great value to us. European upper and lower houses should do everything they can to cooperate. Already, many governments are working together more and more closely in the areas of foreign affairs, security, and defence. So it is very important that we improve parliamentary cooperation in these fields. It is the only way we can protect our free, democratic societies.



Friday, 21 October 2016

XVIIth Meeting of the Association of European Senates

Theme of the Meeting:
The importance of the Senate
in parliamentary decision-making



*Raphaël Comte, President of the Council of States
of the Swiss Federal Assembly, President of the XVIIth Meeting
of the Association of European Senates*

Dear colleagues, I would like to welcome you to the second day of our annual meeting of the Association of European Senates (ASE) and I hope your stay in Switzerland so far has been agreeable. Today's theme is the importance of the Senate in parliamentary decision-making. You are free to approach this topic from your own perspective, as one of the main goals of this annual reunion is to bring to your attention the most recent political developments in the various senates as well as other current questions of importance.

**Block 1:
Contributions by the delegations of Austria, Bosnia-Herzegovina,
the Czech Republic, Germany, and Spain**

Mario Lindner, President of the Federal Council of the Austrian Republic

By now, 13 out of 28 Member States of the European Union have a bicameral parliament. Outside of the EU, bicameral parliaments are found in Bosnia-Herzegovina, Russia, and Switzerland. This proves that it is not only in terms of theory but also in terms of political practice that the bicameral principle has a strong footing in Europe – a fact which I very much welcome. The bicameral system has proved its worth as a corrective instrument and as a guarantor for improving the quality of law-making, but also as a platform for specific interests. It is certainly not a coincidence that in many European countries the senates are the bodies which ensure that the interests of federalism and of the federal states are well represented. When it comes to this function, the second chambers are a valuable and indispensable structure in the representational system of our democracies.

The special position that many senates hold within their respective political environment also brings special opportunities: in a time of increasing digitization and of increasing mistrust against the “political system”, the second chambers in European countries are distinguished by the unique proximity of their members to the citizens of their regions. As Parliamentarians from the regions and for the regions, we fill the federalist system with life, and we ensure that a wide range of opinions, points of view, and ideas are taken into account in the drafting of national laws. In this capacity we are guarantors of the separation of powers and of a modern system of checks and balances. We preserve the interests of the regions vis-à-vis the central state, which is often characterized by a certain abstract quality. In this way, the second chamber has a strongly regional function – even in states that are not federations in the classical sense of the term, such as Italy, France, or Spain.

However, it is not rare for our activities to be the target of criticism: in many European countries, media debates about the usefulness and purpose of a second chamber erupt at regular intervals. This is also true of Austria. Time and again we find ourselves confronted with the task of justifying the work of our senates in a media democracy marked by an ever-increasing pace of communication. In one way or another, such debates – be they open or concealed – take place in almost every European country with a bicameral parliament.

I am deeply convinced that we cannot afford to ignore these debates. We are living at a time that sees a rising wave of mistrust against the “political establishment” in far too many countries, a time in which the media often fail to understand, or to take an interest in, the problems and activities involved in the parliamentary process. Our senates provide us with a platform to actively combat the gradual disengagement of large groups from the democratic system. I believe it is our duty to make use of this opportunity.

“In actual fact, the Republic will work without any problem if there is no Federal Council.” This is what an Austrian expert of constitutional law said about the Second Chamber of the Austrian Parliament a few years ago, and this was not an isolated opinion. In many of our nations, similar statements are made with increasing frequency. In the Austrian case, such a debate completely misses the mark of our political reality. As the Chamber representing the Austrian provinces, the Austrian Federal Council is particularly called upon to provide a regional perspective for the law-making process. Moreover, our Second Chamber is invested with the core competence for European law development. As the Chamber of the provinces and of European affairs, the Austrian Federal Council links the various levels of political activities and ensures that the federalist principle is filled with life.

In recent years, well-working mechanisms have been developed in this context, warranting a continuous exchange between the regional parliaments and the EU level. Our activities offer an opportunity to submit, from the perspective of subsidiarity, opinions on European law projects to the political process.

In addition, the Austrian Federal Council can provide the competent Members of Government with negotiating and even with voting positions for their deliberations in the European Council. In this context, the Austrian Federal Council considers itself to be a “European Chamber” in the best sense of the term.

Like many other senates all over Europe, the Second Chamber of the Austrian Parliament is engaged in a continuous reflection of its own remit. Across all political boundaries between groups and parties, we are reflecting on how our work can be designed in the 21st century to reap maximum benefit. We ask questions such as: What are the focal areas that a second chamber can contribute to the long-term political agenda? What are the objectives we can pursue apart from standard legislative work? The Austrian Federal Council has found a number of very concrete answers. For instance, in recent years our Chamber has become the standard-bearer in all questions relating to digital change.

With the Future Committee we have established an institution that is almost unparalleled in Europe. Beyond the scope of current law projects, this committee deals with questions regarding the future and with long-term objectives. The Federal Council also champions the rights of children. Currently we are establishing an Austrian-wide network against internet hatred and for digital moral courage.

The many steps the Austrian Federal Council has taken in recent years to address new topics and issues have only been possible because we have made use of new elbow room in the political system of our State. I am very well aware that many senates all over Europe are currently engaged in similar processes.

Our senates are more than mere controlling instances and chambers representing the regions. They may not be at the centre of the hustle and bustle of day-to-day politics. Their work may not always be “sexy” enough for our fast-paced media democracy, and it may perhaps not always

provide snappy headlines. However, it would be fundamentally wrong to see this as a reason to discuss their elimination or downgrading, as is too often the case. Instead, we should understand these facts as an opportunity for long-term work and continuous theme-setting, as an opportunity to look across the rim of the teacup of day-to-day politics, and to provide platforms and pursue political agendas.

This is the very reason why European senates are not obsolete – quite on the contrary. In a converging Europe, they are more important than ever: as a link between political spheres; as guarantors for engagement with the citizens; as confident creators of platforms for long-term political activities in the state; as chambers that can combine stability and vision. This is how we should all understand our role.

Barisa Colak, Vice-President of the Chamber of Peoples of Bosnia and Herzegovina

Starting from the general principle of democracy that the authority of the state derives from the people and belongs to the people, the Constitution of Bosnia and Herzegovina in its preamble marks Bosniaks, Croats, and Serbs, along with others, as constituent peoples and citizens who form a community and who equally exercise power through their representatives. The creators of the Constitution therefore appointed the constituent peoples as specific collectivities and granted them equal rights, i.e. they emphasized a “separate but equal” status on an equal footing.

When it comes to the structure of state power in Bosnia and Herzegovina, the Parliamentary Assembly as a representative body is the holder of constitutional and legislative power. By its constitutional status, structure, and competences, the Parliamentary Assembly reflects the character of Bosnia and Herzegovina as a complex social and state community whose constitutional arrangements respect democratic standards but also contain a number of specific solutions.

These solutions are a result of political compromises achieved during the negotiations for the General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Peace Agreement. This agreement consists of eleven annexes, and Annex 4 is the Constitution of Bosnia and Herzegovina, which still exists as part of an international agreement because it was not discussed and considered by the Parliamentary Assembly. Some solutions in our Constitution are unfortunately not fully harmonized with international democratic standards, nor can they be found in a comparative constitutional law, which was confirmed in two cases by the European Court of Human Rights.

The Parliamentary Assembly as a legislative body consists of the House of Representatives and the House of Peoples. The Parliamentary Assembly as a bicameral body, by its structure and way of making decisions, expresses the principles of national sovereignty, the equality of the three constituent peoples, and the complex state structure, i.e. the fact that Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and the Serbian Republic (Republika Srpska). Bosnia and Herzegovina is therefore one of 17 countries in Europe practising bicameralism.

The decision-making process in the Parliamentary Assembly intends to ensure the equality of peoples and citizens as well as the protection of the national interests of the three constituent peoples. Thus, it represents one of the most complicated parliamentary procedures. The Constitution establishes the full equality of the two Houses; therefore, laws and other important decisions are only adopted if they are adopted in identical wording by both Houses.

In addition to the sessions of the Houses, significant parliamentary activities are carried out in the permanent and temporary committees of the Houses, in collegiums, in joint collegiums of both Houses, as well as in the activities of the Speakers and Deputy Speakers of both Houses.

Allow me to briefly explain the rather complex decision-making procedure in the Houses of the Parliamentary Assembly of Bosnia and Herzegovina. The House of Peoples is composed of 15 representatives: five Serb delegates are elected by the National Assembly of the Serbian Republic, and five delegates each are elected by the Bosniak and Croat delegates, respectively, in the House of Peoples of the Federation of Bosnia and Herzegovina. The House of Peoples is managed by the Collegium, composed of three members from the three constituent peoples, and the role of Speaker rotates every eight months during the four-year mandate.

The quorum for work and decision-making is 9 out of the 15 delegates; at least three delegates from each of the constituent peoples are required. All decisions in both Houses are made by majority vote of the members present and voting, provided that such a majority includes one third of the votes of the delegates from each entity. If the majority of votes does not include one third of the votes of the delegates from each entity, the Speaker and the two Deputy Speakers, as a committee, make efforts to reach an agreement within three days after the voting. If no consent can be achieved, the decision will be adopted by a majority of those present and voting, provided that the dissenting votes do not include two thirds or more delegates from one of the entities.

The House of Peoples, unlike upper houses in other complex countries of comparative federalism such as Belgium and Switzerland, in which federal entities are mostly equally represented, represents the constituent peoples and, in addition to its regular legislative role, has the specific role of protecting vital national interests.

In the parliamentary procedure, i.e. in the decision-making process in the House of Peoples, each of the three Clubs – the Club of the Bosniak people, the Club of the Croat people, and the Club of the Serb people – can, by way of the mechanisms for the protection of vital national interests, act preventively and stop the adoption of a proposed act or law, if the majority of delegates of the respective caucus believes that it interferes with the equality of the constituent peoples and is harmful to their vital national interests. Neither the Constitution of Bosnia and Herzegovina nor the Rules of Procedure of the House of Peoples clearly define the issues of vital national interest. Therefore, each national delegation – caucus in the House of Peoples – can determine whether the subject to be decided on is destructive to its vital national interests.

However, decisions on vital national interests can only be made with the consent of the majority of delegates from all three Clubs. In case one Club disputes that an issue is related to vital national interests, the procedure of harmonization of positions is to be initiated. The Speaker of the House convokes a committee consisting of one member from each constituent people caucus, and this committee is required to reach an agreement within five days. If it does not succeed, the Constitutional Court will be included in the decision-making process as a mediator. Depending on the Court's decision, the legislative procedure will continue. If the Constitutional Court finds that the matter is destructive to the vital interests of one of the nations, the caucuses will make a decision; if it is found not to be destructive, it will be decided by majority vote.

So far, this process regarding vital national interests has only been initiated eleven times: nine times by the Bosniak Caucus and two times by the Croat Caucus; the Serb Caucus has not yet used this possibility since it has a double veto, both in the House of Representatives and in the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina.

It is important to know that when it comes to veto power, the Constitution does *not* provide for a “separate but equal” status for all three constituent peoples. It gives a “different and unequal” status to the constituent peoples, much to the detriment of the Croats as the smallest nation in Bosnia and Herzegovina. Thus, the Serbs can exercise their veto right by entity voting in both Houses and the Bosniaks can exercise their veto right in the House of Representatives, while the Croats do not have this option at all.

A small number of members of the caucuses work in several committees at the same time, which does not contribute to the efficiency and work quality of the House. However, it is necessary to have a high level of understanding between political actors.

A constitutional reform in this direction – a reform of the election of the members of Presidency and an Electoral Law reform – would surely contribute to addressing the issue of a better organization and efficiency of the Parliamentary Assembly’s work. Thus, we could provide better conditions for doing quality work, especially bearing in mind the significance of the state legislature on our path towards the EU.

Milan Stech, President of the Senate of the Czech Republic

When I was preparing myself for this meeting, I went through a number of comparative studies by PhD students and Postdocs which focused on the position of bicameral parliaments in Europe. However, I came to the conclusion that it does not make sense to write excerpts of these studies and to present a political comparison. So I returned to my original idea, which was to talk about the position of the Senate of the Czech Republic and the issues it faces in its everyday work.

Naturally, the positions of the senates and upper chambers within Europe differ, although we do have some traits in common as well. In the Czech Republic, we apply a so-called “asymmetric bicameralism”, which is quite a standard form of bicameralism in Europe. This system is based on a long-standing tradition rooted in the 19th century and the Austro-Hungarian Empire, which the Czech lands – Bohemia, Moravia, and Czech Silesia – used to be a part of. Following the changes in 1989 after the so-called Velvet Revolution and the dismantling of the Czechoslovak Federation, the authors of the new Constitution that came into effect on 1 January 1993 anchored the bicameral parliament in our Constitution. The main promoter of a bicameral parliament, which marks a return to the traditional so-called First Czechoslovak Republic (1920–1938), was Václav Havel, the first President of the Czech Republic. I remember very well that late in 1995 I paid the President a visit, and he was the first person who told me that the Czech Senate would finally be reinstated. It was his wish to make sure that the Senate would not be a copy of the Lower House, the Chamber of Deputies of the Parliament of the Czech Republic. President Havel insisted on the Senate being comprised of a wide range of representatives of civic society. When in the autumn of 1996 the Senate elections took place for the first time – a new era for our country – they were mainly about personalities. The Senate was a very vibrant mix of individuals, but we cannot say that it was the Senate of representatives of the regions.

We use a majority system with usually two rounds and first-past-the-post voting. Senate by-elections take place every two years in one third of the Senate districts, which means that one third of the Senate gets re-elected biennially. This system has allowed the Czech Senate to gradually include more and more important individuals and personalities from the regions, who, following their long-term work in their respective Senate districts, were capable of gaining the trust of their citizens. In fact, most Senators enjoy respect since they are not appointed or delegated by

the central government or the Regional Parliamentary Assemblies, but get their mandate through the vote of the general public and their respective electoral districts.

The only problem is that we have two-round elections: in the first round of Senate elections, the turnout is between 30 per cent and 40 per cent, because it is usually combined with other elections; the second round, which takes place one week later, usually has only half the turnout experienced in the first round, which is of course a good argument for the people who claim that the Upper Chamber – as indicated earlier by our Austrian colleague – does not enjoy a high level of trust and is not of great interest to the general public. The low election turnouts seem to demonstrate this fact.

Nevertheless, although not comparable to the Lower House, the Czech Senate enjoys considerable responsibility and authority since it has the right to debate all bills except the state budget. We elect the judges of the Constitutional Court and we also discuss and approve international treaties; in other words, the Czech Republic cannot adopt international treaties without our consent. The Czech Senate is very active in European matters, since it considers all European documents and comments on them. Finally, the Senate has other powers connected with nominations or elections to important state institutions of the Czech Republic. The Czech Senate has proven its substance and justified its existence in many cases – especially when we experienced the political crisis in 2013. This year, we are celebrating the 20th anniversary of the reinstatement of the Czech Senate, which over these past 20 years has proven its position within the political system. The Czech Senate amends approximately one third of all legislative drafts submitted by the Lower House, and 60 per cent of this legislation is then adopted in the wording and with the amendments proposed by the Senate. I think this is a major success. What is more, economists have recently made some calculations and established that tens of billions of Czech Crowns were saved or used in a more efficient way thanks to decisions of the Senate to return legislation to the Lower House.

As in other countries, the Czech Senate is also confronted with doubts regarding the role of bicameral parliamentary systems. These doubts and comments originate mainly from people and politicians who yearn for absolute power and, under the pretence of swift law-making, try to approve fundamental changes, including changes to the Constitution, in case they win the elections to the Lower Chamber. From this point of view, the Czech Republic is actually a textbook example of how important a bicameral parliament, and thus also the Senate, is. The system of election allowing for one third of the Senate to be re-elected every two years is the perfect safety measure against any moods in general society, which is so susceptible to populist movements and opinions – a susceptibility that can have detrimental effects on the functioning of the state. I know what I am talking about: last week, the second round of the Senate elections took place, and exactly those people I mentioned, who are notorious not only in our country for their desire for absolute power, have the most negative remarks and the most reservations about the Upper Chamber of the Czech Parliament.

Hence, I think we need meetings such as this one in order to exchange our experiences and to improve our systems. We are currently discussing about how to improve the election turnout in the Senate elections, i.e. how to attract more people to the senatorial work and how to convince the people who reject the existence of the Senate.

Ladies and Gentlemen, let me express my wish for our Senates and Upper Chambers to be able to fulfil their fundamental role, which is to be the safety measure of parliamentary democracy in our countries.

Stanislaw Tillich, President of the Federal Council of the Federal Republic of Germany

With its 170 years of history, the Swiss Council of States is among the oldest of the Second Chambers assembled here. In comparison, the German Federal Council with its mere 67 years is a young fledgling, but we have nevertheless given it the name “Perpetual” Federal Council.

In its legislative periods, the Federal Council has not seen any discontinuity and it keeps renewing itself independently of the electoral results of the votes in the federal states. Thus, there is a great continuity in its interaction with the constitutional bodies of the federal states, but also with regard to its competencies. Other Second Chambers are seeing great upheaval – I am thinking particularly of our Belgian or Italian colleagues. The Federal Council of Germany sees continuation also in its remit: since 1949 it has acted and participated in the various steps of the legislative process in order to initiate legislation of its own, to be an advisory body, to optimize legislative processes, or to be the decision-maker.

What has changed, however, is the share of laws the Federal Council has to approve: it has decreased from between 50 and 60 per cent to currently only 40 per cent. This is the result of the reform from 2016 with the aim to limit the scope of the Federal Council and to give another expression to the regulation between the federal state level and the state level. Some people feared that, as a result, the role of the Federal Council would become more marginal, which has however not happened; its role and importance have not been lessened.

I would like to talk about two factors that have had an effect on the parliamentary work of the German Federal Council, even though nothing has changed in the institutional setup: the change of the party political landscape and the process for emergency legislation.

As in many other countries in Europe, the political landscape in Germany has changed in recent years, and our Senate has felt the consequences thereof, too. A few years ago, one could easily sort the German federal states according to the party political affiliation of their state premiers. While there used to be A-federal states and B-federal states, this distinction no longer works because certain coalitions are not foreseeable anymore. Today, the heads of government of the 16 German federal states belong not only to either of the two big parties – the Christian Democratic Union and the Social Democratic Party – but also to The Greens or to The Left.

The composition of the federal state governments has become more diverse as well: for example, the Free Democratic Party, which used to be the established partner of the Christian Democratic Union, is no longer represented in many state parliaments, and the loss of this established partner has led to new options for forming coalitions. Thus, there is now cooperation between the Christian Democratic Union and The Greens, but also between other partners, in order to form large coalitions. In addition, populist parties such as the Alternative for Germany have sprung up and gained ground in various federal states in recent years. The Alternative for Germany sees its role as a fundamental opposition, which makes it more difficult to form governments because nobody wants to enter into a coalition with it – I, for one, consider this to be no option whatsoever – and because two-party coalitions often do not find majorities. Four federal states in Germany already have coalitions between three parties, and Berlin will soon be the fifth example. In the 16 federal states, there are 11 different coalitions for government: in Bavaria there is the black party only, there is a green-black coalition, there is a black-green coalition, there is a red-green coalition, there is a red-red coalition, there is a red-red-green coalition, there is the so-called Jamaica coalition, composed of black, yellow, and green, and there is the so-called traffic light co-

alition with red, yellow, and green – in short, there is now much more diversity in colours, and the Federal Council is very colourful indeed. As a consequence, the national grand coalition enjoying a great majority on the Federal Government level no longer has a political majority in the Federal Council, nor can the opposition rely on a majority among federal state governments. Therefore, the Federal Council cannot be counted on to support law projects, nor can it be counted on to stop them – in short, its actions are not easily foreseeable. Since the representatives of a federal state vote en bloc in the Federal Council, they need to agree on a position on the federal state level as well. They have to find an agreement *before* deciding how to vote in the Federal Council, which can lead to the situation that a political party carries a project in one federal state but not in another.

While the blurring of established party political constellations in the Federal Council has opened up new paths, one thing has remained the same: at this level, there is always an intense debate across the boundaries of federal states and party political affiliations in order to find compromise. This seems to raise concern with many members of the Federal Government. Only last week, for example, the Minister of Finance considered it an option to make decisions in the Federal Council with a mere simple majority – a proposition that is quite offensive to the Federal Council.

The second point I would like to address is emergency legislation, a procedure which has been observed with increasing frequency. Normally, deliberations take six months on average. In the context of the financial market crisis, the Euro crisis, or the refugee crisis, however, there were recently cases where laws had to be passed with very short periods of deliberation. This also affects very complex procedures, for example the ratification of the Climate Treaty of Paris, which was submitted to the Federal Council on 20 September and deliberated on 21 and 22 September, with the final deliberation taking place on 23 September. The deliberations for the Refugee Act, particularly with regard to the burden sharing between the federal states and the Government, were completed equally fast in February this year. The Federal Council is now more frequently expected to pass laws quickly and to forego the usual period of deliberation lasting three weeks. So far, it has always been lenient: it has accepted to renounce its periods of deliberation and reduced its deliberations to a minimum. According to its regulations, this is both admissible and also factually possible, because the policy departments continuously inform the law-making process. Sometimes, this is also necessary – but not always. And we should, in our understanding of ourselves, critically question the urgency of the legislative process if we want to remain the valuable partner that we are in this process.

Finally, I would like to venture a look into the future. The Federal Council is deeply anchored in the political system of the German Federal Republic, and the aforementioned developments will not change this. I see new possibilities for a stronger involvement both in the European and in the international context; within the EU, for example, by giving more weight to national parliaments, and on the international level by the involvement in international bodies like the Conference of Parliamentary Committees for Union Affairs of Parliaments of the EU (COSAC), the Europol Joint Supervisory Body (JSB), or – of course – this Association here.

Thus, I would like to invite you to take part in a one-week study programme to further the exchange of ideas among staff members of parliamentary administrations, developed by the secretariat of the Federal Council. You will receive more information on this programme over the next few weeks. Every two years, all of the senates represented here have the opportunity to send one

participant to these study programmes, and I would like to ask you to make use of this offer, because it helps to further our understanding of one another, of how we pass laws, and of how we generally proceed. Above all, it is important to further the exchange of ideas among people, since politics is made by people, and the political process benefits greatly from people understanding each other.

Pio Garcia-Escudero, President of the Senate of the Kingdom of Spain

Today's topic is a relevant debate, which necessarily brings us to the reiterated questioning of the desirability of a bicameral system.

According to the Spanish Constitution of 1978, the Senate represents or should represent territorial interests, thereby complementing the function of the Congress of Deputies. As an interesting point of information, please note that the vast majority of bills in Spain are amended in the Senate, and a high percentage of these amendments tend to be respected in the Congress of Deputies. Therefore, the effective role of our Senate as the house of second reading, or improvement of the bills, is unquestionable – and all this despite having much shorter deliberation times than the Congress of Deputies: two months in the ordinary procedure and twenty days in the urgent one.

In addition, the Spanish Senate has the capacity to use, by absolute majority, its power to veto the totality of a bill approved by the Congress of Deputies. Nonetheless, this veto can be immediately lifted by the Congress by means of an absolute majority of its votes, or simply after two months have passed.

It is clear, then, that the Spanish constitutional system operates in a so-called “imperfect” or “asymmetric bicameralism”, with the Congress taking precedence over the Senate. No doubt, this asymmetry is necessary to avoid undesirable situations of institutional impasse. However, this imbalance should never be excessive, because then there would be a danger of reducing the Senate to a merely symbolic role, which is equally undesirable – least of all today, when voices criticizing the political utility of second houses proliferate so much.

For this reason, increasing the weight of the upper house in legislative proceedings is an important chapter in the debates on the necessary reform of the Senate, which have been occurring in Spain for many years. In fact, this was the case in the Study Committee for Strengthening the Functions of the Senate, which carried out its work during the past legislature with the participation of all political forces in the House.

Some of the main lines of the reform discussed included:

- Increasing the deliberation time for bills in the Senate.
- Establishing more stringent requirements for the Congress of Deputies to reject Senate proposals in ordinary legislative proceedings – even, if there is no agreement, by means of the constitution of joint parity commissions of Deputies and Senators to resolve disagreements.
- Finally, the possibility that the Senate could become the house of first reading of bills and non-governmental bills when they pertain to self-governing communities.

The reference to this latter concrete aspect serves to remind me of the axis around which all political and legal debate regarding the necessary reform of our Senate in Spain revolves. This central question is none other than how to enhance its functions so that it effectively fulfils its constitu-

tional mandate of being the house that exercises territorial representation within our bicameral parliamentary system.

I would like to recall that in Spain, the Constitution of 1978 not only represented the beginning of the full restoration of our country to the path of democracy, but also laid the groundwork for an intense process of decentralisation of political power. This process of constructing our State of self-governing communities has been unfolding in recent decades to the point where it is now fully mature, thus placing our country among the most decentralised nations in Europe.

Nevertheless, our political system remains limited by a certain deficit in terms of the articulation of effective mechanisms for promoting territorial cooperation between the State and the self-governing communities – mechanisms which serve not only to facilitate conflict resolution but also, from a broader perspective and in a constructive spirit, to incorporate and harmonize satisfactorily the territorial point of view in the processes of forming political will and in decision-making by the legislative branch.

Beyond the differences in approach typical for democratic pluralism, in Spain there is considerable agreement between the various parliamentary forces on the need for reforming our Senate. This reform would foster inter-territorial political dialogue, articulate the different territorial interests, and, finally, provide an ample channel for the participation of our self-governing communities in the governance of the State, including, of course, everything related to European affairs. In summary, the reform would allow something as urgent today as the improvement of the social esteem of the Senate and the better comprehension of its essential role within the constitutional system.

The territorial houses find themselves at the intersection of two fundamental vectors of our constitutional models: parliamentary democracy and political decentralisation. Therefore, strengthening the Senate requires that we never lose sight of these two vectors, which are perfectly complementary and mutually reinforcing. With good reason: what can confer greater value on the decisions adopted by parliaments than the democratic origin of its representatives, be it through direct or indirect processes – or through both systems at once, which occurs in the case of the Spanish Senate, where the representatives elected directly by the citizens through open lists meet with the 20 per cent of representatives who are designated by the parliaments of the self-governing communities?

It seems to me, therefore, that the great challenge facing the territorial parliamentary houses is to know how to promote, in a balanced manner, our two major distinguishing traits. Acting in this manner is the best means within our grasp for confronting a problem as serious as politics being socially discredited and, in this way, for blocking the path of all those who seek to undermine our democracies by exploiting their weaknesses. I think that the closer we bring politics to our fellow citizens, the more we drive away those who today seek to appropriate it for their own spurious interests.

Block 2: Contributions by the delegations of France, Italy, Luxembourg, the Netherlands, Poland, and Russia

Gérard Larcher, President of the Senate of the French Republic

First of all, I would like to remind you what the French bicameral system is about. It is a key feature of the 5th French Republic suggested by General Charles de Gaulle in 1958. This bicameral system helps to balance the institutional system imagined by General de Gaulle as soon as World War II was over. In a famous speech held in Normandy in 1946 he said: "It is quite clear and understood that the final vote on laws and budgets lies with the Assembly elected through universal and direct suffrage. But what such an Assembly suggests to be done is not necessarily clear-sighted nor serene. We therefore need a second Assembly, elected in a different fashion, to publicly examine what the first Assembly has taken into consideration, to draft amendments, and to propose projects."

Although we may have a change of the presidential majority every five years, this does not affect the French Senate. Therefore, it can play its essential role of weight and counterweight in the parliamentary decision-making process. This role depends on its composition, which is totally different from that of the National Assembly. In France, the Senate is elected by elected representatives – mainly by the 550,000 local authorities – through indirect universal suffrage, and it constitutes the Assembly representing the regional territories of the French Republic. This is our democratic legitimacy, because even if we are not federalist in nature, our Republic – thanks to our Constitution – is nevertheless a "decentralized Republic".

The balance between the Senate and the National Assembly may be asymmetric, but we have the same powers as the National Assembly when it comes to checks and balances with regard to the role and action of the government. Our influence is decisive, regardless of the current political situation. Since my re-election as President of the Senate in 2014, the two Assemblies have not had the same political majority: the National Assembly has the same presidential majority as the President, whereas we in the Senate have another political majority. Nevertheless, we want a "constructive opposition" without severing the ties with the executive, whether it be the government or the President of the French Republic.

A few figures:

- In our last session in 2015/16, three quarters of the texts were adopted in the same wording by both Assemblies, either because they had been shuttling between the two or because a joint mixed commission composed of seven Representatives and seven Senators had agreed on them. The final decision procedure, which enables the government to ask the National Assembly to have the last word, has only been applied to 10 per cent of the final drafts since 1958; today we are at 20 per cent.
- The amendments adopted by the Senate on the legislative drafts under discussion are, for the main part, adopted by the National Assembly.
- The Senate suggests almost the same number of drafts (20 per cent) as the National Assembly (21 per cent), while the large majority (59 per cent) of drafts comes from the government.

These figures show the usefulness of the bicameral system. However, as quantity does not necessarily equal quality, the Senate can take innovative legislative action. Two examples:

- Within the framework of the law on biodiversity adopted last summer, the Senate introduced in the Civil Code the concept of liability in case the environment is damaged. Regarding this I would like to remind you of the oil spill caused by the sinking of the tanker “Erika” in 1999.
- Coming back to yesterday’s debate, I also think of the various texts on the fight against terrorism.

The Senate is there to strike a balance, and it also has a part to play in parliamentary diplomacy. We are called upon to authorize – together with the National Assembly – the extension of the intervention of our armed forces abroad, as was recently the case with Iraq and Syria.

But parliamentary diplomacy is not simply restricted to this institutional role: in agreement with the President of the French Republic, we have renewed our relations with the Republic of Iran, and I was the first to go on an official visit to Iran so as to prepare for the official visit of the Iranian President Hassan Rouhani in Paris. This is the part played by the Upper House in France. At the same time, we also work in a number of countries subjected to crises, such as Ivory Coast and Mali, to try and help them to set up upper houses in order to take into consideration local authorities’ views. This could also be the case in Syria in the very near future.

Having a second chamber enables our expertise to be used to better reconcile territorial diversity and the unity of the nation, as our Russian colleague has also pointed out. This is why, together with our German friends, we have started work with the Ukrainian unicameral Parliament (the Rada) in order to help them in their efforts to decentralize the country.

Dear President of the Council of States, you have, in fact, turned my speech around by asking us about the recent developments when it comes to the role of the Senate in the French Republic. We are involved in constitutional reforms or we have to deal with new practices. In 1995, we went from a frequently meeting parliament to a parliament working full-time (from six to nine months; the government does not work in August), which means we can now play our role with regard to checks and balances throughout the year.

The President of the French Republic is now only elected for a term of five years, and the legislative is elected after the presidential election. Accordingly, the political majority of the legislative body will be the same as that of the President of the Republic. So the Senate needs to ensure continuity and to help balance the whole system.

In 2003, the Senate was able to examine, as a priority, the drafts of local authorities. So even if, according to our Constitution, the government may decide otherwise, we are the first to examine these drafts. As you all have experienced, the lower house will set the tone of the drafts.

In 2008, there was a very important constitutional reform: now the Senate in plenary no longer discusses the text submitted by the government, but the text submitted by our commission. The government makes a draft and the commission changes or amends it, and this is the draft we then discuss. If the government wants to go back to its initial draft, it has to table the amendments and discuss this in front of the parliament – letter by letter and article by article. The reform of 2008 has also changed the way in which the agenda is set: two weeks for the government, one week for Parliament, and one week is devoted to checks and balances.

Commissions also confirm – or do not confirm – the main appointments by the President of the French Republic. The Senate’s decision is not an advisory vote but a final vote.

In 2014/15, we implemented an internal reform of our working methods. We want fewer sessions; we are a southern country and we love to talk into the night and the early morning. As

we want to become more like our northern colleagues, we have changed the way in which we examine matters at commission level. We have strengthened and diversified the checks and balances of the government. Yes, we need to go faster – but at the same time we do not want to rush, because “haste makes waste”. The Official Journal shows that twice as many laws have been passed than have not been passed. However, I do not know whether our lives are better than they were under President Georges Pompidou, simply because we have more laws ...

Every week, there is a session devoted to current affairs, which is broadcasted on public television, the parliamentary channel, and on social media. This just goes to show the importance of the Senate.

To the President of the Federal Council of Austria I would like to say: perhaps we are less sexy, but we are all the more wise, and with time, sexiness becomes less important and wisdom far more so. We still have and always will have to play a role of balancing matters, especially in the uncertain times we are living in. Thus, together with the local authorities we will set up a participatory platform for our citizens. I believe in representative democracy, and to establish a participatory citizen platform will allow us to do away with populist aberrations.

Bicameral systems are particularly important in these troubled times, in which we need to rebuild some countries that have seen civil wars and division. But we see this importance also in our overseas territories, with which we have now more balanced and open relationships.

Pietro Grasso, President of the Senate of the Italian Republic

We have been given a wonderful opportunity to exchange ideas on the role of senates in parliamentary proceedings and also on the present and future of our democracies, as our great continent is being battered by a long period of political and geopolitical turbulence which is jeopardizing the stability, the economic and social development, the security, and the rights of each one of our countries. I believe that interparliamentary cooperation, owing to its informal and relaxed nature, provides a good opportunity to discuss controversial issues between our countries in order to better understand the points of view of others and thus to enable us to bring our positions closer together in the interests of intergovernmental dialogue. I also believe that the wealth of ideas that were exchanged yesterday during the meeting on the parliamentary oversight of security policies and antiterrorism stresses the importance of such exchanges of experiences and opinions. They help us to reinforce the capacity of our assemblies, to analyse phenomena, and to scrutinize government action. I hope that similar initiatives dealing with specific sectors of public policy and international relations can also become standard practice at future meetings of our Association.

Let me now turn to today's theme. At the outset, I must say that in April this year, the Italian Parliament adopted a constitutional amendment bill which, among other things, revises both the composition and the functions of the Italian Senate, thus making it a chamber representing local governments and superseding the present system of a “perfect” or “symmetrical bicameralism”. In a nutshell, in the future, only the Chamber of Deputies will have the power to propose a vote of confidence in the government. Also, the reform establishes a certain set of categories of laws that have to be passed by both Chambers; all other bills only *may* be approved also by the Senators, which means that the Senate mainly has an advisory role. With the reform, the number of Senators will go down from presently 315 to a maximum of 100 Senators, who are elected by the Regional Councils from among their own members and the mayors, so that the Senate serves as

the link between the national government and the local authorities as well as between the state and the European Union. In addition, the Senate will be charged with appraising public policies and assessing the impact of EU legislation.

The entry into force of the constitutional reform is conditional on a referendum to be held on 4 December, for which no quorum will be required. The referendum was called because the constitutional reform bill failed to reach the two-thirds majority in Parliament required by the Constitution. The Italian people have already voted on constitutional reforms before: in favour in the 2001 referendum and against in the 2006 referendum.

Notwithstanding the outcome of the public vote, our Parliament will have a lot of work to do after 4 December and in the remaining parliamentary term, which ends in March 2018: should the reform not be approved, it will have to pass an electoral law for the Senate, because the previous electoral law was struck down by the Constitutional Court and the political forces have only made provisions for the new election of the Chamber of Deputies. If, conversely, the reform is approved, Parliament will have to pass a number of key measures such as the procedures for the indirect election of senators; in other words, it will have to overhaul the Senate's rules of procedure.

In the meantime, the Senate is further enhancing the skills of its already top-rate staff through training in issues such as evaluation of public policies, regional affairs, and European affairs. Even well before the reform process was set in motion, work had begun in concert with the Chamber of Deputies to introduce a single career path for the Chamber and the Senate and to merge some services (research offices, personnel offices, library, procurement, logistics, etc.) in order to substantially reduce expenditure and streamline the workings of parliamentary administrative support staff.

To return to the current situation, I would like to underline some of the political and institutional changes in the Senate's role in the present parliamentary processes. One distinctive feature of our Upper House is the high degree of inter-group mobility of the Senators, which is a result of the 2005 electoral law to prevent the formation of solid majorities and to fragment the party system (sometimes, parliamentary groups are created which do not reflect any of the political parties that took part in the elections). Group mobility and the very different political composition of the Chamber of Deputies make the dynamics on the floor of the Chamber unpredictable. Thus, the President has a particularly strategic role as the authority responsible for guaranteeing the demands of the majority and the opposition.

In the present Parliament, I have often been called upon to take sensitive decisions on points of order regarding the most controversial political measures. Especially during the parliamentary process that led up to the approval of the constitutional reform bill, I often had to strike a fair balance between the right of the majority to move forward and the right of the opposition to be given sufficient time for reflection and debate. Another feature of the Senate's work in this parliamentary term concerns the constant recourse by the Executive to (governmental) decree-laws and to motions of confidence in order to pre-empt debates on amendments and to vote through what have often been millions of amendments to certain bills.

In conclusion, I would like to mention two important areas of the Senate's work. The first area is European affairs, where there is constant and positive progress: in 2015, the Italian Senate was once again one of the most active Houses of Parliament – of all European Union Member States – in overseeing subsidiarity with respect to the documents or measures proposed by the European

Commission. The government, then, reports regularly to the Senate, the Chamber, and to their committees on the stances it takes in European negotiations. The second sphere of activity is the parliamentary oversight of the government. In one particular case, the law which has incorporated the principle of balancing the budget into the Italian Constitution has also established a Parliamentary Budget Office with a panel of three members appointed by the Presidents of both chambers, to monitor public finances in a wholly independent manner; this is yet another instrument of democracy.

Finally, from what I have heard from the previous speakers, I can truly appreciate how the histories and dynamics of our countries have forged our upper houses in unique and specific ways. But I believe that all upper houses share the same role of reflection, of wisdom, and of government oversight, and I am convinced that we must all work together in our Association to make our upper chambers, even more than now, a place for strengthening democracy and for debating issues of supranational concern on which the future of our countries and of humanity itself depends.

Georges Wivenes, President of the Council of State of the Grand Duchy of Luxembourg

The Council of State of Luxembourg was set up by the Constitution of 1856 as an assembly called upon to discuss and draft bills as well as possible amendments and to serve as a counterweight to the House of Representatives in Luxembourg's unicameral system. The authors of the constitutional reform of 1856 wanted the Council of State to act as a second house. The Constitution of 1856 is still in force, hence the Council of State has been maintained as an independent institution on the same level as the Government and the House of Representatives.

Its main task is to advise these two institutions within the legislative and the regulatory decision-making process. It is asked to hand down an opinion on every draft and amendment – leaving aside certain special procedures. As a result, the House of Representatives cannot pass a bill without having heard the Council of State. Although the Council of State has no right to initiate legislation, it can draw the Government's attention to areas in which new laws might be necessary. It can also examine whether a draft is relevant and appropriate with regard to its purpose. Furthermore, it carries out a legal analysis of drafts and ensures that they are in keeping with the Constitution, with EU legislation, with international law standards, and with general principles of law.

In practice, each comment is divided into three parts: the first part concerns general and general legal considerations; the second part comprises a detailed examination of every article; the third part consists of observations regarding legislative technique. The Council of State regularly suggests amendments, following its own observations. It can add a new draft or a new proposal with its own suggestions. It may also offer to the Government and to the House of Representatives legal and pragmatic solutions that are in keeping with superior standards and principles of law. Hence, the role of the Council of State is not limited to critical observations.

Representatives of the ministry which drafted a bill as well as the competent parliamentary committee may meet with the Council of State to obtain additional information in order to prepare future governmental or parliamentary amendments. However, given that the Council of State does not constitute a second chamber, there is no shuttling and negotiating of drafts between the two bodies, as is the case in a bicameral system.

In order to compensate for the lack of a second house, article 59 of the Constitution lays down that all drafts are submitted to a second vote after three months at the earliest, which allows the House of Representatives to re-examine its position and to amend the draft. The second vote is necessary unless the House of Representatives – in public session and in agreement with the Council of State – decides otherwise. If the House of Representatives decides that there is no need for a second vote, the text is nonetheless passed on to the Council of State in order to obtain its agreement. Thanks to its co-decision power, the Council of State has a moderating influence, as befits an upper house.

If the Council of State agrees with a decision made by the House of Representatives, the draft bill is voted on and subject to promulgation by the Grand Duke. If it does not agree, the House of Representatives, as mentioned before, has to organize a second vote, without the Council of State having to explain why it does not agree. In practice, this only happens if the Council of State has found incompatibility between the draft bill and superior standards and if the legislator fails to provide arguments that induce the Council of State to give up its opposition. This amounts to a right of veto by which the Council of State makes sure that the House of Representatives carries out a second vote.

The position of the Council of State has been reinforced by the creation of the Constitutional Court in 1996. Since then, the constitutionality of laws is examined twice: a priori by the Council of State, a posteriori by the Constitutional Court. The deliberations of the Council of State are not made public, but its opinions on drafts are, as are the sessions in which the Council of State decides whether to formally agree or not.

With its advisory role and its decision powers, the Council of State influences directly the work of the House of Representatives by improving the quality of drafts. Recently, a proposal for a constitutional reform has been brought forward to replace the Constitution of 1856. The reform enshrines the Council of State's role, clarifies its mission of checks and balances with regard to legality, and preserves its power to formally agree or disagree with draft bills suggested by the House of Representatives.

Ankie Broekers-Knol, President of the First Chamber of the States General of the Kingdom of the Netherlands

In the parliamentary system of the Netherlands, the Senate performs the role of “chambre de réflexion”. The Senate scrutinizes all legislation that has been passed by the House of Representatives. It is the only institution that reviews the final text, including amendments, and checks whether it is in line with national and international law. In addition, the Senate of the Netherlands scrutinizes bills for legality, practicality, and enforceability. The Senate of the Netherlands does not have the right to amend bills, like some other European senates do. But it does have a full veto right, which is rare, if not unique among our European senates. We do not know the system of the navette. We can have a veto on bills that are before the Senate. However, we rarely use this veto. It would mean that the bill – and the years of effort that were put into it – would be off the table entirely. The whole legislative process would have to start from scratch. The real influence of the Senate of the Netherlands is much more subtle than its veto right suggests. Our main added value lies in the questions senators ask the cabinet regarding the congruity of the bill with other laws and the implementation of the bill. The answers to these questions by the Senate are often

used by the judiciary to interpret a bill's meaning once it has been enacted into law. And sometimes, questioning can lead to a pledge by a minister to implement a law in a certain way.

During last year's conference, we spoke about hard power versus soft power. I think I can safely say that the Senate of the Netherlands uses its soft power infinitely more than it does its hard power. But its hard power, i.e. the veto right, does have a deterrent effect on both the Government and the House of Representatives. Long before a bill reaches the Senate, they anticipate the Senate's reactions. In the last few years, a new light has been shed on the balance between hard power and soft power. The reason for this is that for the first time in decades the reigning coalition does not hold a majority in the Senate. Some say this damages the position of the Senate because it puts all the various parties – both opposition and coalition – in an increasingly political position. But one can also argue that it allows the Senate to fulfil its role as “chambre de réflexion” even better than before. The reason for this is that it can never be assumed that a majority of senators will be in favour of a bill. The government has to fight for a parliamentary majority for each proposal.

When the Second Rutte Cabinet started its term of office in 2012, there was a lot of uncertainty as to how it would make sure that proposed legislation would pass both houses. But now that its term has almost come to an end, we can start to conclude that it has been fairly successful in this. Out of the hundreds of bills – there were almost a thousand bills between 2011 and 2015 – submitted by the Second Rutte Cabinet, only six were rejected. Five more were withdrawn for further reconsideration and alteration. How is this possible? Over the last four years, the two coalition parties worked together with a number of opposition parties to reach political agreements. In order to arrive at these agreements, the coalition was forced to consult, debate, persuade, and compromise. That in itself is a good thing. However, these agreements were made behind closed doors instead of during a parliamentary debate. Of course, the legislative proposals that resulted from these agreements were always debated in public. It is my firm belief that the acceptance of a legislative proposal should always be the result of a debate in which all arguments have been heard and debated. Without this, a free democracy is an empty shell. I am reminded of a quote by Marcus Tullius Cicero, who once said that arguments should be weighed, not counted. He believed in the power of the argument, that, when all arguments, both for and against, are put on the table, a debate can be enriching and new insight can be generated, leading to increased respect for the opinions of others.

In March of next year, the Netherlands will hold elections for the House of Representatives. In a country like the Netherlands with many different political parties, this means that it is necessary to form a coalition in order to have a majority in the House of Representatives. Already, many discussions are taking place as to whether this coalition should make sure it has a majority in the Senate as well. Some politicians have stated that a majority in the Senate is a *conditio sine qua non*. Others have stated that it is preferable, but not necessary. In my view, a majority in the Senate remains desirable, although in two years from now there will be new elections for the Senate which could change its composition once more. In any case, the decision has to be the result of a conscious choice.

In the meantime, there is another current development that I would like to share with you today. As I said earlier: four years ago, there was a lot of uncertainty about how this relatively new and unique political situation would work. This led to intensive political debate on the workings of the Dutch representative democracy. As a result, last July both houses of parliament requested

the Prime Minister to install a so-called State Committee to analyse the functioning of the Dutch parliamentary system as a whole. This State Committee will look into the question of whether or not the current system is sustainable. It will look at, for instance, citizen involvement in the political process and the effect of European decision-making on the national parliament. In addition, the Senate of the Netherlands has installed a special committee of senators to look at practical ways in which it can further optimize its work. Amongst other things, the committee will examine the way in which the Senate deals with highly urgent legislative proposals and the manner in which senators obtain information from the Government. The committee is expected to present its conclusions some time next year. Of course, I will gladly share them with you next time we meet.

To round off, I would like to state just how much I value this platform. All over the world, senates play an important role in the checks and balances of their respective political systems. How we fulfil that role is different in every country. The reason we take this yearly opportunity to exchange experiences is because we can learn from our differences. I firmly believe that, ultimately, a bicameral system is beneficial to the functioning of a democracy because of the necessary checks and balances. We as politicians should emphasize this in all discussions concerning the position of senates. Checks and balances, that is what it is all about.

Stanislaw Karczewski, President of the Senate of the Republic of Poland

Mr Speaker, I wish to thank you warmly for such generous conditions for our debate and for your exceptional hospitality. I wish to thank all of you present here for this debate, for presenting such an interesting and large body of information, which is so important to us because we are considering here the role and significance of the senates, the second chambers in our legislative systems. I think that we can agree that senates stabilize the political situation in the countries concerned. We have a large variety of constitutional arrangements and positions of senates in our countries. But one thing is sure: senates are a stability factor in easing the political situation. We call the Senate in Poland the chamber of reflexion where the heat is lower, there is less tension, and there is a more relevant and more important political debate. I want to say that senates constitute an added value to our democratic systems.

I will refer shortly to the history of the Polish Senate. The Senate in Poland evolved from the Royal Council. At the same time, the Chamber of Deputies was formed, which represented the nobility. And the Senators, the Deputies, and the King constituted the so-called deliberating estates. They first deliberated in 1403. This model of democracy survived until the collapse of the Polish state at the end of the 18th century. After World War I, the Polish state regained independence, and work on defining its political system was initiated. The Constitution of 1921 created a bicameral parliament composed of the Sejm and the Senate. In 1946, the Communists abolished the Senate after a rigged referendum. With the fall of the Communist dictatorship and the transformation of 1989, the state authorities agreed to the restoration of the Senate as a fully democratically elected second chamber. After the elections in 1989, the democratic opposition won 99 per cent of Senate seats.

The powers of the Senate may be divided into several areas.

The first main area is the legislative process. In this respect, the Senate has an equal position to the Sejm, the lower chamber, only in the event of constitutional amendments and the ratification of international treaties providing for the transfer of power from the state to an international organization, for example the EU. Without separate approvals of both chambers, such acts

cannot be effectively implemented. In other types of legislative activities, the Senate may only use its right of suspending veto, which is very rarely used, in individual cases. The Senate also has the right to make amendments. The Senate, in fact, tables a lot of amendments and, in practice, the Sejm accepts approximately 80 per cent of our amendments. Vetoes are very rare, on average once per year. The Senate may also propose amendments to the state budget bill, but cannot veto it. Apart from the members of parliament, the President, and any group of 100,000 citizens, the Senate also has the right of initiative. In this regard, in recent years, the Senate has specialized in initiating bills in active legislative changes required to fully implement rulings of the Constitutional Tribunal. Over the last years, from 2007 to 2011, the Senate tabled 124 bills to the Sejm, including 77 bills of this constitutional origin. The Sejm passed 78 such acts on the initiative of the Senate, including 55 constitutional bills. In the next term, 2011 to 2015, the Senate tabled 103 bills to the Sejm, including 62 constitutional bills. The Sejm passed 74, including 43 constitutional bills. Over the last two terms, the Senate drafted approximately 8 per cent of the bills tabled to the Sejm, and 70 per cent of the bills tabled by the Senate were passed by the Sejm. Nearly two thirds of the Senate initiatives passed by the Sejm were enactments of rulings of the Constitutional Tribunal. In terms of legislative powers, the Polish Senate is very similar to the Senate of the Czech Republic.

The second area of our activities is the involvement in the appointment or dismissal of key staff of some state bodies. The Senate appoints some members of the Council for Monetary Policy and of the National Council of Radio Broadcasting and Television, which will happen soon at our next session. Additionally, the Senate and the Sejm jointly appoint the Commissioner for Citizens' Rights, the Commissioner for Children's Rights, and the President of the Supreme Audit Office. The Polish President of the State is elected in a general election. However, senators and deputies constitute the National Assembly, which is entitled to bring the President before the State Tribunal. According to the Constitution, the Senate is not entitled to appoint members of the Constitutional Tribunal, because these are appointed by the Sejm. The Constitution does not grant the Senate any powers with regard to scrutiny of the executive power, only the Sejm has such prerogatives.

In practice, however, statutory law grants the Senate the right to be informed by some central state bodies of their activities and the state of public affairs. This may be regarded as the third area of Senate activities. However, the Senate does not have any sovereign functions in this area, and its role is limited to acknowledging information presented by state bodies. The Senate also attaches great importance to providing support to Poles abroad. 38 million Poles live in Poland, but Poles are everywhere, worldwide, including Switzerland. They make a great contribution and cooperate greatly with the Swiss authorities – thank you very much, Mr President of the Council of States. About 20 million Poles live abroad, and they compose a large number of Polish national communities.

The role of the Senate in the parliamentary decision-making process is significantly influenced by the fact that both chambers of Parliament are always elected at the same time by the same electorate; this is the differentiating factor with respect to the Czech Senate. But their electoral systems are different, because Deputies are elected under proportional representation, and Senators are elected under a plurality voting system in single member constituencies. The same parties or coalitions usually secure the majority in both chambers of the Polish Parliament. For example, from 2007 to 2015, the majority in both chambers was held by the Civic Platform, the Polish

People's Party coalition. From 2015, the Law and Justice Party has been the majority party in both chambers. Therefore, you cannot expect that in the decision-making process the Senate will take a different stance from the Sejm. There are some differences, but minor ones. Although sometimes politicians and representatives of economic circles debate about amending the Senate's powers and its electoral system, so far no parliamentary majority has been willing to or capable of changing the Constitution in this regard, because it will require a two-thirds majority in the Sejm and more than 50 per cent of votes in the Senate.

***Valentina Matvienko, President of the Federation Council
of the Federal Assembly of the Russian Federation***

Mr Comte, I would like to thank you personally and the Council of States of the Federal Assembly of Switzerland for the great conditions for our work. I would like to note this spirit of goodwill and the comfortable atmosphere we are working in. I followed very closely the addresses of my colleagues, the presidents of senates, and I have learned many useful things for myself. This is a useful experience and useful practice, which may be used in our work.

For my part, I would like to share the Russian experience with you. Every state goes through its own unique way of forming its national statehood, and parliament is an integral part of it in any democratic state. As in many European countries, in Russia we have a bicameral parliament. This year, the Russian Parliament marked its 110th anniversary. 110 years ago, in 1906, there was the first joint meeting of the Russian Parliament's chambers. It was comprised of the newly elected State Duma and the renewed State Council, which was an analogue of the upper chamber. Now more than a century has passed and the function of the upper chamber of the Russian Parliament has expanded because the tradition of Russia after 1993 gives the Council of the Federation a special place in the Russian system of public authorities.

First, we have a regional principle of formation and representation. It is very important for Russia to take into account that in the Russian Federation there are 85 regions and 8 subjects of the Russian Federation. There are more than 190 peoples and nationalities living in our country, which makes the chamber of regions in the system of the legislative power not only useful, but a kind of categorical imperative. Members of our chamber are endowed with their power by regional parliaments, executive bodies on the basis of the expression of will of their voters. Senators need to go through regional elections. After the elections of 18 September, the composition of our chamber has been renewed, and unlike in the lower chamber, the State Duma, where there are leading political powers and leading parties of the country, in the Council of the Federation, we see the coordination of the will and interests of the Russian regions.

Another particularity of our chamber is that it is beyond any ideology. If in the lower chamber we see different ideas and political views, in the Council of the Federation we see the communication of practice and pragmatics which represents regional administrations, regional parliaments, business circles, and civil institutions of the regions. That is why the coordination of the will and interests of the Russian regions is not a formal and not a simple process. I think that the Swiss experience may fully confirm this conclusion. The Russian Constitution assigns to the Council of the Federation the role of guarantor of state stability. Unlike the State Duma, the Council of the Federation cannot be dissolved. Moreover, no other party than the Council of the Federation has the right of decision on vitally important issues for our country such as confirming the borders of regions of the Federation, approving the election of the President of the Russian Federation, and

adopting Presidential Decrees on the introduction of states of emergency and martial law. Our chamber also has the right to appoint all the judges of the Constitutional Court, of the Supreme Court, the Procurator-General, the Deputy-Chairman of the Accounts Chamber, half of the auditors in the Accounts Chamber, and a third of the members of the Central Election Commission. Our chamber also participates in the assigning and recalling of diplomatic representatives of the Russian Federation in foreign countries and in international organizations.

We also have the right of legislative initiative. We use it very often. Senators or groups of senators introduce draft bills, which then become laws. A particularity of our activities is that the classic law-making function is complemented with the mission of supervising the executive authorities. Our chamber is a constant participant in the process of adopting amendments to the federal constitutional laws. We see that in Russia – this is our particularity, and it is a good practice of other countries – all the draft bills are first introduced to the State Duma, then they are transferred for consideration in the Council of the Federation. That is why our chamber, as Jeremy Bentham has said, might be considered as a court of appeal which follows the first case consideration. We also have the right to reject the laws of the lower chamber. We do it sometimes. We create a commission for the improvement of these laws, taking into account the opinion of members of the upper chamber. Against this background, the very important task we have is to create and to establish constructive interaction of Parliament's chambers with each other. We work with the lower chamber of our Parliament on the majority of the draft bills. Our committees interact actively with the committees of the State Duma. We also hold parliamentary hearings, round tables, and meetings of advisory and deliberative parties within the Council of the Federation and with the President of the Council of the Federation.

In the 19th century, a British prime minister said that the function of parliament is not to manage the country, but to exact an account from those who manage the country. So the Council of the Federation has specific supervisory powers. We have a special law about parliamentary supervision. On every meeting of the chamber, in the framework of the so-called governmental hour, we hear the reports of heads of ministries, members of the government, vice prime ministers, heads of agencies, and we adopt the decrees where we can voice our position, our assessment of the activities of the executive bodies, and we ask to eliminate some flaws that we see. The chamber also hears the reports of the Procurator-General, the presidents of the banks of Russia, the Central Election Commission, and the Accounts Chamber.

I would like to draw your attention to the activities of the Accounts Chamber of the Russian Federation. This is the permanent, independent supreme body of external public audit, accountable to Parliament, to both chambers of the Federal Assembly of the Russian Federation. This is one of the key elements of the system of public supervision of the spending of national resources. The Council of the Federation gives special attention to the drafting, adoption, and execution of the federal budget. Every spring, our chamber considers and adopts proposals and recommendations to the Government in the elaboration of the federal budget for the following year, emphasizing the reflection of the interests of the Russian regions. We also supervise information about the preparation and adoption by executive authorities of by-laws the adoption of which is stipulated in federal laws. We know that a law has been adopted, and then, by some regulatory by-laws, the Government may either amend the essence of this law or just change its logic. That is why we are trying to keep it under control. We then monitor the implementation of the laws, and we also follow the consistency of this by-law regulation in order to detect any possible flaws.

I would like to mention one aspect which has not been voiced yet. We pay special attention to the openness of our chamber's work. We try to be transparent and open towards our citizens. We have established a special parliamentary TV channel, which is accessible in the majority of the territory of our country. Our citizens, through this television channel, may see what we are doing, what decisions we adopt. They may follow the work of the senators and all of our plenary sessions, all our major events; for example, parliamentary hearings and other events are broadcasted online both on the internet and on our parliamentary TV channel. Then, we can have feedback from our society. On our website, citizens may participate in the discussion of the draft bills. We then take it all into account, and there are many other forms of feedback from the citizens of our country.

One of the most important supervisory powers is the right to initiate a parliamentary investigation of facts and circumstances that have negative consequences for the state and for society. I think it is very important to mention the fact that the mission of the upper chamber of the Russian Parliament is not limited to internal functions only, but that parliamentary diplomacy is an independent and intrinsically available area of activities of the Council of the Federation. We attach special importance to these activities in the event of crises in the world. Official diplomacy is sometimes sliding. In modern conditions, the role of the upper chambers of parliament has significantly increased in the interparliamentary dialogue for preservation of peace and mutual trust. We truly believe that international relations are now in a transitional period, related to the formation of a new, more equitable, and more democratic polycentric system of world order. This is not a simple process, because the common challenges and threats are not only not disappearing, but they are becoming more and more large-scale. It is evident that we can find effective and long-term answers to the key problems of modern times only through the unification of our efforts, making use of the potential of states and of all those who are able to exert positive influence on the development of the situation in the world. One of the key roles in this process is assigned to parliaments, because they are democratic institutions and express the will of the people and of their voters, their image, and their ability to find a balance between interests and compromises. They are already playing this stabilizing role for all the systems of international affairs and they give the necessary resilience, sustainability, and predictability in the conditions of painful pasts to a new paradigm of development and world governance.

In these conditions, we think that the imposing of sanctions against parliamentarians is harmful and contradicts the very essence and nature of parliamentarism and democracy. Sanctions violate the norms of international law as well as the rights of millions of people who voted for the parliamentarians, for their work in the representative bodies of their own countries. They are sanctions against voters, against those common people who voted for some deputies. This is why we truly believe that such sanctions should be eliminated once and for all from the practice of interstate communication. I would like to thank the Senator of France and our colleagues from other parliaments who support this position and who advocate the inadmissibility of limitations imposed on parliamentarians and on the possibility to have this interparliamentary dialogue. In the modern world, there are many problems and threats, but I am convinced that only a unifying and not confrontational agenda may help us to achieve the desired results. We representatives of the Council of the Federation are ready to open an honest dialogue, and we invite all our partners and colleagues in Europe to this dialogue.

Block 3: Contributions by the delegations of Romania, Slovenia, Great Britain, and Switzerland

Raphaël Comte, President of the Council of States of the Swiss Federal Assembly, President of the XVIIth Meeting of the Association of European Senates

I invite Mr Ioan Chelaru, Vice-President of the Romanian Senate, to take the floor. I would like to take this opportunity to remind you that the ASE will reunite in Romania in 2018. Unfortunately, I myself will not be able to partake in that meeting as my mandate to preside the Swiss Council of States ends in a couple of weeks – but I am sure many of you will have the pleasure to meet again in Romania.

Ioan Chelaru, Vice-President of the Senate of Romania

Mr President Comte, allow me to thank you for your warm hospitality and for the very interesting programme that you have concocted for this meeting of the Association of European Senates.

The history of the Senate of Romania runs in parallel with the democratic history of Romanian society. Throughout its existence, the Senate has proved its democratic vocation and has affirmed itself as a fundamental institution of modern Romania. It is a powerful form for parliamentary debate. It thus helps to strike a balance between state structures, the protection of rights and fundamental freedoms, and the promotion of national ideals. The 152 years of history of the Romanian Senate, with a few interruptions here and there from its inception to this day, have very often been extremely difficult, characterized by tumultuous events, by major political and geopolitical choices, by debates and internal and international upsets. During this time, I would say, there has been no institution that was more disputed or discussed in political circles, more subject to attempts of takeover, more called into question than the Romanian Senate. But the Romanian Senate survived, and I think that this just goes to show what a democratic institution it is, resisting all the trials and tribulations, and it has shown its affection for European democratic systems. So I think that we can look forward to a proficuous future as a political institution, so long as the dome of the Senate continues to host those that criticize it or praise it, those that are for or against it. This diversity guarantees the impossibility of going back to a regime where freedom of expression in the Senate simply did not exist.

After the revolution of December 1989, which paved the way for Romania to accede to a real democracy based on free elections and political pluralism, on the respect for human rights, separation of powers, and the accountability of its leaders to the representative bodies, the Senate has been re-established. This was the time when we returned to a bicameral parliament which is in keeping with the rule of law. In the years that followed, the Romanian bicameral system was modified twice. The last change took place in 2003 when the Constitution was reformed so as to reconcile its provisions with the new social and political realities as well as the need to integrate EU standards. The main purpose of the reform was to adjust the political system and to streamline functional relationships between the fundamental institutions of the state. We wanted to make them more efficient whilst increasing their democratic functioning. So we created a new working mechanism for the bicameral system which separates the legislative powers of the Senate and the House of Representatives, making legislative activities more fluid and doing away with the phases

of mediation. In more recent years, the trend in Romania has been to try and improve the parliamentary system and to review the relationship between the two houses by distinguishing more between their legislative powers. So as the regions are playing an increasingly important role in the current EU, obviously we have to go along with this trend. We believe that it is necessary to review the Senate's mission so that it can express at the supreme legislative forum the views of future regions and at the same time simplify cooperation between said regions. Given these concerns and objectives, the Romanian Parliament has set up a joint commission of the House of Representatives and the Senate to draft a legislative proposal to review and reform the Constitution. This commission has already added to its agenda a project which has been largely debated by parliamentary parties.

I would like to give you a few examples of the concrete proposals that I drafted as president of the joint commission, proposals in which we are trying to review the powers at the parliamentary level, the sharing of legislative powers between the two houses, the transformation of the Senate into a house with extended powers when it comes to parliamentary checks and balances, and the limitation of powers of the two houses. So in legislative terms I have suggested that the Senate become a decisional house for legislative initiatives that are to do with the electoral system and the organization of local authorities and public administration. Following on from this transformation of the Senate into a body which controls matters, there have been important changes in the structure and the working of the Senate and the whole Parliament. We have a reduced number of standing commissions and naturally an increase in the number of special or ad-hoc investigatory commissions, fewer joint sessions of the two houses, and we have a better system of checks and balances when it comes to the parliamentary system. We have to report back in an informative way to the Government and the Parliament.

I have highlighted a few milestones of the biography of the Senate of Romania, and I am very honoured and happy to be able to do so in the light of my legal expertise and parliamentary experience acquired over the last twelve years. I have chosen the word "biography" and not "monograph" as I should have done simply because I want to emphasize that this institution is part and parcel not only of the history of Romania, but of the very being of the Romanian nation. In conclusion, and as in Romania we are preparing to elect a new legislative body, I would like to share with you my conviction that the members of the Romanian Parliament, whatever their political affiliation, will work responsibly so as to adapt the functions and powers of the Senate in keeping with the socioeconomic development of Romania in the European and international context, and that they will try to improve the relationships with the other state institutions and with civil society in order to reinforce social cohesion and strengthen participatory democracy.

***Raphaël Comte, President of the Council of States
of the Swiss Federal Assembly, President of the XVIIth Meeting
of the Association of European Senates***

I would like to give the floor to the Slovenian delegation and invite the President of the National Council of the Republic of Slovenia, Mr Mitja Bervar, to the rostrum. Next year, our Association will have the pleasure to reunite in Slovenia, and we are already looking forward to this event. We are convinced that we will be warmly welcomed in your country.

***Mitja Bervar, President of the National Council
of the Republic of Slovenia***

Allow me to greet you on behalf of the National Council of the Republic of Slovenia, and I would like to thank President Comte for the excellent organization of this conference and for the generous hospitality. I am very honoured indeed that, on behalf of the National Council of the Republic of Slovenia, I can announce that the next meeting of the Association of European Senates will take place in Slovenia on 1 and 2 June 2017. I would like to take this opportunity to invite you all to actively participate there.

I will divide my address into two parts. I will talk about the National Council in the first part, and in the second part, I will present my thoughts on a second or upper chamber in the European Parliament.

The National Council of the Republic of Slovenia is the upper chamber of the Slovenian Parliament, and it was established by the Constitution as the representative body of social, economic, professional, and local interest groups. Unlike the National Assembly, which is the lower chamber and the representative body of political groups, the National Council represents the interests of all main segments of society. There are 40 members of the National Council, and functional interests are represented there. There are representatives of employees, of employers, of farmers. There are representatives of craftsmen, tradesmen, and independent professions such as lawyers, representatives of non-commercial activities such as social care, representatives of health care, science, education, and higher education as well as culture and sports. The largest group represents local or territorial interest groups. This distinguishes us from other upper chambers. The result of such a structure is that we have non-professional members of the National Council coming from individual fields of expertise with excellent knowledge of their respective fields.

The powers of the upper chamber are different from those of the lower chamber. The National Council participates in the law-making process in line with the powers bestowed upon us by our Constitution. We provide opinions on draft laws, we request the implementation of parliamentary inquiries, propose constitutional reviews, review the legality of acts, and may, on the basis of a veto power, delay legislative decisions of the National Assembly. With regard to the veto power, we have submitted an initiative to the National Assembly to amend the procedures relating to decision-making on a law. This is a proposal for amending the rules of procedure of the National Assembly that would enable a review of only those provisions of the bill that are contentious to the National Council. By doing so, it would no longer be necessary to reject the entire bill, but rather only those provisions that are controversial. Today, deputies of the National Assembly are faced with two bad choices: whether to adopt the law with its deficiencies or reject the bill in its entirety. With a proposed amendment, we suggest to open the possibility for the contentious provisions to be amended prior to the adoption of the law. In the National Council we believe that this would greatly improve the quality of the laws, that it would shorten the time necessary for the amendments, and that the procedures would not be extended.

In addition to the competences or powers granted to the National Council by our Constitution, the National Council has formed strong links with civil society and has thus become a bridge between civil society and daily politics. In practice, it has been confirmed that the bicameral system harbours a potential to reduce the democratic deficit. Our citizens critically assess the attitudes of and relationships between national representative bodies, including relationships between EU institutions and voters.

Regarding the media visibility of upper chambers, let me add that in Slovenia we have a kind of parliamentary TV channel and that we are actively cooperating with national and local TV and radio stations. Thus, we are communicating and informing as well as raising awareness of the work of the upper chamber in Slovenia. Independently of topical party politics, the National Council presents its positions on social and political issues addressed by civil society. We point to important deficiencies and implement the positions in the decision-making processes. Despite the differences in structure, role, and powers, both chambers of the Slovenian Parliament have the same aim: to co-draft the best legislation possible. This is also the basis and vantage point of our joint parliamentary work. In the 25 years of development of Slovenia's democracy, it has been demonstrated how important it is for Parliament to be open to the initiatives and incentives coming from civil society. Some of this was already said today by the President of the Czech Senate when he was talking about ideas of the former Czech President Václav Havel.

So when we are thinking about the changes that touch upon the role of the national parliaments in the decision-making processes, allow me to present the experience of our National Council with regard to the representation of different interests or interest groups. So allow me to be a little bit provocative and to look into the future when it comes to thinking about upper chambers. Our experience shows that the issue of the democratic deficit is a really pressing and burning issue. It is a result of the alienation of our citizens from institutions. But it can be overcome by directly including the interests of local communities and civil society in legislative procedures. This is why, at a time of initiatives and requirements for changing and amending the legislation in the EU, it is perhaps worthwhile to think about the possibility of a bicameral EU Parliament. Many important politicians have considered this in the past, such as Václav Havel, Gerhard Schroeder, Tony Blair, Joschka Fischer, and Lionel Jospin. A bicameral system by definition reduces the democratic deficit and can above all contribute to greater transparency of the law-making processes and to improving the quality of legislative acts. This can also be an interesting vision in the context of endeavours for improving communication between national parliaments and the European Parliament. We could add that already today we have institutions in Brussels such as the Committee of the Regions as well as the Economic and Social Committee, and they could be the basis for the establishment of an upper chamber of the European Parliament. These two institutions often talk about and deliberate on issues of relevance to EU citizens, and such problems and topics we discussed as well here in this meeting: terrorism, migration, and other issues. Several speakers today mentioned the checks and balances of different institutions, so we are back to checks and balances.

When we think about how we can improve the efficiency of the EU in the future, we can also think about the future of the European Parliament as a bicameral body. In this way, we could improve the legitimacy of decisions and strengthen the democratic nature of the decision-making process. We must know that the EU can only be stronger in the future if every citizen of the EU is able to identify with its decisions. This is why we need such proposals for change, for amendment that will open up space for "more Europe" in the heart of each individual European citizen. I believe that, in the long run, decisions will be directed towards "more Europe" and that the EU of the future will be stronger and more democratic. Thus, it will provide high added value for its Member States, for its citizens, and for the entire international community; the added value includes peace, security, and stability.

To conclude, allow me to invite you once again to the meeting in Slovenia on 1 and 2 June 2017. On the afternoon of Thursday, 1 June, much like here in Switzerland, a meeting will be held where we will be discussing certain topical issues, as was done here in Berne yesterday. So welcome to Slovenia, and see you there.

Simon Haskel, Vice-President of the House of Lords of the United Kingdom

The discussion from yesterday about the role of parliament in combatting terrorism has raised very valuable points and certainly we in Britain will take careful note, especially with regard to cooperation.

I am particularly pleased to be here because we in the UK firmly believe in the importance and place of two Chambers in our parliamentary democracy. After all, all legislation has to go through both Houses. However, in Britain we are unusual in that our Upper House is largely appointed. The members are appointed for life and they are appointed largely for the knowledge, experience, and expertise that they can bring to law-making. And much of this expertise is being attained by our not being full-time parliamentarians. In addition, we have archbishops and bishops from the Church of England. And, yes, there are a small number of hereditary peers who remained in the House of Lords after the hereditary principle was abolished in 1999.

We are also unusual in that about a quarter of us, called "Crossbenchers", have no party political allegiance. And those who do have a political allegiance are quite independent by virtually being appointed for life. Consequently, the government party does not have a political majority in the House of Lords, which enables us to take longer-term and less partisan views of legislation. And many think that this makes us more effective in both holding the government to account and challenging weak or ill thought through legislative proposals.

We see our task as holding the government to account, while acknowledging that, eventually, the elected Chamber will have its way. This relationship between the two Houses is governed by conventions which, generally, have stood the test of time over centuries. These conventions ensure that the concerns or alternative proposals in the House of Lords are fully considered and generally taken into account – but in a more collaborative and less adversarial way. One convention is that we have little power to alter the budget; thanks to this we are avoiding the kinds of conflict one gets between two elected houses, while at the same time enabling the executive to govern and Parliament to control the power of the government. This prevents the executive from having too much power at the expense of Parliament.

The increasing length and complexity of legislation is a growing challenge in the House of Lords, because it is in our House where legislation is looked at word by word and line by line. As in the elected House, only the important or controversial clauses are carefully considered; we see our work as complementary to theirs. After all, it is the government that we are holding to account and not the other Chamber.

Also, much of the legislation nowadays comes in the form of what we call "secondary legislation" or "regulations", which are intended to be used for minor or technical changes. Traditionally, these changes are scrutinized less, are not amended, and, consequently, go through quickly. But in recent years, more important matters have also increasingly been legislated in this way in order to get them through more quickly. So we in the House of Lords have been paying particular attention to this secondary legislation.

For over a century, there have been discussions about a reform of the House of Lords. In 1910, Lord Asquith said during a debate: “The reform of the House of Lords brooks no delay!” Becoming an elected House has of course been an important part of this debate over reform, as have the role and purpose of the House. This reform has been much debated in recent years. Since most of the hereditary peers left in 1999, we have had a Royal Commission, four white papers, two bills attempting to turn us into an elected House, and numerous reports from selected committees, academics, and think tanks. In addition, there have also been proposals from our own staff. But in spite of all this work, there has been very little consensus as to how to put these proposals into practice, largely because the appointment to the House of Lords is at the will of the Prime Minister and other party leaders who are very reluctant to give this privilege up. Also, the House of Commons is reluctant to agree to a second elected Chamber which, of course, might challenge its own authority.

However, there are some possible reforms being discussed. At the top of this list is the size of the House. Thus, we are carefully looking at the referendum in Italy about the reduction of the size of the Senate to 100 senators, as mentioned by Mr Grasso. We in Britain have over 800 members in the House of Lords, although of course only less than half of them regularly attend meetings. We are discussing on how to reduce the number, albeit not via a referendum as in Italy – because we have just recently learned that referendums may produce surprising results ... But perhaps we could have appointments for a fixed term or decide that the membership of the House of Lords should be no larger than that of the House of Commons and that the members should regularly attend meetings. To ensure that the current government does not have an absolute majority in the House of Lords, it is suggested – a point we feel strongly about – that there should be at least 20 or 25 per cent of Crossbenchers without political allegiance.

The method of appointment is also being discussed, with the possibility of reducing the power of the Prime Minister to make appointments at will. One idea is to make more appointments through the Independent Appointments Commission, which appoints the Crossbench Peers; thus, we would make fewer appointments available for the party leaders.

Because we are an appointed House, we think that outreach is important. We need to explain to the public who we are, what we do, and why we do it. In order to achieve this, we have an extensive, informative, and up-to-date website, we are on television, and we are active in all the social media. We have effective information departments that deal with queries from the public and provide information to the press and other media in an open and helpful manner. There is a “Parliament Week” that leads to a public engagement and many of us also speak at outside engagements in schools, colleges, universities, and at meetings of various organizations. I myself have recently spoken at regional meetings of the Women’s Institute and Rotary International, always explaining our purpose and our mission.

The House of Lords has several specialist committees, and one of them is the EU Select Committee. Since Britain has joined the EU, proposed EU regulations and legislation have been considered in detail by the UK Parliament in this committee. It has six subcommittees with many members having special knowledge and experience in the matters under examination, such as social and economic issues, legal questions, human rights, finance, trade, technology, agriculture, etc. Together with the specialist staff, nearly 100 people carry out this work. Nor is this relationship to EU legislation one-way: these committees also send many proposals for amendments and improvements to Brussels, some of which have been incorporated into EU-wide legislation.

But now, with Brexit, the British Parliament will have to decide how and if existing European rules and regulations are incorporated into British law once the UK has left the EU. It is anticipated that after 40 years of membership, this will be a huge task. And it may well be that these House of Lords' committees will carry out much of this work and will make the important decisions and judgements as to how the law of the UK will have to be modified.

In the UK, there is no great public demand for an elected Second Chamber. Perhaps this is partially due to a general disenchantment with some of our elected politicians. We have to be responsive to changes: for example, it was very unusual for us to have a coalition government, but we in the House of Lords have adjusted to that.

However, in the spirit of reform, I am very impressed by the points stated by other speakers about the whole question of checks and balances and how they are carried out, as well as about the soft and the hard powers. We will consider them very carefully and are very grateful for all these thoughts and ideas.

***Raphaël Comte, President of the Council of States
of the Swiss Federal Assembly, President of the XVIIth Meeting
of the Association of European Senates***

The last delegation to take the floor is the Swiss delegation, so yours truly is now going to speak.

Yesterday, my two colleagues explained the way in which the Senate works in Switzerland, so I will not go into this again. Instead, please allow me to present a more historical perspective, because institutions do not just fall from the sky – they are the result of the history of a country. Thus, institutions differ so much because the histories of the respective countries are different, too.

Switzerland is one of the few countries where the two Houses have exactly the same powers; there is no additional power granted to one Assembly over the other. This is the result of a historical evolution in Switzerland. Between 1291 and 1848, Switzerland was a confederation of states with wholly independent cantons. Every so often, the cantons met in Federal Assemblies, and they could only make changes with a unanimous decision. Each canton had the same power and had to vote in favour; otherwise, no decision would be made.

Between 1798 and 1803, however, when Napoleon had invaded Switzerland and imposed a unitary system to form the Swiss Republic, the cantons were replaced by Departments. But this system very soon failed and Napoleon wrote a letter to the Swiss citizens saying that "Switzerland is unlike any other state" – these are his words, not mine – "and nature has created for you a confederal state. To try and overcome this nature is not a wise thing to do." This quote by Napoleon shows that federalism is enshrined in our Swiss system. First come the cantons, then comes the Confederation.

In 1847, when the Catholic cantons joined up to form the "Sonderbund" and the Protestant cantons reacted to this, a civil war known as the "Sonderbund War" broke out in Switzerland. The Protestant cantons won the battle and decided that the simple confederation of states should be replaced by a stronger federal state. So in 1848, the Swiss Federal State was born along with its institutions – institutions that have not changed since that crucial year.

At that time, a major debate took place: the progressive parties wanted a House of Commons where the seats would be distributed according to the number of citizens; the conservatives, who had lost the war, wanted to maintain the old regime where every canton had the same power.

They had to arrive at a compromise, which was to take on board both proposals and agree on a bicameral system based on the American system.

The two Chambers are:

- The National Council with 200 seats distributed among the cantons according to the number of their inhabitants, the smallest canton having only one seat while the biggest canton has 30.
- The Council of States with 46 seats, with each canton having two seats.

A parliamentary system is indispensable, but a government can also be useful from time to time. Thus, a government was set up based on the French system of the "Directoire" with seven ministers. In Switzerland, these seven ministers are called the Federal Council, and their number has not changed since 1848. In fact, in the last session, Parliament again rejected an increase to nine ministers and decided to stay with this "magical number" in our Constitution. The President of the Confederation is a *primus inter pares* and is appointed for one year only, and there is a rotation among the seven ministers. The two Assemblies come together in this very building and appoint every minister, seat by seat, so the government members are not elected based on their political programme.

After the elections, the parties reflect on the best distribution of the government seats. There is no majority and no opposition in the Swiss Parliament: all four major parties are involved in governmental affairs, and they can be the majority or the opposition, depending on the subject matter.

The government is a collegial council, so once elected, the ministers never state their personal political views, even if they do not agree with the majority. The ministers sometimes express their frustration at this system, but they must not – and usually do not – take this frustration into the government. We do not have any motion to censor the government's activities. Once elected, the government is entrusted with its task and Parliament cannot withdraw its trust in the government because, so to speak, it has never given the government its trust in the first place. In the same way, the government cannot dissolve Parliament. So for the four years of one legislature, the two elected authorities have to make do and coexist peacefully. The government never commits its responsibility to laws or the budget, which are entirely in the hands of Parliament. This does not affect the way in which the institutions work; there is a strict separation of powers.

When a parliamentarian is appointed a minister, he is no longer a parliamentarian, and when he is no longer a minister, he has to run for parliamentary election again. In such cases, however, our ministers usually do not run for parliamentary election anymore.

Parliament has tremendous freedoms vis-à-vis the government. When the government calls on Parliament to discuss a subject matter, the latter is entirely in control of the agenda and can amend the proposals and drafts in the Council of States and/or the National Council. The government can no longer withdraw its motion once it has been tabled before Parliament.

The separation of powers is very strict and is also mirrored in the distribution of seats in this room. The seats of the government are outside the circle on the side, Parliament is seated on the central stage, and the rapporteurs of the committees have a better place than the ministers. There are only six seats for the government, which, however, has seven members; this shows that Parliament does not want the whole government to be sitting through all its sessions.

In conclusion, allow me to sum up in three points what has been said regarding the importance of the bicameral system:

First of all, the bicameral system is essential when it comes to ensuring quality for the legislative system. Parliament is not here to churn out laws, but to come up with quality laws. And in Switzerland, these laws are indeed of quality, as the statistics over the last 16 years (1999 to 2015) show. Parliament adopted 1,039 items of business. All matters voted on by Parliament are subject to a referendum, which means that if 50,000 or more people sign a petition, the whole people can vote on what has been decided. For all 1,039 items of business, there were 56 calls for a referendum. While in 46 cases the Assembly's opinion prevailed, it was rejected only 10 times by the public vote, which means that less than 1 per cent of all business passed by Parliament was rejected as not good enough. The quality of the work done by the legislative bodies is essential.

Secondly, "to legislate in haste is to repent at leisure". We are very often led to make emotional decisions under the pressure of the media. However, one has to accept that legislative matters take time. People often complain about this lengthy process and want Parliament to act as quickly as possible. But we have to be responsible, because if we want to legislate properly, we need time to consult and find the right decisions – this is the only way in which we can make proper laws and thus cater to the needs of our citizens.

Thirdly, the bicameral system might also be a great system for other countries with huge ethnic, linguistic, religious, or other diversity. It is our responsibility as senators to defend the bicameral system – not because we are senators or because we want to hang on to our seats, but because this system could be an excellent solution for many countries that try to increase social cohesion and to take on board the variety and diversity of their people, so that, at the end of the day, these countries can work properly despite all the differences within society. Switzerland is actually a good example: the bicameral system and all the institutions are results of a war between cantons of different faiths. Thanks to this war, we have been able to set up our political system where there is no longer the same kind of tension between linguistic and religious communities. And this system can also be used in other countries and serve as a model for them.

Thank you all for having taken part in this annual session of the Association of European Senates!

Gérard Larcher, President of the Senate of the French Republic

I would like to thank Mr Comte on behalf of all the Presidents of the European Senates. You represent youth and dynamism, but at the same time you have also summed up the three main points of the bicameral system, so that we are all going home even more enthusiastic about this system. Thank you!

Raphaël Comte, President of the Council of States of the Swiss Federal Assembly, President of the XVIIth Meeting of the Association of European Senates

I would like to thank you once again for having taken part in this meeting of the ASE. It was a tremendous honour for Switzerland to host you, and I hope you can take home a lot of pleasant memories as well as many useful ideas for your respective parliaments. In one month's time, you will receive the minutes of yesterday's and today's meetings in French and English.

I wish you all a safe journey home.

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