



सत्यमेव जयते

# COMMONWEALTH SPEAKERS AND PRESIDING OFFICERS

**EIGHTH CONFERENCE, NEW DELHI (INDIA)  
6-8 JANUARY 1986**

## PROCEEDINGS

**LOK SABHA SECRETARIAT - NEW DELHI**



**EIGHTH CONFERENCE OF COMMONWEALTH  
SPEAKERS AND PRESIDING OFFICERS  
NEW DELHI (INDIA)**

Monday 6 to Wednesday 8 January, 1986

**PROCEEDINGS**



**LOK SABHA SECRETARIAT  
NEW DELHI**

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## LIST OF PARTICIPANTS

### AUSTRALIA

Sen. the Hon. D. McClelland,  
*President of the Senate*

### BAHAMAS

Sen. the Hon. Edwin L. Coleby,  
*President of the Senate*

Hon. Sir Clifford Darling, J.P., M.P.  
*Speaker of the House of Assembly*

### BARBADOS

Sen. the Hon. Sir Arnott Cato, KCMG,  
*President of the Senate*

### BOTSWANA

Hon. J.G. Haskins, O.B.E., M.P.  
*Speaker of the National Assembly*

### CANADA

Sen. the Hon. Guy Charbonneau,  
*Speaker of the Senate*

Hon. John William Bosley, M.P.,  
*Speaker of the House of Commons*

### Fiji

Hon. W.J. Clark,  
*President of the Senate*

Hon. Tomasi R. Vakatora, M.P.,  
*Speaker of the House of Representatives*

### GAMBIA

Hon. Momadou Bahoucarr Njie, M.P.,  
*Speaker of the House of Representatives*



**INDIA**

Hon. Dr. Bal Ram Jakhar,  
*Speaker of Lok Sabha & Chairman of the Conference*

Hon. Dr. (Smt.) Najma Heptulla,  
*Deputy Chairman of Rajya Sabha*

Hon. M. Thambi Durai,  
*Deputy Speaker of Lok Sabha*

**KENYA**

Hon. S.K. Arap Ngeny,  
*Deputy Speaker of the National Assembly*

**KIRIBATI**

Hon. Matita Taniera,  
*Speaker of Parliament*

**LESOTHO**

Hon. Chief George Bereng,  
*President of the Senate*

Hon. Dr. J.T. Kolane, O.D.S.M., O.L., LL.D.  
*Speaker of the National Assembly*

**MALAWI**

Hon. Nelson Khonje, M.P.,  
*Speaker of Parliament*

**MALAYSIA**

Y.B. Dato Mohamed Zahir,  
*Speaker of the House of Representatives*

**MALTA**

Hon. Daniel Micalief,  
*Speaker of the House of Representatives*

**NAURU**

Hon. R.J.T. Kun, M.P.,  
*Speaker of Parliament*

**NEW ZEALAND**

Hon. G.A. Wall,  
*Speaker of the House of Representatives*

**SRI LANKA**

**Hon. E.L. Senanayake,**  
*Speaker of Parliament*

**SWAZILAND**

**Hon. S.Z.S. Dhlamini,**  
*Speaker of the House of Assembly*

**TANZANIA**

**Hon. Chief Adam Sapi Mkwawa, OBE,**  
*Speaker of the National Assembly*

**TONGA**

**Hon. Kalanivalu Fotofili,**  
*Speaker of the Legislative Assembly*

**Hon. Fusitua,**  
*Presiding Officer*

**TRINIDAD & TOBAGO**

**Sen. the Hon. Dr. Wahid Ali,**  
*President of the Senate*

**UNITED KINGDOM**

**Lord Hailsham of St. Marylebone,**  
*Lord Chancellor*

**Rt. Hon. Bernard Weatherill,**  
*Speaker of the House of Commons*

**VUNUATU**

**Hon. F.K. Timakata,**  
*Speaker of the Parliament*

**ZAMBIA**

**Hon. Dr. R.M. Nabulyato, OGCR, M.P.**  
*Speaker of the National Assembly*

**ZIMBABWE**

**Hon. N.C. Makombe,**  
*President of the Senate*

**Hon. D.N.E. Mutasa,**  
*Speaker of the House of Assembly*



## OBSERVERS

### I. Observers from Commonwealth Countries

#### SASKATCHEWAN (CANADA)

Hon. Dr. Herb Swan,  
*Speaker of Legislative Assembly*

#### FORMER PRESIDING OFFICERS OF PARLIAMENT OF INDIA

Dr. G.S. Dhillon, M.P.

Shri Shyam Lal Yadav, M.P.

Shri G. Lakshmanan

### II. Presiding Officers of State/Union Territory Legislature in India

#### ANDHRA PRADESH

Shri G. Narayan Rao,  
*Speaker*

Shri V. Venkata Suryanarayana Raju,  
*Deputy Speaker*

#### ASSAM

Sheikh Chand Mohammad,  
*Speaker*

#### BIHAR

Shri Arun Kumar,  
*Chairman*

Prof. Shiv Chandra Jha,  
*Speaker*

Shri Shiva Nandan Paswan,  
*Deputy Speaker*

#### GUJARAT

Shri Natwarlal C. Shah,  
*Speaker*

Shri Karsandas Sonari,  
*Deputy Speaker*

**HARYANA**

**Sardar Tara Singh,**  
*Speaker*

**Shri Ved Pal,**  
*Deputy Speaker*

**HIMACHAL PRADESH**

**Shrimati Vidya Stokes,**  
*Speaker*

**JAMMU & KASHMIR**

**Shri M.K. Tickoo,**  
*Chairman*

**Shri Mangat Ram Sharma,**  
*Speaker*

**Malik Ghulam-ud-Din,**  
*Deputy Speaker*

**KARNATAKA**

**Shri S. Mallikarjunaiah,**  
*Deputy Speaker*

**Shri Lakshminarasimhaiah,**  
*Deputy Speaker*

**MADHYA PRADESH**

**Shri Rajendra Prasad Shukla,**  
*Speaker*

**MANIPUR**

**Sh. Wahengbam Angou Singh,**  
*Speaker*

**Shri Heisnam Sanayaima Singh,**  
*Deputy Speaker*

**MEGHALAYA**

**Shri E.K. Mawlong,**  
*Speaker*

**Shri I.R. Marak,**  
*Deputy Speaker*



**NAGALAND**

**Shri E.T. Ezung,**  
***Speaker***

**Shri Chenlom,**  
***Deputy Speaker***

**ORISSA**

**Shri Prasanna Kumar Dash**  
***Speaker***

**Shri Chintamani Dyan Samantara,**  
***Deputy Speaker***

**PUNJAB**

**Sardar Ravi Inder Singh**  
***Speaker***

**Sardar Nirmal Singh Kahlon,**  
***Deputy Speaker***

**RAJASTHAN**

**Shri Giriraj Prasad Tiwari,**  
***Acting Speaker***

**SIKKIM**

**Shri T.R. Sharma,**  
***Speaker***

**Shri Ram Lepcha,**  
***Deputy Speaker***

**TAMIL NADU**

**Dr. M.P. Sivagnanam**  
***Chairman***

**Thiru G. Swaminathan,**  
***Deputy Chairman***

**Thiru P.H. Pandian,**  
***Speaker***

**Thiru V.P. Balasubramanian,**  
***Deputy Speaker***

**TRIPURA**

**Shri Amerendra Sarma,**  
*Speaker*

**Shri Bimal Sinha,**  
*Deputy Speaker*

**UTTAR PRADESH**

**Shri Birendra Bahadur Singh Chandel,**  
*Chairman*

**Shri Niaz Hasan,**  
*Speaker*

**Shri Trilok Chandra,**  
*Deputy Speaker*

**WEST BENGAL**

**Shri Hashim Abdul Halim,**  
*Speaker*

**Shri Kalimuddin Shams,**  
*Deputy Speaker*

**GOA, DAMAN AND DIU**

**Shri Dayanand Ganesh Narvekar,**  
*Speaker*

**MIZORAM**

**Dr. H. Thansanga,**  
*Speaker*

**Shri K. Sangchhum,**  
*Deputy Speaker*

**PONDICHERRY**

**Thiru Kamichetty Sri Parassourama Varaprasada Rao Naidou,**  
*Speaker*

**Thiru M. Chandirakasu,**  
*Deputy Speaker*



**ARUNACHAL PRADESH**

Sh. T.L. Rajkumar,  
*Speaker*

Sh. Chera Tale,  
*Deputy Speaker*

**DELHI**

Shri Purushottam Goyel,  
*Chairman*

Shrimati Tajdar Babar,  
*Deputy Chairman*

**III. Clerks, Secretaries/Secretaries-General of Parliaments of the  
Commonwealth Countries**

**AUSTRALIA**

Mr. H.C. Nicholls,  
*Deputy Clerk of the Senate*

Mr. A.R. Browing,  
*Clerk of the House of Representatives*

**BAHAMAS**

Mr. Percy Saunders,  
*Clerk to the Legislature*

**BARBADOS**

Mr. George Brancker,  
*Clerk of the Parliament*

**BOTSWANA**

Mr. Charles Mokobi,  
*Clerk of the National Assembly*

**CANADA**

Mr. Charles Lussier,  
*Clerk of the Senate*

Dr. C.B. Koester,  
*Clerk of the House of Commons*

Mr. Philip Laundry,  
*Clerk Assistant, House of Commons*

FIJI

Mr. Ratu Isoa Gavidi,  
*Clerk to the Parliament*

GAMBIA

Mr. Eddie Bright,  
*Clerk of the House of Representatives*

INDIA

Shri Sudarshan Agarwal,  
*Secretary-General of Rajya Sabha*

Dr. Subhash C. Kashyap,  
*Secretary-General of Lok Sabha & Secretary-General of  
the Conference*

KENYA

Mr. J. K. Masya,  
*Deputy Clerk of the National Assembly*

KIRIBATI

Mr. Atiera Tetoa,  
*Clerk of Parliament*

LESOTHO

Mr. P.L. Ntholi,  
*Clerk of the Senate*

Mr. T.E. Ntehakana,  
*Clerk of the National Assembly*

MALAWI

Mr. P.J.S. Mpase,  
*Clerk of the Parliament*

**MALTA**

**Mr. C. Mifsud,**  
*Clerk of the House of Representatives*

**NAURU**

**Mr. F. Cain,**  
*Deputy Clerk of the Parliament*

**NEW ZEALAND**

**Miss Adrienne Von Tunzelmann,**  
*Deputy Clerk of the House of Representatives*

**SRI LANKA**

**Mr. S. N. Seneviratne,**  
*Secretary-General of the Parliament*

**TANZANIA**

**Mr. J.W.R. Kasanda,**  
*Senior Clerk Assistant of the National Assembly.*

**TRINIDAD & TOBAGO**

**Mr. Russel Griffith,**  
*Clerk of the House of Parliament*

**UNITED KINGDOM**

**Mr. John Sainty,**  
*Clerk of the Parliament*

**Sir Kenneth Bradshaw,**  
*Clerk of the House of Commons*

**VANUATU**

**Mr. Bulekuli dit Sacsac Line,**  
*Clerk of the Parliament*

**ZAMBIA**

**Mr. Ng'ona Mwelwa Chibesakunda,**  
*Clerk of the National Assembly*

**ZIMBABWE**

**Dr. John Kurewa,**  
*Secretary to Parliament*

**IV. Commonwealth Parliamentary Association**

Sir Robin Vanderfelt,  
*Secretary-General*  
*Commonwealth Parliamentary Association*

**V. Honorary Officers of Lok Sabha**

Shri S.L. Shakdher,  
*Hony. Officer of Lok Sabha*

Shri Avtar Singh Rikhy,  
*Hony. Officer of Lok Sabha*

**VI. Secretaries of State/Union Territory Legislatures in India**

**ANDHRA PRADESH**

Shri E. Sadasiva Reddy,  
*Secretary*

**ASSAM**

Dr. P.N. Hazarika,  
*Secretary*

**BIHAR**

Shri A.P. Choubey,  
*Acting Secretary*

Shri V.N. Mehrotra,  
*Secretary*

**GUJARAT**

Shri T.S. Barot,  
*Secretary*

**HARYANA**

Shri G.L. Batra,  
*Secretary*

**HIMACHAL PRADESH**

Shri V. Verma,  
*Secretary*

**JAMMU & KASHMIR**

**S. Inderjit Singh,  
Secretary**

**Shri Abdur Rashid,  
Secretary**

**KERALA**

**Shri K.P. Padmanabhan,  
Secretary**

**MADHYA PRADESH**

**Shri Bharat Narain,  
Secretary**

**Shri D.S. Pathak,  
Director & Adviser to Speaker**

**MANIPUR**

**Shri R.K. Birendra Singh,  
Secretary**

**MEGHALAYA**

**Shri T. Cajee,  
Secretary**

**ORISSA**

**Shri Nirakar Purohit,  
Secretary**

**PUNJAB**

**Sardar Partap Singh,  
Secretary**

**RAJASTHAN**

**Shri Nandlal Chhangani,  
Secretary**

**SIKKIM**

**Shri R.B. Mukhia,  
Secretary**



TAMIL NADU

Thiru P. Pallikondaperumal,  
*Secretary*

Thiru C.K. Ramaswamy,  
*Commissioner & Secretary*

TRIPURA

Shri Barindra Kumar Bhattacharjee,  
*Secretary*

UTTAR PRADESH

Shri H.N.S. Bhatnagar,  
*Secretary*

Shri Bhal Chandra Shukla,  
*Secretary*

WEST BENGAL

Shri L.K. Pal,  
*Secretary*

GOA, DAMAN AND DIU

Shri M.M. Naik,  
*Secretary*

MIZORAM

Shri L.C. Thanga,  
*Secretary*

DELHI

Shri T.R. Bahri,  
*Secretary-in-Charge.*

## AGENDA

1. Election of Vice-Chairmen
2. Amendment of the Standing Rules of the Conference
3. Adoption of the Conference Agenda
4. Declaration and registration of pecuniary interests of members
5. Problems of parliamentary privilege with special reference to:
  - (a) use of parliamentary records before courts and tribunals
  - (b) disclosure of information to members by their constituents.
6. Are Parliamentary Committee Systems fulfilling their function?
7. Facilities for Members of Parliament
8. Powers of Upper Houses and of their presiding officers
9. Does a written or an unwritten constitution better protect the power of Parliament?
10. The one-party Parliament and the Westminster system
11. The political position of the presiding officer outside Parliament with special reference to general election
- \*12. Participation of Speakers of sub-national Legislatures in the Conference of Commonwealth Speakers and Presiding Officers
13. Procedural Developments:
  - (a) The *sub judice* rule.
  - (b) The Speaker and the question period.
  - (c) Methods of voting, including the manner of electing the Speaker.

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\*This item was substituted by the Conference in place of the item "The proper use of the chambers and precincts of Parliament" proposed but withdrawn later.

(d) Discretionary powers of the Chair.

(e) The Speaker and the use of precedent.

14. Timing and venue of the next Conference and the next Standing Committee Meeting.
  15. Election of incoming Standing Committee.
-

## TIME TABLE OF THE CONFERENCE

### Sunday, 5 January, 1986

- 1515 — Meeting of Members of the Standing Committee Room No. 136, Parliament House
- 1800 — Inauguration of Exhibition on 'Parliament and the Commonwealth' by Hon. Dr. Bal Ram Jakhar, Speaker, Lok Sabha at Parliament House Annexe

### Monday, 6 January, 1986

- 1100 — Inaugural Ceremony of the Conference in the Central Hall, Parliament House:
- (i) Welcome Address by Hon. Dr. Bal Ram Jakhar, Speaker, Lok Sabha
  - (ii) Inaugural Address by Hon. R. Venkataraman, Vice-President of India and the Chairman of Rajya Sabha, Release of Special cover with First Day Cancellation of Postage stamps
  - (iii) Thanks-giving address by Hon. Dr. Bal Ram Jakhar, Speaker, Lok Sabha
- 1200 — Conference—First Session, Main Committee Room, Parliament House Annexe
- (i) Release of Book "Parliaments of the Commonwealth"
  - (ii) Election of Vice-Chairmen
  - (iii) Amendment of the Standing Rules of the Conference
  - (iv) Adoption of the Agenda
- Declaration and registration of the pecuniary interests of members

(xx)

1500 — Conference—Second Session  
to  
1630 Problems of Parliamentary privilege with  
special reference to:—

(a) use of parliamentary records before courts  
and tribunals

(b) disclosure of information to members by  
their constituents

Are Parliamentary committees systems fulfilling  
their function?

**Tuesday, 7 January, 1986**

1000 — Conference—Third Session  
to

1300 Facilities for members of Parliament

Powers of Upper Houses and of their presiding  
officers

1500 — Conference—Fourth Session  
to

1600 The one-party Parliament and the Westminster  
system

**Wednesday, 8 January, 1986**

1000 — Conference—Fifth Session  
to

1300 The one-party Parliament and the Westminster  
system (contd.)

The political position of the presiding officer  
outside Parliament with special reference to a  
general election.

Procedural Developments:

(a) The *sub-judice* rule

(b) The Speaker and the question period

(c) Methods of voting, including the manner of  
electing the Speaker

(d) Discretionary powers of the Chair

**(e) The Speaker and the use of Precedent**

**Participation of Speakers of sub-National Legislatures in the Conference of Commonwealth Speakers and Presiding Officers**

**Timing and venue of the next Conference and the next Standing Committee Meeting**

**Election of incoming Standing Committee**

**1600 — Informal Meeting of Clerks/Secretaries/Secretaries-General of Commonwealth Parliaments (including those from Indian State/Union Territory Legislatures in Room No. 139, Parliament House Annexe.**

**Thursday, 9 January, 1986**

**Sight-seeing tour of Delhi**

**Friday, 10 January, 1986**

**Sight-seeing trip to Agra**



# INAUGURAL CEREMONY

(Central Hall, Parliament House, New Delhi)

11 A.M. 6 JANUARY, 1986

**Mr. Speaker, Bal Ram Jakhar (India):** Your Excellency, the Vice-President of India, Hon. Speakers and Presiding Officers, Distinguished Guests, Hon. Members of Parliament, Ladies and Gentlemen:

It is my proud privilege today to extend a hearty welcome to the Hon. Vice-President of India for having made it convenient to agree to inaugurate the Eighth Conference of Commonwealth Speakers and Presiding Officers and release the Special Cover with first day cancellation of stamps in commemoration of the occasion. Hon. Speakers and Presiding Officers, I warmly welcome you to New Delhi. It is a great pleasure for us to have you all here for this Conference. All of you, Excellencies, are old and esteemed friends. I have been looking forward to this occasion to benefit by mutual exchange of ideas on the working of parliamentary institutions, to meet and know you more closely and to strengthen our friendships.

Excellencies, we are members of the Commonwealth family which is a unique experiment in international cooperation and international living. Besides the United Nations and the Non-Aligned Movement, the Commonwealth is the largest and the most representative forum of countries. Its membership today spans six continents and seven oceans embracing more than a third of the world's population. It comprises peoples of widely divergent races, languages, regions, religions and cultures ranging from the poor and the developing countries to the developed ones. It is a voluntary organisation of the nations which have come together not only to serve their national interests but also to contribute towards the evolution of an international order which will promote peace, harmony and progress among the countries of the world. One may ask, "What is the bond that holds together peoples so geographically, racially and economically diverse as the members of this great Commonwealth?" Perhaps it is our common desire for universal

peace and prosperity, our respect for rule of law, our recognition of human freedom, equality and dignity. Then there is also our common interest in the parliamentary form of Government.

Over the years, the Commonwealth has built up a lattice-work of mutual cooperation and consultation at all levels, governmental and non-governmental, in all spheres, political, economic, technical, social etc. At the parliamentary level, we have the Commonwealth Parliamentary Association which aims to promote Commonwealth understanding and respect for parliamentary institutions. The Commonwealth Parliamentary Association acts as a useful machinery for regular consultations between members of the Commonwealth legislatures and its meetings provide opportunities to share experiences and discuss matters of common concern and interest. A new dimension has been added to this inter-parliamentary cooperation in the Commonwealth by the Conference of the Commonwealth Speakers and Presiding Officers. This started in 1969 and this is the Eighth Conference that we are holding now and this is the second one in India.

We in the Commonwealth are placed in an advantageous position as we, among ourselves, have a sizeable and wide-ranging spectrum of knowledge and experience in the working of parliamentary institutions. With the affinities we have in regard to the parliamentary system of Government and attendant institutions, we can exchange ideas purposefully and profit from each other's experiences. It is in this context that the Conference of Commonwealth Speakers and Presiding Officers assumes great importance. It provides us a useful forum to exchange views on the duties, powers, functions and problems of the Presiding Officers and discuss about parliamentary practices and procedures. Such discussions, based on wide knowledge and practical experience of the Presiding Officers, not only contribute to the further growth of healthy parliamentary practices and procedures but also promote mutual understanding and a feeling of fraternity among the Speakers and the Presiding Officers. I hope that our discussions at this Conference would enrich our knowledge and throw up useful suggestions and ideas which would make for far more effective functioning of Parliament and more meaningful participation by members in its proceedings.

To be stable, relevant and effective, political systems and institutions have to keep pace with the changes taking place in society. Any system can prevail only so long as it keeps pace with new

conditions and proves its capability to solve the problems of the people and also to adapt itself to the new environments. The Presiding Officers have to gear up the legislatures, by way of devising and adopting, of course, with the consent of the legislature, adequate procedures and working methods so that the parliamentary institutions may be able to meet the emerging situations on national and international levels and justify themselves as instruments of peaceful socio-economic transformation.

May I request you, Mr. Vice-President, to inaugurate the Conference and to release the first-day special cover?

*(The Vice-President of India then released the Special Day Cover)*

**INAUGURAL ADDRESS BY SHRI R. VENKATARAMAN, VICE-PRESIDENT OF INDIA AND CHAIRMAN, RAJYA SABHA**

**The Vice-President of India (Shri R. Venkataraman): Hon. Speaker Bal Ram Jakhar, Hon. Speakers and Presiding Officers, distinguished guests and friends:**

It gives me immense pleasure to inaugurate the Eighth Conference of Commonwealth Speakers and Presiding Officers. India had the privilege to host the second Conference of Commonwealth Speakers and Presiding Officers in 1970-71. Once again it is our good fortune to hold the Conference in our country. Some of the Presiding Officers must have visited India earlier. We are glad to have them again with us. We also welcome those who are visiting India for the first time; and I wish all of you a very pleasant and fruitful sojourn in our country.

It is a matter of great satisfaction for us that we have assembled here again, in agreement with our long cherished objective of promoting a spirit of unity and cooperation. In today's world, when unity and cooperation are so essential for mankind, our effort to remain together across the six continents and seven oceans is a noble assertion of this idea. In many ways this unity is a gift of history. We not merely preserve it, but we have decided to promote and strengthen it.

It is not easy to establish peace and harmony today in a world that is riven with conflict and strife. And yet, the endeavour must go on ceaselessly for the peace and progress of humanity.

Despite the tremendous progress achieved in the field of science and technology, a large number of people are living without the basic amenities of life, like food, clothing and shelter. The world stands today divided into developed and developing countries, and the chasm between the two is ever widening. It is not beyond human ingenuity to narrow this gap. Only a determined endeavour can reduce the gap, so that the earth's resources can be shared equitably.

In spite of this great task ahead, one feels sad that a certain dimension of man's work offers an unhappy picture. The very

creations of science and technology are posing a danger to our life in the planet. More than 50,000 nuclear warheads capable of destroying mankind from the face of the earth several times over, are stockpiled in the arsenals of the nuclear weapons States. The development of the new weapons systems is bound to lead to further escalation of the nuclear arms race, and enhance the danger of the outbreak of a nuclear war.

Global military expenditure which has reached the staggering level of one trillion dollars and is yet set for a quantum jump if new weapon systems now in the early stages of development are pursued, has pre-empted large amounts of resources required for combating poverty, ignorance and disease in the developing world. This has emerged as a major factor responsible for structural malfunctioning of the world economy.

We have, therefore, to urge upon the nuclear weapon States to make efforts to reach an agreement on substantial reduction in the stockpiles of nuclear warheads. They should declare an immediate moratorium on further testing and development of nuclear weapons. They should reach an understanding which would prevent extension of the arms race into the outer space which is a common heritage of the mankind and should be preserved exclusively for peaceful purposes.

Another regrettable feature of our time is the practice by some States of racial discrimination depriving human beings of their legitimate political and social rights. History has shown that the tide of social revolution cannot be stemmed and that to quote an old English Ballad "For freedom's struggle, once begun, Bequeath'd from bleeding sire to son, Though baffled oft, is ever won."

The Commonwealth fraternity is history's handiwork. When the ships of East India Company and all the mercantile expeditions ventured from the British shores to distant lands, their goal was straight. But soon they managed to get foothold in the countries visited and turned them into colonies. Thus emerged the British empire over which the Sun would not set. The dismantling of the empire and the rise of a host of sovereign states in its place is now part of history. Australia to Zimbabwe represented the A to Z of this process.

Nations widely different in history, culture and tradition, in size and in economic status stand today knitted together as a brotherhood born out of the colonial past. Within the Commonwealth, there

are a number of great many features in our political system which make every one of our countries unique. But at fundamental level we are all practitioners of parliamentary democracy. We recognise certain virtues in this form of government which place it above others.

While opening the Seventh Conference of Commonwealth Speakers and Presiding Officers in Wellington in January, 1984, the Governor-General of New Zealand, the hon. Sir David Stuart Beattie had said: "Although democracy perhaps flounders in the search for new patterns and styles, new rules and discipline, all deductions having been made, it has done less harm and more good than any other form of government."

Parliamentary democracy is a system based on popular mandate. It has an in-built mechanism for providing governments that people choose and, therefore, it provides a room for opposition. Hence its merit lies in the fact that decision-making and policy formulations can never escape deliberations and criticism and above all consultation with and accountability to the people. The institution of Parliament works as the bedrock of democracy. The British left behind two institutions—one, the Parliament and the other, cricket. These two share certain features in common. Both have to be conducted within a framework of rules that are based on fairplay. And both are supervised by unchallenged authority—one by the Presiding Officer and the other by the Umpire. In the House and on the turf but not off it, their presence must be palpable and yet unobtrusive; they must monitor and yet not participate directly, they must judge and try to avoid being judged at least not adversely. The finality of the decisions constitutes an enormous power and equally enormous responsibility. Both sides, the opposition as well as the Treasury benches, repose implicit faith in the Presiding Officer's judgment and impartiality. Their affiliations are to the rules of parliamentary procedures and their energies are directed to the unbiased application of those rules to the proceedings. Presiding Officers are, indeed, the conscience-keepers of parliamentary democracy.

As with all matters of conscience, there is, in the role of the presiding officer, an unchanging still-centre. That still-centre requires and, in fact, demands of the presiding officer, an alertness to the individual rights of members and to the collective sense of the House. Only the Presiding Officer in his mind knows how these two factors are to be balanced without detriment to either. In his thus balancing the two, the democratic will of the people finds



articulation. This 'still centre' of the Presiding Officer's role is, I believe, common to all democracies of the Commonwealth participating in the Conference. Needless to say, local factors called for and led to several variations, but these variations have been inevitable, given the diversity of the Commonwealth countries. The value and merit of the democratic system lies in its flexibility to adapt itself to the changing needs and times of each country. Edmund Burke stated in his work *'On the Sublime and the Beautiful'*:

"A State without the means of some change is without the means of its conservation".

Commonwealth countries have, therefore, had to modify the Westminster model, adopt other nostrums and fashion procedures of their own to suit the genius of their countries and the will of the people.

We feel proud that India is not only the largest democracy, but also one of the healthiest and the most vibrant democracies in the world. Adult franchise has created amongst the people of India a renewed awareness of their right to shape their destiny. India has retained and worked the party system. The Indian electoral results have demonstrated unmistakably their ability to choose a Government for themselves and also their maturity to call parties and Government to account at the time of each General Election. No party or person can take the Indian electorate for granted, nor predict their behaviour. This is a sign of maturity and wisdom.

During the last four decades since independence, our country has—and I may claim with pardonable pride—achieved spectacular progress in several fields like food, self-sufficiency, industrial growth, rural development etc., all of them through the democratic process with the advice and consent of Parliament. Much remains to be done and we have faith and confidence that we shall achieve them through the same process as in the past.

Today the Commonwealth represents more than a third of the world's population and the countries it represents occupy about a quarter of the world's surface and contribute a substantial share of the world's wealth. But, at the same time, the Commonwealth contains a larger proportion of the under-developed and developing areas than other parts of the world. The progress of each one of us depends to a greater or lesser degree on the cooperation that may be forged between us in this Conference.

I understand that you propose to discuss several subjects of relevance and importance to the Parliamentary form of Government. For instance, the relative jurisdiction of the judiciary and the legislature on questions relating to Parliamentary privilege with particular reference to the use of Parliamentary records before the courts and tribunals is one of them. Specific issues such as the working of the Parliamentary Committee system, and procedural developments and the declaration and registration of the pecuniary interests of Members are to be deliberated upon in this Conference. It is well that you propose to examine the "Declaration and Registration of Pecuniary Interests of Members." In several countries of the Commonwealth there is a district procedure in the matter of declaration and registration of Members' pecuniary and personal interests. In India, according to the rules of the House and Directions from the Chair, an objection can be raised to a Member's right of vote on grounds of personal, pecuniary or direct interest in the House or in a Parliamentary Committee. It is useful to frame a Code of Conduct regarding disclosure of personal or pecuniary interest in a matter arising in Parliament. But it is equally realised that a code must have a sanction and unless the political parties evolve a dependable form of sanctions, mere enunciation of a code of conduct is hardly of much value.

**Parliamentary Democracy is a dynamic concept.** Parliament is a growing and constantly evolving institution. For Ministers to remain responsible to Parliament, it is necessary that the Parliament and its Members be responsible to the people. And this accountability is continuous concurrent and not merely periodical ultimate guardian of the integrity in public life.

The subjects proposed for discussion reflect the changes of emphasis in the polity of the concerned nations. Also to be discussed is the role of the second chamber. It is a subject where large divergences in the system from that obtaining in the U.K. can be noticed.

India has had a second chamber since 1919 with near equal roles with the first chamber, its smaller numbers notwithstanding.

In regard to the Chairmanship of the Rajya Sabha, India has borrowed from the example of the USA where the Vice-President is the President of the Senate. India's second chamber has, however, retained the features from the U.K. also. The functions which the Presiding Officer exercises are of a judicial character. The fusion of the Executive role as Vice-President and the judicial role as Chair-

man is not an anomaly. Such cases are not unknown in constitutional practice. In the U.K. the Lord Chancellor presides over the House of Lords sitting in both its legislative and judicial capacities. He presides over the Judicial Committee of the Privy Council also. He is a Member of the Cabinet and is directly concerned with judicial administration.

By and large, our second chamber's performance in the legislative process and the formulation of policies have been extremely useful in the governance of this country and it has worked in a spirit of cooperation and not in confrontation with the Lok Sabha. I hope the Speaker will agree. The Rajya Sabha's role as a revising House giving a second thought and look to legislative and executive functions of Government and reviewing them from the point of view of the States in our Federal Polity has been recognised.

The old joke that it is superfluous if the Second Chamber agrees with the popular House and it is mischievous if it disagrees no longer holds good.

Friends, I wish you a very pleasant stay in our country. I hope that despite the fairly heavy schedule of your meeting you will have time to see our monuments, both ancient and modern, namely, the institute of higher learning and research and also enjoy our lively winter and our fascinating flowers.

It is appropriate that the Government of India have issued a special Philatelic cover to commemorate this historic meet of the Speakers and the Presiding Officers of the Commonwealth. I have great pleasure in releasing it.

I conclude with my best wishes for the success of your very valuable deliberations.

Thank you.

**Mr. Speaker Bal Ram Jakhar (India):** Your Excellency the Vice-President of India, Hon. Speakers and Presiding Officers, Members of the Diplomatic Corps, Your Excellencies, Hon. Members of both Houses of Parliament, Ladies and Gentlemen,

It has been very kind of you, Mr. Vice-President, that in spite of all the heavy engagements in your hand, you had readily agreed to inaugurate this Conference.

We are very grateful for your presence and for your illuminating Address. We are also beholden to you for releasing the Special Cover with the first day cancellation of stamps issued on this occasion.

Mr. Vice-President, you are also the Chairman of the Rajya Sabha, the Upper House. As a distinguished Presiding Officer, you are a happy blend of firmness and persuasiveness and are liked by one and all. We have been very much concerned with the role of comradeship between our two Houses and I fully reciprocate your sentiments, Sir, that we work in complete harmony, respecting each other's rights and positions, and I think there has never been any rancour so far and that is how it should be. The cart goes on two wheels and our wheels are very perfectly well-oiled.

Our gratitude extends to the Prime Minister, Mr. Rajiv Gandhi, who has extended the fullest possible support for making all the necessary arrangements for this Conference. I also thank all my Members who have been so kind as to attend, as also to cooperate with the arrangements and its functioning throughout these days.

Since all of us belong to the Commonwealth family, we follow the Westminster System of democracy with variations suiting our local genius and requirements.

We have with us today a very vigilant Lord Hailsham and also, Mr. Vice-President, we have got a Pole Star here, Mr. Nabulyato of Zambia. He has attended all the Speakers' Conferences so far since its inception in 1960, and that is why I call him the Pole Star. It is but natural that these variations are reflected in the parliamentary practices and procedures followed by us. Our Parliaments too are not similar in sizes and patterns. All the Honourable Speakers and Presiding Officers have, I am sure, come here with a wealth of

ideas and experience to share with one another through deliberations at this Conference. This mutual interaction in an intimate and cordial atmosphere will reiterate and promote our commitment to the causes we stand for. It naturally helps us. This has been my experience when we have travelled throughout to attend these Conferences; and they have helped us in our outlook, in our formulation of the new ideas and the assimilation of those ideas to suit our own conditions here.

I hope most of you have seen the interesting exhibition on "Parliament and the Commonwealth" which opened last night in the Parliament House Annexe. I was deeply touched at the interest evinced by you in this exhibition particularly in the models of the House of Commons Chamber at Westminster, the parliamentary building of Malta as also the buildings of many of our State Legislatures. You must have also seen the excellent photographs of the parliamentary buildings of many Commonwealth countries and our State Legislatures. As you are aware, we are in the process of building a Parliamentary Museum and Archives with the aim of preserving the past and the present for the future by protecting from the ravages of time and neglect all the precious records, historic documents and articles connected with our Constitution and Parliament and through them, to make the history and the growth of parliamentary institutions and the political system better understood. We are keen to add to this Museum interesting documents and objects of parliamentary interest from Commonwealth and other countries as well. I would, on this occasion, like to request my distinguished colleagues from the Commonwealth to help us in achieving this objective by sending for permanent display in our Museum and future exhibitions blown-up colour photographs and illuminated models of their parliamentary buildings and chambers.

By the way, Mr. Speaker Weatherill, you have sent us the model here, but they say that this is temporary. But you know, once you come to the house, it is not for the guests to leave, it is for the host to allow them to leave. So, that is something which it might be not possible for us to part with.

In the end, I welcome you, Excellencies, once again to India and hope you will find your stay here enjoyable. I am confident that the deliberations of this Conference will be fruitful and rewarding for all of us.

For any shortcomings, you will forgive us. But I hope that with mutual understanding and cooperation, your stay is going to be very very enjoyable. The people and the Members of Parliament look

forward to having discussions with you, to having good time and to enriching their own knowledge, because knowledge is so vast but time is so short that the more you know, the more you realise how less you know. Naturally we would like to add more and more to what we know and to take advantage of this storehouse which lies with us.

Thank you once again for coming. Thank you, Mr. Vice-President, for having been so kind to be with us today.

Thank you all very much.

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FIRST SESSION

MONDAY, JANUARY 6, 1966.

[HON. DR. BAL RAM JAKHAR, SPEAKER, LOK SABHA  
(INDIA) in the Chair]

RELEASE OF BOOK "PARLIAMENTS OF THE  
COMMONWEALTH"

**The Chairman:** To start, I think it will be fitting to release the book 'Parliaments of the Commonwealth'.

*(The book was released by the Chairman)*

**The Chairman:** All the Parliaments of the Commonwealth are covered in this book. We are giving you a copy each.

## ITEM I—ELECTION OF VICE-CHAIRMEN

**The Chairman:** Now we start with the agenda. The first item on the agenda is "Election of Vice-Chairmen". Under Article 12 of the Standing Rules of the Conference, two Vice-Chairmen are elected by the Conference from the floor. So may I have some names?

**Mr. Speaker Weatherill (United Kingdom):** I propose the name of Speaker Mutasa.

**Mr. Speaker Nabulyato (Zambia):** I propose the name of Mr. President Wahid Ali.

**The Chairman:** There are no other nominations. So I think we can take it that they are both elected unanimously.

**Mr. President Wahid Ali (Trinidad & Tobago):** Thank you for giving me an opportunity to express my gratitude to you and our distinguished colleagues for the honour you have done to Trinidad and Tobago by electing me to serve as Vice-Chairman during this Conference.

You, Sir, as usual are the most charming and obliging host and it is difficult to assist you at your level. But let me assure the hon. Members that I shall make efforts to observe the rules of the Conference. It is a pleasure for the grandson of an indentured emigrant to be back here in this capacity.

Thank you very much again.

ITEM 2—AMENDMENT OF THE STANDING RULES OF THE  
CONFERENCE

**The Chairman:** The Standing Committee agreed to recommend to the Conference the proposal by Cyprus that Rule 3 be amended in order to increase the quorum of the Standing Committee from 3 to 4 members. The reason for this change is that we had formerly six members and now we have up to ten. That is why this amendment was moved. Now it is up to the House.

Is it agreed?

**Some hon. Members:** Yes.

**The Chairman:** So I take it that it is agreed to.

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### ITEM 3—ADOPTION OF THE AGENDA

**The Chairman:** The full agenda is now proposed to the Conference for its approval.

**Mr. President Wahid Ali (Trinidad & Tobago):** It is only this morning, Mr. Chairman, that I gave in writing a notice to the Secretary-General of my intention to move the following motion:

“Resolved that the following new subject be included on the agenda, namely, “The role of Parliament in the accountability of State-owned enterprises registered and operating as private companies.”

I do not know whether you are aware of the reason why I have given it, but if you wish, I shall explain why. In some countries of the Commonwealth this is posing quite a dilemma namely the accountability of companies which are operating, which are entirely funded by tax-payers' money and I do not know whether or not the Parliament has an adequate role in the supervision of the operations of such companies. Perhaps, at this point, some more learned Members may like to present some introductory remarks. Otherwise, the Trinidad and Tobago delegation will try to make some sketchy introduction.

**The Chairman:** May I just bring to your kind notice that the time available at the disposal of all of us is limited and we can just put it as the last item. If time is available, then we might take it up, if the House so desires: otherwise, I do not think it will be possible. But we can have it as an item for the next occasion because this is not the last. It is the beginning. So, we can take it later on also and you can send your suggestion for its inclusion for the next Standing Committee meeting.

There is one more item on the agenda, and I would like to have the approval of the House because the Standing Committee decided to recommend it to the House. There is a special request from the Canadian Speaker. Earlier they had given one item. Now they want to withdraw it and instead introduce a new one. The Standing Committee has no objection to that. If the House so approves, shall I take it as approved?

**Mr. Speaker Tomasi R. Vakatora (Fiji):** Mr. Chairman, Sir, my hearing aid was not working at that very crucial moment. I am not quite clear in my mind about what is now proposed.

**The Chairman:** The proposal is that the subject for discussion proposed by the Canadian Parliament is to be withdrawn. The subject is:

“The proper use of the chambers and precincts of Parliament.”  
The Canadian Parliament wants to withdraw this subject at the moment and substitute it with a new one. If the House approves the Standing Committee’s recommendation, then I shall take it as approved.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** What is the substitution?

**Mr. Speaker Bosley (Canada):** The substitution which has been proposed and on which we would like to have discussion is “The representation of Speakers of provincial State legislatures”.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** We are only talking about including this item in the agenda. Is that correct?

**The Chairman:** Yes, Sir.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** From what has been said, it appears to me that this will require a change in the Constitution of this conference.

**The Chairman:** Change in the rule.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** Change in the rule—whatever it is called. This to my mind will require two months’ notice in writing and I am asking whether this requirement has been fulfilled.

**Mr. Speaker Bosely (Canada):** Mr. Chairman, it is not my intention to propose a change to the rule. At the point my simple request is that the matter be scheduled for discussion here at this conference. Therefore, I suggest that no procedural arguments may take place. I entirely agree that if we recommend change in the rules then we shall have to be making proper procedural notifications.

But our understanding was that we were being asked at this point to consider including this subject for discussion on the agenda.

**The Chairman:** Rule 19 of the Standing Rules says:

“A motion for the amendment of the standing rules or the adoption of new rules shall require two months’ notice to be given in writing before the commencement of the Conference at which it is to be considered. Such a motion shall be proposed and seconded from the floor of the Conference, and shall be decided by a majority vote of the Conference. Any amendment or new rule so adopted shall be effective immediately.”

So, that needs two months’ time. But the subject can be discussed. There is no problem on that.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** Mr. Chairman. I am referring to Rule 2 about membership of the Conference which restricts—it may not be the proper term to use—the membership of the Conference to the Speakers and Presiding Officers of the Parliaments of the sovereign nations of the Commonwealth. If it is the intention of this motion to change the membership of this Conference, then, I submit with respect that the rules require to be changed. If it is only for discussion and no decision is reached, then that is entirely a different matter.

**The Chairman:** That is the only matter. If we have to decide it, then we have to change the rules and then make them members. Now, it is only for discussion. We cannot change the rules without prior notice of two months, and only after it has been adopted, it will become effective. Now, it is a question whether the House will approve or disapprove of this suggestion at this stage. It has been discussed so many times: even the Standing Committee so many times has given its recommendation to the contrary. I think there is no harm if Hon. Mr. Bosley puts it before the House and we can have a discussion and later we can decide what to do.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** Some of us are, and at least I am, very conscious of the Speakers’ position in this Conference from smaller Parliaments. If it is the understanding that this subject is only for discussion without any conclusion, without any recommendation whether or not to change the rules, that is perfectly okay with me.

**The Chairman:** So, I take it that it is approved.

#### ITEM 4—DECLARATION AND REGISTRATION OF THE PECUNIARY INTERESTS OF MEMBERS

**The Chairman:** Now, we start with the discussion on Declaration and registration of the pecuniary interests of members.

The opener will be Hon. Mr. D. McClelland, Australia. The opener will have twenty minutes, while the subsequent speakers will have fifteen minutes each.

**Mr. President McClelland (Australia):** Mr. Chairman, Sir, while your countrymen fight mine, one against the other, on the Sydney Cricket ground for cricket supremacy between the two nations, I am particularly pleased on behalf of the Australian delegation here this morning to thank you and your colleagues very much indeed for the warm and friendly welcome extended to all of us from Australia and others from other Commonwealth countries.

I do not know the outcome of the cricket test because that depends, as it were, on the fighting power, on the ability of the two respective sides, but if it is satisfactory in Australia today, as it has been to us here in Delhi, I am sure, everyone will be very happy indeed in both here in Delhi, I am sure, everyone will be very happy indeed in both absolutely magnificent and we do not have words to be able to say "Thank you" sufficiently and adequately.

Mr. Chairman, Sir, on behalf of my colleague, the former Speaker of the Australian House of Representatives, Dr. Harry Jenkins, who recently tendered his resignation from the Australian Parliament, I present to the Conference a paper on the declaration and registration of the pecuniary interests of Members of the Australian Parliament. Mr. Chairman, I was particularly pleased to hear your Vice-President in his speech of welcome this morning make a brief reference to this subject and India's experience in the matter. I am sure everyone has read the Paper that has been submitted to the Conference by my colleague, Dr. Jenkins. He in his paper has summarised the progress that has been made towards the introduction of a system of compulsory registration of interests of members of the Australian Parliament and outlined the constitutional position and the Standing Orders of the two Houses which are relevant to the matter.

The Australian Labour Government has been formally and publicly committed to the principle for some years now and, in line with this policy, when the Government was elected in 1983, the new Prime Minister tabled in Parliament statements by Ministers of the Crown of the pecuniary interests of the Ministers and their families.

In October 1984, the House of Representatives adopted a new standing order which established a Committee of Members' Interests, which requires the registration of interests on a form to be determined by the Committee.

I should mention at this stage, of course, that despite these moves towards the registration of members' interests in Australia, there has never been a case or suggestion in the Australian Parliament of any impropriety by any Member in relation to Members' interests, and I must emphasise this in all fairness to my Parliamentary colleagues in Australia.

The Committee of Members' Interests, to which I have made a reference, is having difficulties in determining the form to be sent to members by the Registrar of Members' Interests, and is still working to find a solution to this problem.

The Standing Orders Committee of the Senate, which I have the honour to chair, has considered establishing a system for the registration of Senators' interests at a number of meetings but has not yet come to any agreed conclusions. At the last meeting of this Committee, the Leader of the Government in the Senate and the Leader of the Opposition in the Senate, at the request of the Committee, agreed to confer and report back to the Committee their considerations, hopefully with a recommendation. That took place some time in September or October but they have not yet been able to report progress in these discussions.

On behalf of Dr. Jenkins, I now leave the subject open for discussion and ask the various Presiding Officers who have faced similar problems and who may have found some solution to those problems, to let the meeting know of their experiences in the hope that they may guide us in considering the position in our National Parliaments and more especially so far as the Australian Parliament is concerned.

I thank you, Mr. Chairman and I have great pleasure in presenting the Paper formally on behalf of my colleague Dr. Jenkins.



**The Chairman:** Now, it is open for discussion. Who is going to take the floor? Yes, Mr. Weatherill.

**Mr. Speaker Weatherill (United Kingdom):** Recently on 17th December we had in the House of Commons a debate on this matter. So, it is very much in my mind; and if I may summarize the debate, it is as follows:

As far back as can be readily traced, the House has set its face against Members using their position for personal gain, while upholding their constitutional right to represent without impediment their constituents and the country as a whole. This balancing of two principles has not always been easy. More recently, the concept of the right even of those in public life to privacy has entered the equation as has a great increase in professional lobbying and in the number of Members engaged in public relations and political consultancy. No doubt, where the balance is struck in future will vary as circumstances change.

A Member is expected to have regard to his public position and the good name of Parliament in any work he undertakes or interests he acquires and to be frank and open about his interests in his dealings with those who would be entitled to know about them. That openness is secured by the Registration and Declaration of pecuniary interests, both being required of Members by Resolution of the House. There is no requirement to declare or register interests from which a Member does not stand to secure a pecuniary advantage—for example, charitable causes which he supports. Compliance with registration does not absolve a Member, where appropriate, from also declaring an interest in debate.

Declaration and Registration, in the Parliament of the United Kingdom, are two distinct matters. Complying with one does not absolve a Member from performing the other. Declaration is required only in certain specific circumstances—essentially when a Member is doing something relevant to an interest in his parliamentary capacity.

The definition of interest in this context is wide; it can be present or future; direct or indirect; and the duty to declare depends on the facts of the particular case and within the general concept of the standards which the House is entitled to expect from its Members.

Registration of interests, on the other hand, is required of Members within a month of their taking their seats, and of changes in their interests within one month of the change occurring, whether or not they take any Parliamentary action relevant to those interests. The interests they are required to register are set out briefly in the foreword to the Register. The headings are:

1. Directorships
2. Employment or office
3. Trades or professions, etc.
4. Clients
5. Financial sponsorships
6. Overseas visits
7. Payments, etc. from abroad
8. Land and property, and
9. Declarable shareholdings

These are only broad guidelines and it is the responsibility of each Member to disclose those interests which might reasonably be held possible to affect his Parliamentary actions and to bear in mind the stated purpose of the Register. I quote:

“to provide information of any pecuniary interest or other material benefit which a Member of Parliament may receive which might be thought to affect his conduct as a Member of Parliament or influence his actions, speeches or vote in Parliament.”

A Member is *not* required to disclose the *amount* of any remuneration or benefit they may have, nor the interests of spouses or children (except in relation to joint shareholdings).

Following the establishment of the Register, the House has appointed a continuing Select Committee on Members' Interests. That Committee oversees the production of the Register; considers any formal complaints made in relation to the registering or declaring of interests and reports to the House, which, of course, takes any final decision. We have in fact in the present Parliament had only one complaint lodged; and that concerned the Prime Minister Mrs. Thatcher and contracts in Oman in which her

son was said to be involved; and the Committee found that the complaint was, in fact, unfounded.

Finally, the Select Committee was charged by the House on 17 December, 1985 with keeping under review the present arrangements and considering whether any extension or change in the present scope of the Register and the requirement to declare interests was desirable. This instruction arises from the increasing concern at the growth of parliamentary lobbying and not least about risks of conflicts of interest where Members promote the views of outside bodies to whom they stand in a financial relationship. At the same time, the House extended the registration of financial interests to members of the Press lobby.

**Mr. Speaker John William Bosley (Canada):** When you say Members of Parliament, does it include Members of the House of Lords?

**Lord Hailsham of St. Marylebone (U.K.):** I think, I am right in saying that we have had the enquiry, but we do not require a register. We are expected to declare an interest in any matter in which we are involved either in speaking or in taking part in a committee. But I think we have not a register.

**Mr. Speaker Daniel Micallef (Malta):** We are speaking today on the declaration and registration of the pecuniary interests of Members of Parliament and I would like to tackle this item from another point of view, different from that discussed so far. I will deal with the income and capital assets of Members of Parliament and their availability to the public. The Income Tax Act, 1948 was amended in 1984 so as to ensure, *inter alia*, that the public becomes more convinced of the fairness of the income-tax system by removing all secrecy from income-tax returns, so that the public may have access to income-tax details of every individual taxpayer and company, because editors of newspapers and Members of Parliament are able to request such details from the Commissioner of Inland Revenue. As matters stood, before this amendment, the Department of Inland Revenue could give information to other Government departments only in serious cases and only with the Prime Minister's consent. Another innovation in the amending Act of 1984 was, as already mentioned, that Members of Parliament and editors of newspapers could make enquiries with regard to declaration of income and capital assets of particular individuals and companies. The Department tells the individual about the

request in this regard and the answers it intends to give. The reason why members of Parliament and editors were chosen is that they are individuals holding responsible positions.

Another innovation in the same amending Act of 1984 was that the Commissioner of Inland Revenue has to send to the Speaker the declarations made by all Members of Parliament with regard to their incomes and capital assets--the declaration of capital assets was introduced in the Main Act in 1972. These will be laid on the Table of the House. The intention behind this is to remove all doubts. This was something new in Malta. It can be found also, for example, in Sweden, Italy and the United Kingdom. It was felt that social honesty necessitated these disclosures, from which those who are honest had nothing to be afraid of.

One Minister suggested in the House that the income-tax returns of Members of Parliament for the years during which they were not elected ought to be made accessible to the public too. The powers given to editors were intended to provide an effective monitor against abuses and not to encourage any trend in gutter journalism.

All Government Members agreed with the publication of returns filed by Members of Parliament, but various alterations were suggested. A number of Government Members criticized the other provisions of this amending Act—for example, the extension of this publication of returns to small businesses, which could encourage unfair competition and possibly foster abuses especially regarding cash in hand.

During the debate in the Committee stage of the amending Act, Government rejected an amendment of the Leader of the Opposition which would make public the declaration of income and of capital assets of all current Members of Parliament for every year since they were elected to Parliament. The Leader of the Opposition said that they were all in favour of removing the secrecy surrounding the income and capital assets of Members of Parliament, because the people had to be convinced of the honesty of each Member of Parliament. Every Member of Parliament had to be honest in order to carry out his duties properly, and honesty was not something one could legislate for. Honesty could only be guaranteed by the character of each Member of Parliament. There had been various doubts and allegations made in the press and elsewhere about the honesty of Members of Parliament. The

Leader of the opposition said that it was a good thing that Government proposed this amendment in the main law, but the amendment could be even wider, and moreover the Bill was not clear as to what happened once the Speaker received the Commissioner's signed declaration about each Member of Parliament's returns and laid it on the Table of the House. He doubted how this would make it accessible to the public and suggested that copies of the declaration be circulated to all Members of Parliament.

The Government answered that no previous administration had the courage to take this step and that the amendment it was proposing was enough. As for accessibility to the public, of the Commissioner's declaration, the Government did not think that circulating this declaration to Members of Parliament would make it more accessible to the public. Interested Members of Parliament could obtain the information they needed from the Clerk of the House.

Government felt that the proposal by the Leader of the Opposition to make the amendment retroactive, when Parliament is as a rule against retroactivity, was an injustice; and indeed in some cases it would have to be retroactive up to even 35 years.

I thank you, Mr. Chairman and with your permission, I shall submit the paper to the Table.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** I just want to be the devil's advocate because nobody else has made any contribution to this subject from the other angle.

Although it is a grand idea to get the Members of Parliament register their interests so that the people know how they stand financially, yet I wonder what the value of it is. What benefit will it lead to? Some Members may not even wish to disclose their total assets. How can you force them? How can you make them say 'This is what I have got in the bank and this is the building I own and so on'? In any case, I believe most Standing Orders contain a provision which says that a Member, when speaking on a particular subject, must declare his interest before he speaks on that particular subject, if he has an interest in it. That may be an appropriate thing to do. Also, there is nothing to stop a Member of Parliament from raising in the House the pecuniary interests of another Member, if he owns so many buildings or owns so many

arms, cattle or sheep. I was wondering what the benefit of having this sort of arrangement with the Members of Parliament is.

Looking at the negative side, I thought it might be an opportunity to prevent some people from standing for Parliament, because they do not want to be bothered with declaring the interests, although they may be good people to have in Parliament.

**Mr. Speaker Mohamed Zahir (Malaysia):** I have listened to my colleague from Fiji. I have also read the proposal which has been made by Australia. I am rather surprised to know that Members in Australia, when they are appointed as Members, can no longer continue their former employment. Suppose he has been a lawyer. He cannot pursue his profession as lawyer. Suppose he has been a doctor. He cannot continue his profession as a doctor. It appears that in Australia a Member has to become a full employed member of Parliament. But in Malaysia we do not consider his membership of Parliament as employment. He is permitted to push through his own interest or trade or employment. I am surprised to note the reasons which have been enumerated. A person or Member is not permitted to participate in any debate if he has pecuniary interest. This is what Standing Order 196 of the Australian Standing Orders says. A Member of Parliament is being restricted from acquiring wealth or acquiring some property during his tenure of office as Member of Parliament. I do not see the purpose of it. Of course, if he has acquired it by corrupt means, then there are remedies. That can be taken care of even under the Standing Orders of the House. That is all I wish to say. Thank you.

**Mr. President Edwin L. Coleby (Bahamas):** This is a subject of great importance. In the year 1976 we passed legislation that those who were Members of Parliament or those who were aspiring to become Members of Parliament must declare their interests. Since that time we have had quite a bit of problems with Members declaring their interest. And, Parliamentarians must declare not only their interest but also that of their spouses and dependent children. They also must declare their interests. In the Bahamas, as in many other countries, we believe that whenever one becomes a Member of Parliament one should declare one's assets. And the other way to safeguard Members is to ask them to declare before they enter Parliament because we do have in the Commonwealth Members entering Parliament as poor Members

and in a short time they become rich, and this is true in many Commonwealth countries, so the best way to prove that everything is on the level, that Members are not corrupt, is to declare the interests. We have a Commission, a Disclosure Commission, where all Members are supposed to declare their interests and disclose various properties or whatever they have to the Government or to this Commission, I should say, and if they have failed to do that, then there is a penalty. In recent times we have had quite a bit of problems. We had set up last year or the year before last a Commission of Inquiry where they heard Members accused of being corrupt and it was proved that some of them were corrupt, but it also cleared the names of many whom they had accused of being corrupt. So, I believe we should look at this thing very carefully because we do have honest and dishonest parliamentarians—there is no doubt about it—in the Commonwealth countries and we want to separate the honest ones from the dishonest ones. And the other way to do, as I believe, is to declare their interests. Just a year ago there was a case where the person was a poor man and two years later he became a millionaire. Then we wondered where he got the money from. There has to be some way by which you ensure that one does not get money dishonestly. If you do not inherit anything and you become a millionaire in a very short time, then we must realise that something is wrong. So, I think it is a very good thing to disclose and declare your pecuniary interests. Thank you.

**Mr. President Wahid Ali (Trinidad and Tobago):** Mr. Chairman, I would like to offer a few comments on this subject which has been exercising our minds for several years in Trinidad and Tobago, to this extent that in 1976 when we adopted the Republican Constitution, we introduced into it, provisions for an Integrity Commission which would in fact have gone farther than a Member making a declaration in Parliament when he was making a contribution on a particular matter. We have studied the situation in other countries, but it is indeed a complex problem and so far we in Trinidad and Tobago have not been able to resolve it. Here are some of the reasons. If Members of Parliament are to be involved in declarations to an Integrity Commission or to some Board that is set up, why not the senior civil servants also who have considerable influence on the society? Why not members of Boards and State Corporations and why not the members of local government authorities? To what limit will the legislation be involved and what impact will it have in terms of recruiting people to serve the public in various

ways and who in fact will guard the guardians? In our particular case, ours being a small country, one has also to be particularly careful about repercussions that the disclosures may have when these disclosures become public, considering the trends which we observe in the world where things like attacks on families and kidnapping and various other problems like that have in fact been experienced.

So far, we have not found any solution. I am delighted to hear the views expressed here, and I look forward to hearing any further views which may emanate in the informal conversations. But with respect, I submit that, perhaps, the most vital approach to this problem would be that Members of Parliament be, in fact, honourable and that a culture be promoted in our society which will make dishonestly a thing which will be frowned upon by the society as a whole.

**Mr. Speaker Bernard Weatherill (United Kingdom):** May I make one or two brief comments by way of clarification of what I have said? The real problem that is facing us all is the activities, the increasing activities, of professional lobbies. In America they have professional lobbies and we are beginning to get professional lobbies in Westminster. All other Parliaments are also likely to have professional lobbies where large government contracts and government money are involved. It is this which is really exercising the Members of the House of Commons and also the members of the public. I agree with the Speaker from Trinidad & Tobago who has said that we are all honourable Members. We are not corrupt and it will be quite wrong to suggest that having a register necessarily means that we are corrupt. It is a protection for the Members to have this register. I think we all do agree that not only should we be clean but should also be publicly seen to be clean in our duties. That is why we feel in Westminster that it is necessary to have a register.

We have another problem in Britain because the press is increasingly given government information by 'press embargo'. A very good example might be a change in the local authority system where something is given to the press in the morning embargoed until the House is served with the statement at 3.30 p.m. The pressman, who had in the past no register, might easily get on for instance, to a town clerk or the chief executive of the local authority and give him to get some indications of what is in the statement. So, it was strongly felt by the Members of Parliament that the press also should be subjected to the same rules as Members of Parliament were subjected to in terms of declaring any interest they might have.



**Mr. Speaker Daniel Micallef (Malta):** Referring to the comments made by my dear colleague from Malaysia that a Member of Parliament would be deprived of practising his profession, I may say that I come from Malta and a Member of Parliament in Malta is not in any way prohibited from following any trade or profession. As a matter of fact, I am still a medical doctor, having full practice. Only Government Ministers are debarred from pursuing a private trade or a profession.

The hon. Speaker from the Bahamas did advocate the introduction of certain checks on the accumulation of wealth by Members of Parliament or Ministers and I quite agree with him. Every country which wants to do social justice to its citizens would like to include some measure to control the accumulation of wealth by certain individuals who hold certain responsible posts, Members of Parliament and Ministers of Government included.

Thank you.

**Mr. Speaker Bosley (Canada):** The subject under discussion is a very fascinating one. We are in the middle of an attempt to study the question of a registry at the moment.

If I may say to the Hon. Speakers, it seems to us that there is a difference between registration of private interests registration of foreign travels and registration of lobbying interests. We are very much concerned to try and protect, if we can, the right of the Member of Parliament to maintain a private life, with private activities shielded from public scrutiny. Perhaps, our experience is different.

To become a Minister or Member of Parliament in our country is to become poor, not to become rich. And so it may be necessary to shield that fact from the public in order to encourage people to continue to be so. The other side of the coin, if I may say so, is that I appreciate all the interests that have been raised and I would very much welcome receiving from those of who have a system of registration information on your system. I would also simply say to the Hon. Speaker from Australia that I am fascinated by his suggestion that the spouses also would have to register their interests. He may have more control over his spouse than I have over mine!

**Mr. Speaker Wall (New Zealand):** We are discussing a most significant matter. It is being examined or has been examined by

at least a majority of the Parliaments. Way back we were exactly on the same exercise in New Zealand and it is before the Committee of Standing Orders now.

Like the Speaker from Canada, I shall be very grateful if I can have some indications as to the types for registers that have been used and how effective they are. I personally have a great deal of scepticism about registering or declaration of interests. We shall thereby annoy the honest more rather than deter the dishonest. But this is obviously a matter of concern throughout the Commonwealth and I would be pleased if any one here could give us any method which obviously achieves this objective without raising any problems.

**The Chairman:** We are getting nearer the lunch time and I think the Hon. Speaker from Gambia will be the last speaker on the subject.

**Mr. Speaker Njie (Gambia):** Thank you, Mr. Chairman.

I just wish to supplement what our hon. friends from Trinidad and Tobago and Canada have just mentioned. I come from a small country of about a million people with a Parliament of fifty members.

The reason why I have decided to say something on this point is that some parliamentarians by getting into the Parliament become poorer and not richer. The reason why I say this is that in a small community like ours we do have the disadvantage of an extended family system where one person is employed and he has to maintain dependents outside his family. Now, with the parliamentarian getting poorer and poorer would it not be aggravating the situation if he had anything to be disclosed to the public? It is not easy in some countries to get every citizen to go through the ballot box. It will become even more difficult if people have to be exposed in that manner. I think, as earlier mentioned, hon. Members should not only see themselves as hon. Members but they should also be seen by others to be honourable. I wonder whether those Parliaments which have already introduced registration or declaration have had the time to get the feedback on the effect of registration or declaration and what change it has made. The income-tax laws and criminal laws are there. These are not only for all citizens but for Parliamentarians as well. I wonder if these are not enough in a small country like ours. By this you may be exposing the parliamentarians to the mercy of the electorate rather than doing them any good.

Thank you, Mr. Chairman.

**The Chairman:** So, that much on the subject. We can only say that it is a very very important subject and it has been discussed for quite a number of years all along. As regards Members, they are supposed to be honourable. There might be some difference of opinion at certain places about a person getting rich overnight or otherwise. That is also something where we have to find a *via media* whereby we can adopt some measure. Everything has got *pros and cons*, negative as well as positive. There is nothing all positive. There is nothing all negative. We the chosen representatives of the people have to project an image which should be above reproach and to safeguard that image this is a kind of suggestion. But it has to be looked at from the angle of how it can work without damaging the interests of hon. Members. If we have to make it public, it might be difficult. Ministers are only supposed to give information about their holdings or pecuniary interests to the Prime Minister and the respective hon. Members to their respective leaders. Then it is kept under watch because then it will be in the judicious eyes of the leaders whether this person is behaving properly or not. Though they are all honourable, yet when we choose a leader we must remember that we are choosing a leader. In my country we have got a rule. In India it is a well settled practice that a Member who has a personal, pecuniary or direct interest in the matter before the House should mention at the beginning of his speech the nature of that interest. It is further expected of him, as a matter of propriety, to decide for himself whether in casting his vote in Division in the House on that matter his judgment is likely to be deflected from the straight line of public policy by that interest. But still to make it much more a matter of fact thing and a surety we have to devise a method by which we can face the public. Suppose by putting in a provision like that we are going to harm the interests of the independent members of a certain family of a Member, then it is going to be detrimental. He is as good a member of the society as anybody else is. So, he has got the right to make his way up in the social strata or economy. But it should not be at the cost of the Member's position or it should not be due to his position. That has to be ensured. In a rightful manner he has all the rights to go ahead in life. So, I think, the consensus on this subject is that there should be a way which should not harm the interests of the hon. Members but which will at the same time safeguard and enhance their dignity in the eyes of the people. And for that we have also to evolve a code of conduct or law. Law will not help. Law is there but still murders take place, kidnappings take place. People will always be there to do away with law. We have to make it a moral sort of thing, whereby we can do something and face the people and say, here we are, here

is our code of conduct, we do it purely on merit. That should be done and that will be good for the interest of the Parliaments and the parliamentary democracy. And as a *via media*, just as in the history of the British Commonwealth, or the British Empire, the half-way policy of Queen Victoria might be a good policy to adopt, so that we are able to safeguard the interest of the Members as well as their honour and our prestige among the public as a whole.

Now, before we adjourn for the lunch which is being hosted by Hon. Dr. (Mrs.) Najma Heptullah, Deputy Chairman, Rajya Sabha at the Banquet Hall near this Conference Room, I would like to mention today's engagements.

After lunch we shall have our Second Session in this Conference Room at 1500 hours. The session would conclude at 1700 hours. Thereafter the delegates could have some free time. There is no afternoon reception today.

At 2000 hours you are cordially invited for a dinner at the Convention Hall, Ashoka Hotel. The dinner will be hosted by me.

*For the spouses:* While the delegates remain busy with the official programme, the spouses can witness some interesting documentary films that we have specially arranged for them at the Auditorium, Parliament House Annexe.

*(The Conference adjourned from 1.25 p.m. to 3.05 p.m.)*

## SECOND SESSION

[HON. DR. BAL RAM JAKHAR, SPEAKER LOK SABHA (INDIA) *in the Chair*]

### ITEM 5: PROBLEMS OF PARLIAMENTARY PRIVILEGES WITH SPECIAL REFERENCE TO:

(A) USE OF PARLIAMENTARY RECORDS BEFORE COURTS AND TRIBUNALS

(B) DISCLOSURE OF INFORMATION TO MEMBERS BY THEIR CONSTITUENTS.

**The Chairman:** Shall we start? I now call Hon. Speaker of Zambia, Dr. Nabulyato to speak on Item 5 of our Agenda.

**Mr. Speaker Nabulyato (Zambia):** Mr. Chairman, in this Discussion of Parliamentary Privileges, I shall make specific references to the powers of the Judiciary to call for Parliamentary Records as evidence before the Courts and Tribunals. I shall also endeavour to discuss some of the problems which Zambian Members of Parliament face as legislators and representatives of the people.

The Zambian Constitution, which is Chapter One of our Laws, provides for a system of Government in which Dicey's Principle of Separation of Power is observed. To that end, Article 62 of the Zambian Constitution states:

“The Legislative power of the Republic shall vest in the Parliament of Zambia which shall consist of the President and a National Assembly.”

In pursuing this legislative function and granting its privileges, the Zambian Constitution in Articles 90 and 91 provides that:

“Subject to the provisions of this Constitution, the National Assembly may determine its own procedure”,

And That

“The National Assembly and its Members shall have such privileges and immunities as may be prescribed by an Act of Parliament.”

This provision is reinforced by Chapter 17 of our Laws, The National Assembly (Powers and Privileges) Act and the Standing Orders. These instruments give Parliament powers, privileges and immunities which ensure that Parliament carries out its functions effectively.

Among the important privileges of the House is the use of Parliamentary Records outside Parliament. Therefore, in considering the subject of parliamentary privileges as it relates to the use of parliamentary records elsewhere and in particular before Courts and Tribunals, the question that ought to be asked is: 'What constitutes Parliamentary Records?' Among the various parliamentary papers and records, the most important ones are the Order Paper, the Daily Parliamentary Debates and the Votes and Proceedings.

The Order Paper is a record giving the Agenda of the sitting for the current day. This cannot be relied upon, nor can it be used as concrete evidence in a court of law, as it does not necessarily reflect, *de facto*, what transpired in the House on a given day. This is because some items on the Order Paper may not have been discussed due to lack of time or any other reason. Similarly, while the Daily Parliamentary Debates constitute the official reports of the verbatim proceedings of the House, some amount of correction to the script is permitted both to Members and to the Editors before they are printed, thus disqualifying them as evidence in court as they are not, in the strictest sense, verbatim records of the proceedings.

But it is the Votes and Proceedings which are of paramount importance. These reflect the record of the proceedings of the House on the previous day. The Votes and Proceedings Record, in summary form what has been done on any sitting day by the House. They are, therefore, regarded as authentic records of the business of the House. In this sense, this is the only parliamentary record that may be accepted as evidence in a court of law or tribunal. Moreover, Votes and Proceedings need Mr. Speaker's signature for authentication.

Nevertheless, Records of Proceedings of the House are for the exclusive use of Parliament. The House has assigned the responsibility of maintaining and keeping custody of these records to the Clerk of the National Assembly.

During each day's sitting, the Clerk of the National Assembly keeps records of all the Votes and Proceedings of the House, and for this reason, there are provisions in our Standing Orders.

Therefore, before such votes and proceedings can be used outside Parliament as evidence in a Tribunal or Court of Law, leave of the House is required. Such leave of the House is granted on a substantive motion for the Votes and Proceedings of a specific date to be released for use in a court of law or tribunal. Any actions or attempts of easy release of the parliamentary records and information to outsiders will frighten legislators from speaking and voting freely on any issue that comes before them in the House, thereby killing democracy. As this directly involves Parliamentary privileges of the House, such a motion is given priority over other business of the House.

The House must agree to such a motion. If the records of Parliament are used in court without leave being granted by the House, a breach of parliamentary privilege is committed. Although the extent of parliamentary privileges may appear to be clearly defined, in certain instances, it becomes somewhat difficult to demarcate the boundaries of this privilege involving documents.

Further, in order to enhance the provisions of the Constitution, the Acts of Parliament and Standing Orders, the Zambian Parliament has provided an appropriate standard form which outside institutions or individuals have to fill in if they want to have access to any Parliamentary Records, files and other documents for a particular purpose. This has been designed so as to protect and safeguard the documents, rights and privileges of the House. I do not need to remind my colleagues why this is necessary. However, we in Zambia find that it is one of the ways of maintaining democracy as well as protecting the fundamental rights of the people who are in the real sense the Government. Any political party in power in any given State is fully aware of the fact that citizens as taxpayers, merely agree to be governed in exchange for services, peace and for guarantees of their civil liberties and freedom.

In our Standing Orders, provision is made for individuals to present petitions through a member of the House. In this regard, Standing Orders 149 to 155 deal with the presentation of petitions. Thus in a case arising out of the infringement of personal rights and liberties as enshrined in Part III of our Zambian Constitution, an individual may present a petition to Parliament. If the individual is dissatisfied with the decision of the Chair, he may seek further redress from the courts of law. In presenting his case, the petitioner may seek to introduce a record of his petition and the ensuing proceedings as supporting evidence. In such an instance, can Parliament withhold documents on account of privilege? I hope my colleagues will explain the position.

In another instance, a petitioner after using the aforementioned standing orders, may wish to publish a copy of his petition in a local newspaper for diverse reasons. Can Parliament seek an injunction to restrain the local newspaper from publishing the actual petition on grounds of parliamentary privilege?

From these two illustrations, the Zambian experience has been that it may sometimes be difficult to define clearly the limits of parliamentary privilege even though these are laid down in various legal instruments.

Now I come to the other part of the subject, viz. problems of information regarding the electorate and their Members of Parliament. A well informed Member of Parliament is an asset to the House and to his constituency. He is seen as a link between the people and the Government in power. He provides the psychological bridge and is a conduit of information about things that are done in the legislature. Hence he should be able to articulate the measures which the Government of the day brings about on certain policies which go to affect the lives of the people he represents. This shows that as a matter of necessity, the legislator should understand what is going on in the House so as to know the kind of law being enacted and how these laws are going to affect the people including himself. If a Member is effective in this respect, he wins the confidence of his constituents, and they in turn will be in a position to assist him with the information he requires.

But the ideal relationship between a Member of Parliament and his constituency which is a prerequisite for easy flow of information does not exist in most cases. In Zambia, this is mainly due to a gap between the public on the one hand and Parliament on the other. The majority of the people are not well informed about Parliament and the work of its members. This problem has its roots in the channels of communication between the elected Member and his constituents. This is further compounded by the high percentage of illiteracy and lack of political awareness in rural areas. Incidentally, a great majority of our Members of Parliament in Zambia represent the rural sectors.

Another problem which affects the easy flow of information between the Member and his electorate is the behaviour and personal conduct of the Member himself. In some cases, the voters may elect a person of doubtful calibre. This arises out of the lack of media exposure at campaign and election time. Thus the electorate might



quite often bring to the House a candidate they do not really know. The vices of such a candidate become known to them only after they have elected him.

Since the work of a Member of Parliament involves legislative and constituency duties, and in order to function properly, a Member must be able to communicate freely with his constituents. This is one of the reasons why he is afforded parliamentary privilege, so that he should be familiar with the problems of his constituents. He should know the various factors that inhibit the people's effective participation in the constituency and State matters. I, therefore, find it important, especially in Africa, for each Parliament to educate members of the public about its functions and its role in the society. Although this can be done by way of radio broadcasting and televising parliamentary proceedings where possible, we in Zambia have not been able to do so due to economic and other constraints. Thus, the main source of information, especially in our rural areas of Zambia, are the radio and periodical newspapers. These amenities are not readily available to the majority of the people. There is no way by which they can find them out. I consider this a big handicap on efforts to educate the public about Parliament work, for which I appeal to Commonwealth Parliaments to find practical solutions, in order to save democracy from being abused. I wish to emphasize that to enjoy popular support from the public who in turn would greatly assist Members of Parliament with information, Parliamentarians should explore the possibility of setting up public relations offices, with the main aim of bringing Parliaments closer to the people. Such offices would embark on the production of weekly information bulletins on the proceedings of the House. This would no doubt encourage members of the public to know about the proceedings of the House. But the initiative should be taken so that information about Parliament reaches a wide section of the public in any given country.

Parliamentary democracy flourishes only when Members of Parliament and the constituents can communicate freely. This is possible when Members understand their role as communication links between the people and the Governments of the day. A Member should not only strive to know the needs of the people but he should also be able to ascertain how such needs can be met. In other words, he should give leadership. A well informed Member of Parliament can play his role as the people's advocate who is able to champion their aspirations. Moreover, for divulging information to the House as given to him by his constituents, a Member of Parliament is protected by the laws relating to parliamentary privilege. I, therefore, deem it necessary to improve channels of parliamentary communication

between the elected and the electorate. I am grateful to have been given an opportunity to contribute to this item on parliamentary privilege and the problems of information between the electorate and the elected with special reference to Zambia. It remains a challenge on my mind as to how not only to approach it but also to find solutions to the problem. I shall be eager and open-minded so as to learn from contributions by friends here in the conference on this subject.

Mr. Chairman. I thank you and all colleagues.

**Mr. President McClelland (Australia):** I am indebted to my friend from Zambia for presenting this matter of parliamentary privilege for consideration by this Conference, because the question of the use of the evidence taken by parliamentary select committees in Australia has become a vexed question of admission or non-admission in criminal proceedings to be taken against certain judges in Australia. There have been two famous cases in the recent times. Last year, there was the trial of a Justice of the High Court of Australia and he incidentally is now awaiting re-trial on the charge of attempting to pervert the course of justice. There was another case of a District Court Judge, who also was charged with the same offence, but as a result of his trial, he has been acquitted.

Evidence had been given during these trial proceedings concerning certain matters before a placed Senate Committee that had been established to inquire into the conduct of a Judge. As the President of the Senate, I took the view that Article 9 of the Bill of Rights, in its application to the Australian Parliament under section 49 of the Constitution, and as interpreted in leading court cases, prevented the cross-examination in court proceedings of a witness or the accused on evidence given by the witness or the accused before a parliamentary committee. I also took the view that, while the cases do not explicitly deal with the position of witnesses, it is clearly contrary to law for an accused to be cross-examined on parliamentary evidence given by the accused, as this amounts to using parliamentary proceedings to support a course of action, which the judgment in a recent leading case, which is known as the "Scientology" case, clearly forbids.

In March last year, I informed the Senate that I had arranged for counsel to be instructed to make submissions to this effect in the committal proceedings against the High Court Judge and the District Court Judge. Submissions were made in the committal proceedings and were upheld by the Magistrates.

The defence counsel for the District Court Judge petitioned the Senate to waive the privilege. On 16 April last year, after debate, the Senate on the motion of the Minister representing the Attorney-General, declined to accede to the petition, on the grounds as stated in debate, that the senate did not have the power to waive the privilege, that it was not desirable in principle to waive the privilege, and that it appeared that no prejudice to the defence case could result therefrom.

On 29 May last year, on the motion of the Minister representing the Attorney-General, the Senate then agreed, without debate, to a resolution directing me as President to instruct counsel to appear at the beginning of the trials of the High Court Judge and the District Court Judge, to make submissions to the court and then to withdraw from the trials.

Submissions were accordingly made at the beginning of the trial of the High Court Judge. The defence in that case submitted that Article 9 of the Bill of Rights prevents the cross-examination of the accused on his parliamentary evidence, but does not prevent the use of such evidence to examine witnesses other than the accused.

On 5 June Mr. Justice Cantor, Judge of the New South Wales Supreme Court gave a judgment to the effect that Article 9 of the Bill of Rights does not prevent the cross-examination of persons in court proceedings on their parliamentary evidence, that the test of a violation of article 9 is whether there is any adverse effect on parliamentary proceedings, and that the protection of parliamentary proceedings must be "balanced" against the requirements of court proceedings. Subsequently, in the course of the trial a witness was extensively cross-examined on evidence given before a Senate committee, including evidence given *in camera*, and the truthfulness of that evidence was questioned. The accused himself when he took the stand, was cross-examined on a written statement which he had submitted *in camera* to a Senate Committee and which had been treated by that Select Committee as *in camera* evidence, and the prosecution made submissions to the jury questioning the truthfulness of the accused on the basis of his evidence given *in camera* to the Senate Select Committee despite the objections that were taken by the defence.

In July last year certain questions of law arising in the trial of the High Court Judge, including the question of whether the prosecution's use of his Senate Committee evidence was contrary to Article

9, were referred to the Australian High Court. I again, on the instructions of the Senate, instructed counsel to appear in the High Court to submit that the accused's parliamentary evidence should not have been used against him, but the High Court remitted all reserved questions to the New South Wales Supreme Court.

On 5 September, counsel instructed by me appeared at the beginning of the trial of the District Court Judge and submitted that Mr. Justice Cantor's judgment was in error and should not be followed, but the judge in that case indicated, without giving reasons at all, that he would follow that judgment. Subsequently in that trial witnesses were extensively cross-examined on their Senate committee evidence including *in camera* evidence, and the truthfulness of that evidence and their motives in giving that evidence were questioned.

I made a statement in the Senate last September concerning the appearances at the trials and the Cantor judgment, and presented relevant documents to the Senate, including the written submission arguing that the Cantor judgment was in error. In debate on the statement the Minister representing the Attorney-General, the Deputy-Leader of the Opposition in the Senate, and the Leader and the Deputy-Leader of the Australian Democrats supported the action which I had taken and the view which I had expressed as to the unsatisfactory nature of the Cantor judgment. I was urged in debate to seek a reversal of the judgment in further court proceedings. In November last year, that is, two months ago, I instructed my Counsel to appear in the appeal proceedings brought by Mr. Justice Murphy, the High Court Judge, to submit that the Parliamentary evidence of the accused should not have been used against him. The defence had decided, however, not to pursue that question, and, therefore, the court could not consider it, so that the submission on my behalf was not taken into account. In the event, the New South Wales Court of Criminal Appeals upheld the application by the accused and the new trial has now been ordered.

So, the question of Parliamentary privilege relating to its use in court proceedings, particularly the evidence given "*in camera*" proceedings, is still up in the air in Australia, and I am sure that this question will once again raise its ugly head in the courts and in the Parliament. The cases are quite unique and certainly a lot more will be heard in the coming months. I thought I should raise the matter because it is one of importance so far as the protection of Parliament and Parliamentary proceedings and witnesses coming before Parlia-

mentary Committees are concerned and it is of great importance so far as an interpretation of Article 9 of the Bill of Rights of 1668 is concerned.

**Lord Hailsham of St. Marylebone (U.K.):** An extremely interesting point has been raised by our Australian friend. So far as I know, there has been no case in point in the United Kingdom where the question has been raised as to whether a witness in criminal proceedings of the accused can be cross-examined on the evidence given in public before a Parliamentary Committee. I think obviously very different questions will arise if the evidence were given *in camera*, because the disclosure of what is given *in camera* might itself abridge the Parliamentary privilege of either House. But that is an impromptu contribution.

**Mr. Speaker Nabulyato (Zambia):** I asked two questions, which, I thought, perhaps the Conference could help in giving explanation through the Lord Chancellor. The question was in connection with a petitioner, who got dissatisfied with the ruling from the Chair and decided to seek redress from the court of law. I wonder how Parliamentary privileges would stop that kind of thing from happening.

The second question is, if the petitioner wants to publish his petition in the newspaper, could Parliament not stop such a petition from being published by way of an injunction?

**Lord Hailsham of St. Marylebone (U.K.):** Dealing with the second question first, I would say that I know of nothing in the United Kingdom which would prevent a petitioner to Parliament from publishing the text of his petition either before or after it was handed over to the Speaker of the relevant House.

As regards the first question, I do not think the courts would have jurisdiction to challenge the ruling of the Chair in any circumstances whatever, because it is one of the undoubted ancient privileges of the House of Commons. So far as I know, although it is never claimed, the House of Lords is in the same position to regulate its own proceedings. And if the Judge has attempted to challenge the ruling of either Mr. Speaker in the House of Commons or of the Lord Chancellor of the House of Lords, in spite of the fact that the Lord Chancellor does not have such powers as the Speaker, I would say that he was himself in contempt as in *Hansard*, *Sheriff of Middlesex* and in all those cases.

**Mr. Speaker Wall (New Zealand):** I am asking this question on the basis of our own Standing Orders. I presume that we share this problem in all the Houses of Parliament. My question is whether a distinction can be made between the evidence that has been given *in camera* to a Select Committee and the evidence which is given in an open Committee. Under our Standing Orders once the Committee has reported back to the House, all the proceedings of the Committee are then available to the House. They are a part of the report of the Committee. So, any protection which might be given to witnesses in the course of the Committee proceedings can only be given subject to confirmation by the House. That protection has to be sought by a separate motion after the Report is presented that such an evidence perhaps being *in camera*, should remain secret and should be in the custody of the Clerk. We hope that has been done apparently indefinitely because there is no provision for it to be disclosed. But I wonder whether the proceedings of Houses put a different construction on that matter.

**Lord Hailsham of St. Marylebone (U.K.):** The only comment I would make on that is this. My original statement was based on the supposition that the evidences given *in camera* have not been, in fact, separately published. The idea that I was contemplating was that the House itself had not chosen to publish the evidence given *in camera*, when it was reported back to the House. Therefore, my previous answer should be read in that context.

**Mr. Deputy-Speaker Arap Ngeny (Kenya):** I just wanted to give a little brief on what we have in Kenya in this particular respect. Our National Assembly Powers and Privileges Act and some provisions of Section 4 specify clearly that no civil or criminal proceedings shall be instituted against any Member for words spoken, published or written in a Report to the Assembly or in one of its Committees or by reason of any other matter that is related to Parliamentary proceedings. So, this clearly specifies that no Member under whatever circumstances may have these used against him or used in a court of law or do anything that would be injurious to a Member; and also upon an inquiry which is touching on the privileges and immunities and powers of the Assembly or of any Member, any copy of the journal printed or purported to be printed by the Government printer, shall be admitted as evidence in any court. Now, the Powers and Privileges Act does help in this respect in that it prohibits any use of such material by courts of

law. So far as our experience in Kenya is concerned, we have not had a situation that has given occasion for these questions. On the other hand, the Speaker or any of the officers of the Assembly are protected in whatever they do in the House. They are being brought into courts in various ways. They are serving the House and so in the same manner they are covered by the Powers and Privileges Act.

The only thing I might add here is that we have a very interesting situation that is arising just now where a Member in his contribution in the House, did make some references to activities of somebody in the civil service and his branch has taken it up without so saying and just now the Member is due to for some disciplinary action. I think what is not clear is whether his particular branch is directly using the words which the Member is purported to have spoken in the House. We are waiting to see how it transpires. This might be the first such case where somebody speaking something in Parliament is coming up for disciplinary action, for what he actually said in Parliament. But as I said, since the offence has not been spelt out clearly and is still being politicised and allegedly matters pertaining to his constituency are the subject of disciplinary action, we shall have to wait and see. The Powers and Privileges Act is defending and assisting Members so that they can discharge their responsibility to the nation.

Thank you, Mr. Chairman.

**Mr. President Makombe (Zimbabwe):** My comment is going to be very brief. We are new to Parliamentary democracy but we cannot close our eyes to certain incidents that have occurred in our early stages of independence.

In Zimbabwe we have a case pending against a Member of Parliament who appeared in a Foreign Broadcasting Corporation and referred to our Parliamentary democracy by saying that 'Democracy is not for export'. He was speaking when the Speaker was presiding. The Speaker appointed a Select Committee to investigate into the allegations and the statements which he had made, which were regarded by our Parliamentary Privilege Regulations to be in breach of the Regulations. And this Committee has not yet given its full evidence as to what has actually been said. What I want to say is, it will be useful especially on our part if this subject could be left on the Agenda again for the next time so that it could throw some light to some of us who are young in Parliamentary democracy. Thank you.

**Mr. Speaker Tan Sri Dato Mohammed Zahir (Malaysia):** Mr. Chairman, I find it very interesting to note what my colleague from Zimbabwe has stated in presenting his paper that whenever parliamentary record is to be used in court, the leave of the House is required through a substantive motion, whether to allow any particular record to be used in court. And if the court itself were to be using the record without leave of the House, then, it is considered as committing a breach of the parliamentary privileges,—I hope I have got it clear. I have been wondering, because in Malaysia we consider any record of Parliament as a public record and it can be used anywhere. There is no necessity for leave to be taken from any House of Parliament in order to make use of the record. Even our Clerk can be subpoenaed by any court to appear in the court in order to produce any of the parliamentary documents as evidence in the court. I do not know whether there is any better method or better way or procedure than the one that is being practised in Zimbabwe. I personally think that Parliamentary record should be a public record and should be disclosed and should be made use of by anybody without any leave being taken from the House before it can be used. Thank you.

**The Chairman:** We come to the final argument. In India I think we agree with Lord Hailsham and we see no reason to say that the ruling of the Speaker is subject to any other inspection or over-seeing. The Speaker's judgement is above all, as far as the House proceedings and the breach of privilege of the House and its Members are concerned. As far as the information part is concerned, for it to be made available in the court, we have got specific rules.

Leave of the House is necessary for giving evidence in a court of law in respect of the proceedings in the House or Committees thereof or for production of any document connected with the proceedings of the House or Committees thereof, or in the custody of the officers of the House. According to the First Report of the Committee of Privileges of Second Lok Sabha "No member or officer of the House should give evidence in a court of law in respect of any proceedings of the House or any Committees of the House or any other document connected with the proceedings of the House or in the custody of the Secretary-General without the leave of the House being first obtained."

When the House is not in session, the Speaker may, in emergent cases, allow the production of the relevant documents in courts of law in order to prevent delays in the administration of justice and inform the House accordingly of the fact when it re-assembles or



through the Bulletin. However, in case the matter involves any question of privilege, especially the privilege of a witness, or in case the production of the document appears to him to be a subject for the discretion of the House itself, the Speaker may decline to grant the required permission without leave of the House. And that power we have used; I think I have used it twice. I have forbidden some persons to appear or to be produced even after their having been summoned in the court. I think the judiciary and the Legislature have got two separate spheres of working and we must work in close harmony as complementary and supplementary to each other. We do not want to transgress into their sphere. Now do we want them to intrude into our sphere, in the working of the Parliament itself?

As in this case now, as put by our hon. Speaker, Mr. Nabulyato, and also by our friend from Zimbabwe, there are certain cases still pending as in Kenya as well as in Zimbabwe and Mr. McClelland also referred to some, I think the better way is to still wait and let the things emerge, and then we can take it up again because this subject is a continuous one and we shall have to form a definite opinion about it and it can be done, I think, in the next Session itself, if that has the approval of the House—I do not know.

Mr. Deputy-Speaker from Kenya, do you have to add something to it?

**Mr. Deputy-Speaker Arap Ngeny (Kenya):** Yes, Mr. Chairman, I am sorry to take you back a little, but something interesting arose from the contribution by the Hon. Speaker from Malaysia according to which it would appear that there anybody can just use the material or the contribution by Members in any manner. I am just wondering whether he might explain to us as to what happens if a Member has said something which is legitimate in the national interest and is affecting a particular group of people, and then they use that material freely to inflict injury on that Member for his contribution. What happens then? It is because I think that this seems to be a departure from what I have always understood and what, I believe, should be the practice namely that the Legislature should have special privileges for the Members when they are there that I am raising this; otherwise, free speech will be hampered.

**The Chairman:** Yes, we have this much that his saying, in the House are protected by the privilege. He can say with freedom without being subjected to any harassment by any person and it is just on the floor of the House where he is himself quite free and he can feel free in expression.

If you want to respond, Mr. Speaker from Malaysia, you may; let us hear him.

**Mr. Speaker Tan Sri Dato Mohamed Zahir (Malaysia):** Mr. Chairman, this is a separate matter. What I said just a little while ago was about the parliamentary records; for instance, the Hansard or the debate or the speeches can be adduced as evidence in courts; but of course, this is not against any particular Member who used those words. For instance, for libel I can say 'No' because he is protected under the privileges of Parliament.

## ITEM 6—ARE PARLIAMENTARY COMMITTEE SYSTEMS FULFILLING THEIR FUNCTION?

**The Chairman:** Now we come to the next subject; Item No. 6; "Are Parliamentary Committee Systems fulfilling their function?" This is a subject on which I think we have to contribute.

This is a contribution as one of the delegates now, not from the Chair.

Hon. Members and Speakers and Presiding Officers, Parliamentary Committees play an important and useful role in the working of legislatures all over the world. The system of Committees facilitates deeper consideration of issues which, as involving points of detail or questions of a technical nature, are not possible for the House as a whole to discuss at length. The Committee System, while ensuring a fuller and more comprehensive examination of matters, also results in saving the time of the House for discussion of important matters and prevents Parliament from getting lost in details and thereby losing hold on matters of policy and broad principles. While the composition of the Committees generally reflects the composition of the House, their proceedings are devoid of any party bias and the procedure there is more flexible than in the House. This leads to a more dispassionate, comprehensive and judicious consideration of the issues entrusted to the Committee.

What we have seen from practical experience is, after having a good debate, number of hours are gone into, even days are spent on the Budget Session, but when it comes to the final conclusion, debates are only debates because whatever is presented to the House, Government get it passed because they are in a majority. Howsoever productive or conducive to progress may be the points raised and made by the Opposition, as it prevails today, any infringement or any deviation from that is supposed to be the defeat of the Government. So, they do not let it happen. Naturally, it becomes a discussion which leads to nowhere, but it is not so in the Committee. In the Committee System there prevails a camaraderie type of companionship and atmosphere where it is give-and-take. You listen and if one point is good, it is incorporated without losing faith and it is a joint effort for the betterment of the people for whom we are all

responsible. So, in that case it become more positive and productive to have that point thrashed out and churn out the cream which might be helpful in furthering the health of the nation.

During the last few decades the Committee System has undergone significant developments in various countries. In Canada, in the House of Commons, there are 20 Standing Committees—if I am not mistaken, Mr. Bosley—14 of which are functional, having jurisdictions corresponding closely to the activities of the Government Departments and Agencies. In Britain, by a Standing Order adopted by the Commons in 1979, 12 new Select Committees have been introduced, each of them corresponding to one of the principal Government Departments and charged with the functions of examining the 'expenditure, administration and policy' of their concerned Departments and of associated Public Bodies. In addition, two more Select Committees relating to (i) Welsh Affairs and (ii) Scottish Affairs have been set up. Some other existing Committees were allowed to continue even after the adoption of the new system. Among a number of reforms introduced in 1985 in the New Zealand House of Representatives, was the adoption of a new Select Committee System. The main features of the new system are: a structure based comprehensively on the full range of government activity as represented by Ministerial portfolios; widely drawn terms of reference, each committee having responsibility for both legislative functions and the scrutiny of policy, administration and expenditure of government departments and other bodies within their jurisdiction. Many other countries have evolved their own Committee Systems.

In India, Parliament has a well-knit Committee System and the various Parliamentary Committees have been functioning vigorously. Among the Standing Committees of Lok Sabha the three financial committees which we have: the Committees on Estimates, Public Accounts, and Public Undertakings, constitute a distinct group and they keep an unremitting vigil over governmental spending and performance.

Parliament has obvious limitation in regard to scrutiny of the Budget. Although nearly two months of parliamentary sittings are devoted to examination of the Budget, the discussions are not very comprehensive. As the time available is short, often Demands for Grants relating to a number of Ministries/Departments have to be guillotined without discussion. To get over this difficulty, there is a proposal to introduce Budget Committees which will consider the Demands for Grants in depth. A final decision on the matter

by the Rules Committee of the Lok Sabha is expected to be taken in the near future. We have been trying to introduce this system; for the last two or three years, I have been after it. But it takes time. I have seen by experience that, out of so many Ministries|Departments which we have, the Demands for Grants relating to only ten or twelve of them are discussed. Because the Members are interested in Agriculture or Home Affairs or Foreign Affairs, most of the time is taken away by these so-called important Ministries|Departments, and the Demands for Grants relating to about 24 or 26 Ministries|Departments get guillotined without any discussion. That has put some sort of an idea in the minds of the bureaucracy that they can do whatever they like and that nobody will be there to look into what they have done. Actually it is a *post-mortem* that we are doing in the Public Accounts Committee because, there, we are going through what they have already done. That is why there is this proposal of mine to set up budgetary Committees, to divide the House into a number of Committees with 45 Members in each Committee, associating each and every Member with those Committees, thus making them responsible for a number of Ministries; and those Ministries will also be responsible to put before them their various demands which will be discussed there. That collective effort will then be put before the House. The Opposition will have their say and will have their time to have amended any proposal which, they may think, is detrimental to the economic health of the country. So, in a purified manner, the whole thing will come before the House. This will be a pre-voting scrutiny, this will be something before what is going to take place. Naturally, it will have very wide implications. I hope that this time the Rules Committee will accede to my request and finalise this concept. Again it depends on the House because we are all creatures or servants of the House, we are at their mercy, we have to go according to what they lay down for us. This is what I call a fore-runner for some new thoughts which may be put before the Members, before the House, and they may bear fruit.

In pursuance of the above suggestion, a Memorandum proposing the setting up of *ad hoc* Budget Committees for pre-voting scrutiny of the Demands for Grants of all Ministries|Departments of the Government of India, was prepared and placed before the Rules Committee for consideration. The Rules Committee of the Seventh Lok Sabha which considered the Speaker's proposal, however, felt that the matter could better be left for consideration in the Eighth Lok Sabha. And this is the Eighth Lok Sabha that we are now

sitting in, and I hope that some positive decision on this will now be taken.

The States in India have got their own State Legislatures; they are also independent bodies looking after their interests. In Kerala, which is one of our States and which has got its own Legislative Assembly, ten Standing Subjects Committees have been functioning since March, 1980. Each Committee is assigned a fairly well-defined subject area or areas. One of the functions of a Subject Committee is to scrutinise the legislation. Every Bill, other than an Appropriation Bill, unless referred to a Select Committee, after its general principles are approved by the House on a motion, stands referred to the appropriate Subject Committee for detailed examination.

In India, every year, a Conference of the Presiding Officers—Speakers of the Lower Houses and Chairmen of the Upper Houses—of all the legislative bodies in India is held; we get together and discuss matters there. We had set up a Committee of Presiding Officers on 'Committee System'. The Committee of Presiding Officers on 'Committee System' have stated in their report that the deliberations and reports of Subject Committees in the Kerala Legislature have been found to have helped a great deal in strengthening responsible Government and the work in the Committee, it is felt, will lead to expertise and specialisation.

The Committee has further observed that, while the general idea of setting up of the Subject Committees on the pattern of those obtaining in the Kerala Legislature has to be commended in principle for adoption by Parliament and the State Legislatures, it is, however, felt that a beginning in this direction may be made by setting up *ad hoc* Budget Committees for pre-voting scrutiny of the Demands for Grants of all Ministries|Departments of the Government as stipulated in the memorandum which was placed before the Rules Committee of Lok Sabha.

The Report of the Committee of Presiding Officers on 'Committee System' was considered and adopted at the Conference of the Presiding Officers of Legislative Bodies in India held in Lucknow on October 27, 1985; that is, just two months back, we have adopted that report and said that it is a very fine concept, a very fine idea, and that we must put it into practice so as to give more momentum to the scrutiny and also ensure that the hard-earned money of the people is spent in a very useful manner.

Thank you. Any contribution?

**Mr. Speaker D. N. E. Mutasa (Zimbabwe):** Mine is just a question. When you suggested setting up of budgetary Committees, I wondered whether these Committees would not be interfering too much with the executive functioning of government because, once Parliament has allocated the sums of money to the Ministries, it is up to those Ministries to use that money as they wish and they are not to be interfered with by Parliamentary Committees.

**The Chairman:** This is a pre-budget scrutiny; it will not be after the budget, but before the budget is passed; it will be before we start doing anything; if any policy is to be made or some deviations or amendments to the present policies are to be made, that can be done. As it is, the discussion that we now have before the whole House is not productive. In the Committees, before the Demands for Grants are approved by the House, there will be a scrutiny so as to pave the way for better, more comprehensive and productive execution of policies and programmes.

**Mr. Speaker D. N. E. Mutasa (Zimbabwe):** I also find, arising from exactly the same question, a feature in Zimbabwe which is similar to that in India. In our Government there is a Government Minister who is responsible for Parliamentary Affairs. I do not know how he functions in India. Don't you find him interfering with their legislative functions?

**The Chairman:** We in India have a Minister of Parliamentary Affairs who does the liaison between the Government and the Chair. He is the Chief Whip of the ruling Party.

**Mr. Speaker Daniel Micallef (Malta):** Our Standing Orders make provisions for Committees of the whole House; and for Select Committees.

In the Committee of Supply on the Prime Minister's votes, under whom the House of Representatives falls for this purpose, the Leader of the Opposition said in January 1979 that they were all in favour of Committees of the House, but that the Prime Minister of the time the Hon. Tom Mintoff was on record as being against Committees in practice.

**The Minister of Justice and Parliamentary Affairs** replied that the Standing Orders of the House were outdated and that, in principle, the Prime Minister favoured Select Committees of the House, but in practice he was against them because they did not work and the time spent was just the same.

The Electoral Programme of the Malta Labour Party before the last election in 1981, promised a Parliamentary Committee on Gozo Affairs made up of the five Members of Parliament coming from Gozo and Ministers and public officers in rotation. This Committee was in fact set up in November 1983 and has since held 8 sittings, the last one in October 1985. The last electoral programme of the Nationalist Party which is the Party in opposition, stated that in order that Parliamentary business be better distributed, a Nationalist Government would set up permanent Parliamentary Committees to examine in more detail and without undue haste the main fields of the Government activity such as expenditure, and foreign policy. Parliamentary Committees would also be set up from time to time to examine laws and particular problems and projects without being too much pressed for time. These Committees would have at their disposal all relevant Government information, and could seek the advice of experts and interested groups, before finally reporting their conclusions to Parliament which could thus come to its decisions in the light of such conclusions.

The Labour Government has introduced the participation of Government officials and of officials of Public Corporation in Committees of the House, either through legislation, as it happens under the Education Act, when it comes to the estimates of the University, or through procedure motions as in the case of the estimates of Telemalta, Enemalta and the Housing Authority. Most of these committees are televised, in accordance with the last electoral programme of the Malta Labour Party which stated that "A Socialist Government would do its best so that the people would be better informed about the business of Parliament." This was done by increasing the number of televised debates of Parliament. The more intensified use of the relatively new medium, the television, has however, helped to somehow affect the proper functioning of our committee system as evidenced during the Committees of Supply in connection with the passage of the General Estimates, because members of both sides tend to discuss policy only, and no details at all; whereas the purpose of the Committee is to discuss details only. Presumably most Members lack the information and the expert knowledge necessary for criticising details of supply, and moreover prefer to talk politics which appeals more to the general public, and on which certainly they are more prolific, politics being their bread and butter as politicians. The television during Committees



of Supply has thus perhaps further helped, I am afraid, to divorce such committees from their proper purpose.

Thank you, Mr. Chairman.

**Mr. Speaker Nabulyato (Zambia):** I was interested in the explanation given to the Conference about the Indian position where they have pre-Budget committees of Parliament. Ours is the other way round. The idea is that when estimates come before the House, they get committed to specific proposals and we have parliamentary committees to follow up how the executive uses this money as voted by the Parliament. That is the way we do in Zambia. I was interested in knowing how you do it here—the pre-budget scrutiny.

**The Chairman:** We are not doing it. We are just contemplating. We are trying to experiment with that and that was the explanation I gave. Our friend said, 'We want to see if it could work out in a very useful way.'

**Mr. Speaker Nabulyato (Zambia):** We shall be very happy to see your results.

**The Chairman:** We shall report to you when we get to that.

**Mr. Speaker Weatherhill (United Kingdom):** We in the House of Commons set up in June 1979 a new system of select committees. Apart from the eleven existing committees which were established like the Public Accounts Committee and the Privileges Committee, fourteen new committees were established, each designed to oversee one of the principal government departments and the semi-public bodies associated with them, that is, the nationalised industries and that sort of thing.

The main functions of each of these committees has been on questions of policy and on expenditure and on administration. They are concerned to make Ministers fully accountable to Parliament for what they are doing. The committees were set up to prevent Ministers from operating without reference to Parliament and to-day Ministers are personally summoned before the Committees for periods up to 1 to 2 hours to expound upon or to defend their policies or their uses of public money.

So, to sum up how they fulfil these functions, so far as the traditional committees are concerned, like the Public Accounts Committee and the Privileges Committee, etc., well, they continue and I think the fact that they continue, indicates that they have been highly satisfactory. The legislative committees save the House from looking at the great mass of legislation which would otherwise have to be considered on the floor. So far as the departmental committees are concerned, the House has received hundreds of reports from them over the last six years and in each case the Government has to make a reply within two months and these replies may lead to further action by the Committee. Whenever there is public interest about Government action or inaction, a committee can discover the facts and report to the House. Thus, there is a continuous oversight of Government policy by the House. This widening of the House's oversight of the Government is one of the principal changes in Parliament in the UK in the last few years.

As I have already said, the change is shown most dramatically by the extent to which Ministers now have to defend their policies before select committees and this new facility is much appreciated by backbenchers. Perhaps some Ministers may think in a rather different way.

The oversight of expenditure and administration led the House to make certain changes in its Standing Orders in recent years. As a result, the criticisms of committees about departmental expenditure are ensured a hearing on the floor of the House for three days every session. In pursuance of this, each committee now regularly examines the details of Government expenditure every year. As a result, for the first time in at least half a century, the House is carrying out its historic function of examining details of Government expenditure on a systematic basis.

So, to sum up, by their wide-ranging activities, their flexibility and their team spirit, the select committees have extended the range of parliamentary activity. They have increased the standing of Parliament at the expense of the civil service. By feeding authenticated facts into Parliament they have raised the level of debate on the floor of the House. They have taken advantage of the talents of backbenchers and given a new career to the Committee Chairman who frequently now gain great public prestige from their positions and finally and I think importantly they have encouraged cross-party initiatives within committees and thereby helped to moderate the extremes of party conflict.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** With regard to your proposal to set up a pre-Budget committee, I would like to know at what stage this committee will come into action under your contemplation, because, as I see it, in the normal chain of events there is the Appropriation Bill, the Bill is read first and then the Minister gives his speech where he makes proposals about the Budget for the following year including new taxes. Then comes the second reading debate, then these Committees and then the third reading. At what point of time would your Budget Committees come into operation?

**The Chairman:** First, we have the presentation of the Budget; then there is a general debate on the Budget itself as a whole. After that we take up the Demands for Grants for each Department or different Ministries separately. Before the debate on the Demands for Grants starts, we shall bring in these Committees. All the Members of the House would be divided in separate Committees and each Committee would be entrusted with three or four Ministries, and then they will look into all the things. And the final shape will again be presented in the report to the House; the House can take up four or five Demands of Grants to scrutinise after the reports from the Committees are received. The House would go into recess during the period the Committees would meet. All the Members of the House will be entrusted with the Committee task during that period for a complete and thorough checking of all the Demands, policies and projects of the Government. That is how we want to do it. Do I satisfy you?

**Mr. Speaker Tomasi R. Vakatora (Fiji):** In other words, after the second reading debate.

**The Chairman:** No, after the debate on the Budget as a whole. The Budget with all its tax proposals will be discussed as a whole, but the Demands for Grants for various Ministries would be entrusted to the Committees.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** Maybe I will discuss it with you later.

**The Chairman:** A question had been asked about the Assurances committee. The purpose of that Committee is this. We have to make the Ministers realise that they have made an assurance and they have to carry it out, otherwise they are liable to action on the floor of the House. They cannot escape. That is what the Assurance Committee is for. It is to see that the assurances given on the floor of the House are carried through within three months.

Dr. Najma Heptulla, Deputy Chairman, Rajya Sbbha will explain it.

**Madam Deputy Chairman Najma Heptulla (India):** As far as the question pertaining to the Assurance Committee is concerned, as the Chairman said, its main function is to chase the Minister. If he makes an announcement on the floor of the House and gives an assurance to the Members on the floor of the House, he is responsible to fulfil his assurance or the promises he makes within three months. If he does not do that, he has to appear before the Committee; he is answerable to the Committee.

If he has not fulfilled it in three months at least he should say what he has done within three months.

**The Chairman:** He can ask for extension of time, if he cannot do it. If he has plausible excuses, we agree to extension of time, otherwise he will be just put on the mat.

**The Chairman:** Now Dr. Najma Heptulla.

**Madam Deputy Chairman Najma Heptulla (India):** Thank you very much for giving me this opportunity. As I belong to the second Chamber, I would like to know the role played by the Members of the Senate or the Upper House in relation to Budget Committees or Financial Committees in various other Parliaments where they have a second Chamber. Do they participate in the discussions or they don't? Have the Members, especially in the House of Lords in the United Kingdom anything to do with it and do they discuss the Budget or they don't?

**The Chairman:** Lord Hailsham will answer that.

**Lord Hailsham of St. Marylebone (U.K.):** Mr. Chairman, first of all we have in the House of Lords an elaborate Committee system, but I think it would be treated with a sense of outrage by the Commons if we were to interfere in any way with budgetary matters, and so we do not.

There was another point which I wanted to make, and that is this. I think we should remember the limitations of the Committee system. When my father was a young man in 1914 there was a great scandal in Parliament, which was called the Marconi scandal about the purchase of shares by Ministers and the alleged profit made by them out of it. A Select Committee of the House of

Commons was set up. My father was a counsel before it and there is no doubt whatsoever that that brought the Committee system into disrepute, because the Committee divided throughout on purely party lines. There was at that time Government of one party and Opposition by another party. As a result of that in 1921, the British Parliament set up what was called the Tribunal of Enquiries and the Evidence Act, which was to undertake enquiries of that peculiarly sensitive kind, where a direct Select Committee of the Commons or the Lords for that matter would not function properly.

Secondly, we have introduced the Parliamentary Commissioner who is there to undertake cases of maladministration complained of through a Member of Parliament. That exists side by side with the new departmental Committee system described by Mr. Speaker.

Thirdly, there are matters, which, I think, are not appropriately enquired into by Select Committees and one of them is the appointment of judges and initiation of prosecution. It is only where there is a scandal that this is appropriate. It is important for the purpose of the separation of powers—and here I talk not as a Speaker of the House of Lords, but as the head of the judiciary in England,—to separate judicial patronage from political interference. I could go into much greater detail about that. It is also the case that the Attorney General in the House of Commons and equally the Lord Advocate for the purpose of Scotland would, I think, resent having the question of whether he should initiate prosecution investigated by a Select Committee. But he and I are responsible to Parliament for what we do. The Attorney General can be criticised in the House of Commons by an appropriate procedure and sometimes he has to answer for his conduct. There was a very well known case of 1922, called the Campbell case, which is usually taken as the example of that. I do not think that it has happened with the Lord Chancellor for a very long time that his judicial appointment has been called in question. I would have to answer to the House of Lords or indeed in public, should there be any question. I have very happily given evidence to Home Affairs Committee of the House of Commons on two questions which I thought entirely appropriate. One was about penal treatment in prisons and the other was about delays in the procedures of the courts. I found them most helpful and I found the discussion which ensued very valuable. But there are limitations.

I would like to make just one other point. The genius—and I say this in the presence of Mr. Speaker—the genius of the British House of Commons is the confrontation on the floor of the House between the Ministers and their back-benchers. In contrast, in the American Senate and the American Congress, the focus of attention is in the

select Committee. I should myself be very sorry if the genius of the British House of Commons at question time and at other times of questioning the Ministers were to be transferred from the floor of the House to the Committee floor.

**Madam Deputy Chairman, Najma Heptulla (India):** I would like to know whether the other Chamber participates in the Committee System alongwith the House of Commons.

**Lord Hailsham of St. Marylebone (U.K.):** We do have Joint Committees with the House of Commons. We have a very valuable Committee in the House of Lords called the 'Consolidation Committee' which owing to the complicated and terrible state of affairs of our Statute-Book, does try to reduce it to some kind of order.

**The Chairman:** I think our hon. Deputy Chairman wants to know whether there are any financial/budgetary Joint Committees.

**Madam Deputy Chairman Najma Heptulla (India):** Yes, Sir. You understood my point.

**Lord Hailsham of St. Marylebone (U.K.):** I would say again with utmost emphasis that if the House of Lords were to attempt to interfere with the Budget and with Government's expenditure or the raising of taxes the House of Commons will be up in arms and in fact they are perfectly right there.

**Madam Deputy Chairman Najma Heptulla (India):** Our Chamber is involved in the Public Accounts Committee and the Public Undertakings Committee, thereby we do have Members represented on these Committees alongwith Lok Sabha.

**The Chairman:** We are more liberal.

**Madam Deputy Chairman Najma Heptulla (India):** I would like you to be more liberal so far as Budgetary Committees are concerned.

**Mr. Speaker Momadou Baboucarr Njie (Gambia):** Thank you, Mr. Chairman. I just want to mention that right now, we are considering the introduction of the Committee System, you would excuse me if I ask more questions than contributing to the subject on the Floor. If I go back to the Item on the agenda—'Are Parliamentary Committee Systems fulfilling their functions?', I think the answer is 'Yes', because of the contributions we have had. What I would be interested to know more, short of going down to the nitty-gritty of things, is whether there are problems; and if there are problems, what those problems are. I would be interested to know this.

**Mr. President Makombe (Zimbabwe):** I would like to make a comment in answer to the question of the Deputy Chairman of Rajya Sabha, that in Zimbabwe in terms of our Constitution of 1979, we do not discuss financial or constitutional matters. If there is any need for bringing changes to our Constitution, it will be precisely the prerogative of the House of Assembly; and the budget is also the prerogative of the House of Assembly. There is no quarrel between the House of Assembly and the Senate on this point.

**Mr. Speaker Njie (Gambia):** I just want to mention that right now in the Parliament of Gambia, we are studying very closely the introduction of the Committee system. That is why I took interest in this item No. 6, viz. "Are Parliamentary Committee Systems fulfilling their function?". I think that the contributions we have had on the floor indicate that the answer is "Yes". I asked whether it would be possible to know whether there were problems. If there were problems, what were they; and what were the solutions to them?

**Mr. Speaker Weatherill (United Kingdom):** I speak in answer to that, Mr. Chairman, with your permission. There are a few problems, of course. The first is the one that has been mentioned by the Lord Chancellor, viz. that it tends to take the debate away from the floor of the House and put it into the Committees. Very frequently, a Member may come to the Chair, and say: 'I hoped to take part in the debate this afternoon, Mr. Speaker; but unfortunately, I have got a Select Committee sitting at 4 o'clock; I would not be here until 6 o'clock'. So, it does undoubtedly take debate from the floor of the House. There are certain additional expenses to the House, and I think that that has to be borne in mind. We overcome this by keeping our staff very small. We have a liaison Committee of Chairmen of Committees. We ask the Chairman of the Select Committee to keep an eye on the expenses. There is a danger of overlapping, of Committees undertaking purely similar subjects; but that is also dealt with by the Liaison Committee which ensures that as far as possible Committees do not overlap in their investigations.

I think there is a major burden on the Ministers; but the Lord Chancellor will be able to say more on that than I; but I think I am entitled to say that the Ministers have to come before the Select Committee, and can be literally grilled by a small expert group of Members for anything up to two hours. It must be a heavy strain upon them. But as the Speaker of the House of Commons, I would not be too worried about that.

Finally, I think we have just to be a little cautious about their real effect, i.e. whether they really make Governments change their minds. But I think it does affect the future Government policies, because by the mere examination of what Governments are doing, and the interrogations which the Ministers undergo, there is a possibility that as a result of this expert examination and subsequent debates on the floor of the House, Governments may be forced to change their minds in the future.

**Mr. President McClelland (Australia):** I respond to the remarks of the Deputy Chairman of the Rajya Sabha, as to the responsibilities of the other Upper Houses throughout the Commonwealth. In the Australian Parliament, of course, there are two Houses, the House of Representatives, and the Senate both of which are elected Houses. The House of Representatives is elected on a preferential voting basis, by the direct vote of the people; and the Senate is elected, again by the vote of the people, but on the basis of proportional representation, which ensures representation of minority parties if they can obtain sufficient votes. Therefore, both the Houses are masters of their own business, and both the Houses in fact have Committees of their own. But they also have Joint Committees, and I recall to mind the Joint Committee on Foreign Affairs and Defence, which is a very important Committee, as far as Parliament is concerned. When visiting dignitaries come to Australia, not only do they have talks with the Prime Minister, the Minister of Foreign Affairs and other Ministers but invariably they are invited to discuss with the Members of the Joint Committee on Foreign Affairs and on Defence.

So far as the financial matters are concerned, there are groups of committees in the Senate known as Estimates Committees. These have established a tradition of rigorous public scrutiny of government expenditure through their twice-yearly examination of the Appropriation Bills—the Budget Bill which is introduced in Australia in August and Supplementary Appropriation Bills introduced in April or May. These committees provide an opportunity for Senators of all parties including minority parties to question Senate Ministers on their own portfolios and on the portfolios of their colleagues in the lower House whom they represent in the Senate in a far more detailed way than is possible in Committee of the Whole. These committees also enable Senators to question senior public servants directly on the estimates—something not possible in Committee of the Whole.



The Committees present their reports and these reports are considered when the Appropriation Bills are being examined in Committee of the Whole.

The existence of Estimates Committees has resulted in the preparation by departments, mainly to Estimate Committee specifications, of detailed and comprehensive explanatory notes which do away with the need for a lot of otherwise routine questions and enable Senators to better pinpoint major discrepancies and concentrate their questioning accordingly.

Estimates Committees in Australia have also had an influence in the development of the practice by which departments submit annual reports to the Parliament. If a Government department is slow in presenting the annual report to the Parliament, then the Senate Committee invariably wants to know the reasons for the lateness. They have also had an influence in the division of proposed expenditure between Appropriation Bills 1 and 2 which, in the Australian situation, means a difference as to whether the Senate may make amendments or not. The proceedings of Estimates Committees, like those of the Senate itself, must be held in public.

The effectiveness of committees depends very much upon their membership. Much has been achieved by a determined Chairman of a committee and purposeful Members, particularly when party attitudes have been put aside. A certain measure of bipartisanship is required for a committee system to work effectively, and this has been the key to the success which Senate Committees have achieved to date.

But having said that, I must say that I completely agree with the remarks of the Lord Chancellor, I would hate to have a situation where the confrontation, which takes place at question time between a Minister and a back-bencher on the floor of Parliament, is taken away to the committee room. I think this has never taken place. But I assure you that so far as our committee is concerned, it has become very effective in establishing the supremacy of Parliament over the executive.

**Mr. Speaker Dhlamini (Swaziland):** A lot has been said about Committees. I just want to put a very simple question. Who is responsible for forming these Committees? Are they formed by legislation or by Standing Orders or by the Speaker?

**The Chairman:** It is the House which forms itself into the Committee and the Chairman is appointed by the Speaker.

**Mr. Speaker Njie (Gambia):** I would wish further to ask one question. I would like to know the sort of control, if any, which the Speaker has over any of these Committees.

**The Chairman:** The Speaker gives directions from time to time, and the rest is left to the Chairman and Members of the Committees who carry out those directions and work under those directions.

**Mr. Speaker Njie (Gambia):** Do these directions go as far as stipulating the precise dates when the Report should be submitted or otherwise?

**The Chairman:** Yes. Reports have to come. They have to submit the reports. That is what the Committees are there for.

**Mr. Speaker Njie (Gambia):** I want to know whether the direction is extended to the point where the Committee is supposed to report back to the House.

**The Chairman:** Yes, within the specified time. Otherwise we would not be able to carry on the discussion on the Demands for Grants.

**Mr. Deputy-Speaker Thambi Durai (India):** Madam, just now you informed that when we are forming these Committees, the Speaker nominates the Chairman. In practice, what I have learnt from the Kerala Assembly, is that when they are making their Ministers *ex-officio* Chairman, then sometimes meetings do not properly take place. May I know from the Speaker whether he will consider this kind of problem and will not appoint a Minister as Chairman of the Committee?

**The Chairman:** That is why we have not taken Ministers as Chairman. Nor have we proposed such a thing.

**Mr. President Makombe (Zimbabwe):** With regard to the comment which has been made in connection with the permission being granted by the Ministers to allow their officials to give evidence to Committees, is it not mandatory that the Committee could get evidence from any Member of the Committee and that the civil servants would be required to give evidence in their own right? I would like to know whether the Minister gives that permission.

**Mr. President McClelland (Australia):** No, Mr. Chairman, the Estimates Committees are established purely for the purpose of examining the Ministers on the Appropriations that the Government seeks from the Parliament. Therefore, the Ministers come before the Senate Estimates Committees in explanation of the expenditure to be incurred by the Government in the prosecution of these powers. Since Ministers are unable to respond to all of the questions that will be asked by Members of the Senate, they bring along with them their senior public servants for their advice and every question is directed to the Minister from the Senate Estimates Committee. But if the Senate makes further questions from the Minister, the Minister may agree to the public servant advising him giving similar advice to the Senator, to the Member of the Senate Estimates Committee. In theory, the Minister is answerable to the Senate Estimates Committee because he is also a Member of the Senate, but he has with him the public servants and he by an agreement agrees that they should answer questions asked by the Senate Estimates Committee.

**Madam Deputy Chairman Najma Heptullah (India):** The hon. Speaker has asked a question but his question has not been fully answered. I would like to supplement it. He was asking about the time. I just wanted to say that there are two types of committees. One is our permanent committees like those on Public Accounts, Public Undertakings/Assurances in which the members retire but which are permanent. But there are certain committees which are constituted from time to time for a particular purpose and there is a time-limit set of 2 months or 3 months or 6 months. They have to submit their report before the Parliament, before the time is out. Of course, they can ask for extension of time. This is what I wanted to supplement.

**The Chairman:** Mr. Speaker Bernard Weatherill.

**Mr. Speaker Weatherill:** The Lord Chancellor is half-American.

**Lord Hailsham of St. Marylebone (U.K.):** I am half-American and I love my mother's country. But I prefer the British constitution. I do think that this is just one of the things which I was talking about when I expressed the fear that the Committee system might be used to remove the focus of attention from the floor of the House up to the Committee floor. Now those of us who were active 20 or 30 years ago remember that those committees in which

Senator McCarthy played such a prominent part in cross-examining various public officials did, I think, much more harm than good.

**The Chairman:** I agree there.

—Now, there is one request. It is from Mr. Charles Lussier, Clerk of the Canadian Senate. If he has the permission of the House then I can allow him to elucidate certain points because his Speaker is not here. He can elucidate if you like.

**Mr. Charles Lussier, Clerk of the Senate (Canada):** Thank you, Mr. Chairman. My Speaker is not here. He is sick. I wanted to say that we have approximately the same system as they have in the U.K. In the Senate of Canada we have 17 Standing Committees and as far as the Money Bills are concerned, we have even more power than the House of Lords, because we are not limited by time, as they are in the House of Lords. If they have extensive power, we have the full power as they have in the House of Commons. But as far as the Money bills are concerned, it never happened that we have really refused that kind of a Bill even if we may do so, because the Senate of Canada is not an elected Senate, it would be resented by the House of Commons if we were to refuse any Money Bill. We have approximately the same problem as in the British House of Commons but at a lower level, if I may say so. Our Committees work as they do in our House of Commons and we also have some Joint Committee but not for the Money Bills. When there is a conflict between the House of Commons and the Senate, we have what we call a Joint Conference to settle the problem. This is all that I wanted to add, Mr. Chairman. Thank you very much.

**The Chairman:** So, that brings us to the conclusion of this Second Session.

Before we close for the day I have some announcements. The programme for spouses from 7th January 1986 is:

10.30 a.m.—a visit to the International Dolls Museum, and second, visit to the National Gallery of Modern Art and at 12.30 visit to National Museum and visit to Indira Gandhi Memorial.

Spouses and relations of the delegates should come to the gates of their respective hotels at 9.45 a.m. on 7 January 1986 when officers of the Lok Sabha Secretariat will take them to the above places.

Speakers and Clerks might like to collect their copies from the Reference counter, of first, the book on *Parliaments of the Commonwealth* and second, *Journal of Parliamentary Information*.

The third thing is, there will be a meeting of Speakers from the African region in Committee Room 'B', adjacent to this Conference Room, immediately on the adjournment of this Session, just now.

We look forward to seeing you at dinner at 8 o'Clock in the Ashoka Hotel. Thank you.

*(The Conference adjourned at 5.03 P.M.)*

THIRD SESSION

[HON. DR. BAL RAM JAKHAR, SPEAKER LOK SABHA (INDIA)  
*in the Chair*]

**The Chairman:** We may now start our morning Session. Before we start, I may inform you that I have received two messages, one from Mr. K. S. Hegde, my predecessor, and the second from Mr. M. Hidayatullah, our former Vice-President. Both of them wish a very very successful Conference.

ITEM 7—FACILITIES FOR MEMBERS OF PARLIAMENT

**The Chairman:** Now we take up item 7 of the agenda. The opener will be the Hon. Speaker from Bahamas.

**Mr. Speaker Clifford Darling (Bahamas):** Mr. Chairman, fellow Speakers and Presiding Officers of the Commonwealth, may I take this opportunity of extending to you, Mr. Chairman, to the Government and to the people of India my thanks and appreciation for the warm hospitality that myself, my wife and the members of the Bahamian Delegation have received since our arrival here to attend the Eighth Conference of Commonwealth Speakers and Presiding Officers.

The topic that I am introducing must be of concern to all of us, whether we are Presiding Officers of large or small Parliaments. It is my considered opinion that the level of service to Members of small Parliaments, particularly in third world countries and more so in the Caribbean region, in many ways, is behind that in some of the more developed countries with larger Parliaments. Members require facilities to enable them to carry out their parliamentary responsibilities such as Secretaries and Research Assistants and they also need accommodation. Those Parliaments without a Standing Committee on services may well consider having such a Committee to be designated as the House Services Committee whereby enquiries could be made under its auspices and the results of such enquiries may lead to recommending better facilities for Parliamentarians.

In the Bahamas, as in many of our Commonwealth countries, there are Members of Parliament who represent their constituencies in the Islands but reside in the capital city and have to visit

their constituencies from time to time. On the other hand there are those Members who are living in their constituencies in the Islands and who have to attend meetings in the Capital. Proper facilities should be provided in both instances for both categories of Members such as living accommodation and transportation. My Government at present assists Members in this regard, but it is not sufficient to sustain them. However, the Government is reviewing the situation. The House of Commons had similar experiences for many years and it was not until 1979 that they became responsible for their own financial affairs.

It is my hope that the Speakers and Presiding Officers assembled here will give this matter serious consideration and make recommendations to their respective Governments on behalf of their Members.

Thank you very much.

**Mr. President Wahid Ali (Trinidad & Tobago):** Mr. Chairman, may I express my gratitude to my colleague from the Bahamas for his pertinent introduction of this subject? I wish to make some very brief comments.

In our country the vote for Parliament is prepared by the Parliament staff; the money comes from the Consolidated Fund; it, therefore, has to meet with the approval of the Executive and thereafter it has to be approved by the Parliament itself. We are happy over the fact that, until now, once that vote is approved, the independence of the Parliament and of the Presiding Officers to operate within that vote has been maintained. However, if we need any further capital sums for improvements, for facilities for Members, for, let us say, hosting Parliamentary colleagues or a Conference, Parliament must again go to the Executive to ask for money. Therefore, Parliament in our country is not in a position to do anything like this unless the Executive, during the course of the year, approves. What I am trying to say is that, for recurrent expenses, we have a situation which is entirely satisfactory and where the independence of Parliament is not in any way abridged. But to do anything new, improve facilities, develop new contacts, host a Conference or to do anything like that, Parliament cannot, in the situation obtaining now in Trinidad & Tobago, act without the approval and support of the Executive. I would like to hear as to what the situation in other countries is.

There is one related matter—I hope I shall not slip into something out of order because I know you will pull me up, Mr. Chairman, if I do so. That is the question that in our Parliament there is, up till now,—of course, we are a small country—no arrangement for independent legal advice to Parliament. I am worried not over the fact that I am sitting very close to the distinguished Lord Chancellor. I would say that in the case of the Senate of Trinidad & Tobago, the President advises himself. But there is a well known adage in law which I would not like to have thrown at me. What is the experience of other Parliaments in the matter of legal advice to the Chair from an independent source, not from the staff of the Attorney-General and Minister for Legal Affairs?

Thank you very much.

**Mr. Speaker Guy Charbonneau (Canada):** Mr. Chairman, if anybody has special problems, it is we in Canada because of distances. Over and above the Sessional Allowance to the Members, we have tax-free expense allowance; we have also special travel facilities to and from constituencies. We have quite comprehensive facilities which our Delegation will be glad to distribute because it would be too long at this stage to dwell on them. But we would be glad to give you our policy here, with the figures and all that go with it. As I said earlier, we have a big problem because of distances. I suppose it does not apply to every country, but I think probably it will be useful to the members of this Conference to have this document. We shall gladly make it available later on.

Thank you very much.

**Mr. Speaker Mutasa (Zimbabwe):** I just wanted to make a reference to the question raised by the Hon. President of Trinidad and Tobago as to whether there is an independent legal adviser to the Presiding Officer. In Zimbabwe we have got a Counsel to Parliament who is a legal officer employed by the Parliament and is responsible to the Parliament. He is one of the staff of the Parliament and he advises us any time any legal matter arises.

**Mr. Speaker Senanayake (Sri Lanka):** In our Parliament, our Members of Parliament are provided with lots of facilities. Those members travelling from distance are provided with Government flats or rooms in an MPs' Hostel.

Travel by railway is free. A first class pass is issued to every Member of Parliament and also every year an ordinary class permit is issued to a member of his staff. The spouses of MPs are



provided with railway passes thrice a year. They can cover the whole island.

They have also got free telephone facilities, free postal facilities and the Members are also allowed once in five years to import a car—of course, we have got a restriction on the size and the horse-power of the car—duty-free. No duty is levied on such an import.

Stationery is provided to the members. Postal facilities are also provided. They also get priority telephone calls. Of course, now it does not arise because we have direct dialling facilities in our country.

We also give them typewriter and copying machine at a concessional rate.

Each Member of Parliament is provided with a fuel allowance of Rs. 1500 per month. Of course, the Ministers including the Speaker and the Deputy Speaker get petrol as required, but the MPs are given a special allowance.

Therefore, in our country, Members of Parliament, Mr. Chairman, cannot grumble. Of late, there has been an increase in the allowances paid to the MPs because we find that the type of young people who come forward to contest the seats on either side are not people with means. Therefore, our President considered that a substantial increase in the allowances paid to the Members of Parliament be allowed.

Thank you.

**Mr. Speaker Khonje (Malawi):** Thank you very much for giving me opportunity to say a few words about the facilities provided to Members of Parliament in Malawi.

With the exception of Ministers and the Speaker of the National Assembly, no Member of Parliament is entitled to official residence. However, during meetings of Parliament or meetings of the Select Committees of the House, Members are accommodated at the Government Hostel which is within walking distance of the National Assembly. Others are accommodated at Ku Chawe Inn on Zomba Mountain some eight kilometres away and official transport is provided to ferry members to and from Parliament Building. The National Assembly is responsible for meeting the cost of the accommodation, meals and reasonable laundry charges at both hotels.

When Parliament is meeting, the National Assembly provides tea, lunches etc. to Members of Parliament within the Parliament Building.

Members are provided with official postal franks for use when sending official letters to their constituents, National Assembly, Ministries and Departments.

No official transport is provided. However, Members are entitled to mileage allowance at a prescribed rate if they use their cars when travelling on Parliamentary duties to and from the National Assembly or to meetings of Select Committees of the House or to meetings of Commonwealth Parliamentary Association, Inter-Parliamentary Union or the Union of African Parliaments. Where a Member travels by public transport he is reimbursed the fare on production of the relevant ticket.

Members of Parliament are entitled to free medical treatment provided at Government medical institutions. However, they can make their own private arrangement if they want paid medical treatment at government or private hospitals. During meetings of Parliament a senior Clinical Officer and a Registered Nurse are in attendance at Parliament Building to deal with common ailments. Should a Member require specialist treatment, he is then referred to the nearest hospital.

There is a private Bar for Members within the Parliament Buildings where they can relax and also play darts and other indoor games. Film shows are also arranged at least twice a week when Parliament is in session.

Mr. Chairman, these are some of the facilities we have for our Members in the Malawi Parliament.

Thank you.

**Mr. Speaker Vakatora, (Fiji):** Mr. Chairman, I am sure most of the things that have been mentioned so far are available in most of our Parliaments. As far as we are concerned, in Fiji there is one area which is still grey—not quite grey but getting grey—and I would like to ask Hon. Speakers here if they have some provision available.

Some have taken up politics as a career. They attend Parliament until their working life is over. The question I would like to ask is whether there is a superannuation scheme for Members

of Parliament when their working life is over and they are going to some kind of retirement, and if it is available, whether there is a separate superannuation scheme for Members and for Ministers of the Crown.

We heard yesterday that Members of Parliament should declare their assets. In some areas they are presumed to be dishonest. That was what was said yesterday. A Member of Parliament is a human being and he needs to be protected when his working life is over. I wonder what the position is in other Parliaments when a career politician finishes his political career and goes in for retirement. Is there any superannuation scheme? That is all I wish to ask.

**Mr. Speaker Bosley (Canada):** Sir, it may be helpful and we shall be truly happy to provide figures under our political system. My good friend from Fiji would be proud of our pension scheme in Canada. We have a committee reviewing the matter in order to determine whether it is good. Our system used to be that to attain four pensions as a Member of Parliament you have to serve 25 years in the House. Now, you have to serve 15 years and on retirement after 15 years' service you receive 75 per cent of your salary as Member of Parliament—75 per cent average of your six best years—to which both Members and Government contribute on matched basis during the term of office. Ministers who receive salary as Ministers are entitled to make contributions and have matching contribution by the Government of their Ministerial salary as well. In fact, they can have their Ministerial salaries deemed as pensionable earnings. Four insurance schemes exist for our Members of Parliament while they are Members.

I may also add that the pension plan has a survival benefit for the spouses of Members under which spouses would continue to receive on the death of the Member or on retirement 60 per cent of that pension. We started the scheme a long time ago and we did it precisely for the reason that concerns you that we wanted to be sure that somebody who had devoted his life or a substantial portion of his career to the service of the country would not be disadvantaged. Surely all our friends who had spent 15 to 25 years in office would find it enormously difficult to establish themselves. That was the reasons behind the plan.

**Mr Speaker Taniera (Kiribati):** Mr. Chairman, thank you very much for giving me the time to speak on this subject. In Kiribati our Members of Parliament are paid from the Consolidated Fund.

The salary is determined by the Tribunal Committee. According to our Constitution there is the Members of Parliament Salaries and Allowances Tribunal Committee. This Committee decides the salaries and allowances of all Members including the Ministers and the President. They recommend it to the House and the House has to approve of it. So, the Executive or cabinet has nothing to do with the salaries and allowances of Members of Parliament in Kiribati because once it is approved by the House, the Clerk puts it in the estimates and there is nothing to be done about it again. That is the end of it.

We have over 26 Members living in islands away from the Parliament. I think the farthest constituency from Tarawa—the seat of Parliament—is over 2000 miles. There are three members from there. When we invite them to come for the meeting they have to come *via* Honolulu, Marshals and Tarawa and by air it costs almost 6000 dollars (Australian) for one meeting just for three members. It is very very expensive. So, in our budget we try to make 50,000 dollars for travelling for all members for one year and sometimes we need supplementary appropriation because that is not sufficient. Members are paid 5 dollars subsistence allowance per day if they live at Tarawa and also all transport for them during the meetings. We pay their air fare to Tarawa and back to their constituency. That is the situation in our country. Thank you, Mr. Chairman.

**Mr. President Wahid Ali (Trinidad and Tobago):** Mr. Chairman and colleagues, I thank you for your indulgence. I have been prompted to make this brief second intervention because of comments on emoluments. I do know that in many countries of the Commonwealth the Members of Parliament pay party dues and for want of more appropriate words pay a percentage of their emoluments to the party through which they enter Parliament. Now, this is nothing bad. Without the party organization the Members will not get into the Parliament in those situations where the party system operates.

The point I wish to raise, and I raise it only to benefit from the experience of my colleagues, is seeing that the Speaker or the Presiding Officer must not only be independent, but must appear to be independent, how appropriate is it for a Speaker or a Presiding Officer to continue to pay party dues or party tax? I should be grateful for any views on this.

**Mr. President McClland (Australia):** I shall explain this point to my friend from Trinidad and Tobago from our experience in Australia.

In Australia when the Appropriation Bills are presented to the Parliament, there is a separate Bill presented to the Parliament, known as the Appropriation (Parliamentary Department) Bill. This is specifically designed to provide funds for the administration and general running of the Parliament, the House of Representatives and the Senate. Included in the Appropriation (Parliamentary Department) Bill is a special advance made available to the Speaker of the House of Representatives and a special advance made available to the President of the Senate to meet the expenses regarded by them as being for unusual and unforeseen circumstances at the time of the drafting of the Appropriation Bills.

In the case of Speaker of the House of Representatives, the amount made available to him by way of special advance is three hundred thousand Australian dollars and in the case of President of the Senate one hundred and fifty thousand Australian dollars

Yesterday, I alluded to the situation in Australia regarding the question of privilege and the necessity for the Parliament to intervene in certain criminal proceedings. It was said that the advice of the Law Office could have been made available to me or could have been made available to the Speaker of the House of Representatives, but because the Crown was prosecuting a justice of the High Court, we thought that we had to seek independent legal advice so far as Parliament was concerned. I resorted to the use of advance made available to the President of the Senate under the Appropriation (Parliamentary Department) Bill to enable me to seek independent legal advice and having sought that advice to engage counsel to appear for the Parliament in respect of action the Crown might be taking. This year I expect that the advance would be raised rather than reduced because of certain other matters which are around the corner. This is one way how we have developed our system for the operation of the Parliament independent from the Crown so far as unusual and unforeseen expenditure is concerned.

In respect of general allowances, of course, Australia has a Remuneration Tribunal and the Tribunal is responsible on an annual basis for giving consideration to the salaries of Ministers of the Crown. Members of Parliament and those who hold judicial office, Chairman and Members of Statutory Boards and Commissions. That report has to be laid on the Table of each House within

15 sitting days of its receipt by Government and the report takes effect from the date of its presentation, until and unless either House of Parliament rejects the report.

On the question of superannuation as raised by my friend Mr. Vakatora from Fiji, he would know that like Canada, Australia has a parliamentary superannuation fund, which too was reviewed by Government some months ago with a view to lowering the rate of receipt, but that fund is provided for by contributions by the Members of 11½ per cent of their salary on an annual basis. A Member has to be in Parliament for eight years or for the life of three Parliaments before he is entitled to superannuation. If he is defeated before eight years, or is there for less than three Parliaments, then he receives one and a half times the contribution that he has made. If he is entitled to superannuation, he starts at 52 per cent of the Member's salary after eight years' service, raising it by 2 per cent on an annual basis until he gets 75 per cent of the Member's salary.

I have said all this to assist my friend from Trinidad and Tobago. I have also mentioned about the special allowance made available to the Speaker of the House of Representatives and the President of the Senate to meet unusual and unforeseen circumstances.

**Mr. Speaker Dhlamini (Swaziland):** Mr. Chairman, I thank you for giving me the opportunity to say something on this very important subject. Being probably one of the youngest Speakers in this august body and also coming from one of the youngest independent countries, I would apologise that most of my contribution will be by way of questions.

**The Chairman:** That is also a contribution.

**Mr. Speaker Dhlamini (Swaziland):** This is because I would like to know what my big brothers are doing. My mind was very much agitated by hearing what is happening in Canada, where you have people who are called career M.Ps. How does one become a career M.P. when most Parliaments have five years' life?

Then, you also have got pension for Members in Canada. What about those Members who will only serve for that particular five years' period? How are they compensated?

At the same time, it would be really interesting to know how one becomes a career M.P. because one has to be chosen by people. How can you opt to be a career M.P.?

**Mr. Speaker Bosley (Canada):** It is an excellent question. Being lucky enough to continue to get re-elected is what is meant; by career M.P., we mean someone who continues to be fortunate at the polls.

We do find that it is fair to say that the old tradition of people pursuing a business career, teaching career or any other career and then entering politics as a second life is less the rule today than it was. We have more and more people today who start not somewhere else. In my case, for instance, I started as a Member of the Municipal Council, City of Toronto, and then decided from that experience to come as closely as I can to making a life career of public service in some way. Perhaps I like it, perhaps not to be a public or a civil servant.

We find that many of our politicians at the federal level had started somewhere else at a young age, and then tried to make it their life career as best as they could, because that depends on continuing to be elected, continuing to be acceptable to the people.

For those who come to Parliament for one term, we have got, what we call, a severance pay, or separation pay or allowance. If they are defeated at the end of one term, or have served for less than six years, should they be defeated, we pay them back all their contribution, as does Australia, to the pension scheme with a very lovely interest and we pay them the severance allowance of their happy years' salary to get them readjusted to their other way of life.

**The Chairman:** We have to see the correlation between item No. 4 which we discussed yesterday, namely 'Declaration and registration of the pecuniary interests of members' and item No. 7 which we are discussing at the moment. I think it has a correlation with this also.

[MR. SPEAKER MUTASA (ZIMBABWE) *in the Chair*]

**Mr. Speaker Bernard Weatherill (U.K.):** Mr. Chairman, may I say first of all how good it is to see you in the Chair? Mine is a very brief contribution, really sparked off by the comments of the Speaker from Swaziland. I entirely agree with what he has said. I think that there is a great danger that politicians may become professionals and treat it as a career rather than a service. I think that in all this the size of the country makes quite a great deal of difference. I imagine in Australia and in Canada and in India, countries with big distances to travel, it is very difficult to have

any outside career. But in smaller countries and certainly in Britain, we try to strike a balance in the emoluments, pay and allowances and we take it as a cardinal principle that Members of Parliament should be there not as career politicians, but it should be a service because as the Speaker from Swaziland correctly stated, we have been elected by the people to serve them. We are not entering Parliament in order to serve our own interests. I think in all this we want to bear this balance in mind. That is all I want to say about it.

**Mr. Deputy Speaker Thambi Durai (India):** I thank you, Mr. Chairman, for giving me an opportunity to add one point regarding the facilities for Members of Parliament. As mentioned by many delegates, most of the MPs are entering public life, leaving their academic or business line. During the short period of their tenure as MPs, they are getting some facilities. Whether they are getting it for their services or to facilitate their working is a debatable point. I want to add here that though there is no retirement in politics, due to certain circumstances they have to leave politics and then it becomes very difficult for them once again to go back to their own professions, either as a teacher or as a businessman. If we do not keep the interests of the retired politicians in view, it may give rise to all kinds of ideas in the minds of the present politicians also, as to whether they themselves will be looked after later or not. As mentioned by the Speaker from Canada and also by other delegates, after their retirement, it is proper to look after their welfare, giving them more facilities because they sacrifice their lives for the upliftment of the society and spend most of their time doing social work. If you give them some kind of facilities which are very essential for them to look after themselves, then only I think the society will definitely be rewarded by their service. Working politicians/Members of Parliament will also feel that they are secure and that their future may not be spoiled and it will be an inducement for them. So, I just wanted to emphasise this point regarding the pension facilities.

**Madam Deputy Chairman Najma Heptulla (India):** Mr. Chairman, being the only woman representative in this Conference, I might add one thing. As far as women are concerned, we have somebody else to earn for us and we can freely work in Parliament. But I feel, just as my hon. colleague from the Lok Sabha has suggested, that the facilities to the Members of Parliament should be increased. Very recently, in the last Session of the Parliament in our country, we have enhanced certain facilities to our



Members of Parliament. But still we feel that they are not sufficient, considering the inflation rate not only in India but all over the world. And the Members of Parliament from all over the world feel, as has been stated yesterday by the Speaker from Canada or by somebody else, that they become poorer by becoming Members of Parliament.

**Mr. Speaker Daniel Micallef (Malta):** Mr. Chairman and dear colleagues, this gathering of Speakers and Presiding Officers, I think, is primarily concerned about the physical aspects of facilities, that is, transport, free telephone service, free postal service, residence, etc. There is another subject, however, about which I am concerned very much indeed. It is the level of education, the level of awareness and the degree of service that a Member of Parliament could give to his constituents.

In Malta, I had the experience of being a Member of Parliament for a number of years before the House elected me as Speaker early in 1982. I can then compare the facilities and the advantages of being a Member of Parliament and the advantages of being a Speaker with a secretarial staff. The shortage of secretarial staff or the total absence of it for most of the Members of Parliament does hamper their proper performance. Then there are financial difficulties, time constraints and dedication. It has been mentioned here that some Members of Parliament in some countries follow their trade or profession. I, for one, as a medical doctor, never ceased to follow my profession for the last 23 years of my membership of Parliament. And I still do it. But now as a Speaker I am able to do more for my constituents because of the secretarial facilities that I have. I am still a Member of Parliament and I am still a member of the Labour Party. But my secretarial staff looks after the political work and I keep away from that, maintaining as much distance as possible. This I do to protect my neutrality as a Speaker.

One other subject that concerns me very closely especially as Speaker is the raising of the level of debate. In this respect I am trying to organise a library with all research facilities possible for Members of Parliament. Our primary concern is to upgrade the performance of the Members of Parliament not only in Parliament but also in their dealings with their electorate. I feel that it is essential and we should put our heads together and try to organise a kind of circulating library that would provide facilities in research for Members of Parliament in the Commonwealth countries. The CPA has been doing very good work. It has got a Data Bank that can supply information. But our experience in Malta is

that for some reason or other we have not yet fully made use of these facilities

Another aspect that I would like to highlight is the question of financial difficulties for Members of Parliament to participate in international conferences. I have the experience of the CPA and I am grateful for the tremendous amount of knowledge that I have gained from it. But is it always possible for countries with low *per capita* income to encourage their Members of Parliament to attend these international conferences? For us in Malta, it is always a big self-sacrifice. So, I conclude that these considerations should also be taken into account when we talk of facilities to Members of Parliament. Thank you, Mr. Chairman.

**The Chairman:** Thank you very much indeed; may I now draw the attention of the Conference to the need to round up discussion on this item, so that we can move on to the other items on the agenda?

#### ITEM 8—POWERS OF UPPER HOUSES AND OF THEIR PRESIDING OFFICERS

**Mr. President Arnott Cato (Barbados):** Whenever the subject of the powers of Upper Houses is being discussed, there is always lurking in the background the question of their functions and usefulness in the democratic system, and even whether they should exist at all. The House of Lords, that ancient body which has to a large extent provided a pattern for Upper Chambers in the Commonwealth, has been frequently threatened with drastic reform and even abolition by the British Labour Party. New Zealand abolished the Upper House in 1951, and a number of the newer Commonwealth countries are unicameral.

Recently, our Commonwealth Parliamentary Association appointed a Study Group to look into the role of Second Chambers, and they found that Second Chambers play "a useful, almost essential role, which it would be difficult to replace". And, if I may quote from a speech by the esteemed Lord Chancellor: "In a modern State, an Upper Chamber acts as a governor, controlling the speed of a piece of political machinery which might otherwise shake itself to pieces as the result of too many revolutions per minute. It is also, in another phase of its activities, a lubricant, preventing the generation of too much heat resulting from excessive friction between the various parts of the machinery of society, and as such an essential part of the framework of any effective system

of democratic Government". I suspect that many of us present here agree with these views, and that the powers of Upper Houses should be proportionate to the functions they perform.

Parliaments and Congresses are authorized to make laws for the peace, order and good government of their countries. Where these bodies are bicameral, the authority resides in both Houses. Because Upper Houses are part of the legislative process, all legislation must be submitted to these Chambers. Legislation may be initiated, motions proposed, and petitions presented in the Upper House. Limitations exist in regard to Finance. Bills relating to revenue matters—Money Bills—cannot be initiated in the Upper House, and in most cases may not even be amended, certainly not successfully. Assent to Money Bills may be dispensed with, and Constitutions prescribe a period after which the Bill becomes law regardless of the views of the Upper House. Money Bills are so certified by the Speaker of the Lower House. Ordinary Bills may also be passed over the dissent of the Upper House, but the delaying process is much longer.

Parliaments in the Commonwealth, though to a large extent patterned on the Westminster model, are comprised of a lower House elected by popular vote and an Upper House with varying forms of membership selection. In the Commonwealth Caribbean, the Governor-General appoints certain members of the Senate on the advice of the Prime Minister and the Leader of the Opposition, the numbers varying from country to country.

The Indian Council of States—the Rajya Sabha, is constituted predominantly through indirect election. The majority of the members are elected by the various State Legislative Assemblies, the number of seats being based on population. The remainder, small in number, are nominated by the President of India from among persons with certain special accomplishments.

The Australian Senate is constituted on the American model; the members are elected for a fixed term and each State is equally represented.

Members of the Canadian Senate are nominated by the Governor-General on the advice of the Prime Minister. Previous to 1965 the appointments were for life; members appointed since then must retire at the age of seventy-five.

The authority of the Upper House originates from its constitutional role, especially relating to the passage of legislation, and

from the method of selection or election of its members. Where there is a lack of independent continuity of membership, it is regarded as a weakness. Continuity exists in the House of Lords where membership is hereditary or for life, and to some extent in Canada where members may remain in the Upper House until the age of seventy-five. A measure of continuity is also present in the elected Upper Chambers like those in Australia and the United States of America, since members are elected for a six-year term. In certain circumstances the Australian Senate is subject to dissolution. The members of the Rajya Sabha of India, which is a permanent body not subject to dissolution, are also appointed for six years. In the Commonwealth Caribbean both Houses are dissolved together.

In India and Australia the expedient of a joint meeting of the two Houses can be used to settle serious differences.

Nominated Second Chambers, like those in the Commonwealth Caribbean serve as effective deliberative revising bodies. This is a positive approach for the enactment of legislation. The time for the proverbial second look is provided, but, more importantly, time is made available for public debate, dissent and pressure. This must be an effective and, perhaps, less disruptive check on unpopular legislation than confrontation, dissolution and joint meetings. Further, the most important provisions of the Constitutions, those which have entrenched the fundamental rights and freedoms, are safeguarded against politically controversial changes by the requirement of a two-thirds majority of the Upper House for their amendment.

Most Upper Houses make it their business to keep an eye on delegated legislation, and to check on anything *ultra vires* the parent Act.

In Zimbabwe, the Senate Legal Committee has the power to consider in advance draft Bills and draft Statutory Instruments.

The House of Lords has been described as the most effective Second Chamber in the Commonwealth. The Australian Senate is termed the most powerful in the Commonwealth since it can amend some Money Bills and bring about a dissolution of Parliament. The United States Senate is considered the most powerful in the world; the Constitution gives it the power of consenting to nominations for certain public offices and to treaties. The Senate has the sole power to try the President if he is impeached by the Lower House.

I said earlier that Parliaments exist to make laws for the peace, order and good government of their countries. To enable them to discharge these functions, they have certain rights and privileges not possessed by other bodies or individuals.

At Westminster, these privileges and immunities exist both in the members individually and in the House collectively, and they apply to both Houses. Some are hallowed by the "*lex et consuetudo Parliament*" (law and custom of Parliament), others by statute. But whereas the Lords enjoy them simply as part of the High Court of Parliament, the time-honoured custom is for the Speaker of the House of Commons, at the commencement of every Parliament, to lay claim to freedom of speech, freedom from arrest, freedom of access to Her Majesty, and that the most favourable construction should be placed upon all their proceedings. If any of the rights and immunities of Parliament are disregarded or attacked by any individual or authority, it is a punishable offence. So also are offences against the authority or dignity of either House, and persons may be in contempt for refusing legitimate summonses, or rebelling either House, its Members or Officers.

Apart from all this, the House of Lords has certain special powers as a Court of Judicature.

In regard to the rights and immunities of Parliament, what has been of considerable interest in the past was the extent to which any of these privileges became vested in Colonial Legislatures, especially in regard to contempt proceedings. There are numbers of cases which my legal friends no doubt, have found absorbing. Nowadays, independent Commonwealth countries have all passed their own Statutes, determining and regulating the privileges, immunities and powers of Parliament. Certain Constitutions provided for the application of what obtained at Westminster, until there was local statute law on the subject.

In the case of the United States Senate, the Constitution expressly gives freedom from arrest and freedom of speech. It seems that Congress would have to legislate specifically for the offence of contempt.

The Constitutions of the Commonwealth Caribbean empower the Upper Houses to regulate their own procedure. This includes the authority to elect a President, from among members, to preside over meetings of the Senate. Ministers and Parliamentary Secretaries are not eligible for election as President or Deputy President. The powers of the President relate to his actions in the Senate

He is authorised to adjourn or suspend meetings. He is not entitled to vote in the first instance, but has a casting vote in the event of a tie. He keeps order, and can direct a member to withdraw from the House or name him, if necessary. Of course, he can also expel strangers. He can use force when it is required.

The Presiding Officer in the Indian Council of States is the Chairman. The Vice-President of India is the *ex officio* Chairman of the Council. He is not a member of that Upper House, but his functions and powers are similar to those of the President of the Senate in Caribbean countries. The Deputy Chairman is elected from among members of the Council.

The Speaker of the House of Lords is the Lord Chancellor. He is chosen by the Prime Minister, is a member of the Cabinet and the Government's chief legal adviser. The Lord Chancellor is also head of the judiciary, and presides over the House of Lords when it sits as the highest British Court of Appeal. This throws an interesting light on the doctrine of the separation of powers, but I shall leave that for learned members to discuss.

As Speaker of the Upper House, the Lord Chancellor has less power than the President and the Chairman in the Caribbean and India. He cannot arbitrate upon points of order nor adjourn the House. He has no more authority than any other member, but he has the same rights. He may take part in debates and vote, but he cannot settle a tied vote. If the Lord Chancellor is absent, one of the members of the House presides.

In the United States the Vice-President is the President of the Senate. Like the Chancellor he combines executive and legislative functions. He has only a casting vote, but has the usual powers of a presiding officer. Usually the senior Senator of the majority party shares the powers of the Vice-President as Presiding Officer.

In the Bahamas and Jamaica, the President of the Senate is allowed an original vote when the matter before the Upper House is alteration of provisions of the Constitution requiring a two-thirds majority.

Mr. Chairman, I realise that this has been merely an introduction to an interesting and important subject. I look forward to learning a great deal from any discussion which may follow.

My chief difficulty has been, for the purposes of this meeting, in deciding how much to put in, and how much to leave out, as there

is always some unavoidable overlapping in the subjects on our agenda, to say nothing of the time factor.

In the preparation of this paper, my sources have been for the most part:

1. The Constitutions of Barbados, the Bahamas and Jamaica;
2. "Parliament as an Expert", edited by Sir Alan Burns;
3. "Constitutional Government in India", by M. V. Pylee;
4. "Our Federal Government: How it works", by P. C. Acheson; and, of course,
5. Erskine May.

**Mr. Chairman:** I wish to say that the President of the Barbados Senate has presented a very interesting paper indeed. It is a thought-provoking paper.

Now, we come to the stage where presentations can be made from the floor.

I note that there is an indication from the Trinidad and Tobago Speaker.

**Mr. President Wahid Ali (Trinidad and Tobago):** Thank you, Mr. Chairman. May I join you in congratulating our colleague from the Caribbean on the comprehensive and most constructive presentation?

The Upper House in Trinidad and Tobago, like in most other Commonwealth countries, is based on the Westminster model with modifications to suit our particular circumstances. Therefore, by and large the powers of the Upper Houses and their presiding Officers are more or less similar.

May I just add that in our case the President of the Senate has the additional responsibility of acting temporarily in the Office of the President of the country when His Excellency the President is unable to perform his functions. In the descending order it is the Speaker of the House of Representatives and the Vice-President of the Senate who will so have to function if the circumstances arise.

I wish here to raise a particular matter and would speak quite elaborately, because I hope to benefit on this particular problem from the contributions of the hon. Members.

One of the adaptations which we have made is the creation of what we call in our Constitution the Public Accounts Enterprises Committee. We do have, like most of the Commonwealth countries, the Public Accounts Committee. That Public Accounts Committee is comprised of Members of both the Houses, the number of Members being determined by the House of Representatives. In the case of the Public Accounts Enterprises Committee, the number is also determined by the House of Representatives, but it is stipulated in the Constitution that the Chairman of the Public Accounts Enterprises Committee shall be a Senator, to quote the Constitution, "appointed in accordance with the advice of the Leader of the Opposition", so that the Chairman of the Public Accounts Enterprises Committee in our country must be an Opposition Senator, if he is so willing to act.

Unfortunately, our Standing Orders have not been updated to include that Committee by name among the Committees. Therefore, whether that is a Joint Committee or a Committee of the Constitution has come into controversy in our country.

The view has been expressed—and I share that view—that even the Members of Parliament and Presiding Officers can make mistakes. Perhaps we made an error in our Constitution, the most fundamental document in our country, by indicating, and I quote:

"...shall be such Members of the House of Representatives and Senators as the House of Representatives may determine."

That is the reference to the Constitution so that in the context of the bi-cameral system this is an appropriate situation. Bear in mind that the Parliamentarians and their Presiding Officers are also human beings; and not infrequently they work 16 hours and they sign Bills at 3.30 or 4 O'Clock in the morning.

An interesting incident has occurred very recently in the Senate. This relates to the powers of the President of the Senate. One Member of this Public Accounts Enterprises (and I should indicate that he is one of what is called the President's appointees and, therefore, he is not expected to take a partisan position on matters) at a full sitting of the Senate announced his resignation from the Committee and sent a letter of resignation to the President of the Senate. Is it in order that the President of the Senate in such circumstances could accept the resignation? That point of view was disputed and it was suggested that that resignation had to go to the Speaker of the House of Representatives, even though the



Senator was nominated to be a Member of the Committee by the hon. Members of the Senate. If that resignation must be communicated to the Speaker of the House of Representatives before it can be effective, does it not affect or does it affect—I put it objectively—the relationship of the two Houses in the bi-cameral system? While dealing with the powers of Upper Houses and Joint Select Committees, does it also, therefore, come into the picture? Is it appropriate that a summons with the approval of Mr. Speaker and issued by the Clerk on behalf of such a Committee could be resisted in a court of law?

These are the issues I have quite deliberately raised early in the discussion just to benefit from the views of other distinguished colleagues and perhaps they may be of interest to other colleagues.

**Mr. Chairman:** I would now request the hon. Deputy-Chairman of the Rajya Sabha to take the floor.

**Madam Deputy-Chairman Najma Heptulla (India):** Thank you, Mr. Chairman, for giving me an opportunity to speak. I would like to speak on behalf of the House I represent here i.e. Rajya Sabha or the Council of States. I thank the hon. Member from Barbados for giving a very elaborate study of various Upper Chambers of the other Houses of Parliament and various Parliaments of the world and also about India.

I would like to mention that Rajya Sabha, the Council of States, was constituted in 1952. According to Article 79 of the Constitution of India Parliament means both Houses of Parliament and the President. According to Article 80 of the Indian Constitution, Rajya Sabha can have a maximum number of 250 Members, including 12 nominated by the President. The Members are elected, as already said by the Member from Barbados, by the elected representatives of the States and the Union Territories on the basis of their population for a term of six years.

The Vice-President of the country is the *ex-officio* Chairman of Rajya Sabha.

I feel that the Parliaments of the world can be divided into five categories: (1) Hereditary (2) Nominated (3) Partially elected (4) Fully elected, and (5) Special type.

As far as India is concerned, though we have a federal system in a form different from that in the U.S. and Australia, it is based on the federal principle of equality of representation of the States and the representatives are indirectly elected by the people. Though

India is a centrifugal federation created through devolution of powers as in Canada by the Centre to the States, yet it is not a typical federal State as the Constitution is partly unitary and partly federal and hence Rajya Sabha's position is unique in the community of the Upper Houses of the world. It is neither only a Chamber of revision or initiation, nor is it simply one that plays a second fiddle to the Lower House. It stands on equal footing with Lok Sabha in all matters except in regard to money bills and the responsibility of the Council of Ministers which is of the Lok Sabha or the Lower House. Yet it has certain powers which the Lok Sabha does not have. To mention a few, Rajya Sabha has the exclusive power to pass a resolution enabling Parliament to enact the laws for the whole of the country or part thereof on subjects listed in the State List, and this shows the importance of the federal second Chamber.

Under Article 312 of the Constitution certain new all India Services can be created only by Rajya Sabha if the Rajya Sabha passes a resolution by its two-thirds majority. This provision is not there in Lok Sabha. Yet another power available to the Rajya Sabha is to singly approve a Proclamation of Emergency when the Lower House stands dissolved. If the Rajya Sabha disapproves it, the emergency ceases to operate as the Rajya Sabha is a permanent House which cannot be dissolved, as already mentioned. Except for money bills, all the other legislative business can also originate in Rajya Sabha and any Constitution (Amendment) Bill has to be approved by Rajya Sabha, and there has been a very cordial relation of respect for each other between both the Houses of Parliament. Though the bills have been passed by Lok Sabha, the amendments suggested by Rajya Sabha have been accepted by the Lok Sabha and matters of dispute have been taken up together by a Joint Sitting of both the Houses of Parliament. The importance of Rajya Sabha is clear since the Chairman of Rajya Sabha can officiate in the absence of the Head of the State. I would like to quote here the words of Dr. Zakir Hussain, the Chairman of Rajya Sabha. He said, "There is no superiority or inferiority in anything, we are two different Houses, we have prescribed functions to perform."

I would also like to mention here the words of our first Prime Minister, Pandit Jawaharlal Nehru, who had tremendous respect for parliamentary democracy. He said in May 1953, "Under our Constitution Parliament consists of our two Houses, each functioning in allotted sphere laid down in the Constitution." Sometimes we refer to, wrongly commenting on it with reference to the United

Kingdom, as Upper House and the Lower House; though we have profited by the experience of other people, but our guide must be our Constitution which has clearly specified the functions of the Council of States and the House of the People. Each House has full authority to regulate its own procedure within the limits of the Constitution. Neither House by itself constitutes Parliament, it is the two Houses together that are the Parliament of India.

Sir, Rajya Sabha in the last 35 years to be exact, has had many eminent personalities as its Members. At one point of time the Prime Minister of this country, Shrimati Indira Gandhi, was a Member of Rajya Sabha. This House has also worked in cooperation with the Lok Sabha in governing the country and has also from time to time acted as a watch-dog or as a check upon the excessive enthusiasm of the popularly elected Lok Sabha and has also reflected the federal system of our country.

With reference to the point mentioned by our very esteemed colleague from Trinidad and Tobago as regards the Committees I have a suggestion to make that in our Parliament we have two permanent Committees where representation from both the Houses of Parliament is made, namely the Public Accounts Committee and the Public Undertakings Committee. Well, there is a long history of how the Members of Rajya Sabha have been appointed on these Committees, and it is a Resolution of the Lok Sabha which appoints them as Members there on an *ad hoc* basis. But these Members from Rajya Sabha who are working on these financial committees have the full right of discussion and participation in both the Committees. I suggest strongly that the Members of Rajya Sabha should be associated with the Estimates Committee of Lok Sabha also, and I also feel, for representing the federal system or concept in our country, as the Speaker of Lok Sabha is the sole authority to certify money bills, the Chairman of Rajya Sabha should be the final authority to certify what is of a federal nature. I would put these points before this august Conference to discuss and give their opinion thereon. Unfortunately we have been mentioning—yesterday we were discussing the Committee System of the House of Lords and House of Commons and I came at a point to know that the House of Lords did have authority over the money bills till 1911 and it was only after 1911 they themselves clipped their wings or their authority and gave it to the Lower House or the House of Commons. I was talking to the Lord Chancellor while we were entering this Conference Hall about it and reminding him of the 1909 and 1910 discussions in the House of Lords. I feel that while we are discussing these matters, since everybody feels that the

importance of the other House is rightly there, we should suggest that the Members of the other House or the Upper House or the other Chamber should be associated on the Committees as far as financial matters also are concerned, specially in a federal system like India. Thank you very much.

**The Chairman:** I wish to thank you very much, Madam, for a very comprehensive statement.

Now I recognise the Lord Chancellor, Lord Hailsham.

**Lord Hailsham of St. Marylebone (U.K.):** Well, Mr. Chairman, I think perhaps I hope to say something. I am not going to describe the House of Lords, it is quite indescribable, and I am not going to seek to defend the logic of its composition because it is manifestly illogical, and I am not, as the Quiet Knight said in *Alice in the Wonderland* through the looking glass, going to say that it is better than any other Second Chamber. I only say that it is different.

Now, the funny thing about the House of Lords, its illogical characteristic is that it has very largely gathered in strength, and it has been transformed during my life time, and I do not know what my friend, the Speaker of the Commons would say, but my judgment is that its prestige is far higher now than it has been at any time that I can remember. The factors which have improved it are three-fold. I think, the first is the introduction of the light carriage for Lords. The second is the payment of the modest subsistence allowance for attendance, and the third thing has been the fact that since the proceedings are being broadcast, it has gradually dawned upon the electorate to ensure that it conducts its debates in the absence of any authority whatever from the rules, in a much more civilised manner than some of the other Chambers which existed elsewhere in the world. But I think these are all lessons to be drawn from these peculiarities. May I say, in passing, that by no means I despise the hereditary element amongst us? They introduced an indispensable element in an earthly common-sense.

May I tell you one story—not perhaps a very edifying one. There was a debate some years ago about a well-known book which was prosecuted unsuccessfully in Old Bailey for obscenity, *Lady Chatterley's Lover*, and the very serious-minded peer who was against the acquittal of the *Lady Chatterley's Lover* said by way of peroration—he was a life peer, so to speak—“My Lords, which of your Lordship would like to put this disgusting volume in

the hands of your wife?", to which a very wise and erudite peer replied, "I would not mind letting my wife see it, but I will be damned if I give it to my game-keeper". Now, what can we learn from a curious institution? Of course, the paradigm of democracy is universal suffrage, and nobody would wish to alter that. It is upon that basis that our democracies are built. But like every other human institution, universal suffrage has curious limitations. There are, as in my mother-country, Canada, Australia and India, vast differences on regional interests. They are not, on purely a population basis, wholly accountable on universal suffrage though the differences as in Canada and India are of local languages. There, again, are variations which cannot be accounted for entirely in terms of universal suffrage. There was also a need for expertise, whether it is in law or art or whatever. service-chiefs, ex-civil servants, trade unionists; and they cannot be fully represented in an elected democratic assembly. We are an assembly of nothing infallible but very civilized people representing all sorts of people who would never get into an elected House; they would be very bad candidates, they do not want constituents and sometimes they may be very experienced politicians as many of our front-benchers are. I would only emphasize that we serve a useful purpose. As I have always been saying, a traditional assembly can be judged on a different pragmatic sanction—does it work, does it serve a useful purpose? I would say, that so long as the House of Lords always defers to the Commons, never uses its powers in court and speaks absolutely fearlessly, its future in the British Constitution is probably assured unless somebody wants to take over the British Constitution and turn it into a dictatorship when the first thing they would do would be to abolish the House of Lords.

**The Chairman:** Lord Hailsham is serving a very useful purpose in this Conference.

Can I invite the Hon. delegate from Zimbabwe to speak?

**Mr. President Makombe (Zimbabwe):** Thank you, Mr. Chairman.

In the first place, I would like to compliment Senator Sir Arnott Cato, President of the Senate, Barbados, for his exposition on this subject. I am glad to say that I was also associated with the Study Group on Second Chamber in London in 1982; Senator Sir Arnott Cato was also a member of that Study Group there. On behalf of

Zimbabwe I presented a paper on Zimbabwe Senate. I do not want to bother you on the details of that paper, but what I would, perhaps, like to remind you of is that in that paper I have said that I was not quite happy with the composition of the Senate of Zimbabwe in terms of the proportion of the representatives of the Chiefs in Matekeleland and Machoualand, and also the ten White seats which form one quota of the total membership of the Senate itself. After the Conference, I reported back the proceedings of the Study Group on Second Chamber to the Senate and circulated the report to the Senators and Members of Parliament. This issue was taken up by the Senate for 19 weeks. It created a great deal of interest and debate on the advantages and disadvantages of Second Chamber in our Parliamentary democracy. After that, I was asked again by the Committee to present a paper to a Conference of this nature in New Zealand. Some of you will remember that at that time I had said that changes were coming to Zimbabwe. And not very far from that Conference, our Prime Minister created offices of Governors in eight provinces in Zimbabwe. I do not know how he thought about this. I think he must have foreseen and he did a lot better than the drafters of our Constitution by creating the office of Governor. And these Governors report direct to him through a military created in his office, and the Governors are all members of the Senate. You can see that the calibre of the membership in the Senate of Zimbabwe is far higher than the calibre that we had earlier. It may not be because of what was discussed in the Senate by various Senators in favour of the Second Chamber. But I think the standard of the Senate in Zimbabwe at the moment is much higher than what it was six years ago. I was quite happy to hear what Lord Hailsham was saying just now. Of course, Zimbabwe being a young nation is undergoing change. We have to wait and see, and it is up to the ruling Party itself to see whether the Second Chamber in our young nation has to be abolished. And if at all I do not hear from any quarters that the Senate is to be abolished, it is perhaps because the Senate is becoming positively effective.

**Mr. Speaker Nabulyato (Zambia):** Mr. Chairman, I do not come from a bicameral Parliament; I come from a unicameral Parliament. But I have been prompted to speak so that I can get some clarification on the composition of the Upper Houses. My question is—perhaps Lord Chancellor Hailsham will be in a better position to answer my question, his being the oldest Upper Chamber in the Commonwealth—why it is that Members of most Upper Houses are appointed and not elected by the people?

**The Chairman:** Do you want to delve into that question immediately, Lord Chancellor?

**Lord Hailsham of St. Marylebone:** I do not know if one can generalise, but I would have liked myself at one time, not very long ago, to have seen an element of election to the House of Lords on a provincial basis. There is an inadequate public opinion behind it.

The virtue of nomination in our system is that although the Prime Minister of the day who may be a jack in office, can nominate, he cannot get ready response to that and, therefore, we represent a longer term movement of public opinion than the government of the day is able to summon to its support and our voice is listened to because it is very often a voice of experience and it is sometimes more representative than that of the Government of the day.

**The Chairman:** Can we dispose of another question from Trinidad and Tobago?

**Mr. President Wahid Ali (Trinidad & Tobago):** Thank you, Mr. Chairman.

It is a characteristic of the people of my country that we prefer, when the opportunity arises, to accept assistance and guidance, when it is coupled with charm. And for this reason, I would like to ask the distinguished Deputy Chairman of Rajya Sabha, seeing that the composition of the Committee on Public Undertakings is similar to that of the PAEC—Public Accounts Enterprises Committee of my little country. If I have understood her correctly, the membership of the committee is determined by Lok Sabha. Did you have any experience or has your Rajya Sabha had any experience of the Members resigning from the Committee and if so, by what procedure?

**Madam Deputy Chairman Najma Heptulla (India):** I have not listened to the first part of the question.

**Mr. President Wahid Ali:** I understood your contribution to indicate that the Committee on Public Undertakings is appointed on a resolution of the Lok Sabha. ....

**Madam Deputy Chairman Najma Heptulla:** Yes.

**Mr. President Wahid Ali:** That makes it very similar to the PAEC of my country. Suppose a member of Rajya Sabha wishes to resign from the Committee, what is the procedure? Or has there been any such experience? What is the procedure to be followed?

**The Chairman:** The original question was about your charm, Madam!

**Madam Deputy Chairman Najma Heptulla:** I did not understand it.

The representation on the Committee is according to the strength of Lok Sabha and Rajya Sabha. We are less than in Lok Sabha. So, we have less number of members. And if any member from the Rajya Sabha resigns, he is replaced by another Member from the Rajya Sabha. The acceptance is by the Speaker.

**Mr. President Wahid Ali:** Thank you very much.

**The Chairman:** I gather that the resignations in the Committee are addressed to the Chairman of the Rajya Sabha and not to the Speaker of Lok Sabha.

**Mr. President Wahid Ali:** Thank you very much.

**The Chairman:** I recognise the Hon. President of the Senate from Australia.

**Mr. President McClelland (Australia):** I join my colleagues in extending my cogratulations to Barbados for the presentation of what I regard an excellent paper concerning the role of second Chambers in the Commonwealth.

In regard to the Australian Senate, I would say that in relation to its legislative powers, the Australian Senate is arguably one of the strongest upper Houses in any Westminster-type system and in contradistinction to, as Lord Hailsham of St. Marylebone says, perhaps the House of Lords. I believe this results mainly from the federal basis of the Australian Parliament and the fact that the Australian Senate is an elected Chamber, coupled with the fact, of course, that it was modelled on the lines of the United States Senate which everyone knows is the most powerful Chamber in the American system.



The Australian Senators are elected for a period of six years, as has been mentioned in the paper. But it may be of interest to the delegates here to know that of the 76 Senators currently in the Australian Senate, only one of them, that is, myself have served the full term of six years. I merely mention that to indicate the frequency of elections in Australia in the last two decades. I think in terms of precedence, the President of the Australian Senate occupies the third position after the Governor-General and the Prime Minister in the order of precedence.

The Senate in Australia is an elected Chamber, elected on the basis of proportional representation, as I mentioned yesterday, thus providing for the election of minority parties which in the general election can roughly marshal 14 per cent of the total formal votes cast in the election. Therefore, the Australian Senate consists of Members of two major political Parties—representatives of the rural sector of the community, namely, the National Party of Australia and representatives of another party, a minority party, the Democrats and there are two independents—one from the State of Tasmania and one from the State of Western Australia.

For the last 30 years, it has only been for a period of two years that the Government of the day has ever controlled the Senate. For 28 years out of 30, the Government of the day has not controlled at any time the legislative ability of the Senate and that, in fact, is the situation today.

Lord Hailsham mentioned the question of distances, so far as Canada, Australia and India are concerned. Australia is a country of 15 million people living within a region of 3 million sq. miles. There are vast distances involved. There are vast geographical differences involved and over a period of its first one hundred years, Australia grew up, as it were, under the Westminster system, through the administration of six separate colonies. And when the six Australian colonies were debating federation, a principal concern of the smaller colonies was their fear of being 'swamped' by the greater voting strength of the larger colonies or the larger States in the proposed House of Representatives, upon which the Government was to be based. The States feared losing their identity and becoming under-developed backwaters.

The solution arrived at was to provide for a second Chamber, namely, the Senate which would give expression to the interests of the States, and in which each State, irrespective of population,

would be equally represented, to ensure that the States continued to have a strong voice, and that the agreed arrangements were not easily circumvented. The Senate at the same time was given equal legislative powers with the House of Representatives, the single exception being the Senate's powers in relation to what are commonly called, in the Australian situation, 'money bills'.

Thus, by Section 53 of the Constitution, the Senate may not:

- (a) originate a taxing bill or appropriation bill;
- (b) amend a taxing bill or a bill appropriating revenue or moneys for the ordinary annual services of government;
- (c) amend any bill so as to increase any proposed charge or burden on the people.

In respect of bills which the Senate may not amend, it may, at any time, make a request, by message to the House of Representatives for the omission, insertion or amendment of any item or provision. Under its Standing Orders, the Australian Senate also claims the right to press such requests, and has done so on a number of occasions. In addition, the Senate has the power to veto any bill, including bills it cannot amend, coming to it from the House of Representatives.

Both the major parties in Australia have declared their intention to use the Senate's constitutional power to veto money bills—including the Government's budget—if considered necessary 'in the public interest'. The constitutional crisis of 1975 arose when the non-government majority used its numbers to defer consideration (not veto) of the government's budget bills until such time as the government agreed to submit itself to the judgement of the people. This situation was overtaken by the Governor-General's decision to dissolve both Houses under the deadlock provisions, with the Opposition forming a caretaker government on the basis that it could guarantee passage of the budget bills in the Senate. I mentioned this merely to show the extensive legislative powers and constitutional powers provided by the Australian Constitution to the Australian Upper House because its strength lies in the fact that it is an elected chamber.

The Senate has always fought hard to maintain the powers it does have in relation to financial legislation. Thus it sought early recognition (in its first year of existence 1901) to the fact that Supply is the joint grant of the two Houses. It has consistently asserted its right to press requests for amendments; it has ensured

that there is a proper classification of what are the ordinary annual services of government in order to protect the Senate's constitutional power of amendment in respect of money bills; it has zealously guarded against 'tacking' attempts; and it has asserted its power to defer or reject Supply.

Both major political parties realise that the Senate is there to stay. It is there as a check. It is there as a balance and its strength is found in the fact that it is an elected chamber and it caters for all sections of the Australian political community.

[HON. DR. BAL RAM JAKHAR, SPEAKER, LOK SABHA (INDIA)  
IN THE CHAIR]

ITEM 9—DOES A WRITTEN OR AN UNWRITTEN CONSTITUTION  
BETTER PROTECT THE POWER OF PARLIAMENT?

**Lord Hailsham of St. Marylebone (UK):** Mr. Chairman, this is the fifth of these interesting gatherings, I think, that I have attended and I always begin with the stainer which has already been made that I am not a Speaker with power, I am rather *sui generis*.

I find myself asking questions more easily than providing answers. I shall therefore, begin with a question in answer to the one on the agenda. This, unless I am mistaken, was and is: "Does a written or unwritten constitution better protect the power of Parliament?" I reply with another: Is it one of the desirable purposes of a Constitution to protect the power of Parliament? Was Parliament, like the Sabbath, made for man, or man for Parliament? Or, to put the point another way, is it the purpose of the Constitution to protect Parliament or is it one of the principal purposes and duties of Parliament to protect the Constitution? These questions arise in my mind quite naturally. But, to ask them, in some sense, is to answer them. Parliaments and Constitutions, and, for that matter, judges, courts, statesmen and even Speakers exist to serve the communities in whose interests they are set up. So long as they serve this purpose it is the duty of each to protect the other. If any cease to serve this purpose the duty of protection must cease; and they are then as the salt which has lost its savour, fit only to be cast into the oven.

There is a second point which I must now make in the form of a question. All Commonwealth countries except Britain and New Zealand, have, I apprehend, written constitutions, and with the solitary addition of Israel, so, I think, do all modern sovereign States. But what are the characteristics of a written Constitution? Even if we disregard the various Acts setting up various parts of Her Majesty's

former Dominions and Territories, an independent States, the British Constitution, from *Magna Carta*, via the Bill of Rights, the Act of Settlement, to the Statute of Westminster, and the European Communities Act has probably more printed words in it than a written Constitution of an average independent State.

In his judgement in the Privy Council case of *McCawley Vs the King*, Lord Birkenhead boldly threw aside the description 'written' altogether and adopted as his preferred designation 'controlled'. In the words he used:

"The first point which requires consideration depends upon the distinction between Constitutions the terms of which may be modified or repealed with no other formality than is necessary in the case of other legislation and Constitutions which can only be altered with some special formality and, in some cases by a specially convened assembly".

In other words, in his view the real distinction is between countries which divide laws and legislation into two classes—namely those which are passed by the legislature in the ordinary way, and those which require some special procedure, designed in its nature to be limiting, whether in the form of a special assembly, a referendum, a qualified majority of the legislature, or some other device either to set them up, or, when they are set up, to amend their provisions. If this analysis is correct, and, of course, in fact it is, the distinguishing feature of a written Constitution is that it makes certain types of change (which I may refer to as constitutional laws) the subject of special and limiting procedures, which I may call methods of constitutional amendment, and what I may call ordinary laws which are not subject to this form of control. So far as this analysis goes, constitutional law is not at all to protect the legislature, but to control it so as to prevent its becoming an elective dictatorship. As Lord Birkenhead put it in the same case:

"Many terms have been employed in the textbooks to distinguish these two contrasted forms of Constitution. Their special qualities may perhaps be exhibited as clearly by calling the one a controlled and the other an uncontrolled Constitution as by any other nomenclature."

By this standard Britain is almost alone in the world. Parliament is protected only because Parliament is legally omnipotent, and, being able to prolong its own life is in theory immune even to changes of opinion in the electorate. In practice, of course, we

know that political realities are somewhat different from the theory. Even armed by the Parliament Acts, our present Government in the United Kingdom is no more capable of prolonging its life than of taking a rocket and flying to the Moon.

But this leads me to a third question. What is the purpose of a Constitution of any kind, whether written or unwritten? What for instance is the difference between a constitutional and an absolute monarchy? Here, at least, the answer is simple. The purpose of all Constitution is to limit the power of those in authority. Limitations may be of law. Thus our own Constitution limits the power of the executive and the judiciary but, legally speaking, not of Parliament. The United States Constitution limits all three, both vertically and, as I shall be pointing out, horizontally. For in addition to the three vertical divisions the United States Constitution is so structured as to give effect to a federal system. In addition to the limitations placed on the powers of the three classical arms of Government, all three vertical components are subject to a horizontal limitation because the powers of Central Government are limited by the entirely separate powers conferred on the component parts of the federation. This is true of all federal Constitutions by whatever name the lower tier component parts are known, the States in the United States, India, or Australia, the provinces in Canada, the cantons in Switzerland or as the case may be. These are essential features in some countries where the geographical areas as in Australia or Canada or India, differences in culture, language or religion (as in Canada or Switzerland) render the component parts so diverse that a unitary State would inevitably operate as an elective dictatorship or lead to a breakdown in chaos.

I have already hinted at the fact that constitutional safeguards are not necessarily legal. They may be political or conventional rather than legal in the strict sense of the word. In Britain with its unwritten constitution the necessity for periodical elections is governed only by an ordinary statute (the Parliament Act, 1911). But it is buttressed by the existence of the prerogative of dissolution which by convention can precipitate an election where a Government no longer commands a majority in the House of Commons. Likewise, within Parliament, an effective safeguard of liberty is provided by the party system, and British political parties form no part at all either of the legal or of the conventional framework of the Constitution, though in practice they are effectively a component part essential to its working. By contrast, the absence of such independent parties may destroy freedom. Though I have never read it in details, I understand that the constitution of the USSR is, apart

from its atheism, a remarkably liberal document. But of what value is a remarkably liberal piece of paper without political parties to enforce its observance on the bureaucracy and the party leadership?

Opinions may differ on the answer to this question. But there can hardly be any doubt about the answer to the next question. Of what value are any safeguards, legal, political, or conventional without a set of courts armed with a system of jurisprudence, capable of arriving at independent decisions and ensuring the enforcement of their judgments?

The independence of the judiciary is thus seen as a necessary protection of individual and minority groupings inside or outside Parliament. This is itself a large subject, but I speak of it with conviction, because I am persuaded that, quite apart from his speakership of the House of Lords, the existence of a Lord Chancellor, charged with the appointment of judges is one of the key stones in the arch of political freedom enjoyed in England and Northern Ireland. (The situation in Scotland is analogous but somewhat different).

Whether our own formula is the best possible or not may be a matter for debate, but it is clear that the preservation of the Constitution demands a system for the appointment of judges which is beyond reproach and not the subject of political pressures. It also demands, as provided in our own Act of Settlement, a total security of tenure for judges after appointment up to retiring age, dependent solely on continued capacity and good behaviour. Not only should judges be not politically appointed and secure in tenure, but at least to my own mind, it is not acceptable in principle (though it may be in practice) that judicial appointments shall be in the same hands as the prosecution service or penal treatment. In practice, judicial appointment cannot, of course, be divorced entirely from executive responsibility or accountability to Parliament. But it is highly desirable that this responsibility and accountability should be as far removed as possible from day to day politics.

In some written constitutions, but not, I think, in the few unwritten constitutions which exist, constitutional questions are decided in a special court with jurisdiction separate from the ordinary pyramidal court structure. I do not myself see the advantage of this. A constitutional question can arise (e.g. as to the vires of subordinate legislation or abuse of power by a public authority) in almost any sort of case. In England to some extent the development, since the war, of administrative law, by way of judicial review makes the

Divisional Court of the Queen's Bench Division the most frequent forum in which constitutional questions can be raised at a high level. But this jurisdiction is not exclusive.

Constitutional questions may arise and be argued in any court. Further, the Queen's Bench Division itself is part of the general Court structure and its judges, members of the ordinary judiciary. The ultimate appellate jurisdiction of the House of Lords is the ultimate Court of last resort in all cases and all parts of the United Kingdom and is not limited to constitutional issues and is thus not analogous to the Supreme Court of the USA.

Before I tackle the actual question which we are now discussing, I would wish to summarise the discussion up to this point. First, the purpose of a Constitution of any kind is not so much the protection of powers as the limitation of the use of them, although of course, in practice, the limitation of lawful authority involves at the same time the protection of those in a position of lawful authority within the legitimate bounds that have been given. Here the contrast is not between written and unwritten Constitutions, but between the theory of limited or unlimited authority, between, let us say Hobbes' *Leviathan* and Dicey's *Law of the Constitution*.

Secondly, the effectiveness of a Constitution depends or may depend as much on its conventions or the existence of bodies with actual power but outside its formal legal limits as upon the force of its strictly legal provisions.

Thirdly, whatever else the differences between 'written' and unwritten constitutions may be, they do not consist in the presence or absence of writing. It is common for written Constitutions to consist in a single document with or without the addition of formal amendments or judicial interpretation. But more essentially it consists in the existence of a body of law recognised as different from 'ordinary laws' and capable of modification, if at all, only by special procedures or special bodies or a combination of both.

This brings me to the final attempt to answer the question.

All human institutions belong to one of two classes—traditional and contrived. In their nature all written Constitutions whether obtained after successful revolution like the French Republic or the United States, or a written treaty, or an Act by the sovereign legislature of the parent nation like the Constitutions of Canada or Australia, or the newly independent States of the Commonwealth, belong to the contrived species. By contrast, unwritten Constitutions,

like the British Constitution or the Papacy, or the Constitution of that of Imperial Rome belong to the traditional variety. But it must be pointed out that examples of the traditional variety have nothing necessarily in common with one another except their traditional nature. It follows that one cannot generalise about them except by some pragmatic sanction. And the only questions to be applied are: "Does it work?" Or "How well does it work?" and "Has it a prospect of continuing to work?" If the answers to these questions prove favourable to freedom, their unwritten character gives them a flexibility foreign to their written cousins, and their immemorial traditional and gradual evolution commands a degree of public acceptance among the lieges and even a kind of religious mystique which increases their hope of survival.

But whereas the test of an unwritten Constitution is essentially pragmatic, based on the answer to the question "How well does it work?", the test of a written Constitution is essentially theoretical. It consists in the answer to the question: How far does it satisfy the requirements of the human reason? This gives it both an advantage and a disadvantage. The advantage is that if it answers this question satisfactorily it is more likely to gain willing acceptance, because it will be found, to a greater degree than its unwritten cousin, to correspond with the popular political theories of the times. One disadvantage is its inflexibility. Once adopted, it is difficult to change. But once changes begin to be made, they may be made too often. We are for example now into the fifth French Republic. Another disadvantage is that the spirit of the times may alter so as to render the whole contrivance obsolete. Looking back on my own lifetime there are, I would think, few amongst us who would defend the Eighteenth Amendment of the Constitution of the United States, which was passed in a state of enthusiasm bordering on intoxication, and removed amid cries of execration at the corruption engendered by a rule of law which a sizeable minority did not wish to keep.

Another weakness of the written Constitution is the encouragement it offers to the litigious instinct. It is arguable that my mother's country, the United States, has become a nation of litigants and hypochondriacs. So far as this is true—and of course it is not entirely true at all—this fault is not entirely due to the written nature of their Constitution. I would certainly number among the contributory causes, the contingent fee and the civil jury. All the same, as experience of the Strasbourg Court has shown, crude general statements of human rights embodied in a legal document are apt to encourage the belief that the rule of law is best preserved by the frequency with which it is invoked by litigation.



This cannot be true or even wise. I leave the matter in your hands. For my part I am content to live under an unwritten constitution, provided that it is the British Constitution, as comfortable to our peculiar body-politic as an old garment or a well worn pair of boots, constantly evolving, never quite precise, and as adaptable to change as the epidermis of the human body.

**Mr. Speaker Kalafivelu (Tonga):** Mr Chairman, Hon. Speakers, Presiding Officers, and fellow parliamentarians:

Before saying anything about the subject under discussion—as you are aware that I am the newly-appointed Speaker by His Majesty—please allow me, gentlemen, to convey a goodwill message from His Majesty the King of Tonga, King Taufaahau Tupou IV, and his people to His Excellency the President and people of India; to you, Sir the Hon. Speaker of the Lok Sabha, President of the Commonwealth Parliamentary Association, and all the participants in this Conference:

“May you have an enjoyable and successful Conference—and may your deliberations enhance and strengthen the mystique bond that binds the nations of the Commonwealth—and may it further the cause of peace and prosperity which is the sole object of our common efforts today.”

That is the message, gentlemen, from our King and his people and also from my Parliament.

In so far as whether the power of Parliament is better protected by a written or an unwritten Constitution, obviously, of course, the *pros* and *cons* will always be there. An unwritten Constitution leaves quite a sizeable grey area, a grey area that could, if misused by whoever may be in power, be very harmful to the power of Parliament, in spite of any implied or direct constraint provided by Common Law or precedents.

On the other hand, a written Constitution which was drafted to suit a certain point of time, and to cater for the needs under a certain set of circumstances may, and sometimes does, hamper the liberty of Parliament to function freely. This is especially so when the Constitution is regarded as a Bible or Koran, or some kind of holy writ that it is taboo, that it is almost impossible to touch it. There are extreme cases in which it is provided within the Constitution itself that no amendment may be made, unless the decision for the amendment is unanimous. Some demand 75 per cent approval. That perhaps is not as bad as the extreme cases, but not

much better either. I am not a legal man, but I think Constitutions of this type border on being *ultra vires*. This limits, if not completely deprives Parliament's power to legislate in certain areas.

It appears, then, that a happy medium would be to have a written Constitution, leaving no grey areas for the mischievous to play havoc with, and at the same time make provisions—not that amendments should, and could be made at the drop of a hat, but that when the occasion arises and it is found that it is essential, in the interest of the people, that amendment must be made, Parliament must have the power to amend the Constitution. The paramount thought must be: "In what way would the interest of the people be better served". Then it flows from that, that that interest would be best served when the power of Parliament is best protected, and a written Constitution with wise provisions for its amendment is, I believe, the best way to protect the power of Parliament. Thank you.

**Mr. President Wahid Ali (Trinidad & Tobago):** The comment of my distinguished colleague from Tonga that he is not a legal man, brings home to my mind very forcibly, the fact that I am not even a Speaker; I am a mere President. In my country, I call myself a 'jigger-footed lawyer', an expression, I trust, not understood in this distinguished company by some of my colleagues.

I wish to thank the distinguished Lord Chancellor for his very erudite contribution on a question that has caused me some concern for some time. In the literature, and more certainly in the language of parliamentarians, Parliament has been described sometimes, and continues to be described, as the highest court in the land. In many countries on several motions, the independent judiciary has within its full rights overturned the decisions of Parliament, especially on grounds of those being in conflict with the Constitution. I am not merely raising the matter of semantics. Does it have a deeper meaning than that? Is it still appropriate that often parliamentarians should refer to Parliament as the highest court in the land?

**Lord Hailsham of St. Marylebone (U.K.):** That is a very good question. It was referred to as the highest court for three quite separate reasons. The first was the power of impeachment by the Commons before the Lords which was the court—the Commons acting as the grand inquest and the Lords as judiciary. That has now virtually become obsolete; the last impeachment was in 1805. The second was the appellate jurisdiction of the House of Lords.

That still continues; or in practice it is exercised solely by the Law Lords. It is, in fact, the only court to which is applicable all three jurisdictions in the U.K. namely England and Wales, Scotland and Northern Ireland. That is effective. The third reason was that until the beginning of the eighteenth century it was thought that the Acts of Parliament could be illegal. This is obsolete. The last attempt to resurrect the doctrine in the nature of a Private Act was about ten years ago by Lord Denning in the case called *Pekian* against the British Railway Board. And that was properly quashed by the House of Lords. It is inconsistent with the realities of the British Constitution to regard the normal functions of Parliament other than the appellate jurisdiction of the House of Lords as the High Court of Parliament. But still that remains its honorary title. And long may it remain so.

**Mr. Speaker Nabulyato (Zambia):** My question is in connection with both written and unwritten Constitutions. Most of us, in this Conference, were once colonies or dominions of the British empire. But as we, one by one, began to become independent, the very system which is unwritten in Britain decided to give us the written Constitution. Why is that so?

**Lord Hailsham of St. Marylebone (U.K.):** If I may coin a phrase from our Prime Minister, there was no alternative. You have to start with something if you do not start with the tradition. And if you are old enough, to go back from time immemorial, then you do not require a piece of writing and probably you prefer not to have one. But if you are going to start a new lease of life like in the case of United States—they made a successful rebellion ending in a war which they won; when they started that way, they made it themselves—or you start it by Lancaster House Conference ending in an agreement and then an Act of Parliament—it does not matter which—in the end, you get to start with the document. If you start with the document, it must define various parts of the new State, various functions of its component arms of the Government and the rights which the citizens have and it ought to have a mechanism for alteration. All of which means, to use Margaret Thatcher's phrase, there was no alternative.

**The Chairman:** It may be of interest to note that the country which was to be the most conspicuous example of an "unwritten" system was itself the mother of written constitutions. The first attempt at a written constitution was made in England in 1649—the Agreement of the people, a document drawn up and approved by

the Council of Officers of the Parliamentary Army. Its purpose, as stated in its preamble, was to show why written constitutions were desired: "to take the best care we can for the future, to avoid both the danger of returning into a slavish condition and the chargeable remedy of another war". "We are fully agreed and resolved, God willing, to provide, that hereafter our Representatives be neither left to an uncertainty for times nor be unequally constituted, nor made useless to the ends for which they are intended. In order whereunto we declare and agree..." The agreement, however, never became effective.

**Madam Deputy Chairman Najma Heptulla (India):** The Lord Chancellor made a very elaborate and comprehensive study of the subject—whether a written or an unwritten constitution better protected the power of Parliament. As I mentioned before, our first Prime Minister, Pandit Jawaharlal Nehru, who was a great supporter of democracy, gave a guideline for running the Parliament through the Constitution. And I feel that the distinguishing characteristic of a Constitution is its fundamentality, its paramountcy, as a regulator of power relationship in a given society. The Constitution ceases to be fundamental unless its principles are impressed upon the State organs—the Legislature, the Executive and the Judiciary. Writing it down is obviously for securing the Constitution as a standard of reference for State actions. But mere writing it down is not enough, I think, following it up is more important.

*(The Conference adjourned at 12.47)*

*(Lunch break)*

## FOURTH SESSION

*(The Conference reassembled at 3.00 P.M.)*

[HON. DR. BAL RAM JAKHAR, SPEAKER LOK SABHA (INDIA)  
*in the chair*]

### ITEM 10—THE ONE-PARTY PARLIAMENT AND THE WESTMINSTER SYSTEM

**The Chairman:** Hon. Speaker Mutasa from Zimbabwe will initiate the discussion on Item No. 10.

**Mr. Speaker Mutasa (Zimbabwe):** Mr. Chairman and Hon. Speakers and gentlemen, I hope you would not mind my presenting the speech standing.

**The Chairman:** It is a very democratic country, Sir.

**Mr. Speaker Mutasa (Zimbabwe):** Thank you very much indeed. After a very good lunch, sitting down makes you sleep.

Mr. Chairman, may, I on behalf of the Zimbabwe delegation pay tributes to yourself and to India for the way we have been received and are being looked after. We are grateful to you that you have been able to extend this marvellous invitation to all of us and for the facilities that you have provided for Conference. The Zimbabwe delegation is extremely grateful.

Mr. Chairman, in this paper I only try to explain how one-party parliaments are an endeavour to relate the Westminster system into the political culture and traditions of the formerly colonised indigenous people.

It is pertinent to say that, without exception, there was in every British colony before colonisation, an on-going political culture and tradition, be it in Australia, Canada, New Zealand, India or Africa. Some of this culture was destroyed by brute force of conquest or through "protection" and resulted in the establishment of a colony in which British interests were paramount.

The Westminster parliamentary system is based on British culture and traditions. It has worked well for the British who spread it throughout the Commonwealth. It was adapted, in the USA, to fall within an emerging culture of a new independent territory composed of people who came from the UK and various parts of Europe, but not the culture of those who were taken there from Africa as slaves or the indigenous aborigines, the Eskimos, Maoris, Indians and Africans who were conquered and collectively referred to as "the Natives".

The Westminster parliamentary system was introduced to former British colonies to suit the settlers. Colonial legislative councils were, in the main, composed of people from the UK who made laws

governing the indigenous majority. Occasionally, representatives of the indigenous majority were appointed to these legislative councils.

Pre-independence conferences held at Lancaster House provided for the colony a written constitution aimed at satisfying the interests of the settlers, to ensure their continued stay in the colonies. Little, if any, regard was paid to the interests of the indigenous community. So, most of the time of the newly independent colony is taken in making amendments to the constitution and existing legislation. In the course of doing that, new interests and sometimes conflict emerged.

Democracy originated and flourished in no-party Greek States, the majority of whose inhabitants were slaves without the right to vote, but did not flourish in multi-party Rhodesia, where, for more than half a century, all white minority could have the vote and not the black majority. A worse situation is occurring in South Africa today where blacks have no political rights to determine their human rights and future.

Most ancient polities were monarchies or kingdoms. A move from monarchies occurred in Europe and resulted in Republics. The Westminster system retains the Monarch or its representatives. The power to run the State is divided between the executive, legislative and judiciary branches of the State.

A close look at the functioning of African Kingdoms before colonisation reveals that the Monarch did not function in isolation. His counsellors performed legislative, executive and judiciary functions.

Even in the very centralised Zulu Kingdom, where the King wielded (in theory) absolute power, in practice, he operated within defined limits. He always sought the advice of his council which discussed the Kingdom's policies and programmes. They were always guided by their unwritten but carefully understood traditions which were the law. There were no formal opposition groups. If any such group developed, it left the Kingdom and wandered away to set up a separate kingdom.

The entire Kingdom had the same religion and pursued common interests. Apart from the King and his family, the Kingdom was one class of people. It lived in harmony with itself and with nature, and respected the rights and territorial integrity of other Kingdoms. These Kingdoms were in a sense one-party states.

The colonial era produced colonial boundaries some of which subdivided some kingdoms. The kingdoms within the confines of a colonial territorial boundary became one nation. They fell under one British flag and administration. The kingdoms were made as uniform as possible. Any form of political opposition to the colonial

administration was punishable. Gradually the kingdoms were forced to disappear. Those that remained had no political power or fell under colonial protection. The end result was that the entire colony was run as a one-party state by a Colonial Secretary of State through the Colonial Office.

The ruling party in Britain dictated to what happened in the Colonies. There was no formal opposition in the colonies, to the dictates of the ruling British Party. Those settlers who might have belonged to the opposition party in the U.K. went along with the Colonial Office which, any way, ruled the colonies in the interest of the settlers.

The indigenous population was, initially, totally left out of the decision-making process. The argument of the settlers and the Colonial Office seemed to be that "native affairs" had to be conducted through Native Commissioners, and the less those Commissioners knew about native affairs the better. Besides, they were civil servants and could not argue with their political masters. They were, however, the link and symbol of the one-party-state nature of events during the colonial period. The indigenous people were spectators of political events that affected their countries' destinies. They were never consulted and were always to blame.

Then suddenly "the wind of change" blew all over Africa. The colonies had to be independent. Political parties were allowed to be organised to suit Whitehall's wishes. And where Whitehall's view did not suit the settlers' wishes, the emerging indigenous political leaders were detained for "subversive activities". In Kenya, Malawi and Zambia, the emerging African political leadership spent long periods in detention and were released to become political leaders and Heads of their nations. In Zimbabwe the detained emerging political leaders reorganised their parties into Liberation Movements and fought against the settler regime prior to the attainment of national independence.

It is important to stress that right through the political history of British colonies in Africa the indigenous population never participated in any meaningful political organisation without harassment. However, they participated in the united movements to rid themselves of colonial domination. At the end of that domination, Whitehall seemed to desire that there should be political parties including an official opposition.

This demand for political opposition groups took no regard of Whitehall's former contention which, though clumsily put, was more in line with African culture and tradition that kingdoms could not have any formal opposition.

The compulsory end of African kingdoms, during the colonial period, did not mean the end of our understanding of their political culture and tradition. With the end of colonial foreign domination the unopposed and imposed kingdoms of the various British Colonial Secretaries disappeared and were replaced with new indigenous kingdoms. The political culture of people, which had never significantly changed right through the colonial period required to be brought forward and organised into an on-going political force for the first time. The new political leadership organised people to become members of their political organisations. Obviously, they could not organise them into opposition groups. Political power in itself attracts more political support. No one wants to be an outsider. Besides, to be in opposition could be interpreted to mean dislike of the present "kingdom" and preference of the former, and, like in the past, was looked upon contemptuously or as punishable.

In African political culture, constructive ideas have always been welcome. Those ideas could be in opposition to the main stream of current thought but were always expressed within the community of interests and intended to lead the whole community towards a higher level. Destructive opposition was not tolerated for obvious reasons. So, that commonality of political thought, interests, and expression has to be exercised through a common political party. This way political tradition and culture is advanced to a higher level. What used to be the unwritten traditional law of the political kingdom becomes the constitution of the party and the political organisation of the whole nation. That organisation becomes the supreme body which ensures that the legislative, executive and judiciary functions of the State are carried out in accordance with the will and interest of the nation.

From this supreme political organisation is derived the various representatives of the nation elected by the people to serve the people's legislative and executive interests.

The establishment of one-party states and the attendant one-party parliaments, particularly in the former British colonies, has aroused interesting debate among various schools of political thought.

Most of this debate has revolved around the question of whether the one-party system is democratic. While participants in the debate have accepted that the one-party system is democratic, the discussion has degenerated into controversial comparisons of the merits and demerits of the one-party and the multi-party systems.

Today, some political scientists are beginning to accept that the one-party system is more democratic than the multi-party system,



provided certain fundamental essentials of democracy are recognised and adhered to. These include free and periodical elections, free discussion and communication at all levels, freedom to criticise the government, maintenance of the rule of law and respect for human rights and dignity.

Some advocates of orthodox multi-party democracy are slowly thawing to the view that there is no party system that should be considered the sole guarantor of democracy. History has many examples where both systems have produced democratic governments and others where the same systems have yielded to dictatorial, totalitarian and fascist regimes.

Now we turn to the political organisation of the one party, I give below the structure of the ZANU (PF) Party which I am most familiar with. Its structure and function is similar to that of other parties such as Chama Cha Mapinduzi, the Malawai Congress Party, the United National Independence Party, Kenya African National Union, etc.

The following are the principal organs and structure of ZANU (PF):

(a) *The Peoples' Congress:*

This is the policy-making organ of the Party. It convenes in ordinary sessions once in every five years and may convene an extraordinary session during the intervening period.

(b) *The Central Committee:*

This is the principal organ for the implementation of the policies of the Party and the administration of the affairs of the Party. It is answerable to the People's Congress and has a membership of 90, constituted as follows:—

- (i) 42 members elected by the People's Congress upon the nomination of the Central Committee from lists submitted to it by Provincial Executive Councils.
- (ii) 18 members—2 from each of the nine regional provinces of the Party.
- (iii) 10 members of the National Executive Council of the Women's League—elected by the National Women's Conference.
- (iv) 10 members of the National Executive Council of the Youth League—elected by the National Youth Conference.

- (v) 10 members appointed by the President of the Party with the approval of the Central Committee and the People's Congress.

(c) *The Politbureau:*

This is the administrative and executive organ of the Central Committee. It has a membership of 15. It supervises governmental agencies through five Standing Committees of the Central Committee, *i.e.*,

- (i) Economic Committee;
- (ii) Political and Policy Committee;
- (iii) Justice and Constitutional Affairs Committee;
- (iv) Social and Welfare Committee; and
- (v) Defence and Security Committee.

(d) The National Executive Council of the Women's League: is the principal organ of the Women's League for the implementation of the policies of the Party and the administration of the affairs of the Women's League. It is composed of twenty-two members of the Women's League.

(e) The National Executive Council of the Youth League: is the principal organ of the Youth League responsible for the implementation of the policies of the Party and the administration of the affairs of the Youth League. It consists of eleven members of the Youth League:

The Main Wing, Women's League and Youth League each have 9 regional Provinces made up of all districts in that province; each district is made up of 10 branches or 5000 members; each branch is made up of 10 cells (urban) or 10 villages (rural) or 500 members; and

each cell or village is made up of 10 households or 50 members.

It is important to observe that in the event of the establishment of a one-party state in Zimbabwe there will be country-wide participation in the Party, by all members of the community, at the Cell or Village level right up to the People's Congress.

The Party will direct the government because the Party, not the government, provides the policy which emanates from the people. It has their support and loyalty which ties them to the State. The Party integrates the nation by a method that maximizes the opportunity of every citizen to participate on a regular and meaningful basis, in the decision-making process.

The notion that the Opposition may have its chance next time does not apply because the minority will be so small that it may never have a chance to form a government. From the above structure and method of organisation, it can be seen that the desire is to mobilise the whole nation into a political awareness that had never occurred before.

It is nonsense to say that such an organisation is communist. On the contrary, the organisation is African and serves our interests best. It brings forward into the modern era our political culture and tradition. Indeed, communist parties organise themselves in this manner, but it would be ridiculous to claim that they are African. On the other hand, Britain has had political parties for nearly 200 years. The most spectacular development of the twentieth century history of parties in that country is not their rise but their strength and influence. Mass parties have controlled or attempted to control social organisations such as trade unions, youth movement and women groups as well as newspaper and other media of communication.

Even though parties have existed in Britain for so long, it is surely misleading to equate the Tories and Whigs of the 18th Century with the Conservative and Labour Parties of today. Tories and Whigs were small cliques centred around leading families; they were scarcely more than factions. There is virtually no relationship between those loosely organised political bodies and the large parties of today which claim hundreds of thousands or even millions of members and supporters with their regular conferences and congresses.

Time has seen the decline of the Liberal Party in the 1930s and the rise of the Labour Party in the years up to the 80s when the Social Democratic Party emerged and formed an alliance with the Liberal Party. How far this will mean the eclipse of the Labour Party in the foreseeable future is yet to be seen. The point is that the difference, in ideological terms, of the two dominating Parties in Britain does not seem to us to be as great as is always portrayed.

In 1935 the Communist Party (UK) made a formal request for affiliation with the Labour Party. This was rejected by the National Executive of the Labour Party because "the fundamental difference between the democratic policy of the Labour Party and the policy of dictatorship, which the Communist Party had been created to promote, were irreconcilable". Similarly, Mosely's Fascist organisation did not team up with the Conservative Party. This seems to indicate the middle-of-the-road nature of the domineering British parties.

Parties, in their wish to win elections, whip up popular demands and expectations often with little regard to a government's capacity to meet those demands. Hence the voters' feeling of disappointment and betrayal when the Government's performance falls short of the Party's promise. The adversary nature of the two-party system, combined with the all-or-nothing nature of the single-party government breeds excessive partisanship and encourages parties to be irresponsible when they are in opposition. It also produces abrupt reversals of policy when one party replaces the other in government.

There is a tendency for the presentation of poor quality policy concocted while the party was in opposition during which it is in relative ignorance of future circumstances, reactions of the civil service and major interest groups in the world.

The regrettable influence of the Manifesto on British elections encourages the production of a document which may be a piece of window-dressing; something designed to present the party in favoured light, more of an exercise in symbolic than substantive politics.

The theory of responsible party government posts, a set of relationships between the party, its manifesto and those who vote for the party. It is assumed that voters implicitly or explicitly support the programme when they vote for the party.

The essence of the conventional defence of the two-party system is that at elections voters have the opportunity to choose between different sets of issues and policies and that because of the concentration of power embodied in parliamentary sovereignty and single-party government, they may hold the government accountable at the next election. Electoral studies have shown that voting decisions are largely determined by policy considerations, the party's record, competence of leadership and tradition rather than specific issues in the party manifesto.

The question has to be asked; do the different party manifestoes make any difference as to how the government is going to be run? Analyses of manifestoes do show that there are no clear differences between the two British parties on many policies. So, the replacement of one party by another in government will not have much difference.

The point about the limits of the multi-party government may be made more emphatically if we turn to the economy. The party's manifesto promises have increasingly dealt with economic matters—**inflation, growth, unemployment and prosperity.** What is striking

is how little there is a consistent partisan pattern. An analysis by Richard Rose, a political scientist, in "Do Parties Make a Difference?" shows how the growth in public expenditure hardly correlates with changes in party control of government since 1945. If we turn to other macro-economic indicators, such as the size of the public sector deficit, rates of inflation, levels of unemployment and minimum lending rate, there has been a secular rise in each, over time, regardless of the party's programmes or policies. The lack of variation of these indicators according to party policy or influence argues for the constraints of circumstances rather than the positive influence of party ideology.

An important question therefore arises: Are multi-parties necessary? Are they not misleading and a waste of leadership resources? When the leadership of any country works together for the common good of that country, the country could be a better place to live in, and in turn the world.

Minus the official opposition the Westminster system is easily applicable to a one-party parliament. This has been so in Zambia since that country became a one-party state.

Quite interesting developments have emerged in Zambia, Tanzania and Kenya in the recruitment of new Members of Parliament. In the past, general elections used to be a frightening experience and occasionally led to deaths due to violence during the campaigns. Only one candidate per constituency was put forward by each competing party. Now, and in theory, the party can put forward as many candidates as are willing to stand for election in any one constituency.

Since the establishment of a one-party state in Zambia, elections are peaceful. The issue during elections is who is most capable to represent the interests of the people as spelt out in policies formulated during the party congress. Those who are elected to Parliament work within the Westminster system to achieve the objectives set out at Congress.

Whether or not the Westminster system should be adapted is a consideration for the future. It requires careful study and thought. If adapted, it would be important to take into consideration the various peculiarities of different African and other cultures and traditions. It would be absurd to adapt it to suit the culture of one country. It is important to mention that the practice of the West-

minster system is not identical in Canada, Australia and New Zealand,—I mention this because they are the older members of the Commonwealth—but the difference is not all that noticeable. The Westminster system is, therefore, like a university degree that one-party parliaments can easily graduate into.

Thank you very much.

**Mr. Speaker Mkwawa (Tanzania):** Mr. Chairman, on behalf of the Tanzanian Delegation and on my own behalf, I would like to thank you, Sir, and your government for the opportunity given to attend this very important Conference. We are very grateful indeed for the warm welcome we have received since we arrived in this great country.

Tanzania has a one-party Parliament. In the House we do not have the Opposition as such, but we do have spontaneous criticisms from within. We became independent in 1961. So far, we have had five General Elections; the last one took place in October last year—three months ago. From the outcome of all these five General Elections, it has been noticed that not less than 50 per cent of the Members of Parliament were new faces. Sometimes some Ministers lose their seats. So, as far as we are concerned, we feel that one-party Parliament is quite democratic. Therefore, I totally support my friend, Speaker Mutasa of Parliament of Zimbabwe, for his comprehensive exposition on the subject.

Unlike in multi-party Parliament, in one-party Parliament there is no safe seat. So, that again proves that a one-Party Parliament in a way is very democratic. I would not say that it is more democratic but it is very democratic.

Thank you, Mr. Chairman.

**Mr. Deputy Speaker Ngeny (Kenya):** I like to support by congratulating Mr. Speaker Mutasa of Zimbabwe for his very comprehensive paper on the One-Party Parliament and its functioning on the Westminster pattern.

I would like to make a few remarks in connection with our experience in Kenya because we are currently, *de jure* a one-Party State. Kenya has had five stages in its evolutionary process in the party development starting from 1963-64. When we entered independence, we had three parties and in due course, within the past 22 years, two of these Parties which were in opposition voluntarily wound up their existence and joined the current party, the Kenya

National Union that had won the elections as we moved to independence. This was a voluntary winding up. There was no force from anybody. It was just a realisation of the futility of their existence in Opposition where you are not going to achieve anything for your constituents. So, when we entered the republican status in 1964, we were *de facto* a one-Party State.

This came up to 1966 when we had a few members of the governmental party in Parliament deciding that they were not very happy with what was happening. So, they broke away. At the same time, there was a constitutional amendment to make it compulsory for anybody who changes his party allegiance while in Parliament to go back to the people and seek a fresh mandate for whatever party he has joined after changing his allegiance. So, in 1966, about 20 members decided to resign from the ruling party. There was a little bye-election in order to fill those seats. About 9 of them were able to get back to Parliament. So, from 1966 to 1969, we had these two Parties. There was a small Opposition of only 9 members. They did not even constitute an official Opposition in Parliament. Now their existence came to an abrupt end in 1969 when they got involved in subversive activities and the Registrar under the Societies Act derecognised them. So, again, we were back to a one-party system and we have not had any other Party up till now and the status of being a one-Party State was formalised by a constitutional amendment in 1982.

Now, I said at the beginning that I supported the views expressed by Mr. Speaker Mutasa for one main reason and that is that in African culture the concept of an Opposition is absolutely alien because you belong to a party and when you say things that may not be of common acceptance, it does not automatically make you an opponent of that particular system. You simply contribute according to your thinking and, therefore, the idea of having an Opposition for Opposition's sake or in order to express another idea is definitely alien to African culture and that is why the multi-party system has not gained much ground in the African continent.

Supporting what the Hon. Speaker from Tanzania has said, we, in Kenya, have had regular elections in accordance with our constitutional provisions and we have had four elections since our Independence—in 1969, 1974, 1979 and recently in 1983 and on the same tune, that during the time of election any number of candidates can offer themselves for election in any particular constituency. I remember in one constituency in 1963 we had up to 14 candidates offering themselves for election.

And this illustrates our democratic nature because it is the same Party that clears all the candidates. You have to apply to the Party in order to stand and as long as your record is proper, the Party would give you clearance and you go and speak to the people and the person who receives a simple majority gets elected to the Parliament.

Another thing I wanted to say, which, I think, the paper by Mr. Speaker Mutasa did not touch upon. Up to the time of independence, each of our countries in the African continent and we, in Kenya in particular, felt that we had a lot to fight in the economic field. We were more conscious of moving economically to try and catch up as part of the international community. And this was one of the compelling factors that we felt that if the opposition was going to be there and yet, the issues that were being dealt with were really for the social and economic advancement of the individual, then in Kenya we did not have the time on our side to be debating for months and sometimes for years in order to have a policy formulated and implemented. And this helped us in this move for the one-party system. At least we felt that because we are looking at the same thing and we are all using the same manifesto, we shall be moving forward in the economic field and we feel very proud in Kenya that after 22 years since our Independence, economically we think that we have reached some way and when we look back, we think that if we have had all these other parties thinking about whether we should be moving left, right or backwards, we might not have achieved similar goals.

So, Mr. Chairman, in conclusion I would say that we in Kenya are very happy with the way our parliamentary system is working within the ambit of one-Party State.

Thank you.

**Mr. President Coleby (Bahamas):** It is with much pleasure that I join my colleague, Mr. Speaker Sir Clifford Darling in expressing our sincere gratitude to you and the Government of India for the excellent provisions which you have made for this Conference and for the great degree of hospitality which you have extended to our delegations and our spouses.

I would address a few remarks on the topic raised by the representative from Zimbabwe and that is, the one-Party Parliament and the Westminster system. I simply wish to get some precise information regarding the structure and the administration of the one-party organisation and to pose a few questions in order to clarify in my mind more specifically how the system works. I come



from an area where we have a multi-party system working. It will be appreciated if the representative from Zimbabwe just in a capsule form outlines the party organisation; how it is structured and administered; how they select candidates in the general elections and how they deal with the Opposition in Parliament and things of that nature.

**Mr. Speaker Mutasa (Zimbabwe):** The structure of our party is quite simple. If you begin from the bottom-most organ first there is the cell, you divide the locality into your homes and ten of those homes become a cell or 50 members of a locality can set up a cell of the party and 10 of those cells become a branch and 10 of those branches become a district. If you can visualise, in an urban area it would be about 500 homes that become a district of the party, and a city like Delhi will have many such districts.

Each of these organs has a Chairman, Secretary and Treasurer and quite a number of other officials who are responsible for the various activities like administration of the cell, branch, district or province. We have divided the whole country into nine provinces.

Now at regular periods of, say, one month the various organs meet under their Chairmanship and discuss any issue that may come across their mind and then they raise the issue with the upper organ if it is possible to solve it within the province or within the branch or within the district; but if it is of national importance, then it would be referred to the Central Committee and the Central Committee will solve that issue. That is the organisation at the various levels.

Then once in four years the whole country goes to the Party Congress where new party leadership is elected and indeed we may come back from the Congress with a totally new leadership of the party which will then direct the incoming government following the general elections.

You have also desired to know how candidates for Parliament are elected. The country is divided into constituencies and each constituency is represented by one Member of Parliament. At the present moment because Zimbabwe is not yet a one-party State, there is one candidate who is put forth by our party; another candidate is put forth by ZAPU and another candidate is put forth by Mr. Smith's party—the Conservative Alliance of Zimbabwe. Each of those candidates competes in the normal way and the winner becomes the Member of Parliament. But in future it will

be as is happening in Zambia, Kenya and Tanzania and if many people wish to stand for elections they can do so but those people will be members of the same party. They will be members of ZANU (PF) and will compete for elections as such. The number does not matter. As many as ten people can, in fact, compete for election in any constituency and the fellow who has the biggest support is adopted as Member of Parliament. Once Parliament is instituted it then functions in the normal way just as the House of Commons does.

**The Chairman:** Will any body be able to stand at his will or will the party authorise him to stand?

**Mr. Speaker Mutasa (Zimbabwe):** He can stand as an independent but the problem is that if he does that he will not have anybody to vote for him because people will only vote for a member of the party. Again they will vote of their own will and not because they are forced by the party. They regard anyone who is deviant in that respect as not one of their community. In fact, people are very much ashamed about such deviant behaviour because it is frowned upon. They think it is too western and they think also it is very destructive.

If you look at the short period that Zimbabwe has existed, a party like that of Bishop Muzorewa which was the governing party just before our Independence but had never been involved in the liberation struggle went straight down regardless of the immense support that it had from USA and South Africa. It appears at the moment that ZAPU is slowly dwindling in preference to ZANU-- not because anybody has required people to leave it but the people in their own thinking feel that they want a united group of leaders and they would like to be governed by the group of persons who agree with one another rather than those who are at each other's throat.

**Mr. President Coleby (Bahamas):** I have two other questions for clarification. How is the overall party administered? In Bahamas the governing party is administered by the National General Council. Do you have the same type of structure?

**Mr. Speaker Mutasa (Zimbabwe):** Yes, except that we call it a politbureau instead of national executive.

**Mr. President Coleby (Bahamas):** Who is considered then the leader of your party?

**Mr. Speaker Mutasa (Zimbabwe):** At the moment it is the non-Comrade Robert Mugabe, the Prime Minister. He is the President of the party.

**Mr. Speaker Bosley (Canada):** I had the benefit of preview of this conversation with Speaker Mutasa some months ago and I have been waiting with interest to hear this presentation.

I have one question. If your people want your party, why is it necessary to change your system to give them the ability to get your party? Why not leave your system so that if the people choose your party unanimously, and if another party wants to seek the consent of the people but does not get it, then at least in the eyes of the world you would not have started another party. Why not leave that system in place?

**Mr. Speaker Mutasa (Zimbabwe):** That is a very interesting question. Indeed we could do that, but at the same time, nobody is forced to become a member of our party. We have just created these various structures for those who are willing to join and indeed our Prime Minister who is the President of our party has specifically said precisely what you are saying, that nobody should be a member of our party on grounds of fear, but that they should be members of the party because they would like to be. But the other thing which is very important to mention at this time is how people came to our assistance during the liberation war. During the fifteen years of war in which our country was involved, every single person became either for or against the war and the majority of the people in the rural areas obviously supported the war, and that is why the war succeeded. We cannot say now that those people who were with us during the war of liberation should be forgotten. Indeed, we have tried to facilitate for them structures through which they can be involved in the decision-making process of their country.

**The Chairman:** Mr. Bosley wanted to know, if the people go along with the idea of choosing only your party, then what is the need of changing the Constitution? Why should you put it into law, if the whole people are with you?

**Mr. Speaker Mutasa (Zimbabwe):** It is because we are afraid of the world opinion, as Mr. Bosley is voicing it now. If we did that, they would say that we have forced the people by changing our Constitution. We would like it to happen democratically, because eventually perhaps in the next Parliament or two, the people, the whole country would retain ZANU (PF) Members of Parliament only and we shall be *de facto* a one-party State.

**Mr. Speaker Bosley (Canada):** If you do that, would it continue to be lawful for another party to exist and to seek election?

**Mr. Speaker Mutasa (Zimbabwe):** Yes, why not? It could be quite lawful.

**Mr. Speaker Bosley (Canada):** Then, I have the same question for Zambia and Kenya, whether in their system it is lawful for the other parties to stand and seek election. I take it that Zimbabwe has been saying that Zimbabwe would be progressing towards the system that exists in Kenya and Zambia. My question to Zambia and Kenya is whether the other parties can lawfully stand and seek elections.

**The Chairman:** Before Speaker Nabulyato answers that, I would tell you a joke. Once a State secret was stolen and there was a great hue and cry and the police was let loose to find out who the culprit was. Somebody asked "What is the State secret?". The reply was that they could not divulge it because it was the election results of 1990. So, that is what he is afraid of. I think you have to satisfy him.

We have a civic reception by the Mayor of Delhi at Red Fort at 4.30 p.m. We shall, therefore, be winding up this session within another 5—10 minutes.

**Mr. Speaker Nabulyato (Zambia):** I thank you for giving me the chance to talk to you, specially on one-party system of Parliament. I have spoken on this subject from time to time whenever a chance offered itself. My friend from Zimbabwe is not yet a one-party Parliament. He is not, therefore, in a position yet to answer digging questions on the practice of one-party Parliament. Malawi, Kenya and Zambia are in a better position than Zimbabwe to answer this question at the moment. Therefore, I shall go back a little to make it clear how we became a one-party Parliament.

To begin with, we were more than three parties contesting for seats in our Parliament. We noticed that all our manifestoes and constitutions of various parties were aiming at one thing, namely development. We realised that people were not very much concerned about politics, they were more concerned with development, and as time went on, we began to emphasise the question of development of Zambia. Even the people themselves began asking us why we were having so many parties coming to talk to them the same thing. They asked when everybody wanted the same

thing, development of the country, why so many parties were bothering them. We began to realise that people were beginning to think of just one person or one party, to lead them. And as time went on, we appointed a Commission to go round the whole country, getting people to talk as to what they expected us to do. We called it the Chona Commission, because the name of that gentleman was Chona. He is now our Ambassador in China. Being a lawyer, he was able to give us a very well prepared and concise report on the issue and when he presented his report, the majority recommendations of the Commission were accepted by the Government, that we should go in for one-party system. The people wanted that. That was the first step.

The second step was an automatic thing happening among the parties. Some of the parties began failing to return candidates to the House and at the end when I became the Speaker, I found only three parties out of four. And out of three parties, one had about 17 Members, and the other had two. The majority was of the United National Independence Party members. And as time went on, the one-party which had two members lost because its Members either resigned or could not be returned to Parliament, and even the party which I found had 17 members began losing some of its members by crossing the floor and joining the governing party. When we went to the General Elections, that Party died a natural death. So, we began to see clearly that the people had wanted a one-Party System of Parliament. So, that is it, so far as this question is concerned. It came naturally and we never forced anybody. But we could not be legal. We could not go into one-party system.

**The Chairman:** Even now?

**Mr. Speaker Nabulyato:** No, at that time. We had to become legal.

**The Chairman:** By your standards, I shall be losing ten parties!

**Mr. Speaker Nabulyato:** So we consulted the advisers and they said that we could go ahead with this type of Parliamentary System by amending our Constitution, because our Constitution at that time allowed only multi-party system.

**Mr. Speaker Nelson Khonje (Malawi):** Mr. Chairman Malawi is one of these countries which has a one-party system and I should say that the system has been a success to a certain extent. There are three reasons for this. This is done under the leadership of the life President because everyone is better fed than he was

during the Colonial rule. People are better dressed than they were during the colonial time and they are living in better houses than they used to do when they were under the British.

We are all familiar, Mr. Chairman, with the Westminster system of parliamentary practice based on an established opposition which almost all the time criticises the government of the day and its Prime Minister. This system may be suitable for a developed country like Britain which has evolved its parliamentary system over many centuries. However, such a system may not necessarily be relevant to many developing countries where conditions—economic, political, social and cultural—are not the same.

In a developing country like Malawi, the people need a system that encourages rather than hinders development of the country. We can observe that many political parties in most developing countries in Africa, for example, were organised or are organised on tribal ethnic lines. This, in many cases hinders the unity which is very necessary for development and for building the nation. Where there is national unity and there are no bickerings, people are not hindered in working freely towards the development of their country and there can be increased pace of development.

African democracy involved direct participation by all the people in the Government of the area. Every adult took part in the discussion and a decision had to be reached which took into account all divergent views. The decision was the consensus which was reached after detailed examination of all points of view.

In Malawi the one-party State came about by the will of the people through the ballot box when the Malawi Congress Party in the General Election of 1964, before the attainment of independence, won unopposed all seats in Parliament and therefore wiped out all the opposition parties. All opposition parties lost their deposits completely. The elimination of opposition parties meant, for all practical purposes, that Malawi was a One-Party State, not by legislation, but by the will of the people through the ballot box. The situation was recognised during the Annual Convention of the Party in 1965 when the Republican Constitution which was to come into force in July 1966 was drawn up.

The main characteristics of the one-party State are: (a) universal adult suffrage, i.e. one man—one vote; (b) the country is divided into constituencies each returning a single member of Parliament; (c) periodic elections at intervals of four or five years; and (d) the electorate in each constituency at a general election

is presented with a list of two or more candidates. These candidates must receive the party's blessings before they can stand for elections. The voters will, therefore, choose which candidate they prefer. In this way candidates can be responsive to the wishes of the people in their constituencies.

The Government of Malawi is a Government of the people, by the people. As a government of the people, it is essential that the will of the people is fully and freely expressed in the choice of Members of Parliament. The people should, therefore, choose their Members of Parliament without fear or favour. And as a Government of the people, it is essential that the people should be satisfied that those who are selected to represent them are in full sympathy with their hopes and aspirations. The people should participate fully and exercise good judgment and wisdom in the choice of Members of Parliament.

The responsibility of the people does not, however, end with the selection of their Members of Parliament, however wise their choice may be. The people have to exercise continuous vigilance to ensure that their Members of Parliament continue to represent the interests of the people. Therefore, whenever and wherever Members of Parliament overlook or neglect their responsibilities, the people have the right to replace them at any time as they see fit. This ensures that the Government of our country is truly a government of the people.

Individuals are not allowed to canvass for votes during general election. The people in each district are allowed to consider candidates for Parliament without any undue influence. Canvassing is not permitted because the people who would aspire to go to Parliament would be tempted to bribe and corrupt the people in the district. Such bribery and corruption would enable the people who are rich and crooks to go to Parliament. Not less than three and not more than five candidates are nominated by district conferences which are composed of a cross-section of the people, to stand for the general election. But reasons must be given for each name proposed.

**The Chairman:** Mr. Khonje, we are getting late. We shall give you some more time tomorrow. We have got about three subjects left.

**Mr. Speaker Nelson Khonje:** Thank you, Mr. Chairman.

**The Chairman:** If we start at 9.30 a.m. and finish by 1.30 p.m., we can, by tomorrow evening, be off to attend to certain other things—shopping, etc. for you—and also to attend the Prime Minister's Reception in the Hyderabad House, at 6.00 p.m. If it is convenient to you all, we shall meet at 9.30 a.m. tomorrow. Is it okay?

**Several Hon. Delegates:** We agree.

**The Chairman:** Thank you. I have an announcement and it may have some effect on your pockets. The programme schedule for tomorrow for spouses of delegates is shopping in Delhi. So, please stuff their bags fully. The delegates may inform their spouses that those interested in shopping (I think all of them are interested) may make it convenient to assemble at the foyers of the hotels at 9.45 a.m. tomorrow.

And now, we have to reach the Red Fort by 4.30 p.m. We shall start right away, so that we shall be in time. At 8.00 p.m. we have a dinner to be hosted by our Vice-President. Yesterday it was your Brother Speaker's, that is mine, so it did not matter but now we have to attend the Vice-President's Dinner and we should make it convenient to reach there in time. Thank you.

*The Conference adjourned at 4.00 p.m.*



[HON. DR. BAL RAM JAKHAR, SPEAKER, LOK SABHA (INDIA)  
IN THE CHAIR.]

ITEM 10—THE ONE PARTY PARLIAMENTARY AND THE  
WESTMINSTER SYSTEM (Contd.)

**The Chairman:** Shall we start the proceedings, gentlemen? Honourable colleagues, we have one subject on hand right now. I shall allow five minutes to the Hon. Speaker from Malawi, and five minutes each to Swaziland and Gambia also, if the latter would like to have some time. We have to take up other items as well.

**Mr. Speaker Nelson Khonje (Malawi):** Mr. Chairman, hon. delegates and friends, when the Conference adjourned yesterday, I had told you how the one-party system of Government in Malawi had worked there, and how the other political parties were eliminated by the will of the people at the ballot box.

Now I shall continue to say that a delegate at a district has the right to oppose any name proposed, but he must also give reasons for opposing it. Once a candidate has been elected Member of Parliament during the general election conducted by the Electoral Commission established under the Constitution, his conduct in the National Assembly is governed by relevant Parliament Standing Orders, as well as party's policies.

Finally, I wish to point out that the one-party system has worked and is still working because of the wise leadership and the fact that the people observe the four corner-stones of unity, loyalty, obedience and discipline to maintain peace and calm, law and order. These are the conditions which create an ideal atmosphere for national development in all respects.

Thank you, Mr. Chairman.

**Mr. Speaker Dhlamini (Swaziland):** Thank you, Mr. Chairman, for allowing me to say something on this very vital subject. Its importance is proved by the fact that more Speakers had to make their contributions on this than on any other topic that has been dealt with previously and also by the fact that it had to spill over to to-day's session.

Mr. Chairman, Hon. Speakers and Presiding Officers, before proceeding to give you a synopsis of the Swaziland situation regarding this subject, I wish to collaborate and endorse the sentiments expressed by my colleagues who spoke before me, regarding the kindness, hospitality and generosity which your great country has displayed and accorded us since we have arrived here, and also to offer congratulations to our colleague, Hon. Speaker Mutasa on introducing this subject in such a well-prepared paper which, to me, needs no comment at all.

Mr. Chairman, having said that, I wish to say that without bothering this august Conference with repetitions, I do think, however, that our system of election of the Members of Parliament is of a unique nature and may be of interest to you all.

After the Parliament of Swaziland's first Prime Minister, Prince Makhosini found out that the Westminster model of Constitution was unworkable, they recommended to His Majesty the King its repeal and accordingly, it was scrapped in April 1973. The King then appointed a Constitutional Commission to gather material for consideration whether or not Swaziland could still have a written Constitution. This Commission went round the whole kingdom, holding meetings to find out from the masses the kind of Constitution they desired. The Commission also visited countries abroad, and I am sure they went even to some of the countries of my colleagues present here today. Unfortunately, our beloved King passed away before any action could be taken on this exercise.

The consensus of the Swazi nation was that any Constitution which could be drawn up should be one which would take cognisance of the wishes, aspirations and traditions of the Swazi, a Constitution which would allow the populace fuller participation in the Government of their country at grassroot level.

The country was, therefore, divided into 40 Tinkhundlas which would mean under a party system small constituencies, each of which would elect two members, thereby making 80 members called the Electoral College. These 80 members, in turn, would come together to Parliament House to elect 40 MPs. The Head of State would nominate ten MPs for the House of Assembly, making a total number of 50. These 50 members would then elect ten members to the Senate. Again, the King would nominate ten Senators to bring up the number to 20. The two Houses would then elect a Presiding Officer, viz. the Speaker in the House of

Assembly and the President in the Senate. This whole process is exercised by a King's Order-in-Council called "The Establishment of the Parliament of Swaziland".

Mr. Chairman and hon. Presiding Officers, as time is of the essence, I would end here, but otherwise I would have given you in a nutshell how the Tinkhundla system of Government operates at regional level, where in reality the government of the people, by the people and for the people starts.

In conclusion, Mr. Chairman, I do not want to cast my vote in favour of either one party or multi-party Parliaments but, I am only too pleased to say that our system of election of MPs and the operations of Parliament have worked so well and so satisfactorily that I would not wish to see them scrapped or tarnished in any way.

Thank you, Mr. Chairman.

**The Chairman:** You do not give any options.

You know that there was a gentleman who approached a lady and gave her two options and asked her to have either of the two. She asked: "What are the options?" The gentleman said: "Either you marry me or be my wife."

**Mr. Speaker Momadou Baboucarr Njie (Gambia):** Like my brother from Swaziland I also find it a very important and interesting debate. But it may remain inconclusive unless and until someone makes an attempt to speak on a matter concerning the other side of the coin, not necessarily opposing the topic on the floor.

Let me, first of all, extend my heartiest congratulations to the Hon. Speaker Mr. Mutasa from Zimbabwe for the comprehensive and highly educative paper presented to this august Assembly. Let me also make this quite clear that I am not intending to hold a brief for the multi-party system of democracy nor am I opposing the one-party system of democracy. By no implication or by no consideration should this be assumed. My intention is just to acquaint or intimate this august assembly and my dear colleagues of what prevails in my country, Gambia, a small country, ever since independence in 1965.

Since 1965 we have been practising a multi-party system of democracy with respect to human and social rights in all respects. We conduct free and fair elections every five years. We have an absolutely independent judiciary, freedom of speech and assembly.

and freedom of the press. We never had any political prisoner since 1965. We have a Parliament of 50 Members, of whom 35 are elected. Of the 50 Members of Parliament, we have only three opposition Members and two independent Members. Despite all this, I must confess that some schools of thought, though they have not succeeded very much as yet, firmly feel why in such a situation, the one-party system could not be introduced. But the policy of the Party and the President is that one-party system may be introduced but only by persuasion and never by legislation or by imposition. If the people decide to go for one party system, that is up to them. That is the policy of our President.

I conclude by submitting with due respect, that whatever may be the system, be it a multi-party system, one-party system or be it otherwise, the deciding factor or the underlying factor is the quality of the leadership: I do beg to submit.

**Mr. President Makombe (Zimbabwe):** In fact I just want to add a little more to what my distinguished colleague Comrade Mutasa said yesterday. In addition to what he said, I would like to assure Hon. Speakers and Presiding Officers assembled here in this room that our sincerity in opting for a one-party participatory democracy is very sincere and I would like to relate what is happening in Zimbabwe at the moment, especially in relation to a genuine attempt to implement the policy of reconciliation. Every Zimbabwean, whether he be black, white, yellow or coloured is regarded as a Zimbabwean, first and foremost; as Zimbabwe is going ahead with its stages of development. we are going to be a fully non-racial State.

The question of one-party State arose from our political history in Zimbabwe. I would not like to go back to the 1923 Constitution which gave Southern Rhodesia a self-governing Constitution, but I would like to agree with my colleague when he said and I quote:

“What used to be unwritten traditional laws of the political kingdoms, becomes the Constitution of the party and the political organisation of the whole nation.”

It is true that traditional laws guided us from time immemorial as the unifying force in our communities. The voice of dissent in our communities was protected but opposition for the sake of opposition was not entertained.

Zimbabwe's political history also supports and justifies what my colleague said yesterday. I do not wish to bother you with the details from the early 40s, but I would like to begin perhaps from the

mid-50s, when the African National Congress was formed, led by Comrade Joshua Nkomo. It was the only one political wonder for the African people in Zimbabwe. When it was done, the National Democratic Party took the same thing and the rebels also took the same thing. We conditioned our people to a stage of a one-party, one-leader and one nation. As a result, we adopted the slogan 'son or daughter of the soil'. This means that irrespective of colour, creed, racial groupings, every Zimbabwean should be regarded as an equal partner, an equal citizen in our motherland. Therefore, during the Liberation struggle the Patriotic Front, as you are all aware, in Zimbabwe, (it being the host country), and in Tanzania and Mozambique was formed to crush the minority regime of Ian Smith which ultimately, as you know, succumbed and the Lancaster Constitution was agreed to and signed. As I am talking now, talks about unity in our country are being pursued with vigour and determination. I would not like to pre-empt the outcome of the talks, but what I would like to assure the Hon. Speakers and Presiding Officers is that what my colleague said yesterday is true in our tradition. We do not have any room for an Opposition party, but, as I said earlier on, the voice of dissent was protected. But opposition for the sake of toppling the legitimate community was not entertained. Our Prime Minister on several occasions has always said that the one-party system will not come by Caesarian birth but it will come by the will of the people. And you cannot put an indictment on a people who have opted for one party, one leader and one nation. Thank you.

#### TIMING AND VENUE OF THE NEXT CONFERENCE AND THE NEXT STANDING COMMITTEE MEETING

**The Chairman:** Now, I think—it is for the House—that we better take up the Time and venue of the next Conference.

I have to inform this House that Mr. Mutasa has very graciously invited us for his Standing Committee meeting in Zimbabwe. But our friend the Hon. Speaker from Malaysia, has offered Malaysia as the next venue. We have once been to Zimbabwe. I appeal to Mr. Mutasa that we better keep that in reserve for next time and we may accept the venue in Malaysia.

Thank you.

I thank the Hon. Speaker, Malaysia for his kind invitation. We shall be all happy—whoever are the members of the standing committee—to be there.

Next is the invitation by the Hon. Speaker Mr. Weatherill of the United Kingdom for the next, conference of Speakers in 1988. The meeting, time and dates—whatever they are—will be decided at the next Standing Committee meeting; and the House very heartily accepts the proposal of Hon. Speaker Mr. Weatherill.

I hope that is agreed.

Now, as per our rules, Mr. Speaker Weatherill will assume the Chairmanship of the Speakers' Conference after the end of this conference.

We are very happy and we congratulate him on his assumption of this office. Our hearty felicitations! We wish him happy successes in future. Thank you very much.

#### ELECTION OF INCOMING STANDING COMMITTEE

**The Chairman:** Now, there are 6 Standing Committee places for which members are to be elected.

The Hon. Speaker from Malaysia will be one of the Members. So, five Members remain to be nominated. Three more Members are to be co-opted.

We shall have five nominations from the floor of the House. I think we shall do it in such a way that each region is represented and then it would become easy to handle the work.

Now, the nominations.

**Mr. Speaker Wall (New Zealand):** I propose the name of Senator the Hon. D. Mc Clelland, President of the Senate of Australia.

**The Chairman:** I think it is okey. It is agreed.

**Mr. President Coleby (Bahamas):** I propose the name of Hon. Sir Clifford Darling, Speaker of the House of Assembly, Bahamas.

**The Chairman:** I think it is okay. Agreed.

**Mr. Speaker Weatherill (U.K.):** I propose the name of the Hon. Tomasi Vakatora, Speaker of the House of Representatives, Fiji.

**The Chairman:** I think it is okay. Agreed.

**Mr. Speaker Vakatora (Fiji):** I propose the name of the Hon. John William Bosley, Speaker of the House of Commons, Canada.

**The Chairman:** It is okay. Agreed.

**Mr. Speaker Mutasa (Zimbabwe):** I propose to nominate you, Sir —I propose Dr. Bal Ram Jakhar of India.

**Mr. President Wahid Ali (Trinidad and Tobago):** I second it.

**The Chairman:** Mr. Wahid Ali has seconded it.

**Mr. President Wahid Ali (Trinidad and Tobago):** I apologise if my request to this distinguished Conference seems to be rather unusual. But since there seems to be some misunderstanding among the Carribean region members about the nominee to the elected post in the Standing Committee, may I request for 5 minutes' suspension so that we can settle the matter amongst ourselves?

**The Chairman:** I think we can accommodate every region because three more members are to be taken in and that is also by consensus. I can step down; it is okay. It is immaterial. What is there? After all, each of us is equally as good as all of us and we can just take it round.

**Mr. Speaker Wahid Ali (Trinidad and Tobago):** I think the principle of rotation has been agreed to. I thought there was a consensus that it would be the turn of another Carribean country on the geographical and rotation basis.

**The Chairman:** We can accommodate one of the Carribean countries by this co-option. Three can be co-opted. So, we can have it that way.

**Mr. Speaker Mutasa (Zimbabwe):** I find that the African region is not represented. And perhaps could we ask for the same dispensation as the Carribeans so that we can have a caucus amongst our Members to be able to submit a name for you to co-opt?

**The Chairman:** Yes, no problem. You can give us one name; You also can give us a second name. For the third also, if any region is unrepresented, we can accommodate the third one also. So, no problem will be there. Okay. It is adopted. It is all right.

**Mr. Speaker Wahid Ali (Trinidad and Tobago):** Sir, on the basis of rotation for election to the Standing Committee, Trinidad and Tobago was not represented; Barbados was elected for a second term and Bahamas is serving. Now therefore, on the principle of rotation...

**The Chairman:** We can take it otherwise. We can make it like this, so that every one will be satisfied. We will not let anything grow amongst us which is rather thorn-like. We shall make it smooth-sailing.

**Mr. Speaker Bernard Weatherill (United Kingdom):** Mr. Chairman, would it be possible for me to nominate Trinidad and Tobago? That will solve the problem.

**The Chairman:** After the Session you can call a meeting of the Standing Committee and just coopt all the three honourable Members. No problem. As desired by caucus, no problem, I think.

**Mr. President Wahid Ali (Trinidad and Tobago):** But, Sir, with great respect, the Trinidad and Tobago delegation feels a difference between election to the Standing Committee and cooption to the Standing Committee, and it is this principle on which I think my friend is asking....

**The Chairman:** If you want me there, I would like to be coopted. Dr. Wahid Ali may be nominated in the election in my place.

**Mr. President Wahid Ali (Trinidad and Tobago):** No, Sir.

**The Chairman:** It is all right, it makes little difference. I have been there, I was there, I was the Chairman. So, I don't mind. I will be there to assist you, Sir, No problem. So, that is it. So, five are elected.

So, the following are elected, namely Dr. Wahid Ali, Mr. Darling, Mr. Bosley, Mr. McClelland, Mr. Vakatora, Mr. Speaker from Malaysia and Mr. Speaker Weatherill.

That is okay. No problem.

Now, we take up the remaining items on the Agenda.

#### ITEM 11—THE POLITICAL POSITION OF THE PRESIDING OFFICER OUTSIDE PARLIAMENT WITH SPECIAL REFERENCE TO GENERAL ELECTION

**The Chairman:** We shall now take up item No. 11: "The political position of the presiding officer outside Parliament with special reference to general election". Hon. Speaker from Fiji may initiate the discussion.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** Mr. Chairman, distinguished delegates, observers and friends, before I introduce this Paper, I would like, Sir, on behalf of my delegation, to join the other members who have spoken about your hospitality and the hospitality given by your Parliament to this Conference. We are, indeed, overwhelmed by the generous functions that have been held so far for us and we can only say that we wish you well, Sir, and the Parliament of India and the people of your great country.



Sir, in introducing this Paper I am using the term 'Speaker' and it should be taken to mean Presiding Officers as well. This is done for convenience and for no other reason.

I do not wish to go into the background of the history of the post of Speakership because this is very well covered by Mr. Philip Laundy in his book entitled "The office of Speaker in Parliament of the Commonwealth", about which I have noticed, in this morning's newsletter that copies are available and they can be obtained from Sir Robin Vanderfelt's office. I commend that book to those who have not read it. It is quite a good book. I am not patting Mr. Laundy on his back. I think he has done a good job in writing that book. He needs the royalty as well!

It was very difficult for me to write this Paper, I do not know where to start from and I think the best thing to do is, first of all, to find out in my own mind, which is a prominent question—whether the Speaker as an elected Member of Parliament is a politician first and Speaker last or *vice versa*. To my mind, the former is important and I have given my reasons in paragraphs 2, 3, 5 and 6 of my Paper. Incidentally, Sir, this Paper was distributed earlier on in this Conference, I do not intend to read it. I hope that Members have read them and would be able to contribute to it. But just to highlight a few points which I put down in my Paper, I do not know if I am thinking correctly or not, my thinking is that Speaker must be a politician first and Speaker last because he is an elected Member of Parliament, he has a constituency to look after and he is a political animal like any other politician and he should not lose sight of that fact. If he does, I am sure it could cost him dearly at the next election. And I believe, Sir, that in that regard the Speaker can play a key role in politics and by that I mean that he should visit his constituency and discuss political issues with his constituents and perhaps pass on the feelings of his constituents to the political hierarchy, he should attend perhaps as a back-stage observer political meetings of his Party, meetings held in his constituency or elsewhere, he should be involved in things like opening of new road or new schools or health centres, he should initiate his own visit to his own constituency to find out things for himself rather than depending on reports. he should participate in his party fund-raising activities and he should be seen perhaps at functions or recreation meetings or receptions with his colleagues so that he can keep his political line warmer with his party. If he does not do that, in my view, Sir, he would be forgotten and be cast aside. Nobody will want to have him back in the Party.

In paragraphs 7 and 8, I have tried to put down on paper what I think the Speaker should do about his electorate or his constituents.

I think he should try to be involved with them in such matters as social functions, marriages, funeral church service, should try to be involved with them in such things as fund-raising for supporting bodies and schools, and he should try to visit them as often as he can to try and explain political issues or Government stands on particular political issues; and in order to be able to do that, I believe that the Speaker should, as I said before, keep an open line with his party. He should keep himself awake about what is going on in the Party by perhaps being given journals, newsletters issued by his political party and also by having periodical discussions with his colleagues who are Ministers. I think in that way he would be able to keep his place warm in the party, especially if he wants to seek another term, and in seeking another term I think, Sir, that the Speaker should be more identified with his party rather than perhaps playing a key role. We all know that when Parliament is dissolved all the appointments are dissolved with it, although the Speaker may keep his place as a Caretaker Speaker, so to speak. But if he really wants to get back into the House, he needs to be well identified with his party. And in saying this, I am quite aware of the arguments about the norms of the office of the Speaker, that he should keep himself above politics, he should remain above politics. I do not think that these arguments would apply to Fiji. There is a particular case where a Member of Parliament who wished to stand as Speaker was rejected not only by his own Party but by the Opposition as well and in the end he had no electorate. I have mentioned on pages 3-4 of my paper what I think a Speaker should do. At the time of general election when the House is dissolved, I believe that the Speaker should no longer play a low-profile-role. He should come out and campaign openly to ensure that not only does he win his seat but his Party also wins the election, his Party is returned, so that they will be able to form the next Government. I think the Speaker should do that if he really wants to continue to be a practising politician—not a career politician but a practising politician. I believe that we in Fiji recognise this fact and this is manifested in the move that we have taken, that the Speaker is of the same status and has the same salary and privileges as a Cabinet Minister. This will allow us to interchange. I think this is a good policy because we do not have 15 million people or 600 million people to choose from; we have only round about 700,000 people to choose from the field is very limited. If our system allows for a flexibility in this regard, I think it is a good thing.

You may ask, "If a Speaker, for all intents and purposes, is actively engaged in politics as described about can he perform satisfac-

torily when he is in the Chair?". I believe he can. On page 4 of my paper I have tried to answer that question by writing down the job-description of a Speaker. In paragraph 15, this is what I have thought to be the job-description of a Speaker:

"A matured person of a very high calibre imbued with dignity, diplomacy, respect, patience, resolute tolerance, impartiality, flexibility, humour, a sense of fair-play and a good deal of commonsense."

Now I can see some delegates shaking their heads. You probably feel that this guy must be near to an angel. I agree, a very rare guy indeed has to be found. But I believe that if he can display some of those qualities at the right time, judging the mood of the House, he should be able to discharge his responsibilities satisfactorily.

A word about non-elected Speaker. I understand that there is, in some of our Parliaments, a provision that the Speaker will not be elected from within the Members of Parliament. Maybe, he is an ideal person to become Speaker; I do not know. It would be interesting to hear their views on that.

In conclusion may I say that I do not wish to be too hard on accepted norms of the office of Speaker? I have only tried to provide something which will generate discussion on this subject which is very close to the hearts of all of us here. Whether we are Speakers or non-Speakers, we are still politicians. And I leave it to the floor.

Thank you very much.

**Mr. Speaker Weatherill (United Kingdom):** Mr. Chairman, it pains me to have to disagree with my honourable and respected friend. I believe that a Speaker should be a Speaker first and a politician second and not the other way round. I believe that he has no difficulty in representing his constituents. I have been Speaker for seven years now and I have had no difficulty in representing my constituents. My weekly surgeries are busier than they were before. I have had no difficulty in ensuring that their representations are made to Ministers. My distinguished predecessor, Mr. George Thomas, known to many of you, summed it up when he said to me after I had been elected. "From now on, you will get whatever you ask for: so, I advise you to be very careful about what you ask". I think that was a very good advice.

In the United Kingdom, the Speaker does not participate in fundraising of any kind. On his election to Speakership, he severs all connections with his former Party and he stands 'outside' and not

'above' party politics. I make this point, because if we were to say that we stand 'above' party politics, perhaps it touches upon a previous debate that might indicate that there is something wrong with party politics. I wish to assure you that there is nothing wrong with party politics. It gives the choice. So we should not say that we stand 'above' but 'outside' party politics. And we should be seen to be totally independent of the Government, representing fairly all the interests in our respective Houses and in particular protecting the interests of the minority. The relationship of the Speaker with his constituents was summed up by a Select Committee of the House of Commons in these words:

"In matters of individual interest or grievance, the Speaker's constituents are in fact in a peculiarly favoured position. Though the Speaker himself can put down no questions, any matter affecting them which he feels justified in raising privately with a Department of State will, in the nature of human reactions, coming from such a source, receive the most careful consideration. Again, if the circumstances of a particular case require that a question should receive public expression, it would be and in fact is willingly sponsored by other Members.

"Apart from these considerations, it cannot be disputed that a great honour is conferred on the Constituency whose Member is chosen from among all others for those rare qualities which will enable him to fill the high office of presiding over the deliberations of the House of Commons and representing it as the first commoner in the land."

I would say to this Conference, Mr. Chairman, that I have had no difficulty in having my constituents' cases raised in the House of Commons. In our case on any one day there are about 40 or 50 Members who wish to take part in the debate and if fortunately none of them speaks too long, half of them may be called. I would only need—in fact, I only do need—to send for a Member and say to him, "Would you be kind enough to raise this case on behalf of one of my constituents and I will call you before 5 O' Clock". And I cannot tell you how pleased they are. I do not think that there is any difficulty about representing the interests of one's constituents, and I think it is very important for those of us who are privileged to have been chosen from amongst our fellowmen by our fellow-Members to represent them with total impartiality, to be not only impartial but at all times be seen to be impartial.

Generally speaking, in Britain Speakers are not opposed in their Constituencies. Speaker George Thomas was elected unopposed. His election Address had a message from the Chairman of the Cardiff West Conservative Association recommending him; a message from the Cardiff West Labour Association recommending him; a message from the Cardiff West Liberal Association recommending him and finally a message from the businessmen of Cardiff recommending him; and you will not be surprised that he got the biggest majority. I understand that there is quite a possibility that I may be opposed at the next general election.

Just before I left Britain, the Labour Party in my constituency adopted a candidate and they were kind enough to send me a letter saying that there was nothing personal and that they thought that the electorate should have a choice—and I do not disagree with that. After all, we are living in democracies and the electorate should be given a choice if there is a strong feeling of any Party in any constituency. So, if it does happen at the next election, I shall stand as Mr. Speaker seeking re-election. Probably I shall have no public meetings, though I might have, I think, one at the beginning of the campaign. It is fairly a new experience because no Speaker has in fact been opposed in his constituency since Speaker Hilton Foster was opposed in 1964. That was the last time a Speaker was opposed. I think I can have one public meeting at the beginning of the campaign, but certainly I can do no canvassing. I have to rely upon the good-will of my constituents and my own record as a constituency Member and as the Speaker of the House of Commons to be re-elected. If I am not re-elected so it be.

There have been suggestions, Mr. Chairman, in the House of Commons that it is inappropriate that the Speaker should be contested in his constituency and, therefore, it might perhaps be a way out of the problem if he were to be given a fictitious constituency—for instance, the constituency of St. Stephen. The last time that was raised in debate in the House was on 26th January 1982 when Mr. Clement Freud, a Liberal Member, moved to bring a Bill to provide for a constituency known as the constituency of St. Stephen to be represented by Mr. Speaker. But the motion was overwhelmingly rejected by the House of Commons after an outstanding speech by a Labour Member, Mr. Nigel Spearing who put to the House the proposition that it was very important that Mr. Speaker should always remain “one of us”.

I tell this Conference that this is very important because I think we would all be in the same position. In granting private notice questions, in allowing statements to run on, in selecting amendment

and in deciding who should speak, I am heavily influenced by the pressures brought upon me by my constituents. If the Speaker were totally removed not only from party politics but also from constituency politics, he would be in effect in limbo.

So I conclude by saying that I believe and I passionately believe that the Speaker in exercising his duties as a totally impartial man in the Chair, should stand outside Party politics and should not only be impartial but should also be seen to be impartial at all times from the moment of his election, even through a general election if he is opposed. I should also remind the Conference that at Westminster the Speaker remains Speaker throughout the period of the general election.

I can only say in my own case if I am opposed in the next election and if I happen to be rejected by the electorate, I should simply take that as being the demonstration of democracy. But still I would not feel it right not to have spoken up myself.

**The Chairman:** Will you stand as an independent candidate on your own behalf or will you stand on behalf of some Party?

**Mr. Speaker Weatherill:** I shall stand on behalf of no Party. I have to be readopted, of course. So I have to be re-adopted by the Conservative Association in my constituency of Croydon as a non-party candidate.

**The Chairman:** This will be just, catching the ear not this way but the other way.

**Mr. Speaker Weatherill:** Certainly, I think, the Chairman knows that politics is an important element in the elections.

**The Chairman:** Each point of view has some weight in it. But I do not know how this can be a one-way traffic, how it can be a one-way lane. We are supposed to be, and we are, I think, as Speaker, supposed to be and we try to be, impartial on the floor of the House and this, I think, is incumbent upon us, if we are true to our salt, and we must deliver the goods because of the confidence reposed in us. But should the Parties as well not realise what happens to us when we go outside?

As you say, you have to take some sort of a party support and I would also say the same thing. When we go out for elections, whom should we call as our partner and on whom shall we depend for our support? It is all right that we get the constituents' ambitions served. We serve the constituency and I have no doubt about

it because I have seen it and I have done it and I think it is the best served constituency in the whole of the country and I can proclaim it from the nouse-tops. But, still when you go to the polls, you need some support and you need some backing. Then should we be thrown to the wolves by the Opposition or by the ruling Party? It should be some sort of a consensus. If they want us to be impartial completely, then let us be impartial and let us be taken care of outside also. Why I say this is that clapping has to be done by two hands and not by one only. If you say that you put your finger in my mouth and I put my finger in your eye, how can one take it? That is the thing I want to ask. I have felt that on the floor of the House and I have had a lot of discussion. The Opposition Members and Members from the Ruling Party in my House have said, 'Well, the Speaker must be impartial. He should be above reproach. No question about his impartiality. We want that he should be retained as such and there should be no opposition.' But when I stood for elections, all the Parties put up their candidates against me. What should I do? You may retire from politics and take to *Sanyas* as we call it in India and go to the banks of the Ganga and take beads in your hand. But if you want to fight it, you will have to do something.

What I think is that inside the House if we become Speakers, as we have become Speakers, it is our duty to be impartial. We must uphold the traditions because it is we who further the cause of democracy and we will not let it go by default, we will not let it go due to lack of sincere efforts on our part. That is all right. But outside when all the Parties say, 'You be impartial and a non-party man', then they should help us in that effort. It should be a collective effort on behalf of the people and the parties concerned. We are human beings. We are not demi-gods.

Mr. Speaker Vakatora brought out a very fine example of the person who should be there. But that, I think, should be God himself. That is the only difficulty I feel about it.

**Mr. Speaker Weatherill:** I shall respond very briefly.

Perhaps my own experience and perhaps one's own experience is most important. I had a fairly difficult and rough ride in my early days in the Speakership, particularly due to the fact that at the time of the last election I fought, I was Deputy Speaker. I stood as a Conservative candidate. Deputy Speakers do stand under their party affiliation. You cannot stand as a party candidate without putting forth the policies of your party. I did at the last elections

put forth the policy of my then Conservative Party. I was opposed by the Labour Party and the Liberal Alliance Party.

Nevertheless, when I first became Speaker some of the statements which I had made in that general election were thrown back at me in the Chair. It was sometimes suggested that I had not selected an Opposition amendment because my views on this subject were already well known, because of what I had stated in the general election; secondly, that I did select a Government amendment because my views were equally well known. It is very difficult, and it may be a peculiarity of British politics where things are these days put in black and white between the various parties. At the moment we are not quite certain what the Alliance policies are. They will get clearer near the general elections. But I think it is very difficult for a man who has been earnestly trying in the Chair to be totally impartial, to go back at general elections to being a party politician. In Britain, I think, he would not be fully trusted and that is why we have this principle of the Speaker's not contesting at the general elections but standing as a non-party candidate.

Of course, Mr. Chairman, you are absolutely right. The long tradition in Britain has been that the Speaker is not opposed in his Constituency and there are many cases going back to the early days of this century where a senior politician like Lloyd George was writing strongly against his own party saying that although his own party was opposing the Speaker in that particular general election, he himself would campaign for the Speaker and against his own party in his constituency because he believed, as you have rightly said, clapping of hands should not only be at the time when he is elected Speaker in the House but also at the time of his general election.

**Mr. Deputy Speaker Ngeny (Kenya):** Thank you, Mr. Chairman, our experience in Kenya is different from the two examples that we have been given on the Floor. Perhaps, Mr. Chairman, in order to make it clear I should say at the outset that our Speaker in Kenya is not a constituency member. Perhaps the only way I can make it clear is to use my hon. friend, Mr. Speaker Frederick M. Mati who has been Speaker in the National Assembly since 1969. He was first elected to that position in 1969 and at that time he had been elected as a constituency member to the National Assembly. Our constitutional provision is that as soon as you are elected Speaker, if you are a constituency member then you resign from your constituency seat and this is intended to pave for the impartiality that is necessary from a Speaker and this is even more so, Mr. Chairman, if



you take into account the one party Parliament that we have been pressing for. The impartiality of the Speaker is very important because he has got to ballot various shades of opinion in the House, the shades from front benches, back-benches and various regional areas. We have got different opinions and the Speaker, therefore, is to be seen to be exercising that impartiality so as to be able to bring all those points of view into account during any particular debate.

This, I think, has worked very well for us in Kenya and that is why Hon. Frederick M. Mati was elected to the same position in 1974, 1979, 1983 and he continues. The one thing that, I think, members should bear in mind or the question that somebody may raise is what happens at general elections. Now, the Speaker remains the Speaker even during the general elections because he becomes the continuity of Parliament. So, he remains Speaker until Parliament re-convenes after the general elections. He has to be re-elected to his position. If his services are still required, he may not be opposed in that position of Speakership. It so happens that Hon. Frederick M. Mati has not so far been opposed. But the provision is there for anybody to contest for the position of Speaker. The provision is that members elected to the National Assembly after the general elections or anybody from outside may stand for Speakership, provided he is qualified in the same manner as how if he stood for the general elections he would be qualified in all respects in accordance with our electoral law.

The one thing that we do not have is that although the Speaker is re-elected, there is no provision for his resigning in order to be re-elected. But when the House first meets after general elections, a few minutes before the formalisation of the first sitting, because the first item on the Order Paper is the election of Speaker, the Speaker ceases to be the Speaker for those few moments before the formal election takes place in order to enable anybody else who may contest for that position of Speaker to offer himself in which case he would have presented his nomination papers 48 hours before that first meeting. Otherwise, in other respects the Speaker is a life-member of the party because in the first instance this would have been the qualification that in order to stand for National Assembly you have to be a life member of the party, and so he remains.

He also attends the party's Parliamentary group meetings. We have a provision in our party's Constitution that Members of Parliament have their own meetings which are usually held *in camera* and the Speaker as a party member is a member of this party group meeting. He also as life-member of the party will usually attend party seminars but he is not expected to participate in discussions.

He more or less attends as an observer in order to listen and keep abreast of the trend of thinking at any particular moment as far as party matters are concerned. He contributes to party funds in the same manner as any other party member is required to contribute either by way of fund-raising or any other.

There is no restriction. Also, by a natural coincidence, he attends the Executive Committee meetings of the party and also those of the Governing Council. I say incidentally because for some time now certain views have been held in the old Chamber of the National Assembly. As Speaker he is responsible for every corner of the Parliament precincts. Naturally, when the Governing Council or the National Executive Committee are holding their meetings, the President of our Republic, who is also the President of the party, has to be formally received by the Speaker into the precincts of the National Assembly. So, he sits during such discussions but does not participate in the discussions.

That is the position with regard to our Speaker in relation to the membership of the National Assembly, in relation to the membership of his constituency, and in relation to his participation in the party affairs.

[PRESIDENT WAHID ALI (TRINIDAD & TOBAGO) *in the Chair*]

**Mr. Chairman:** Now, I call Mr. Speaker Bosley (Canada).

**Mr. Speaker Bosley (Canada):** Mr. Chairman, as a new Speaker, it is one of the most fascinating subjects for me, I can assure you, because I have no idea of what I am going to do in the next campaign. But I may tell you what the Canadian precedents are, if I may.

We have never been able to achieve, except on one occasion, the British consensus with regard to the non-opposition of the Speaker. And that one occasion was when Mr. Lucien Lamoureux ran unopposed by the Conservative Party on his first re-election. Some of you might remember this, because he was the Speaker in 1969 when this Conference was held. The new Democratic Party is equivalent to the Labour Party and they took the position that until the House spoke on this matter, it would present a candidate and they did. On his second attempt to be re-elected as Speaker, the Democratic Party presented a candidate against him and the Conservative Party also presented a candidate against him. Therefore, there has been only one occasion in our history, when we came close, or rather not close, but closer, to the British concept.

At the same time, we have a tradition of Speakers to run as party candidates not as unopposed or non-partisan men, but as members of their party. Of course, as I said, one exception was there in the case of Mr. Lucian Lamoureux. Going back to Mr. Michener and others—of course, Madam Sauve did not present herself for the second time—everyone of the Speakers, although standing as a party candidate, has not conducted a partisan campaign. They have conducted a campaign based on what they have been able to do for the riding. If you go back as far as 1952, the Speakers refused to campaign whatsoever, though they had been on the ballot. As a partisan candidate in 1952, we had peculiar circumstances, because the Prime Minister did not like Mr. Speaker Michener and he refused to campaign and Mr. Speaker Michener lost his seat.

But I can tell you that strictly speaking, my position has been that I have refused to go to any party meeting, but I maintain my party membership. I attend minor political functions in my own association in my own riding, but I do not participate in any national fund-raising meeting. And I presume, I would be presenting myself at the next campaign in the tradition of the Canadian Speaker as a party member without conducting a partisan campaign. How one does that, I am looking forward to find out.

All of us would love to have the tradition; Mr. Speaker Weatherill, you have, but I do not know how we can get it and I do not know how we can resolve the problems that our friends from Fiji and from India have raised, and how we can clap without both hands. I do not know how we can raise it with our party leaders.

I had the experience of the leader of the opposition making a political speech in my city; he chose my riding to do it. It was not long ago. He attacked my party; you can imagine, I am rather expected to go and make a counter-speech. I can do it. He, in fact, had not realised when he chose that particular place to give his address that it was my riding. He apologised to me, but that did not change the political damage done. It did not change the problem for my association. I felt more disenfranchised than my voters. My party felt an enormous problem. What was I to do then?

I do not know how it is going to develop in Canada. We are proud of our progression of depoliticalising the Speakership, but whether we shall go the next step and develop the tradition of non-opposition, I doubt, or whether we will go the step of creating St. Stephen. We have a Private Member's Motion on paper for the last three years to that effect.

I suspect on balance that there is a slimly greater likelihood that we would do that in the non-opposition. My guess—given the Canadian tradition in history on this is that we shall do nothing but carry on as we are.

**Mr. Speaker Mutasa (Zimbabwe):** Mr. Chairman, I think, the position of the Speaker depends mainly on the political system that is followed in any particular country. This became very clear, I think, when our colleague from Kenya outlined the position vis-a-vis Kenya and after listening to Mr. Speaker Weatherill and those who spoke before him. I think it also depends very much on the constitutional position in that country. We in Zimbabwe are at the present moment still bound by the Constitution that we derived from the Lancaster House conference. And that is very specific. It says that the Speaker shall resign his seat upon election as Speaker of the House of Assembly or the President of the Senate. And then there shall be a bye-election which means that the desire of the Constitution is to make the Speaker completely a political. When we came into power, we found ourselves landed with a Speaker who was, in fact, a Member of the Central Committee and Deputy Treasurer of the party. So, that created a precedent in our country in that the Speaker could be a Member of the political party and indeed during the last elections which we held last year, the President of the Senate had been previously elected as a Member of the Central Committee and he was also chosen as a Director in the Directorate of Election Campaign of ZANU P.F. I am a member of the Politburo, the National Executive of the Party and am in charge of the foreign affairs of our party. I am responsible for the entire administration of our party's foreign affairs and in fact, the Minister of Foreign Affairs reports to me because he is my Deputy, in the Party. So, the Speaker of the Assembly and the Presiding Officer in the Upper Chamber are very political but that does not make us in any way partisan. We are completely impartial when we conduct our affairs in our Houses. And indeed, as the President of the Senate was making some reference yesterday, we have very interesting situations. We have amongst our Members people like Mr. Ian Smith who, to all intents and purposes, in other countries would have to be hanged by now, but you see, we tolerate him. He is quite able to have as much time as he needs and spends it abusing us and our country. We have got to be as fair to him as to other Members of the Parliament. I suppose each country, as it goes along, will develop its own system and find out how best it can comply with this very complicated Parliamentary system which we have inherited from the British.

**The Chairman:** Distinguished colleagues, we have to keep our eyes on the clock, and with your consent I propose that we take on three more members who have indicated their interest in the subject and close it. So, now, Sir Darling of Bahamas, Hon. Speaker Senanayake of Sri Lanka and Hon. Deputy Speaker of the Lok Sabha will be speaking on this subject.

**Mr. Speaker Clifford Darling (Bahamas):** I would like to thank the Hon. Speaker from Fiji for bringing out this very important subject.

Over eighteen years ago, I was elected to Parliament and eight years ago, I was elected as the Speaker of our Parliament. And my position was opposed all the time in the Bahamas. The Speaker's position is that it should be opposed. Years ago it was not so, but in recent times, the Speaker's position has become so and we have opposition always to the Speaker's seat. And I think that it is a part of democracy that the Speaker's position be challenged, because it proves our popularity among our constituents. Secondly, I would not like it to be stated that on the election day, my constituents are disenfranchised because no one is opposing me. I believe that I should be opposed. When the House dissolves, the Speaker is the only one to remain in office until a new speaker is elected. Therefore, as far as getting things done for one's constituency is concerned, he will inform the Minister responsible and they will carry out whatever is needed in his constituency. In the United Kingdom, as the Hon. Speaker said, they have very good things and in many other countries also it may be so, but in the Bahamas it is not like that. I cannot see how a Speaker can get to the campaign without being a member of the political party. It cannot be done in the Bahamas. It is almost crazy for a Speaker to say that he would contest without being a member of the political party. We need the machinery behind us in order to get elected. The Hon. Speaker from the United Kingdom claimed that he went as an independent but in the Bahamas it is not so.

While one must have the machinery of the political party behind him, when one sits in the Chair as the Speaker, he should be impartial and appear to be impartial. But one must always be a member of the political party. Now, I do attend important political party meetings but I do not participate in the debate in these meetings except when questions are asked and I just sit and listen to them. But I do attend the political meetings. During the election time, I go from place to place campaigning on behalf of my own party. I for one, would not like to be there all alone as an independent Member

of Parliament seeking re-election without the machinery of my political party.

**Mr. Speaker Senanayake (Sri Lanka):** The Hon. Speaker from Fiji has submitted a very interesting document. In paragraph 4 of his document, he says that a member is a politician first and a Speaker last, because a person cannot become the Speaker except in a few cases unless he was elected to a seat in Parliament.

In my case, Mr. Chairman, I have been a founder-member of the United National Party since 1948. I have been returned to the same constituency on seven different occasions. I was made Speaker two years ago. I was the Member of the Working Committee of our party, which is the most important body in our party government. But since I was elected Speaker uncontested, I had to step down from the Working Committee of the party and I do not participate even in government parliamentary group meetings.

But according to our Constitution, a member holding office as a Speaker or a Deputy Speaker or a Deputy Chairman of committees shall—unless he earlier resigns his office by writing a note in his hand addressed to the President—ceases to be a member. He vacates his office on the dissolution of Parliament. Therefore, that problem will not confront me because the moment Parliament is dissolved, I vacate my office and my Deputy and the other Deputy Chairmen of the Committees also vacate their office. Therefore, we can join the bandwagon of the party system. I think that being prohibited from attending parliamentary groups and working groups whilst holding the office of the Speaker is a very desirable thing because when you are presiding in Parliament, you are supposed to be impartial. We in our country have several parties. So, after the dissolution, when you give up the post of Speaker, you are free to campaign with your other party colleagues. I think our situation is very clear. It has been made clear in our own Constitution.

**Mr. Deputy Speaker Thambi Durai (India):** Mr. Chairman, I also want to add certain points regarding the Speaker's position outside the Parliament. Many of the members spoke that the Speaker must be impartial. It is correct and I also support that point. This can be done when he is presiding over the meetings. If he goes outside to participate in some other activities, what is his position? That is the question which we are discussing now.

If the Speaker has to be impartial, he must be given certain facilities also for re-election. He is also a human being and he cannot say that he does not have any ambition to come back to Parliament.

Therefore, in order to be able to function as an impartial man, he must be allowed to be re-elected without any opposition. Other opposition parties must come forward in this regard. Hon. Speaker from Sri Lanka said just now that after the dissolution of the Parliament he could once again join the campaign as a party member. After five years, when you function as an impartial man, if you want to join the party once again, how will the party re-adopt you? Hon. Speaker from House of Commons, UK said that the party could re-adopt him. But all are human beings. They will expect more from you. Our constituencies' needs can be fulfilled by somebody. That can be done. But the parties have the machineries for doing the election campaign. When you are kept away throughout a certain period, but at election times if you want the party to accept you how is it possible? So, once a person is re-elected, then all other political parties, including the party which elected him, will come forward to elect him as the Speaker.

There is another aspect. During the period of working as Speaker, you get certain facilities, and when you cease to be the Speaker, you may lose all the facilities. Even after election to Parliament, there is no guarantee that you will once again become the Speaker. They may not support you. Therefore, I feel that if the Speaker has really to be impartial and function properly as everyone expects, certain things are necessary. This is very important because otherwise, problems will arise in respect of balloting and when motions etc. come. So, even after election to Parliament, whether he is elected once again as Speaker or not, he must be given all the facilities. During the intervening period, he can impress his party and indicate how he had functioned earlier, and how he will function in his present position and how he will act in a manner satisfactory to all the political parties.

After election to Parliament once again, he may like to become the Speaker or become a Minister and join the Cabinet. If he joins the Cabinet, the matter ends there. Then he becomes a politician. But suppose he is elected once again, and a third time also as a Member of Parliament, you can give a chance to him to become the Speaker unopposed i.e. for the second and third term also.

Only if he gets certain facilities, he will get the feeling that in future his party is going to like him; and he will be impartial during the period of his functioning as the Speaker and will fulfil the expectations of others. That is what I suggest.

When we say that the Speaker must be impartial and also that he must not involve himself in party activities outside, we have to see that the Speaker is re-elected without any opposition. This must be done in all countries including the United Kingdom and Canada. Whether he is elected Speaker or not for the second term, he must be given the facilities. Only then we shall be doing some justice to the Speakers.

**The Chairman:** Thank you, hon. colleagues. This subject is a vexed one. It has been well ventilated. I am sure this subject will continue to exercise all of us. I thank you all once again, especially the distinguished colleague from Fiji.

Now about the next item. Fortunately, the relations between Canada and Trinidad are particularly cordial. I think I have the support of the Canadian Speaker for the proposal that I am going to make, *viz.* that we proceed to item No. 13 now, and on the conclusion of that item, we take up item No. 12 relating to Sub-National Parliaments, standing in the name of the Speaker from Canada.

Now item No. 13. Hon. Speaker from Malaysia.

**ITEM NO. 13—PROCEDURAL DEVELOPMENTS:**

- (A) THE SUB-JUDICE RULE
- (B) THE SPEAKER AND THE QUESTION PERIOD
- (C) METHODS OF VOTING, INCLUDING THE MANNER OF ELECTING THE SPEAKER
- (D) DISCRETIONARY POWERS OF THE CHAIR
- (E) THE SPEAKER AND THE USE OF PRECEDENT.

**Mr. Speaker Tan Sri Dato Mohamed Zahir (Malaysia):** Mr. Chairman, fellow Speakers and Presiding Officers: I was assigned to present five papers, namely:

- (1) The *sub judice* rules;
- (2) The Speaker and the question period;
- (3) Methods of voting, including the manner of electing the Speaker;
- (4) Discretionary powers of the Chair; and
- (5) The Speaker and the use of the precedent.

I hope you all have received copies of the papers that have been circulated on these topics.



To be brief, in order to be well within the time allowed to me, I propose to make a few remarks on two of the subjects, namely the Discretionary Powers of the Chair, and The Speaker and the Use of Precedent. As these two subjects are inter-related, I have combined them under one paper.

However, you are at liberty to discuss on any of the other three topics, if you so wish.

One of the questions I wish to ask is whether a Speaker should rigidly follow the precedents that he and his predecessors have made and will only change them after much difficulty.

In my paper, I have outlined how precedents were created; some by the Speakers, some by Committees and some by the House itself.

In my paper, I have ventured to suggest that a Speaker should not hesitate to set aside any Speaker's precedents and create new ones, if such precedents are outmoded. He cannot, of course, set aside precedents created by the Committee or by the House.

I also wrote that if a Speaker is bound by precedents, or if the House is similarly bound, then there is the danger that the principle that Parliament cannot bind a future Parliament will be thrown overboard.

For this reason, I state that precedents in Parliament are only persuasive authority. Any of them can be ignored or set aside if it does not fit into the order of the day.

I think the Privilege Committee creates the most number of precedents as it functions as a court, trying cases and punishing the guilty ones arising from a number of charges.

Care should, therefore, be taken so that the Committee should not create precedents that will vary considerably from those already made by courts. Otherwise, there will be two criteria under which a person can be punished.

There is another aspect on which I would like to invite comments, namely whether Parliament should let the courts try certain cases, reserving for itself only the few ones such as contempt committed in the House or criminal acts committed in the face of the House. Cases such as libel or slander against the House made outside should be left to the courts.

Of course, some of us may argue that the House should itself protect its own dignity. But at the same time others argue that the dignity of the House is better protected by the courts because people are more accustomed to expect prosecutions and punishments from courts and not from Parliament, where their own representatives whom they have elected, work to legislate and not to punish them.

Further, to try a case without the facilities of a court is not an easy task. Some members of the Privilege Committee may not be familiar with the law. Procedures are few, and may be not well made, and some of them were made without the advantage of an in-depth study, compared to those made in the courts. Now, I come to the discretionary power of the Speaker. Here the Speaker is required to exercise his wisdom and tact in using this power so that Members may say in spite of his strictness that the Speaker is fair.

Another point I wish to raise is about the Houses whose Standing Orders do not provide the discretionary powers to the Chair to stop a Member from being repetitious in his speech. The Member goes round and round on the same point and it is very taxing on the Chair, as he cannot go out as other Members can. He has to sit and listen. I learn from the Lord Chancellor that in the House of Lords, there is no such provision and, therefore, there is nothing to stop a Lord from being long-winded, except by a motion passed that the Noble Lord be no longer heard. I think the power provided in some Standing Orders in this respect is invaluable. And the point is whether Parliaments without such powers should consider introducing them in their own Standing Orders. This may require setting aside of some precedents.

Another point I wish to invite comments upon is how to control Members from using unparliamentary words, because I discovered that this simply could not be done, that is, checking the Member in time, before the act was done. The most that we can do is to ask the Member to withdraw the word, and which in most cases he will. But harm has been done.

Should there be a deterrent punishment against such Member, especially when the word used is an established unparliamentary word? Should there be a punishment that the Member be made to cease speaking immediately? I think there should be such a punishment so that there will be less of such incidents.

In my paper I have also mentioned about the book 'Lady Chatterly's Lover' which the Lord Chancellor referred to yesterday.

That book can be freely used anywhere now, whereas in the olden days it was indecent.

I think, I have taken up the time allowed to me, particularly when we are concluding our deliberations this morning. I would like to end with what I have written in my paper about the qualities of a Speaker, as seen by A. F. Stoogis in his book "Learning Parliamentary Procedure" and as mentioned by my colleague from Fiji this morning, that a Speaker should have "two cups of commonsense, well mixed with three pounds of tact and fairness, stirred in and plentifully sprinkled with knowledge of Parliamentary law, baked with a few years of experience."

This is a rare occasion where one can say without offending anybody, if the cap fits you, then wear it.

Thank you, Mr. Chairman and, all my colleagues for your patience.

**The Chairman:** I take it that the hard work put in by the Hon. Speaker Dr. Zahir, is well appreciated by his colleagues and there is no need for further discussion.

**Mr. Speaker Wall (New Zealand):** I merely wanted to draw attention to the experience we have had last year concerning the item 'The Speaker and the Question period'. For a long time in New Zealand, the Parliament has set its face against question time being a free exchange or a sort of miniature debate in which political points were seen to be more important to score than the information to be extracted. Standing orders also militate against the custom of the Chair. But about six months ago, we have introduced a new type of question, a question which is called the question of the day, in which only four hours' notice needs to be given to the Minister. It is limited to, out of six days' question time, a quarter of an hour. We know that we get through about 20 questions in the limited three quarters of an hour that is allowed. There has been a great deal of variation in the control of questions particularly in the supplementaries. The process which we are using, which I cannot say has met with universal approval, is this. At least it has made some progress in that there has been a little understanding, namely that every supplementary question is, in actual fact an elucidation or expansion of the original question so that only such things which are logically consistent with the original question, are allowed. For example, if the question has been asked about the number of school teachers, that would not be allowed to be extended to the cost of employment

or where they are to be employed, of what sexes they are and all that. It has to be strictly related to the total number which is what the question is about. So the range of supplementary questions is very much restricted. The questioner is not aware of why the question is not answered. I am not supposed to explain, except in exceptional circumstances, the basis of my judgment. This has meant a very considerable speeding up of the question period. And the fact is that most Members now get their questions answered whereas under the slacker arrangement where the question period developed into a sort of miniature debate, there were relatively a few Members who got their questions answered. But the process is developing and we are probably in a minority in the Commonwealth where we have insisted on this tradition in our House and the emphasis during question period should be on information to come from the Minister or whomsoever the question is addressed to rather than the question time being used for scoring points.

**Mr. Deputy-Speaker Thambi Durai (India):** The Malaysian Speaker has just now presented a paper relating to the *sub judice* rule. In our Parliament also many Members want to raise certain matters which are *sub judice*, but we are not allowing them. We have to keep in mind that among them are important matters and Members insist on speaking on these matters as they want to throw more light, which may be helpful in the court proceedings. I do accept the point that the manner in which the Members argue will definitely affect the judgment. But in courts, as the pendency is more, cases go on dragging for many years. That being so, if the subject is very important, by using this clause, we are barring the Members from discussing these subjects. We have to give thought as to how to solve this problem. I hope either the Chair or somebody else will focus attention on this point.

**Mr. Speaker Mohamed Zahir (Malaysia):** Mr. Chairman, the point that was raised by the Deputy Speaker, Lok Sabha, just now, is quite important, because this principle of *sub judice* can be abused by some people. For instance, if they do not want a matter to be discussed in Parliament, they would file a writ in the court and then stop the discussion in Parliament on that particular matter. In Malaysia also sometimes the court cases take time to be disposed of. Before the matter is disposed of by the court, nobody can refer to the matter in Parliament. I think it is very unfair to the parliamentarians because it is something which restricts the powers of the parliamentarians or the powers of the Parliament itself. We have been thinking about it.

One of the ways we have found out is perhaps to amend our Standing Orders by putting another provision to say that in such cases the matter can be debated by Parliament *in camera*; and if it is debated *in camera*, then it would not be published. And if there is publication of it outside Parliament, then it can be considered as a contempt of Parliament.

**The Chairman:** Thank you very much, distinguished colleagues. Special thanks are due from the Chair to the distinguished Speaker of the Malaysian Parliament for the very hard work he has put in in the preparation of the paper which has been circulated. I am sure it has been found extremely useful to all the hon. delegates at this Conference.

ITEM NO. 12—PARTICIPATION OF SPEAKERS OF SUB-NATIONAL LEGISLATURES IN THE CONFERENCE OF COMMONWEALTH SPEAKERS AND PRESIDING OFFICERS

**The Chairman:** We now move to the next item on the Agenda which relates to sub-national legislatures. I hope the distinguished Canadian Speaker does not mind that I have substituted Legislatures for Parliaments. I now call on him.

**Mr. Speaker Bosley (Canada):** Thank you, Mr. Chairman. I don't mind it at all.

Let me, as I think we should, through you, convey our appreciation to Speaker Jakhur and the Indian Parliament and its Government for the wonderful reception we have received.

I should apologise to the Conference for not having prepared the paper for distribution in advance. It seems to me perhaps a written paper on this matter was not as necessary as on other subjects, because this subject—the subject of the participation in our conference of the Speakers from sub-national legislatures or parliaments or, as we refer to, of provinces—has been raised many times. I am told, in fact, it is on the Agenda on every Standing Committee meeting that has been held. So, I don't think there is a great deal of need to go into a long preparation of the arguments. I feel its pros and cons are too familiar to the Speakers present here.

Strong and sensible objections have been raised by many Speakers whenever this matter has been discussed. It is assumed that the expansion of this Conference will destroy the easy, open and frank dialogue that we have seen. Smaller and unitary countries

feel that they might be swamped as a result. There might also be a possibility of having people whose minds will be intolerable. Though these points seem to me to be important and there have been strong objections to the proposals, which have been presented in the past and though it also seems perfectly clear to me that the Speakers are not prepared to contemplate the entire opening up of the Conference that is contemplated in the item, I may point out that I do not propose to argue today for a complete expansion of this Conference to all of the Speakers of all the Parliaments, to all of the provinces or to all the assemblies or legislatures, simply because I am sensitive to the views that many Speakers hold. I am not particularly interested in flogging a horse, if I do not think I can win.

At the same time, I have to say at the Conference that the pressure continues, in federal countries such as our own, to include in some way our provincial counterparts for equally sensible and good reasons. The first reason, of course, is the very quality of these leaders—that quality that we all want to preserve. There is no doubt in my mind, this being my first opportunity of having participated and heard the excellent submissions that have been made here, that it only strengthens, in my view, the argument for letting more of our own brethren to hear these arguments.

The second is just to quote Speaker Jakhar

“We are a family of nations assembled here in the Commonwealth Conference.”

So, in my view there is a family of Speakers, the Speakership *per se*. I need to think no further except the conversation we just had collectively about the procedures, about how one stands as a politician when one is Speaker. I think that is perhaps the best example of that family nature that we shared together. Speaker, Sir, is a Speaker in our view regardless of the fact whether that Speaker sits in a provincial or federal or State or a National Assembly.

It is true, of course, that some countries—India and Canada are obviously two—hold regular meetings of all the Speakers of those countries: and the deliberations of this group are reported to those regional or national assemblies, but that is not the same thing as being here. It is also true in our case that some of our State national units or provinces are extremely large. Our provinces of Ottawa and Quebec are each more than six million people

themselves. These units have surely demonstrated their capacity. Witness, if you may, Sir Robin Vanderfelt's memo on his kind season's greetings card that arrived on my table this morning; and therefore, I beg to use the example that he uses in his Newsletter:

"At the recent Commonwealth Parliamentary Conference held in our province at Saskatchewan under the able direction of Speaker Swan, who is himself at this Conference as an observer at the kind invitation of Speaker Jakhar, I only would have indicated that it was not my intention to seek support for a complete opening up of this Conference, simply because it is not on, but it does seem to me that we ought to be able to find some middle way out between expanding this Conference to all sub-national unit Speakers as full delegates on the one hand and no participation at all on the other."

I think it is worth recalling that this Conference was itself founded so that we could help one another and every one of us is benefited as a result. Surely, the same logic that led to the creation of this Conference for ourselves should lead us to see that in a way we have a duty to try and expand this Conference in some way to our provincial or State brethren so that they too can benefit from the wisdom and the logic and the quality that is expressed here by so many who have gone before us.

So, my question to the Conference is: Is there some acceptable middle ground? Although we simply see that this item continues to be in its entirety coming up at the Standing Committee at every meeting, yet it seems clear that it is rejected. I am certain that we can find one way if we want to. I think, therefore, what we should do is that the Conference should ask the Standing Committee to consider, not the questions it has always considered, but to consider it in a more positive way and see whether there is some way to seek the middle ground. I can tell you that my personal preference on behalf of my provincial colleagues will be to invite the sub-national unit Speakers of each country to meet collectively and to select from among their members one or two—and certainly not more than three—to whom we then can extend an invitation to attend our next Conference as observers. It seems to me that that protects our ability to continue to sit in this small horse-shoe and have the dialogue and the openness that we want and at the same time to take a step towards including our provincial and State colleagues in the family. My purpose, Sir, is not to

pitch for that issue or for that solution. My purpose is simply to ask the conference to consider whether we might all collectively consider making some proposal to the next Standing Committee and that will find an appropriate solution. I say this because I have to say it on behalf of my provincial counterparts. They are my equals and I want them here in some way. Thank you.

**The Chairman:** Thank you, Mr. Speaker Bosley.

Any comments?

**Mr. Speaker Mutasa (Zimbabwe):** Mr. Chairman, I think, the proposal put forward by our Canadian colleague is a very interesting one. I wish I could support it. But if I did support it, it would mean a drastic change to international recognition of Canada or any country that can be divided into provinces, because it would then give a very fictitious sovereignty to those provinces which in fact is not recognisable internationally. This Conference is one where each State is recognised internationally as a Sovereign State regardless of its size. And, indeed, I think that there are very small nations here with populations which are much smaller than those in the provinces of Canada. But that is an unfortunate accident of international politics. The solution that he offered was in fact almost a Hobson's choice that the countries should either accept them as equal participants or not at all. I see you are shaking your head. But at least I heard that in your comments that the Conference should accept them as equal participants and not as observers. It would have been a more acceptable proposition to accept them as observers and not as participants in this Conference. But I also wish to offer a solution which arises in my mind. One of the Canadian provinces was hosting the CPA Conference last time and I gathered that that was done at Canada's choice and that Canada as a nation should themselves nominate a Speaker from any province or the Federal Government who would come and represent them in this Conference and then the onus is on Canada rather than on this Conference. Canada should send its representatives to the Conference and they could have Speakers from any province. Thank you.

[HON. DR. BAL RAM JAKHAR, SPEAKER, LOK SABHA (INDIA)  
*in the Chair.*]

**Mr. Deputy Speaker Thambi Durai (India):** Mr. Chairman, Sir, just now the Canadian Speaker and the Zimbabwe Speaker have put forward certain ideas regarding admission of delegates in the Conference.



I also support the Canadian Speaker's view.

Apart from taking a national level Speaker and Deputy Speaker and other people as delegates, it is better to admit Provincial Speakers and Assembly Speakers also as delegates. It is not necessary to admit all the people. As the Canadian Speaker suggested we can select one or two people and admit them in the Conference as delegates, because then only they can also participate equally in the debates and discussions. That will be nice.

Therefore, I support the Canadian Speaker's suggestion for taking one or two people from the Provincial Assemblies also as Delegates, not as mere Observers. Thank you.

**Mr. President McClelland (Australia):** Mr. Chairman, I have given consideration to the matter that is now before the Conference, which has been raised by our Canadian colleague. And I know that this matter has been discussed in previous years, on the basis of admission of the provinces or the States as delegates and that debate seems to have been continued in part by our Indian colleague who has suggested that two delegates from each of the National Groups representing the Provinces, may be admitted as delegates. I note that my friend from Canada Mr. Bosley has now, as it were, amended the proposal to suggest that the Provinces be admitted as Observers. I believe that this proposal would not be well received in Australia by the Australian Parliament; or indeed would not be well received by my colleagues from the small nations of the Pacific region. I believe that it would add considerably to the cost of holding the Conference, it might tend to introduce provincial as well as national discussion and thus need more time and add to the time involved in the holding of this Conference and consequently an increase in the cost thereof.

I also believe that in the Pacific region it would tend to swamp the significance of the attendance at and the influence of the small nations now represented at this conference such as my friends, as I look around, from Nauru, from Tonga and from Kiribati. I believe it would tend to block up or substantially detract from the Annual Conference of Presiding Officers that is held including the States and territories of Australia within the Pacific region. Last year it was held at Kiribati. This year it is to be held at Melbourne. And I suggest that if we were to invite the representatives of each of the provinces of the States or the territories, that would mean that in the Pacific region there would have to be at least one representative from each of the States and Territories in Australia.

It would also mean that there would have to be another representative from each of the provinces in the country of Papua New Guinea and it goes on, and I speak just from off the top of my hat also, from the South of Manala, which I suppose is a former Provincial Government. And, of course, as far as my friends from New Zealand are concerned, exactly what would be the situation in respect of the Cook Islands? But, so far as Australia is concerned, it would mean, if we were to have a representative of each State and Territory, inviting one from each of the 12 States' and Territory's Houses of Parliament. And, because this Conference of Commonwealth Presiding Officers takes place once every two years, if it were decided that the States and Territories were to be represented, among themselves it would mean that they would be represented, each of those Houses of Parliament would be represented, once in every 24 years. And with the emergence of self government in the Australian capital territory and the territory of Northern Island, it would mean once in every 26 years, and I suggest that that just would be far from satisfactory so far as they are concerned, so far as this gathering of Commonwealth Speakers is concerned. As I said, every year in our region we have a Conference of Presiding Officers taking in Australian Parliament, the States of the northern territory, and taking in all our Pacific countries. Through that Conference we have built up a right spirit of brotherhood, of understanding, of assistance of one to the other and cooperation within the region, but I feel that if we have to get consensus among them as to who is to represent the States or the territories at this Conference once every 24 years or once every 26 years, it would substantially hinder the development of the regional cooperation that we have been able to build up in the region over the years. If I thought, the proposal would help this Conference, if I thought it would add to the success of this gathering, I would agree with it, but I do not think it would. Indeed, I feel it might detract from it, I feel it might substantially add to the cost of it, and therefore, it might put difficulties on some of our present brothers attending this Conference and therefore, I must express my opposition which, I believe, will be echoed by my friends from the Pacific countries.

**The Chairman:** Mr. Speaker Vakatora will speak.

**Mr. Speaker Tomasi R. Vakatora (Fiji):** Thank you, Mr. Chairman.

I would like to support my colleague from Australia, the honourable Senator Mr. McClelland, in opposing the proposal that we should have invited to this Conference provincial

Assemblies or Parliaments. I think this will make this Conference more unwieldy and it could be extended on and on and on, and there would be no end to it. In the end it will be just like another CPA General Conference. The reasons Mr. McClelland has given which I fully support.

I would also like to draw the attention of this Conference to Rule 8 of the Rules of this Conference which gives the host Parliament the opportunity to invite any person who it believes may make a contribution to this Conference as an observer. For that reason, I see no reason for this matter to be brought to this Conference and be discussed because the opportunity is already there and it is for each host country to decide whether or not to invite any person and that person can be from a provincial government in Canada or government in Australia or Malaysia or Solomon Islands or where the host country thinks they could be invited from; the provision is already there and I see no reason why this matter should be brought up at this Conference, and as I said, Sir, I totally support my colleague from Australia in opposing what is being proposed here.

**The Chairman:** Dr. Wahid Ali may speak.

**Mr. President Wahid Ali (Trinidad and Tobago):** Thank you, Mr. Chairman. Let me begin by saying that naturally I understand and appreciate the position of the distinguished Canadian Speaker. The closeness between our two countries, however, allows that if we do not hold identical views on this matter, our brotherliness will remain intact. In my infancy, Sir, I grew up on imported Canadian milk. I understand that our Canadian friends do consume a little bit of another liquid produced in my country and other Caribbean countries.

Sir, this Conference of Speakers and Presiding Officers reminds us of the fact that Speakers and Presiding Officers are the repositories of order, of dignity and decorum. They are the upholders of rules and procedures, they are the ones in their national parliaments to see that things are held in the proper perspective. Are they super human beings? No, they are not. But they do imbibe something of the national ethos there, which means something in their respective countries. It is not a matter of the largeness of the population, it is a matter of the ethos and the national dignity of a country that is concerned, and I humbly disagree with the Speaker of the Canadian Parliament that we can refer to sub-

national Parliaments. I apologise if I am wrong in my own view, they are not Parliaments, they may be referred to perhaps as **Legislatures**.

The Speakers and Presiding Officers of these sub-national bodies do, in fact, also play an important role, perhaps an equally important role in society, but there is a difference in status and that must certainly be recognised, not only in the national situation, but in the Commonwealth and in the international situation. What then of the Chair-persons of municipalities and local government bodies? Can they too not also benefit from this exposure? These are questions which must exercise our minds as we consider this matter.

Rule 2 of this Conference provides that not even the Deputy-Speaker or the Deputy Presiding Officer of a national Parliament can be invited or represented here except under particular circumstances. What is their position? My concern is that the quality of this institution should not be damaged. Quite rightly, the Chairman is the **Speaker of the elected House**. I have absolutely no quarrel on this because the elected House in any country with the bicameral system is a House with a special meaning. In our case, Sir, if we are talking about *primus inter pares* in this Conference, who is more eminent than you to be that *primus inter pares*? What will be the description of the future Conference which includes sub-national bodies, perhaps municipalities, perhaps local government bodies, perhaps in the case of the Trinidad and Tobago Island local bodies because there is something called the Tobago House of Assembly which is exactly a local government body but certainly is not a national parliament. But, Sir, I am not negative. May I, with great humility, offer something positive and suggest that the sub-national Legislatures as they have been doing continue to hold regional conferences and perhaps occasionally invite distinguished Speakers and Presiding Officers like yourself, like the distinguished Lord Chancellor on my right, and when it is being held in Australia, perhaps like the distinguished Speaker of the Canadian Parliament, to enrich their experience. Rule 6 provides that the Presiding Officers of State, Provincial, Territorial or other dependent legislatures can be invited as observers by the host country. That is also another mechanism for exposure. But we must be the upholders of procedure and should be seeing things in proper proportion. Therefore, I cannot identify myself with the proposal of the Hon. Speaker of Canada, and I would suggest that the correct way to deal with this matter would be to try and

persuade the members of the Standing Committee to see if the rules can be amended, provided that this Conference does not, by a majority, show its willingness to accommodate that request.

Since I consider it unbecoming to take the floor frequently and I believe I have a few minutes more, may I take this opportunity, with your leave and the leave of my distinguished colleagues, to express to you and to the staff, to the Standing Committee and to the staff of the Standing Committee and especially to the Secretary-General, our warmest thanks for all the arrangements and the kind hospitality—and I include in this all the workers from the most humble, I begin with them, to the highest who have been responsible for the most excellent arrangements for this Conference.

Sir, yesterday's function arranged by the Mayor of Delhi reminded me of some Greek words which I had learnt somewhere in the distant past in my youth....

**The Chairman:** You are still young. I deem you to be still young.

**Mr. President Wahid Ali:** I thank you, Sir. Is it a matter of what one feels or looks?

सारे जहां से अच्छा हिन्दोस्तां हमारा,  
हम बुलबुलों है इसकी, यह गुलिस्तां हमारा ।

Your workers, the humble workers in the hotel, the drivers of the vehicles, the security men, your staff in Parliament, show that they are the nightingales of this country.

I am sure, Mr. Chairman, you will understand why I would wish to continue that 'Greek' and say:

ताहिदी की अमानत सीनों में है हमारे,  
आसां नहीं मिटाना, नामो निशां हमारा ।

These words are taken from that immortal bard, Allama Mohammed Iqbal. He was a poet. You, Sir, in your own way bring his poetry into life and service. You are a shining example of the culture of your country. You have inspired us by your leadership, and we are honoured to be your guests. We thank you and your country most warmly and we shall treasure this experience and lay it by among our most-prized possessions.

I wish to end this small contribution with some words taken from the writings of a certain Subhash Kashyap, a young man of many, many years ago—if it were not for the fact that this Subhash

Kashyap still looks like a young man, I would have said the same person. He also quotes from Mohammed Iqbal:

“The life of the world consists in movement. This is the established law of the world. On this road, halt is out of place. A static condition means death. Those who are moving have gone ahead; those who tarry even a while get crushed. Life springs from perpetual movement. Motion constitutes the waves, the whole existence.”

I beg that we take this message to our respective countries.

Thank you.

**The Chairman:** Gentlemen, I think we have had quite a lot of discussion on this subject. I will just refer, once again, to Rule 6. If you study Rule 6, I do not think there is any need for going into a debate on this subject. I shall then put it to Mr. Bosley whether he likes to have a vote on this or he wants to withdraw it. Rule 6 reads:

“The host Parliament at the discretion of its Speaker or Presiding Officer may invite the Presiding Officers of its own State, Provincial, Territorial or other dependent legislatures, or of the legislatures of any other nation which is sovereign except in respect of external affairs, defence or security to attend the Conference as observers.”

So, we have done it. I have my good friends from our Provinces on my invitation as observers. I have one very nice friend from Canada as observer. I have got other friends from other places. That was because you gave me the powers and the authority to invite them. So, there has never been any problem. We have discussed this time and again, and as the trend shows, the opinion has not varied much; it is the same. The composition as it exists today is favoured by general consensus. Now it is up to Mr. Bosley.

**Mr. Speaker Bosley (Canada):** I have made the motion. I am not demanding a vote on this matter at all. I simply wanted the matter to be discussed. That was all.

I wish to say one thing. One Hon. Speaker quoted the rule. Canada interprets Rule 2 to include the Speakers of Provincial Parliaments because they are Parliaments of a sovereign nation. I simply put the matter for discussion before the Conference; I wanted

to get some feeling of the Conference because I shall be making a proposal to the Standing Committee at its meeting. This is not the proper place to consider the motion. I thought I had made it clear at the beginning itself.

**The Chairman:** I am sorry It is okay now.

**Mr. Speaker Mutasa (Zimbabwe):** Mr. Borley, could you kindly clarify under which sovereign nation the Saskatchewan Parliament is?

**Mr. Speaker Bosley:** It is one of the Parliaments of Canada. I shall read out the rule. The rule is:

“Membership of the Conference *de jure* shall be restricted to the Speakers and Presiding Officers of the Parliaments of the sovereign nations of the Commonwealth.”

**Mr. Speaker Mutasa:** “Parliaments of the sovereign nations.” Saskatchewan is not a sovereign nation.

**Mr. Speaker Bosley:** It has a Parliament within the sovereign nation of Canada. That is exactly how the Parliament of Saskatchewan figures. They are one of the Parliaments of Canada.

**The Chairman:** Now, as authorised by the House, I would like to call upon Hon. Herb Swan, Speaker, Legislative Assembly, Saskatchewan, to say a few words.

**Mr. Speaker Swan (Saskatchewan—Canada):** Thank you very much, Mr. Chairman.

I feel that maybe I am treading a dangerous ground when I speak just at this point in the Conference.

I have enjoyed very much the debate that I have heard today and throughout the Conference.

I did not come here as an observer to influence the Conference into allowing Provincial Parliaments to attend, which was a request at our Speakers' Conference in Canada for a number of years, and there has been that interest for a long time. But I think we came here more at this conference to observe and experience the fellowship of your company here in India, and to have the opportunity to visit again friends that we have made throughout the Commonwealth over the past few years.

Mr. Speaker Jakhar, I would like to thank you on behalf of my wife and my staff for the invitation that you extended to us to attend as your guests and as observers at this Conference. This is my first visit to the country of India. I would say that it would not be my last.

It was just an opportunity to come and experience some of the history and culture and friendship of your nation. We have enjoyed it and I look forward to having any of your people in my Province at any time and to be my guests.

Thank you for giving us an opportunity of enjoying the fellowship of so many.

#### FAREWELL TO SIR ROBIN VANDERFELT

**The Chairman:** Now, with your permission I would like to say a few words about our esteemed Secretary-General, Sir Robin Vanderfelt.

I am sure that you all know that Sir Robin Vanderfelt is a fine, very steadfast, hard-working, understanding and co-operative Secretary-General and has also been the guiding spirit of the Commonwealth Parliamentary Association for well over three and a half decades. He has been Secretary-General for 25 years.

Sir Robin has been heading the Commonwealth Parliamentary Association's Headquarters and conducting the affairs with such acumen, sincerity, dedication, zeal and enthusiasm that I cannot put into words what all he has been able to do to make this Commonwealth Parliamentary Association of ours what it is to-day, because it needs some person with that dedication.

Now as all things have to change and as you know there is no other thing in this world as consistent as change, it has to happen, and he is to retire now. It will be our loss and we shall be feeling his absence from all the deliberations and the guiding hand behind all the management and efforts which go into making any conference a success.

Sir Robin Vanderfelt also attended regularly our Commonwealth Speakers' Conferences and there he also has been giving his advice and help in whatever way we have demanded. I do not know. He is in such fine health. Should we allow him to retire? But I alone cannot decide that now.

Sir Robin Vanderfelt, we are very happy that you came on our invitation and you have also been a very good and steadfast friend of India as well. It may be your last visit as Secretary-General to India, but I am sure that our relationship will always be there and you will be often visiting this land and also helping us in the formulation of our own policies as far as the working of the parliamentary institutions is concerned.



On behalf of the Indian Parliament and the Indian Parliamentary Association, I present to you, Sir Robin Vanderfelt this plaque of Indian Parliament and also this rosewood box engraved with the emblem of the Indian Parliament as mementoes. I wish you all health and happy accomplishments in the times to come.

*The mementoes were then presented.*

**Sir Robin Vanderfelt, Secretary-General, Commonwealth Parliamentary Association:** Mr. Chairman, I was unprepared for your kind words a moment ago as I was on the task of making a speech yesterday afternoon. In neither case was I prepared.

I would like to thank you most sincerely for the privilege of attending this Conference. I would like to thank you and your colleagues for permitting me to be here. It has been both a genuine privilege and an occasion of the greatest practical value to me.

It follows from that that I would like to ask that future hosts of such Conferences consider sympathetically the idea that my successor as Secretary-General of the Commonwealth Parliamentary Association should also be invited in future to such conferences.

I would like to make a very brief reference to my friend and colleague, Mr. Philip Laundry's book to which Mr. Speaker Vakatora referred in such generous terms this morning. I just want to make a few comments. It is in no sense a re-issue of Mr. Philip Laundry's book "*The Office of Speaker*" first published in 1964. Were it so, I doubt whether the Commonwealth Parliamentary Association would have been prepared to commission a second edition of that book. What we asked Mr. Philip to do and what he has done so laboriously is to put the focus on the Commonwealth. So, this book which has been referred to during the last day or two has a different title and a different content. It is "*The Office of Speaker in the Parliaments of the Commonwealth*" and if I may put in a word for the CPA, I would hope that not only every parliamentary library but every Speaker of whatever level of legislature, should have his or her own personal copy of this book. I have a very few here but I do have plenty of them. The Editor of the *Parliamentarian* would require me to say that.

Just two other points. Some of the subjects which have been discussed here, such as facilities available to Members are subjects on which over a number of years, thanks to your kindness and co-operation, we have assembled a considerable amount of information in what is known as the *Parliamentary and Information Reference*

Centre in London. It may be that we can give some assistance if future conferences of this kind have a general item such as that introduced by Mr. Speaker Clifford Darling earlier this week. Indeed it is perhaps not inappropriate to suggest that the topic did not lend itself very well to discussion without some dissemination of material on it beforehand and if we can be of any help in that regard, we shall be glad to do so.

I shall now conclude by saying that I think every Presiding Officer here is either the President or the Joint President of the respective Branch of the Commonwealth Parliamentary Association and I have to give my thanks, and do so most willingly, to you and to your predecessors, for the help which you have given the Commonwealth Parliamentary Association in that capacity. Similarly I have to thank all those Clerks who are here, whether or not they are Honorary Secretaries of the respective Branches of the Association, for the help they have given us. Certainly at the level of the headquarters Secretariat we could not function in any sense satisfactorily without their continuing help and support. I am as confident as I am of anything that you and your successors in your office will continue to give that support to my successor, to the headquarters Secretariat and above all to the Association as a whole. Thank you, Sir, very much for this opportunity to say a few words and, yes, certainly I should give my best returns to India.

#### CLOSING CEREMONY

**The Chairman:** If there is no other item which you want to take up, then I may sum up.

Your Excellencies, the Speakers and Presiding Officers from Commonwealth countries, the Distinguished Speakers and Presiding Officers of the State Legislatures in India who have come on my invitation and Mr. Herb Swan and Sir Robin Vanderfelt who have come as my special guests, Clerks of the House, Ladies and Gentlemen:

Before the curtain falls and we wind up the business of the Conference, let me take up the opportunity of expressing my heartfelt gratitude and thankfulness to you all for your kind cooperation and active participation in making the Conference successful. Excellencies, I thank you all, on behalf of the people and the Parliament of India, and particularly on my own behalf, for your meaningful involvement in the deliberations of the Conference. It was a matter of honour and privilege for me to meet you all here in New Delhi. I hope you have enjoyed your stay with us.

Before we depart, may I avail of this opportunity to share my anxiety and satisfaction about the problems and prospects that confront the Club of our Commonwealth of Nations. What is the common thread that runs among us which binds us together so tenaciously? First of all, it is the nostalgia of our common political origin. No more do we describe our organisation as the British Commonwealth of Nations, we simply call it the Commonwealth of Nations. What a change of times and what a transformation. History will record that it was one of the greatest things that happened to this world—a colonial Empire changed into one of the most beautiful brotherhoods of all times without any bloodshed, and we here in the Commonwealth now share common aspirations, common inspirations and we all perspire to achieve our ends through that beautiful way of common consensus; and that is what democracy is. As defined by somebody. “Democracy is a hard core of agreement surrounded by political disagreements.” But still it is strong and stable. It carries forward with it the vast majority of the people who constitute that set of a democratic society, to which this system belongs.

We have so many things in common. We have also so many things in common to face. This Commonwealth has been able to solve very intricate problems like that of Zimbabwe. I think it was a common effort which brought Zimbabwe's freedom and, I think, it will be our endeavour now to cope with what is going to happen to Namibia. I think we shall be the agency to sort out that problem. We have got the capacity. We have got the will. We have got the intelligence to do that. I think time will tell that Commonwealth rose to the occasion and came out with flying colours.

We as a whole, though divergent and different in attitudes, religions, customs and colours, try to co-exist as brothers. We have an unshakable desire for peaceful appreciation of the difficulties of the developing world. It is we in the Commonwealth who have both the things—the poor and the rich, the developed, the under-developed and the developing. We have to forge something whereby we take our brothers who are not so developed towards that goal for which we have all aspired and we still are aspiring to. It is we who will show this world the path where there is bliss, where there is human gentleness and where there is fellow feeling. This world is too much disturbed by the present trend of terrorism. I do not know wherefrom this has penetrated into the body-politic of this entire world. We have grown much more. Our vision has grown. The world has shrunk. Even the cosmos is going to shrink to our onslaught and we might be taking a leap towards finding

other planets where civilisation exists but as far as the human being is concerned, I think, he has shrunk in himself. He has lost that touch where he can feel for others; where he can enjoy the participation of being a fellow traveller in the pursuit of peaceful existence.

We have to fight against this cancer and, I think, this spirit which we exhibit throughout the world by our conference, by our association, by our effort and by our saying will pave a new way. We have seen the vicissitudes and the trials and tribulations of the under-developed world and we have seen what it means to be subjugated. But we have also seen how it could be when you are Independent and can be helpful to others and what satisfaction it gives to you. I think the Speaker in the Lord Chancellor will be feeling what sort of affection there lies in India for them as well as for all my friends here. We are a nation who believes it is a God-given gift to have guests. It is only those who are blessed with His benign grace that have guests; and before you, Mr. Wahid Ali, I shall quote one couplet:

वह आए हमारे घर, खुदा की क़ुदरत  
कभी हम उनके, कभी अपने घर को देखते हैं ।

You may translate for your friends all around. I shall leave that to you. But I might try. It is God's grace that you have come here to our house. It is His greatness. And now what we see is that one way we see you, while the other way we see our house. Because you are here, so everything is pleasant, everything is bountiful and everything is enjoyable. So, you are welcome, Sir. You are welcome; you have done a great honour to us. I have known almost all of you. I have close relationship and friendship with you. I have been having some intimacy with the Speakers for the last six years. I think, there are only two friends here whom I have met for the first time. I have met all the other friends before. There is some interaction among us like family members. We are heart-throbbled when we see each other. My people are here. The Speakers and Presiding Officers of our State Legislatures have been so kind to come and participate here. They along with me feel elevated that we have you with us.

I have seen my people and talked to them. My press has talked to me. All have said: "What a magnificent set of Speaker and Presiding Officers you have brought to this great land."

If there is any discrepancy or any shortcoming on our part, please forgive us.

I am grateful to my friends to my Secretaries-General on my left and right, and to my Presiding Officers of the Lower House and the Upper House, all my staff in the Parliament from top to bottom, irrespective of where they stand; they have felt honoured and very happy in catering to the needs of my guests here.

And what my Government feels about it, you have felt it. My Vice-President came; my President could not come, because he was under sedation; his eye had been operated upon and the doctors forbade him, otherwise he would have been very glad. He would have been very glad to have you there; he is such a likeable person. We would have had the pleasure of exchanging pleasantries and everything.

Today, this evening, you will be meeting my charming Prime Minister, a youthful bundle of energy, dedication, determination, zeal and enthusiasm and he has some urge to take India to the 21st century at the pace which the present climate demands. I think the whole nation is in love with him. He will be meeting you this evening and you will feel what a charming person he is.

I am grateful and thankful to the State of Haryana; they will be hosting tomorrow a reception for you at a scenic spot and a tourist spot just outside Delhi. And when you go to Agra day after tomorrow, the State of Uttar Pradesh will be hosting your lunch; they will be your hosts; they have been so gracious.

And I have had so many offers from all my other States. I do not know how to face my other friends. They had asked me why I had not chosen their States also. So, we shall have to call a few more conferences to accommodate that feeling.

I have also to thank the Mayor of Delhi, who was kind enough to take us to that historic spot, Red Fort, which has seen the rise and fall of so many empires, so many kings and emperors. History has been walking around all the time there as you felt yesterday evening. It is something which gives us inspiration because time does not stand and wait for anybody but it is we who have to keep pace with the time. Time has got only forelock, no hind-lock. If you just miss it, then there is only baldness behind. We have to catch it and keep pace with it. That is why we have these conferences to keep pace with the present situations, as they have come up and to keep ourselves alert.

I must also thank the Chairman Metropolitan Council, Delhi, Mr. Purushottam Goyal who will be holding a reception in your honour tomorrow in the evening.

All of us concerned with this Conference have been very happy. I feel rather very much indebted to you. I cannot find exact words to express what I feel inside. It has to be felt. Please put your hands on your heart and feel how I feel it. Thank you very much.

Reception by the Prime Minister is at 6.00 p.m. today at Hyderabad House.

The African Presiding Officers may please remain here for consultation. The informal meeting of Clerks, Secretaries and Secretaries-General is at 4.00 p.m. in this very hall.

Thank you all once again.

*The conference adjourned at 12.40 p.m.*

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## APPENDICES

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## APPENDIX I

### MESSAGES RECEIVED FROM SOME OF THE COMMONWEALTH SPEAKERS AND PRESIDING OFFICERS.

#### CYPRUS

1. Mr. Hadjioannou,  
Director-General of House  
of Representatives, Republic of Cyprus      "President Lyssarides has asked me to convey his warm greetings and his wishes for a successful and fruitful Conference"

#### INDIA

2. Shri M. Hidayatullah,  
former Vice-President,  
India and Chairman, Rajya  
Sabha      "Wish all success and happy new year to delegates and you"
3. Shri K.S. Hagde,  
Former Speaker, Lok Sabha      "Hope the Conference deliberations will lead to re-establishment of Parliament's effectiveness and prestige; mine and my wife's best wishes for the success of the Conference"

#### MAURITIUS

4. Hon'ble Chattardhari Daby,  
Speaker, Legislative Assembly, Mauritius.      "Best wishes for a most successful Conference"

#### SIERRA LEONE

5. Hon WNS Conteh,  
MRSL, JP, Speaker,  
House of Representatives  
Sierra Leone      "Please accept my best wishes for a successful Conference"

#### TONGA

6. His Majesty Taufaahau  
Tupou IV, King of Tonga      "May you have an enjoyable and successful Conference and may your deliberations enhance and strengthen the mystique bond that binds the nations of the Commonwealth and may it further the cause of peace and prosperity which is the sole object of our common efforts today"



## APPENDIX II

### STANDING RULES FOR CONFERENCES OF COMMONWEALTH SPEAKERS AND PRESIDING OFFICERS AS AMENDED IN NEW DELHI

January 1986

1. Conferences shall be called Conferences of Commonwealth Speakers and Presiding Officers, and shall be numbered in succession.

#### MEMBERSHIP

2. Membership of the Conference, *de jure*, shall be restricted to the Speakers and Presiding Officers of the Parliaments of the sovereign nations of the Commonwealth. A Deputy Presiding Officer may, by prior notification to the host Parliament, attend the Conference as a substitute for a Speaker or a Presiding Officer of his Parliament and any such substitute shall enjoy the same status as a member of the Conference.

#### STANDING COMMITTEE

3. There shall be a Standing Committee consisting of a Chairman and six members elected by the Conference at a General Meeting. The Committee shall have the power to co-opt one or more members from amongst the members of the Conference, but not exceeding four\*. The term of office of the Standing Committee shall be from the end of one Conference to the end of the succeeding Conference. The quorum shall be four\* members of the Committee.

4. When the venue of the next Conference has been agreed to at a Conference, following the conclusion of that Conference, the Speaker of the Lower House of the next host Parliament shall be *ex-officio* Chairman of the Standing Committee; otherwise the Chairman of the last Conference shall be the Chairman of the Standing Committee until the end of the meeting of the Committee at which the venue for the next Conference is decided. Thereafter the Speaker of the next host Parliament shall be Chairman.

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\*The amendment to substitute "four" for "three" was adopted on 6 January 1986 by the Eighth Conference of commonwealth Speakers and Presiding Officers held in New Delhi.

**5. The functions of the Standing Committee shall be:**

- (a) to decide dates and venue of the next Conference;
- (b) to propose subjects for discussion at the next Conference, and to prepare a draft agenda;
- (c) to propose draft amendments to these rules for the consideration of the General Meeting as the occasion may arise; and
- (d) to consider all matters concerning the organization and conduct of the Conference, including financial arrangements.

**OBSERVERS**

6. The host Parliament at the discretion of its Speaker or Presiding Officer may invite the Presiding Officers of its own State Provincial, Territorial or other dependent legislatures, or of the legislatures of any other nation which is sovereign except in respect of external affairs, defence or security, to attend the Conference as observers.

7. The host Parliament may invite Clerks or Secretaries or Secretaries-General, as the case may be, of the sovereign Parliaments of the Commonwealth to attend the Conference as observers.

8. The host Parliament may invite any person who it believes may make a contribution to the Conference as an observer.

9. The Conference may, by resolution, admit to all or any of its sittings any other Officers of Parliament accompanying Speakers and Presiding Officers.

**OFFICERS OF THE CONFERENCE**

10. Officers of the Conference shall be:

The Chairman;

Two Vice-Chairmen; and

The Secretary-General.

11. The Chairman shall be the Speaker of the Lower House of the host Parliament.

12. The Vice-Chairmen shall be elected by the Conference. Nominations for Vice-Chairmen shall be proposed and seconded from the floor of the Conference. If more than two candidates are nominated, the Vice-Chairmen shall be elected by secret ballot.

13. A single ballot paper shall be used for the purpose of the elections. The votes shall be counted by two tellers nominated by the Chairman who shall declare elected candidates receiving the largest and second largest number of votes respectively.

14. The Secretary-General of the Conference shall be the Clerk, Secretary-General or Secretary, as the case may be, of the Lower house of the host Parliament.

#### POWERS AND FUNCTIONS OF OFFICERS

15. The Chairman shall:

- (a) preside at each session of the Conference except that in his absence or by his invitation either one of the Vice-Chairmen may preside;
- (b) open, suspend and close the sittings;
- (c) fix the date, time and items for discussion at the next sitting; and
- (d) at his discretion, summarise the views of the Conference.

16. The Vice-Chairmen when presiding shall exercise the powers and functions of the Chairman as set out in rule 15.

17. The Secretary-General shall co-ordinate the secretarial, administrative and other arrangements of the Conference appointing or co-opting such officers and staff as he may require to:

- (a) provide the necessary services;
- (b) prepare and distribute list of officers comprising the Secretariat; and
- (c) prepare and distribute lists of the Speakers and Presiding Officers attending the Conference, of Clerks, other officers of Parliament and advisers accompanying the Members of the Conference, and all observers attending the Conference by invitation.

#### ADOPTION OF THE RULES OF THE CONFERENCE

18. The standing rules shall be binding on all future Conferences.

19. A motion for the amendment of the standing rules or the adoption of new rules shall require two months' notice to be given in writing before the commencement of the Conference at which it is to be considered. Such a motion shall be proposed and seconded from the floor of the Conference, and shall be decided by a majority vote of the Conference. Any amendment or new rule so adopted shall be effective immediately.

## ADOPTION OF AGENDA

20. The Agenda shall be adopted by the Conference at its first session.

21. Motions for the addition of new items to, or for the amendment or deletion of items from, the draft agenda may be proposed and seconded from the floor of the Conference, and shall be decided by a majority vote of the Conference.

22. The items on the Agenda shall be considered in such order as the Conference may decide.

## THE CONDUCT OF BUSINESS

23. The sittings of the Conference shall be open, unless the Conference decides otherwise.

24. Members desiring to speak shall rise in their places and address the Chairman. When two or more members rise together, the member called by the Chairman shall be entitled to speak.

25. A member leading the discussion of any item on the Agenda may prepare for circulation in advance a paper dealing with the matter he proposes to discuss.

26. Members may not speak more than once on any item of the Agenda unless by leave of the Conference.

27. Speeches shall be limited as follows:

- (a) Opening and closing speeches on any item of the Agenda—  
—not more than twenty minutes;
- (b) Intervening speeches—not more than fifteen minutes; and
- (c) Second Speeches—not more than five minutes.

28. A speaker whose time-limit has expired before the completion of his speech, may be granted an extension of time by leave of the Conference; such extension shall be limited to five minutes.

29. A speaker shall not be interrupted except on a point of order. He may, however, by leave of the Chair, give way to enable elucidation of a particular point, the time-limit of his speech being adjusted accordingly.

30. By leave of the Conference, observers invited under Rule 6, 7 and 8 may take part in the discussions of the Conference, but they shall not have the right to vote on any resolution.

**COMMITTEES**

31. The Conference may refer any matter arising out of an item on the agenda to a Committee for consideration.

32. The Conference shall nominate the members of a Committee and decide the manner in which the places on the Committee shall be allocated.

33. When referring a matter to a Committee the Conference may fix the time by which the Committee should make a report.

34. The Committee shall elect its own Chairman and appoint a rapporteur for each subject referred to it. The rapporteur shall prepare the report of the Committee for presentation to the Conference and for inclusion in the final report of the Conference.

35. The Conference may discuss the report of a Committee, should it see fit.

**REPORT OF THE CONFERENCE**

36. The Secretary-General shall arrange for verbatim records of all discussions of the Conference. These records shall, if possible, be made available to each speaker for editorial amendment before the next session of the Conference.

37. At the conclusion of the Conference, the Secretary-General shall prepare and distribute a report of the proceedings of the Conference which shall include the verbatim record of discussions and any reports presented to the Conference by Committees. Copies of this report shall be distributed to Speakers, Presiding Officers and Clerks of Commonwealth Parliaments and those persons who attend the Conference as observers.

## APPENDIX III

### MINUTES OF THE MEETING OF THE STANDING COMMITTEE OF THE EIGHTH CONFERENCE OF COMMONWEALTH SPEAKERS AND PRESIDING OFFICERS HELD IN NEW DELHI AT 3.15 P.M. ON JANUARY 5, 1986

The Chairman welcomed the members of the Standing Committee and confirmed the arrangements for the conference, details of which had already been circulated.

#### ELECTION OF VICE CHAIRMEN

The Chairman reminded the meeting that it would be necessary to elect two Vice Chairmen and asked Mr. Laundry to explain the past practice in this regard. Mr. Laundry said that it could either be left to the conference to nominate the candidates from the floor or the Standing Committee could suggest nominations. After discussion the Committee agreed to seek nominations from the floor of the conference without any prior arrangements.

#### AGENDA

The Chairman confirmed that the proposed conference agenda had been circulated to all delegates. The countries whose delegates had agreed to open the various agenda items were also confirmed. The Chairman indicated that Mr. Speaker Bosley would be proposing a change in the agenda later in the meeting.

#### TIMING AND VENUE OF THE NEXT CONFERENCE

Mr. Speaker Weatherill indicated that he would be offering Great Britain as the venue for the next conference and would be issuing an invitation with a view to hosting the next conference in July 1988. The conference would coincide with the celebration of the Third Centenary of the Bill of Rights. He recognised that July might not be the ideal month for all Parliaments, but it was necessary to choose a time when the British Parliament would be sitting. A general election was also anticipated in 1987 or the beginning of 1988 and the celebrations and the conference could not conveniently take place until after the election. Most members of the Standing Committee indicated that July would be a suitable month.

However, some reservations with regard to the exact timing were expressed and the meeting agreed to accept the invitation in principle and to agree on the exact dates of the conference at the next meeting. The Chairman thanked Mr. Speaker Weatherill for his invitation.

#### VENUE AND TIMING OF NEXT STANDING COMMITTEE MEETING

The Chairman asked Mr. Laundy what arrangements should be made with regard to the Standing Committee in the light of the invitation of Mr. Speaker Weatherill. Mr. Laundy explained that a host would be needed for the next Standing Committee Meeting and suggested that the Chairman might begin by enquiring whether any of the members present would be prepared to host the meeting. Mr. Speaker Mutasa said that although Zimbabwe had already hosted a Standing Committee meeting, he would be prepared to repeat the invitation. After discussion the meeting agreed that the invitation should be accepted.

#### OFFICIAL OPENING OF THE CONFERENCE

The Chairman explained the procedure for the ceremonial opening and indicated that delegates would be requested to change into their robes where applicable prior to the taking of the official photograph. Facilities for changing would be available in room No. 62, Parliament House building. He said there would be no formal procession prior to the ceremonial opening.

#### SMOKING

The Chairman sought the views of the meeting as to whether smoking should be allowed in the conference chamber. After discussion it was agreed that smoking should not be allowed.

#### CHANGES TO THE AGENDA

The Chairman called on Mr. Speaker Bosley to explain his proposal for changing the agenda. Mr. Speaker Bosley indicated that he had agreed with his colleague, the Speaker of the Senate, that the item "The proper use of the Chambers and precincts of Parliament", which had been proposed by Canada, should be dropped from the agenda. He explained that the item had been proposed by the former Speaker of the Senate and neither he nor his colleague wished to proceed with it. He added that, at the urging of his provincial colleagues, he wished to propose as a substitute item the question of the participation of the Speakers of sub-National Parliaments at Speakers' conferences. Mr. Speaker Mutasa asked for

some clarification of the latter proposal as he understood the question of participation had already been decided at the previous Standing Committee meeting. The Chairman proceeded to read the relevant extract from the minutes of the previous meeting and also drew attention to Rule 21 which provides that any changes to the agenda must be approved by the conference as a whole. Sir Arnott Cato suggested that the Standing Committee could not come to a final decision on this matter. No delegate could be prevented from raising it, even though it had been frequently discussed before, and the conference would have to make the decision.

Mr. Speaker Weatherill said that he agreed with the view expressed at the last Standing Committee meeting and suggested that the Chairman could provide some guidance when the matter was considered by the conference as a whole.

#### AMENDMENT TO THE RULES

The Chairman indicated that an amendment to Rule 3 that the quorum of the Standing Committee should be increased from 3 to 4 members had been proposed by Cyprus. He asked whether the Committee wished to express a view prior to the proposal being placed before the conference. After discussion the Committee agreed to recommend the change.

#### FINANCIAL ARRANGEMENTS

The Chairman enquired whether the Committee wished to discuss the financial arrangements for the next conference. After discussion it was agreed that the matter would, no doubt, be discussed at the next Standing Committee meeting and that in all probability the same arrangements which had been adopted in the past would be agreed to.

The Committee adjourned at 4.15 p.m.

BAL RAM JAKHAR,  
*Chairman*



## APPENDIX IV (I)

### DECLARATION AND REGISTRATION OF THE PECUNIARY INTERESTS OF MEMBERS

**Paper presented by Hon. H. A. Jenkins**

The registration and declaration of the pecuniary interests of Members of the Australian Commonwealth Parliament have been under consideration for a number of years. Four Australian State and Territory Legislatures have enacted legislation requiring registration of the interests of their Members but despite the adoption by the House of Representatives in October 1984 of resolutions requiring the registration of interests of its Members, the register has not yet been established.

It should not be thought from these introductory words that problems of conflict of interest have arisen in the Commonwealth Parliament giving rise to a clamour for the registration of Members' interests. On the contrary, the Parliament has been remarkably free of suggestions of impropriety or of Members' actions or voting being influenced by personal interest. A requirement for introducing of a system of compulsory registration of interests of Members is part of the policy of the present Government but its implementation has proved more difficult than anticipated.

There are existing constitutional and standing order provisions which are relevant to this matter and they are as follows:

#### CONSTITUTION

"44. Any person who—

- (v.) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives."

"45. If a senator or member of the House of Representatives—

- (i.) Becomes subject to any of the disabilities mentioned in the last preceding section; or

- (ii) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or
- (iii) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State:

his place shall thereupon become vacant.”.

#### STANDING ORDERS OF THE HOUSE OF REPRESENTATIVES

“196. No Member shall be entitled to vote in any division upon a question (not being a matter of public policy) in which he has a direct pecuniary interest not held in common with the rest of the subjects of the Crown. The vote of a Member may not be challenged except on the substantive motion moved immediately after the division is completed, and the vote of a Member determined to be so interested shall be disallowed.”

“326. No member may sit on a committee if he is personally interested in the inquiry before such committee.”.

{The Senate has a standing order 292 in identical terms to House of Representatives S.O. 326 but there is no Senate equivalent of S.O. 196).

There have been few occasions when matters have arisen in respect of these provisions. In 1938 a Minister resigned from the Ministry when it became apparent that his Department did, in the normal course of activity, by public tender, enter into contracts with a company of which the Minister was a director. In 1977, a Minister resigned from the Ministry when his financial interests were brought into question but was re-appointed following the receipt of independent legal advice clearing him, and his family, of wrongdoing. There have also been occasions when Members have not served on committees because of a personal interest in the inquiry. However, there has been no occasion when a Member has been found incapable of sitting as a Member in accordance with the constitutional provisions.

In 1974 the Parliament established a joint committee to inquire into whether arrangements should be made relative to the declaration of the interests of Members. The committee recommended a system of registration similar to that operating in the House of Commons at Westminster.

Notices of motion to give effect to the recommendations were given on 2 occasions but lapsed. Following the incident in 1977 concerning a Minister referred to earlier, the Prime Minister established a committee of inquiry into public duty and private interest chaired by a former Minister and later Chief Justice of the Federal Court of Australia. In its 1979 report the committee concluded that there was insufficient justification at that time to introduce a compulsory system of registration of interests. It did, however, recommend the adoption of a code of conduct which included a requirement for *ad hoc* declarations of interest by Members. It further recommended that a system, whereby Ministers were required to supply the Prime Minister, on a confidential basis, with statements of their interests should be continued. The Parliament took no action in respect of the committee's recommendations.

In line with his Party's policy, the newly elected Prime Minister in 1983 tabled in the Parliament statements by Ministers of the pecuniary interests of themselves and their families. Further statements by Ministers declaring the actual values of those interests were retained by the Prime Minister on a confidential basis as had been the practice since 1978. In tabling the statements, the Prime Minister made it clear that the Government expected that the interests of other Members of the Parliament should be similarly registered and available in a public register. Senior public servants and statutory office holders would be required to provide similar details on a confidential basis to the heads of their departments, or their Ministers, as appropriate, and this requirement was put into effect. However, the introduction of the registration requirements for Members has not been so easy.

The matter was first referred to the Standing Orders Committees of the House of Representatives and the Senate in October 1983 for advice on the changes that would be necessary to the standing orders to give effect to the proposal. The House of Representatives Committee reported in June 1984 recommending (1) the establishment of a Committee of Members' Interests to oversight the registration requirements and (2) that the requirements should be given effect by resolutions of the House rather than by amendment of the standing orders. A dissenting report attached to the committee's report objected to the inclusion in the requirements of the interests of a spouse and dependent children. The Senate Standing Orders Committee did not report on the matter.

In October 1984 the House of Representatives adopted a new standing order establishing the Committee of Members' Interests and the following resolutions to have effect from the commencement of the new Parliament.

**“(1) DECLARATION OF MEMBERS’ INTERESTS**

That within 28 days of making and subscribing an oath or affirmation as a Member of the House of Representatives and within 28 days after the commencement of the first period of sittings in each subsequent calendar year while remaining a Member of the House of Representatives, each Member shall provide to the Registrar of Members’ Interests, a statement of—

- (1) the Member’s registrable interests, and
- (2) the registrable interests of which the Member is aware (a) of the Member’s spouse and (b) of any children who are wholly or mainly dependent on the Member for support,

in accordance with resolutions adopted by the House and in a form determined by the Committee of Members’ Interests from time to time, and shall also notify any alteration of those interests to the Registrar within 28 days of that alteration occurring.

**(2) REGISTRATION INTERESTS**

That the statement of a Member’s registrable interests to be provided by a Member shall include the registrable interests of which the Member is aware (1) of the Member’s spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and shall cover the following matters:

- (a) shareholdings in public and private companies (including holding companies) indicating the name of the company or companies;
- (b) family and business trusts and nominee companies—
  - (i) in which a beneficial interest is held, indicating the name of the trust, the nature of its operation and beneficial interest, and
  - (ii) in which the Member, the Member’s spouse, or a child who is wholly or mainly dependent on the Member for support, is a trustee, indicating the name of the trust, the nature of its operation and the beneficiary of the trust;
- (c) real estate, including the location (suburb or area only) and the purpose for which it is owned;
- (d) interests in companies to be determined by the Committee of Members’ Interests;

- (e) partnerships, indicating the nature of the interests, the activities of the partnership and the total amounts of its assets and liabilities;
- (f) liabilities (excluding short-term credit arrangements) indicating the nature of the liability and the creditor concerned;
- (g) the nature of any bonds, debentures and like investments;
- (h) saving or investment accounts, indicating their nature and the name of the bank or other institutions concerned;
- (i) the nature of any other assets (including collections, but excluding household and personal effects) each valued at over \$5000;
- (j) the nature of any other substantial sources of income;
- (k) gifts valued at more than \$250 received from official sources, or at more than \$100 where received from other than official sources;
- (l) any sponsored travel or hospitality received; and
- (m) any other interests, such as membership of organisations, where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.

### (3) REGISTER AND REGISTRAR OF MEMBERS' INTERESTS

That—

- (a) at the commencement of each Parliament, and at other times as necessary, Mr. Speaker shall appoint an officer of the Department of the House of Representatives as the Registrar of Members' Interests and that officer shall also be clerk to the Committee of Members' Interests;
- (b) the Registrar of Members' Interests shall, in accordance with procedures determined by the Committee of Members' Interests, maintain a Register of Members' Interests in a form to be determined by that committee from time to time;
- (c) as soon as possible after the commencement of each Parliament and in each subsequent calendar year during the life of that Parliament, the Chairman of the Committee of Members' Interests shall table in the House a copy of the completed Register of Members' Interests and shall also table from time to time as required any notification by a Member of alteration of those interests; and

- (d) the Register of Members' Interests shall be available for inspection by any person under conditions to be laid down by the Committee of Members Interests from time to time.

(4) DECLARATION OF INTERESTS IN DEBATE AND OTHER PROCEEDINGS

That, notwithstanding the lodgement by a Member of a statement of the Member's registrable interests and the registrable interests of which the Member is aware (1) of the Member's spouse and (2) of any children who are wholly or mainly dependent on the Member for support, and the incorporation of that statement in a Register of Members' Interests, a Member shall declare any relevant interest—

- (a) at the beginning of his or her speech if the Member should participate in debate in the House, committee of the whole House, or a committee of the House (or of the House and the Senate), and
- (b) as soon as practicable after a division is called for in the House, committee of the whole House, or a committee of the House (or of the House and the Senate) if the Member proposes to vote in that division, and

the declaration shall be recorded and indexed in the Votes and Proceedings or minutes of proceedings (as applicable) and in any Hansard report of those proceedings or that division:

Provided that it shall not be necessary for a Member to declare an interest when directing a question seeking information in accordance with standing order 142 or 143."

It will be noted that the resolutions required the registration of interests within 28 days of the making of an oath or affirmation in the next Parliament. However, the information was to be provided on a form to be determined by the Committee of Members' Interests. The membership of that committee was not established until the 28th day after the commencement of the new Parliament and on the following day the committee reported to the House that in the time available it had not been able to determine the form and recommended that Members be granted a further period of time in which to comply with the registration requirements. The House agreed that this extension should be a period of 28 days from when the forms were sent to Members by the Registrar of Members' Interests.

Since that time, the Committee of Members' Interests has been endeavouring to determine a form which can be sent to Members by

been unable to do so because of difficulties and uncertainties in the requirements contained in the House resolutions of October 1984. It also drew attention to "the inequitable and anomalous situations treated by the requirement that Members of the House should register their interests while their Senate colleagues were not so required" and expressed some concern about the public availability of the register. It went on to seek advice whether the requirement was to stand and, if so, requested direction on a number of matters raised in the report.

In an interim response to the committee's report on 29 November, 1985, the Leader of the House stated that the Government's view is very clear on the matter. Registration of Members' Interests is an important principle to which the Government has been formally and publicly committed for some years and it was the Government's view that the House of Representatives should proceed to implement the registration proposals notwithstanding the lack of action by the Senate. It was the Government's intention that there should be a public register of interests, including those of a Member's spouse and dependent children of which the Member was aware. Work would need to be done on the detail of other matters raised by the committee.

It will be obvious from the foregoing that there is a good deal of reluctance to the introduction of a public register of interests. In fact, a cynic might be forgiven for suggesting that if there was unanimous, or near unanimous, support for the proposal, the difficulties that have been advanced could have been resolved fairly quickly.

In all of the recent discussions in Australia on this issue, two aspects do not appear to have received sufficient attention. The first is the existence of standing order 169 of the House preventing a Member from voting upon a question in respect of which that Member has a direct pecuniary interest, and also providing for a vote of a Member to be challenged on a substantive motion. The second is the assessment of the 1979 committee of inquiry<sup>1</sup> that—

"... in much of the public debate on the disclosure of interests, there has been confusion between declaration and registration. As a consequence, in the public mind, the advantages of registration have been overvalued and the benefits of declaration not sufficiently appreciated. It is not sufficiently recognised, as the Strauss Committee did in relation to

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1. Australja, Parl. Paper 353/1979.

Members of Parliament, that a general register is directed to the contingency that an interest *might* affect an office-holder's actions<sup>2</sup>. The proper practice should be aimed at revealing an interest when it *does so*."

The committee went on to recommend the adoption by standing order or resolution of requirements along the lines of the United Kingdom House of Commons on 22 May, 1974:

"That, in any debate or proceedings of the House or its committees or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have."

Perhaps the adoption of such a requirement would satisfy all sides of the Australian Parliament. Without it, the difficulties of implementing a compulsory system of registration, with a publicly available register, appear likely to remain.

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2. U.K. House of Commons, Select Committee on Members' Interests (Declaration), Report 1969-70 HC 57.



## **APPENDIX IV (2)**

### **THE ONE PARTY PARLIAMENT AND THE WESTMINSTER SYSTEM**

**Paper presented by Hon. D N E Mutasa**

In this paper I shall, but only, try to explain how one party parliaments are an endeavour to relate the Westminster system into the political culture and traditions of the formerly colonised indigenous people.

It is pertinent to say that, without exception, there was in every British colony before colonisation, an on-going political culture and tradition; be it in Australia, Canada, New Zealand, India or Africa. Some of this culture was destroyed by brute force of conquest or through "protection" and resulted in the establishment of a colony in which British interests were paramount.

The Westminster parliamentary system is based on British culture and traditions. It has worked well for the British who spread it throughout the Commonwealth. It was adapted, in the USA, to fall within an emerging culture of a new independent territory composed of people who came from the UK and various parts of Europe, but not the culture of those who were taken there from Africa as slaves or the indigenous Aborigines, Eskimos, Maoris, Indians and Africans who were conquered and collectively referred to as "the natives".

The Westminster parliamentary system was introduced to former British colonies to suit the settlers. Colonial legislative councils were, in the main, composed of people from the UK who made laws governing the indigenous majority. Occasionally representatives of the indigenous majority were appointed to these legislative councils.

Pre-independence conferences held at Lancaster House provided for the colony a written constitution aimed at satisfying the interests of the settlers; to ensure their continued stay in the colonies. Little, if any, regard was paid to the interests of the indigenous community. So most of the time of the newly independent colony is taken in making amendments to the constitution and existing legislation. In the course of doing that new interests and sometimes conflict emerged.

Democracy originated and flourished in no-party Greek States, the majority of whose inhabitants were slaves without the right to vote, but not in multi-party Rhodesia, where, for more than half a century, all white minority could have the vote and not the black majority. A worse situation is occurring in South Africa today where blacks have no political rights to determine their human rights and future.

Most ancient polities were monarchies or kingdoms. A move from monarchies occurred in Europe and resulted in Republics. The Westminster system retains the Monarch or its representative. The power to run the State is divided between the executive, legislative and judiciary branches of the State.

A close look at the functioning of African Kingdoms, before colonialisation, reveals that the Monarch did not function in isolation. His counsellors performed legislative, executive and judiciary functions.

Even in the very centralised Zulu Kingdom, where the King wielded (in theory) absolute power, in practice, he operated within defined limits. He always sought the advice of his council which discussed the Kingdom's policies and programmes. They were always guided by their unwritten but carefully understood traditions which were the law. There were no formal opposition groups. If any such group developed it left the Kingdom and wandered away to set up a separate kingdom.

The entire Kingdom had the same religion and pursued common interests. Apart from the King and his family, the Kingdom was one class of people. It lived in harmony with itself and nature, and respected the rights and territorial integrity of other Kingdoms. These Kingdoms were, in a sense, one party states.

The colonial era produced colonial boundaries some of which subdivided some Kingdoms. The Kingdoms within the confines of a colonial territorial boundary became one nation. They fell under one British flag and administration. The Kingdoms were made as uniform as possible. Any form of political opposition to the colonial administration was punishable. Gradually the kingdoms were forced to disappear. Those that remained had no political power or fell under colonial protection. The end result was that the entire colony was run as a one party state by a Colonial Secretary of State through the Colonial Office.

The ruling party in Britain dictated to what happened in the Colonies. There was no formal opposition, in the colonies, to the dictates of the ruling British Party. Those settlers who might have belonged to the opposition party in the UK went along with the Colonial Office which, anyway, ruled the colonies in the interest of the settlers.

The indigenous population was, initially, totally left out of the decision-making process. The argument of the settlers and the Colonial Office seemed to be that "native affairs" had to be conducted through Native Commissioners. The less that those Commissioners knew about native affairs the better. Besides, they were civil servants and could not argue with their political masters. They were, however, the link and symbol of the one-part-state nature of events during the colonial period. The indigenous people were spectators of political events that affected their own countries' destinies. They were never consulted and were always blamed.

Then suddenly "the wind of change" blew all over Africa. The colonies had to be independent. Political parties were allowed to be organised to suit Whitehall's wishes. And where Whitehall's view did not suit the settlers' wishes, the emerging indigenous political leaders were detained for "subversive activities". In Kenya, Malawi and Zambia, the emerging African political leadership spent long periods in detention and were released to become political leaders and Heads of their nations. In Zimbabwe the detained emerging political leaders reorganised their parties into Liberation Movements and fought against the settler regime prior to the attainment of national independence.

It is important to stress that right through the political history of British colonies in Africa the indigenous population never participated in any meaningful political organisation without harassment. However, they participated in united movements to rid themselves of colonial domination. At the end of that domination Whitehall seemed to desire that there should be political parties including an official opposition.

This demand for political opposition groups took no regard of Whitehall's former contention which, though clumsily put was more in line with African culture and tradition that Kingdoms could not have any formal opposition.

The compulsory end of African Kingdoms, during the colonial period, did not mean the end of our understanding of their political culture and tradition. With the end of colonial foreign domination the unopposed and imposed kingdoms of the various British Colonial

Secretaries disappeared and were replaced with new indigenous kingdoms. The political culture of people, which had never significantly changed right through the colonial period required to be brought forward and organised into an on-going political force for the first time. The new political leadership organised people to become members of their political organisations. Obviously, they could not organise them into opposition groups. Political power in itself attracts more political support. No one wants to be an outsider. Besides, to be in opposition could be interpreted to mean dislike of the present "kingdom" and preference of the former, and, like in the past, was looked upon contemptuously or as punishable.

In African political culture constructive ideas have always been welcome. Those ideas could be in opposition to the main stream of current thought but were always expressed within the community of interests and intended to lead the whole community towards a higher level. Destructive opposition was not tolerated for obvious reasons. So, that commonality of political thought, interests, and expression has to be exercised through a common political party. This way political tradition and culture is advanced to a higher level. What used to be the unwritten traditional law of the political kingdom becomes the constitution of the party and the political organisation of the whole nation. That organisation becomes the supreme body which ensures that the legislative, executive and judiciary functions of the state are carried out in accordance with the will and interest of the nation.

From this supreme political organisation is derived the various representatives of the nation elected by the people to serve the people's legislative and executive interests.

The establishment of one-party states and the attendant one-party parliaments, particularly in former British colonies, has aroused interesting debate among various schools of political thought.

Most of this debate has revolved around the question of whether the one-party system is democratic. Where participants in the debate have accepted that the one-party system is democratic, the discussion degenerated into controversial comparisons of the merits and demerits of the one-party and multi-party systems.

Today some political scientists are beginning to accept that the one-party system is more democratic than the multi-party system provided certain fundamental essentials of democracy are recognised and adhered to. These include: free and periodic elections; free discussion and communication at all levels, freedom to criticise the government; maintenance of the rule of law, and respect for human rights and dignity.

Some advocates of orthodox multi-party democracy are slowly thawing to the view that there is no party system that should be considered the sole guarantor of democracy. History has many examples where both systems have produced democratic governments and others where the same systems have yielded to dictatorial, totalitarian and fascist regimes.

Now we turn to the political organisation of the one party. I give below the structure of the ZANU (PF) Party which I am most familiar with. Its structure and function is similar to that of other parties such as Chama Cha Mapinduzi, the Malawi Congress Party, the United National Independence Party, Kenya African National Union, etc.

The following are the principal organs and structure of ZANU (PF):

(a) *The Peoples Congress:*

This is the policy-making organ of the Party. It convenes in ordinary sessions once in every five years and may convene in extraordinary session during the intervening period.

(b) *The Central Committee:*

This is the principal organ for the implementation of the policies of the Party and the administration of the affairs of the Party. It is answerable to the People's Congress and has a membership of 90 constituted as follows:

- (i) 42 members elected by the People's Congress upon the nomination of the Central Committee from lists submitted to it by Provincial Executive Councils.
- (ii) 18 members—2 from each of the nine regional provinces of the Party.
- (iii) 10 members of the National Executive Council of the Women's League—elected by the National Women's Conference.
- (iv) 10 members of the National Executive Council of the Youth League—elected by the National Youth Conference.
- (v) 10 members appointed by the President of the Party with the approval of the Central Committee and the Peoples Congress.

**(c) The Politbureau:**

**This is the administrative and executive organ of the Central Committee. It has a membership of 15. It supervises governmental agencies through five Standing Committees of the Central Committee;**

- i.e. (i) **Economic Committee;**  
 (ii) **Political and Policy Committee;**  
 (iii) **Justice and Constitutional Affairs Committee;**  
 (iv) **Social and Welfare Committee; and**  
 (v) **Defence and Security Committee.**

**(d) The National Executive Council of the Women's League is the Principal organ of the Women's League for the implementation of the policies of the Party and the administration of the affairs of the Women's League. It is composed of twenty-two members of the Women's League.**

**(e) The National Executive Council of the Youth League is the principal organ of the Youth League responsible for the implementation of the Policies of the Party and the administration of the Affairs of the Youth League. It consists of eleven members of the Youth League.**

**The Main Wing, Women's League and Youth League each have:**

9 regional *Provinces* made up of all districts in that Province;

each *district* is made up of 10 branches or 5000 members;

each *branch* is made up of 10 cells (urban) or 10 villages (rural) or 500 members; and

each *cell* or *village* is made up of 10 households or 50 members.

**It is important to observe that in the event of the establishment of a one-party state in Zimbabwe there will be country-wide participation, in the Party, by all members of the community, at the Cell or Village level right up to the Peoples Congress.**

**The Party will direct the government because the Party, not the government provides the policy which emanates from the people. It has their support and loyalty which ties them to the state. The Party integrates the nation by a method that maximizes the oppor-**

tunity of every citizen to participate on a regular and meaningful basis in the decision making process.

The notion that the opposition may have its chance next time does not apply because the minority will be so small that it may never have a chance to form a government.

From the above structure and method of organisation it can be seen that the desire is to mobilise the whole nation into a political awareness that had never occurred before.

It is nonsense to say that such an organisation is communist. To the contrary, the organisation is African and serves our interests best. It brings forward into the modern era our political culture and tradition. Indeed communist parties organise themselves in this manner, but it would be ridiculous to claim that they are African.

On the other hand Britain has had political parties for nearly 200 years. The most spectacular development of the 20th century history of parties in that country is not their rise but their strength and influence. Mass parties have controlled or attempted to control social organisations such as trade unions, youth movements and women groups, as well as newspapers and other media of communication.

Even though parties have existed in Britain for so long, it is surely misleading to equate the Tories and Whigs of the 18th century with the Conservative and Labour Parties of today. Tories and Whigs were small cliques centred around leading families; they were scarcely more than factions. There is virtually no relationship between those loosely organised political bodies and the large parties of today which claim hundreds of thousands or even millions of members and supporters; with their regular conferences and congresses.

Time has seen the decline of the Liberal Party in the 1930s and the rise of the Labour Party in the years up to the 80s when the Social Democratic Party emerged and formed an alliance with the Liberal Party. How far this will mean the eclipse of the Labour Party in the foreseeable future is yet to be seen. The point is that the difference, in ideological terms, of the two dominating Parties in Britain does not seem to us to be as great as is always portrayed.

In 1935 the Communist Party (UK) made a formal request for affiliation with the Labour Party. This was rejected by the National Executive of the Labour Party because "the fundamental difference between the democratic policy of the Labour Party and the policy of dictatorship, which the Communist Party had been created to promote, were irreconcilable". Similarly, Mosely's Fascist organisation did not team up with the Conservative Party. This seems to indicate the middle-of-the-road nature of the domineering British parties

Parties, in their wish to win elections, whip up popular demands and expectations often with little regard to a government's capacity to meet those demands. Hence the voters' feeling of disappointment and betrayal when the Government's performance falls short of the Party's promise.

The adversary nature of the two-party system, combined with the all or nothing nature of the single-party government breeds excessive partisanship and encourages parties to be irresponsible when they are in opposition. It also produces abrupt reversals of policy when one party replaces the other in government.

There is a tendency for the presentation of poor quality policy concocted while the party was in opposition during which it is in relative ignorance of future circumstances, reactions of the civil service and major interest groups in the world.

The regrettable influence of the Manifesto on British elections encourages the production of a document which may be a piece of window-dressing; something designed to present the party in favoured light, more of an exercise in symbolic than substantive politics.

The theory of responsible party government posits a set of relationships between the party, its manifesto and those who vote for the party. It is assumed that voters implicitly or explicitly, support the programme when they vote for the party.

The essence of the conventional defence of the two party system is that at elections voters have the opportunity to choose between different sets of issues and policies and that because of the concentration of power embodied in parliamentary sovereignty and single party government, they may hold the government accountable at the next election. Electoral studies have shown that voting decisions are largely determined by policy considerations, the party's



record, competence of leadership and tradition rather than specific issues in the party manifesto.

The question has to be asked: do the different party manifestos make any difference as to how the government is going to be run? Analyses of manifestoes do show that there are no clear differences between the two British parties on many policies. So the replacement of one party by another in government will not have much difference.

..

The point about the limits of the multi-party government may be made more emphatically if we turn to the economy. The party's manifesto promises have increasingly dealt with economic matters—inflation, growth, unemployment and prosperity. What is striking is how little there is a consistent partisan pattern. An analysis by Richard Rose, a political scientist, in "Do Parties Make a Difference?" shows how the growth in public expenditure hardly correlates with changes in party control of government since 1945. If we turn to other macro-economic indicators, such as the size of the public sector deficit, rates of inflation, levels of unemployment and minimum lending rate, there have been a secular rise in each, over time, regardless of party's programmes or policies. The lack of variation of these indicators according to party policy or influence argues for the constraints of circumstances rather than the positive influence of party ideology.

An important question therefore arises: are multi-parties necessary? Are they not misleading and a waste of leadership resources? When the leadership of any country works together for the common good of that country, the country could be a better place to live in and in turn the world.

Minus the official opposition, the Westminster system is easily applicable to a one party parliament. This has been so in Zambia since that country became a one-party state.

Quite interesting developments have emerged in Zambia, Tanzania and Kenya in the recruitment of new Members of Parliament. In the past, general elections used to be a frightening experience and occasionally led to deaths due to violence during the campaigns. Only one candidate per constituency was put forward by each competing party. Now, and in theory, the party can put forward as many candidates as are willing to stand for election in any one constituency.

Since the establishment of a one-party state in Zambia, elections are peaceful. The issue during elections is who is most capable to

represent the interests of the people as spelt out in policies formulated during the party congress. Those who are elected to Parliament work within the Westminster system to achieve the objectives set out at congress.

Whether or not the Westminster system should be adapted is a consideration for the future. It requires careful study and thought. If adopted it would be important to take into consideration the various peculiarities of different African and other cultures and traditions. It would be absurd to adapt it to suit the culture of one country. It is important to mention that the practice of the Westminster system is not identical in Canada, Australia and New Zealand but the difference is not all that is noticeable. The Westminster system is, therefore, like a university degree that one-party parliaments can easily graduate into.

## APPENDIX IV (3)

### THE POLITICAL POSITION OF THE PRESIDING OFFICER OUTSIDE PARLIAMENT WITH SPECIAL REFERENCE TO GENERAL ELECTION

Paper presented by Hon. T. R. Vakatora

#### INTRODUCTION

1. I have taken the liberty of using the term "Speaker" throughout this paper, although the title refers to the "Presiding Officer". This is done merely for convenience during the preparation of the paper. I would request that wherever the word "Speaker" appears on the paper it should also be interpreted as "Presiding Officer", as the case may be.

2. The historical development of the offices of Speakers in many Commonwealth Countries has been fully described by Mr. Philip Laundry (Honorary Secretary of the Conference) in the new edition of his book entitled "The Office of Speaker in the Parliaments of the Commonwealth". I am grateful to him for providing in his book many examples of the political position, sometimes precarious position, of a Speaker, which held me in preparing this paper. I do not, however intend to use his examples again in this paper but to relate them to my own experiences and to the Fiji situation. I am sure, most of my colleagues here have interesting experiences of their own which they would like to discuss during the discussion on this paper.

#### THE PRESIDING OFFICER AS A POLITICIAN

3. The prominent question that comes to mind and which must be satisfied is: which comes first; the elected Member of Parliament as a politician first and a Speaker last, or *vice versa*.

4. To my mind a Member is a politician first and a Speaker last, because a person cannot become a Speaker unless, except in a few cases, he was elected to a seat in Parliament. It is therefore important that although a Member of Parliament is elevated to the high office of Speaker. He must not lose sight of the fact that basically he is a politician. This is very important to a Member if he wants to continue with his political career. If he loses sight of that fact it could cost him dearly at the next election.

5. Some may argue that once a Member of Parliament has risen to the high office of Speaker he should be above and keep himself above politics. He should not be seen or heard to be either privately or publicly involved in political issues affecting national policies. Any such involvement by a Speaker can cast a doubt on the respect and dignity of the high office of Speaker. The slightest doubt that may be cast upon the Speaker will lower the respect and dignity of that high office.

6. I believe that a Speaker can play a low-key political role rather than being involved in national issues. The Speaker can discuss matters which have political connotation with his constituents and pass on their comments and feelings to those higher up in the political hierarchy. After-all he is their political representative in Parliament. I believe, a Speaker can attend as a back-stage observer a political meeting held by his party in his constituency or elsewhere if only for the reasons of showing his own flag. I believe that a Speaker can participate in such governmental functions as opening of new roads, schools, health centres etc, particularly if such functions are held in his constituency. I believe a Speaker can initiate his own visits to his constituency and elsewhere to inform himself of what is going on in the countryside rather than depending on reports. I believe that a Speaker can contribute to his party's political funds and participate in the party's fund raising activities. These are the types of low profile activities that a Speaker can be involved with if he wants to keep his political link alive. If not he would undoubtedly be cast by the wayside by his own political colleagues and by his constituents.

#### NEEDS OF THE CONSTITUENTS (ELECTORATES)

7. As the Speaker represents a constituency he would be expected by his constituents to look into their needs and problems and to explain Government stand on certain controversial issues. He is therefore expected to visit his constituency regularly to meet and speak with those who have elected him to Parliament. He is also expected to attend social functions in his constituency or elsewhere such as marriages, funerals or a church service. He contributes to fund raising activities in his constituency such as for a sporting body or for the building of a new school. In attending these functions the Speaker could be asked questions on current political issues or certain controversial Government policies.

8. Does a Speaker refrain from doing these things and also refrain from answering questions because it would be contrary to the norm of his office, that is, to steer clear from politics? I do not think

so myself, because I believe that these are normal activities that a member must attend to, and possible questions that can be raised with him when he visits his constituency. He has to try to satisfy the needs of his constituents including the need of being given a satisfactory explanation about certain Government policies and other current political issues. To refrain from doing so would lower his stand as Member with his constituents. I do not think the Speaker has a choice but to attend to the needs of his constituents in the way I have described above.

#### THE SPEAKER VIS A VIS HIS PARTY

9. If a Speaker is to equip himself with up to date information so that he could intelligently answer questions raised with him by his constituents, he ought to keep an open line with his own political party. He should keep himself informed about his party's activities by having access to the party's information system such as circulars, news letters, etc. He should also have, from time to time, private discussions with his party colleagues who are Ministers. He should also be identified with his party in some ways by being seen with some of his colleagues on informal occasions such as receptions or at recreational functions. In this way the Speaker could keep his relationship with his party warm so that he would not be completely forgotten and in due course cast aside because of his office. I feel that the Speaker's relationship with his party is imperative and important especially if he wants to contest the next election.

#### SEEKING ANOTHER TERM

10. A Speaker should decide beforehand whether he wants to have another term in Parliament as a Member or as Speaker. I feel that this question is very important and it is for the Speaker alone to answer it. A number of things will depend on his answer, especially how he is going to conduct himself during the general election.

11. My own view is that when the term of Parliament expires and it is being dissolved all the offices and appointments that were made during the life of that Parliament expire with it. A Speaker therefore, although still holding his office as a caretaker Speaker, for all intents and purposes, is not even an ordinary Member of Parliament because of Parliament's dissolution. He should therefore seek another term in Parliament as a Member and not as a Speaker. If he is returned as a Member after the election and he still commands the respect of other Members of Parliament and he wants it so, he could again be elected to that high office.

12. I am aware of the arguments advanced about the desirability of a Speaker to contest an election as a Speaker and not as a Member. Experiences in Fiji have shown that these arguments were wrong. A Speaker who once proposed to stand as a Speaker did not even get past the first base. Both political parties did not agree with his proposal and in the end he was not even given a ticket by his former political party. Thus his political career was brought to an end. Moreover, even in Parliaments where the doctrine of Speaker standing as Speaker is well established as a convention, the Speaker's seat is at times, still challenged during a general election by candidates who do not subscribe to that convention. In situations like ours in Fiji this challenge is much more pronounced and it would be futile to pretend that a Speaker will be elected for another term just because he was the Speaker.

#### AT THE GENERAL ELECTION

13. If my projected concept that a Member of Parliament is a Member first and Speaker last and that he should seek another term as a Member and not as a Speaker is accepted, it naturally follows that a Speaker must be fully politically involved during a general election. He must no longer play a low profile. He must come out in the open and speak on issues upon which the general election is fought. He must not campaign alone and for himself but with colleagues and for his party. He must work out his strategy not only to ensure that he will win his seat, but more importantly to ensure that his party is returned with a majority enabling it to form the Government. He should no longer be concerned with whether or not he will be elected to the Speaker's post again. There will be other contenders to that post when Parliament re-assembles after the general election. His energy and drive should be directed towards winning a seat for himself and winning the election for his party. That should be his sole concern until the general election is over.

14. It is for this reason I believe, that apart from his status, the Speaker's salary and other office privileges in Fiji have been placed on the same level as those pertaining to Cabinet Ministers. The equation will also facilitate the parallel movements of Cabinet Ministers including the Speaker. Under the Fiji situation, this is a sensible thing to have because the field where Ministers are chosen from after a general election is very limited indeed.

## THE PRESIDING OFFICER AND WHAT IS EXPECTED OF HIM

15. After having said all that I have said above, the question that should be asked now is: Can a Member who has been playing a political role outside Parliament and during a general election also perform satisfactorily as a Speaker? Perhaps, I would answer this question, in this way. If I were to write down the job description of the office of Speaker, I would probably write down the followings:—

‘A matured person of a very high calibre imbued with dignity, diplomacy, respect, patience, resolute, tolerance, impartiality, flexibility, humour, a sense of fair play and a good deal of common sense.’

16. To try and find a person who meets the above job description, is almost impossible. He would be a very rare person indeed. It could be said that he would be next to an angel. But if he can display some of these rare qualities at the appropriate time and in accordance with the mood of the House in a given situation, I believe he can do it, irrespective of his political activities. After all, the main task of a Speaker in Parliament is to ensure that this high institution discharges its responsibilities as expected of it. When a general election is over, every elected Member should put aside the differences and, together face the task of nation building. It is the responsibility of Parliament under the guidance of the Speaker to facilitate the task of nation-building as smoothly as possible.

### THE NON-ELECTED SPEAKER

17. It might be appropriate to have one or two words on a Speaker who is not an elected Member of Parliament. I presume that most of the arguments expounded in this paper would not apply in his case for the simple reason that the Speaker is not a practising politician. Moreover he does not belong to a political party. He is, perhaps the ideal Speaker who does not owe any allegiance to anyone and is perhaps seen by all Members of Parliament as absolutely impartial. It would be interesting to hear their experiences, during their contribution to the discussion on this paper.

### CONCLUSION

18. This paper may be viewed as one-sided as it only portrayed the concept that the Speaker's political position outside Parliament is one of involvement and not one of aloofness. This is precisely the

intention of this paper so that, taking into account the accepted norm that a Speaker must not be involved in politics, the paper could generate some useful discussions.

19. It is hoped that the paper does exactly that and generate discussions.



## APPENDIX IV (4a)

### SUBJUDICE

#### **Paper presented by Tan Sri Dato Mohamed Zahir bin Haji Ismail**

Freedom of speech is one of the liberties guaranteed by the Constitution of many countries and Malaysia is no exception to this. Freedom of speech is entrenched in the Malaysian Constitution whereby Article 10(1)(a) provides:—

“Subject to clauses (2), (3) and (4) every citizen has the right to freedom of speech and expression”.

There are limitations to this and these are provided by clause 2(a) and (4) of the same article. Clause 2(a) provides:

“Parliament may by law impose on the rights conferred by paragraph (a) of clause 1, such restrictions as it deems necessary or expedient with interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and *restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of Court, defamation, or incitement of any offence.*”

Clause (4) provides:

“In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under clause (2)(a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law.”

From the above it can be seen that the freedom of speech and expression subject to certain restrictions is guaranteed under the constitution. Members of both Houses in Parliament (the House of Representatives and the Senate) enjoyed the same freedom and even more freedom when they delivered their speeches in any motion

or debate in any of the Houses. Even this freedom is subject to certain restrictions as stated in Article 10(2)(a) of the Constitution (see the underlined). Amongst these restrictions which we are concerned with in this paper is an act of contempt of court. An act tantamount to contempt of court in this instance is contravening the rule of *sub-judice*.

2. "*Sub-judice*" means a matter which is under consideration or as it is popularly known a matter which is under the consideration of a court of law which is awaiting a decision or a verdict. It is well known principle, a matter which is *sub-judice* shall not be discussed or criticised and if anybody contravenes this rule will commit an offence of contempt of court. This restriction is also applicable to discussion of the matter being raised in Parliament. In Malaysia this restriction is clearly spelt out in the Standing Orders of both houses. Standing Order 23(g) of the House of Representatives (what is known in Malaysia the Standing Orders of the Dewan Rakyat) and Standing Order 22(g) of the Senate provides:—

"Every question shall conform to the following rules:

- (a) a question shall not be so drafted as to be likely to prejudice a case under trial, or be asked on any matter which is *sub-judice*."

Standing Order 36(2) of the House of Representatives and Standing Order 34(2) of the Senate provide the following:

"Reference shall be made to any matter which is *sub-judice* in such a way as it might in the opinion of the Chair prejudice the interests of parties thereto."

In both instances the Chair of each house has the discretion to decide whether a question or a matter in debate is *sub-judice* or otherwise. On this freedom the court in the case of the *Attorney General v. Times Newspapers Ltd.* (1974) AC 274 Lord Reed at page 294 said:

"The laws on this subject (referring to the law of contempt of court) is and must be founded entirely on public policy. It is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the administration of justice and it should in my judgment be limited to what is reasonably

necessary for that purpose. Public policy generally requires a balancing of interests which may conflict. *Freedom of speech should not be limited to any greater extent than is necessary, but it cannot be allowed where there would be real prejudice to the administration of justice.*"

It is a matter of public policy which requires a balancing of interests on the freedom of speech in Parliament. It will not be in the interest of Parliament to interfere with the administration of justice in a court of law and likewise it would not be in the interest of the court to interfere with the proceedings of the Houses of Parliament. Thus the principle of the division of powers must be followed strictly wherever possible. It will be catastrophe if Parliament interferes with the administration of justice carried out by the court and the court interfering with the proceedings in Parliament. Anyway the guiding principle whether a matter is *sub-judice* or otherwise as adopted by the House of Commons in United Kingdom is more or less adopted by the Malaysian Parliament.

3. The House of Commons in the United Kingdom has passed a resolution on 23rd July, 1963 which set out the rule of *sub-judice* in detail. Under that resolution the House of Commons is not allowed to refer in any debate, motion or question to matters awaiting including supplementary question of any matter which is under adjudication in any court of law exercising criminal jurisdiction from the moment the law is set in motion by a charge being made to the time when the verdict or the sentence has been pronounced. **This restriction shall continue even after the verdict or the pronouncement of sentence has been made when an appeal is pending.** The restriction is only lifted when the appeal has been disposed of or where there is no appeal after the time period of appeal has lapsed. The same principle applies to matters in civil courts whereby the restriction is only lifted after the delivery of the judgment or the final disposal of the case. As for a court martial case the restrictions begin when the charge is made until the sentence has been confirmed or promulgated and again when there is an appeal until the disposal of such appeal.

4. By another resolution passed in June 1972 the House of Commons gave the discretion to the Chair to make references of matters awaiting or adjudication in all civil courts in debates, motions or questions in so far as such matters relate to ministerial decisions which cannot be challenged in court except on grounds of bad faith, or concern issues of national importance. Although the Chair is

allowed this discretion, it should be exercised so as to refer to matters if it is apparent that there is real and substantial danger of prejudice to the proceedings.

5. What matters are deemed to be *sub-judice*? As stated earlier, a person who contravenes the *sub-judice* rule will commit an offence of contempt of court. A contempt of court is an act or omission calculated to interfere with the administration of justice. As for Parliament it is more of an act rather than an omission. It is calculated to prejudice the due administration of justice if there is a real risk as opposed to a remote possibility that prejudice will result. In the case of the *Attorney General v. Times Newspapers* (1974) A.C. 273 Lord Diplock outlined the various ways in which the due administration of justice might be prejudiced. He said:

“The due administration of justice requires first that all citizens should have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with procedure adopted in courts of law; and thirdly that, once the dispute has been submitted to a court of law, they should be able to rely upon their being no usurpation by any other person of the function of that court to decide it according to the law. Conduct which is calculated to prejudice any of these requirements or to undermine the public confidence that they will be observed is a contempt of court.”

The definition given by Lord Diplock above is very wide which includes the rule of *sub-judice* such as usurpation by a person or body of persons of the function of a court of law to decide a matter in accordance to the law and this includes conduct which is calculated to pre-judice that requirement or to undermine the public confidence. The most well known contempts are contempts in the case of the courts, acts calculated to prejudice the fair trial of a pending cause, publications scandalising the court, revenge exacted for acts done in the court of litigation, abuse of the process of the court and breach of duty by an officer of the court.

6. As stated earlier, this paper is not dealing in all aspects of contempts of court but only one avenue of contempt viz. breach of the *sub-judice* rule especially in connection with rights of Parliament. In this respect we are concerned only with speech and expression in Parliament which is intended or likely to prejudice fair trial or conduct of proceedings which in other words tends to impair the impartiality of the court which is to try the proceedings or by deterring or influencing the evidence given by witnesses or impairs the ability of the court to determine the true facts. For this purpose we are only concerned with publications. A publication may also be punishable as a contempt of court which has the effect of deterring or inhibiting parties in the conduct of their proceedings by prejudicial discussion of the merits or facts of the case before the proceedings have been determined by a court of law. Publication may be in any form including words spoken, written or otherwise published. It does not matter to whom the publication is addressed, whether to one person or a body of persons but the court may take that into consideration in any proceedings for contempt of these facts in order to establish sufficient prejudice to constitute a contempt. It must be remembered a jury are more likely to be swayed by prejudicial matter than a judge. Thus it is always a serious matter to publish matter which may prejudice a jury against any person. It is also against the rule of *sub-judice* to publish statements which prejudice an issue in pending cause. Anyway, this will not prevent general discussion on the adequacy of the legal system to meet a particular situation, nor the continuance of a public discussion already begun before a proceedings commenced provided that the discussion is not deliberately used as a vehicle to prejudice the proceedings. There are many ways by which prejudgment may occur such as by stating a conclusion about a particular issue in the case or by making a statement which might make the tribunal to reach one conclusion rather than the other or by assertion that one side or the other will win or an assertion that the accused person is guilty or innocent. A *sub-judice* publication may not necessarily be that it should be shown actually to prejudice a fair trial or the conduct of proceedings but it must be shown that the publication is likely or tends to prejudice a trial or conduct of the action. The degree of risk of prejudice, while not material to the question whether a contempt has been committed, is a material factor in determining what punishment, if any, should be imposed. It is also *sub-judice* to comment on the character or the conduct of an accused person which tends to prejudice the fair trial of the accused. It would be a serious contempt to publish the criminal record of an accused person or to comment on his previous bad character before

trial or to publish a confession to crime by an accused out of court, even if the confession is true. An adverse comment on a party need not refer directly to the subject of a pending proceedings but if the comment is calculated to prejudice the trial of the proceedings it will be *sub-judice*.

7. It is *sub-judice* to make a publication which is calculated to impair the ability of the court to determine the true facts in criminal proceedings, by deterring witnesses in tainting the evidence given by witnesses. It is also *sub-judice* to publish comment which is likely to hold up a witness or potential witness in a criminal trial, to publish criticism or opprobrium, or which attacks the veracity of a particular witness. A publication which is calculated to affect or influence the evidence which a witness may give is also *sub-judice*.

8. The relevant date for determining whether a publication is calculated to prejudice a fair trial of criminal proceedings is the date and time of the publication. In general no publication can amount to a contempt unless at the date of publication criminal proceedings are either pending or imminent. Generally a criminal prosecution is said to be pending at any time after a person has been arrested and is in custody. There is no necessity for that person to be committed for trial or for him to be brought before the court. A criminal prosecution is said to be pending until the verdict or the sentence is pronounced or when there is an appeal the disposal of the appeals. In other words the *sub-judice* rule will apply until the proceedings are finally concluded and no further appeal is possible, either because of the rights of appeal have been exhausted or because the time for filing his notice of appeal has elapsed. This is also true of the proceedings in a civil court where a retrial is ordered until the case is disposed of. As to a court-martial case the *sub-judice* rule will apply until the sentence of the court is confirmed and promulgated and when he appealed until the disposal of his appeal.

9. In conclusion I am of the view that Parliament should help to uphold this *sub-judice* rule and maintain the separation of powers between the legislature and the judiciary. I am of the opinion that it will do more harm than good if any of these two bodies start interfering in the business of the other. The independence of these two bodies must be maintained.

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## APPENDIX IV (4b)

### THE SPEAKER AND THE QUESTION PERIOD

Paper presented by Tan Sri Dato' Mohamed Zahir bin Haji Ismail

It was Speaker Cornwell, I believe, who said in the first ever recorded ruling on questions in Parliament in 1783:

“Any member has in my opinion, a right to put a question to a Minister or a person in office, and that person has a right to answer or not to answer as he thinks proper”.

That was ruled sixty-two years after a question was asked for the first time ever in Parliament in 1721.

The practice of asking questions in Parliament was to remain a novelty for another fifty years or so till 1835 when the first printed notice of Questions in the business of parliament appeared; yet another fifty years was to elapse, until the 1880's, when questions in Parliament began to be asked at the prescribed time and according to prescribed rules. Since then the practice has grown to assume, in the words of Sir Ivor Jennings, “the utmost Constitutional importance, “its recent origins notwithstanding.”

Many factors have been cited to account for its slow growth as a parliamentary institution. Amongst these are the conservatism of procedure; Westminster's lack of control over many aspects of administration; the knowledge that Government did not have the means to provide much in the way of information; the relative calm of the political scene then and the lack of means for publicity to be given to proceedings in Parliament. Nevertheless it has grown to be an institution common to all our respective parliaments today.

Firstly, its appearance on the Order Papers is inevitable, I believe, in all our Assemblies.

Secondly, it has become the liveliest part of the parliamentary day.

And thirdly, if I may add, also the most taxing on the presiding Officers, wits if not his wisdom.

It has also evolved to be many things. It has become a test of a Government's accountability; an indispensable part of the art of opposition; and an impetus to bureaucratic inertia. It has also become the most important opportunity for the ventilation of grievances; a sparring ground for testing the worth of a Minister or Member. It has not only become the expression of the desire for redress but also the desire to embarrass. It has also at times become the forum wherein an individual complaint may yet be heard, through his representative, by an increasingly deaf and impersonal Government, all these over and above its original intent of providing information as well as providing the opportunity to press for action.

Perhaps the Question Period would not have grown to assume such importance had there been no corresponding growth in the practice of allowing supplementary questions. Surely, instances are few and far between in our respective parliaments where the main question is not followed quickly by a multitude of supplementary questions, limited only by the Speaker's discretion.

At this point, it would be enlightening for us to look at two rulings in the matter of the supplementary question.

In 1901, Speaker Cully ruled:

"Strictly speaking a supplementary question is only in order when it is asked in order to elucidate some ambiguity or to supply some omission in the original answer."

As late as 1958, Speaker Morrison ruled on what had by then already become accepted practice yet not enjoyed by Members as a matter of right:

"It is a matter of discretion and judgement in each case and no doubt, when it is a matter of discretion, there is a matter of discretion, there is a difference of opinion. Discretion is a matter of opinion. There is no such right."

Yet today supplementary questions are surely the essence of the Question period in all our respective Parliaments.

I have tried to show in the preceding paragraphs how decisions from the Chair at Westminster have shaped the Question Period to be as we recognise it today. So, also have our own rulings determined its character in our own respective Assemblies. We have much in common in the way of the broad principles determining admissibility,



or rather, inadmissibility, of questions. Yet each of our respective legislatures must of necessity respond to different circumstances and evolve in different, though not necessarily divergent, directions in so far as the preservation of parliamentary democracy is concerned. Genuine considerations of internal security might make a question inadmissible in one parliament whilst being very much admissible judged by the Standing Orders of another, in letter and in spirit. I, for one, make no apology for the continued existence of Standing Order 23(2) of the Malaysian House of Representatives which deals in part with the inadmissibility of questions which tend to promote feelings of ill-will or hostility between different communities in the country or infringes any of the provisions of our Sedition Act, which incidentally was enacted in 1948, nine years before we became an independent nation.

Again on the point of differences I do not know how many of your parliaments share with ours the dubious distinction of not having a well developed rota system in the tabling of questions.

I note with admiration how the parliamentary secretariat in India have published a guide, as to which Minister is responsible for what, in order that Members may direct their questions correctly, rather than cope with the awkwardness of transferred questions. This must surely be an innovation born out of necessity, for a Parliament and a nation as large and as complex as yours.

All in all, perhaps the only principle that will not be subject to innovation is the one that makes the Speaker the sole arbiter of the admissibility of questions.

Whilst on the subject of the Speaker's discretionary powers with regard to the admissibility of questions. I take the opportunity of humbly making some comment on Mr. Philip Laundy's perception of some of the powers vested in the Malaysian Speaker as elaborated in his magnificent book, "The office of Speaker in the Parliaments of the Commonwealth," published by Quiller Press, London, 1984. Mr. Laundy writes :

"Some of the powers vested in the Malaysian Speaker are somewhat unusual. In certain circumstances he can oblige a minister to answer a question, although this is a power which is rarely invoked. Standing Order 23(4) gives a minister the right to refuse to answer a question on the ground of public interest 'with the approval of Tuan Yang di-Pertua'. If a minister refused to answer a question without giving a reason it is likely that the Speaker would

ask him to provide a reason. If, for example, a minister declined to answer a supplementary question on the ground that it was irrelevant to the main question, the Speaker, if he thought otherwise, might rule that it was relevant”.

Mr. Laundy's interpretation of the said Standing Order may be entirely correct in a peculiar situation where any edge Speaker vents his petulance on a young, arrogant junior minister as may have actually happened on occasion. However in my opinion it should not be the correct perception of the spirit and intent of Standing Order 23(4). The qualification, “with the approval of the Tuan Yang di-Pertua,” in the said Standing Order is merely symbolic; somewhat analogous in spirit to the spirit of Royal Assent; included perhaps to merely reiterate that in matters relating to Questions, the Speaker shall always be the unquestioned arbiter—well, almost always that is, for truly, the Malaysian Parliament included, if a Minister refuses to answer a supplementary the Speaker would best be advised to call out the next name on the Order Paper.

Somebody once wrote that the Question Period has the characteristics of parliamentary proceedings in microcosm. I am in agreement with this view except for the stress factor, which contrary to undergoing diminution actually becomes amplified many times over during Question times. I have no doubt that the Question Period is detrimental to a Speaker's health.

Personally, I am inclined to view Question Period in two aspects. The first is that which included all the ingredients that goes into it before the cooking actually begins. They relate entirely to the main question and involves principally considerations of admissibility and propriety. This is the lighter and more comfortable aspect. One is accorded the luxury of anticipation as well as deliberations; consultation as well as reference, not to mention the benefit of meticulous prior scrutiny by those jealous guardians of parliamentary tradition, the Clerks. One decides comfortably from the cosiness of one's chamber, confident in the knowledge that one's decision has been based on clear principles and precedents. Sadly, this first aspect does not amount, by any stretch of the imagination, to an equivalent of a dress rehearsal; one can never really prepare oneself for the real performance, which is the Question Period itself. From the moment the words, “Mr. Speaker Sir, Question Number One,” are uttered, conditioned reflexes are triggered; vague fears assume frightful coherence.

“What is the mood today? Will it be frivolous? Will it be combative? Will there be mud? Will blood be drawn? Those school children in the gallery, will they see the best traditions of Parliament? That ruling yesterday on relevance, I was right? Here’s that show-off again with another supplementary,” such are the thoughts that may cross Mr. Speaker’s mind in those critical minutes before he gathers himself into his robes in spirit.

What about Mr. Speaker’s mood and disposition Will he be detached and consistent today? Will his own political belief colour his rulings? Will he be obviously harsh with some and unduly ingratiating with others? Just as a Speaker could shape the Question Period so would it show him up—more so than any other proceeding,—due to its spontaneity.

The Question Period really belongs to the supplementary question, notwithstanding its being only a Member’s privilege, not a right, to ask. A Speaker may easily ignore this at his own peril. I believe it helps to keep one’s instincts at bay, about motive and purpose of questions, when monitoring supplementaries.

On the other hand because the rules that apply to the main question are also those that apply to the supplementary, the only difference being that they have to be applied almost instinctively, the Chair can be a very lonely place, especially so when the Leader of the Opposition throws a barbed supplementary of questionable admissibility and doubtful relevance at the Prime Minister on a day when the public gallery is overflowing.

In conclusion, I would like to mention in passing a particular problem in my experience in the Malaysian House of Representatives. There is an increasing tendency for supplementary questions to not only become longer and longer but also to assume the nature of stacked or composite questions, some parts clearly admissible, some parts doubtful. I have tried to cope with this problem by only allowing the clearly admissible parts. As for checking this tendency in general so that the entire Question Period may not be exhausted by the House ultimately being able to deal with only two or three main questions. I have in brave moments dared to instruct that supplementaries be precise and specific. In the latter I cannot take comfort from any standing Order as at present. Perhaps it is time for yet another amendment in the Standing Orders.

## APPENDIX IV (4c)

### METHOD OF VOTING, INCLUDING THE MANNER OF ELECTING THE SPEAKER

**Paper presented by the Hon'ble Tan Sri Dato Mohamed Zahir Bin Haji Ismail**

1. The voting process in Parliament is an extension of the democratic process of voting in an election whereby the winning party or the majority, is allowed to run the affairs of the country, after both the majority and minority have had their say. While the election is governed by statute (The Election Act), the method of voting in Parliament is determined by the Standing Orders as well as the Supreme Law of the country—the Constitution. In the case of Malaysia, the Constitution stipulates that subject to certain provisions of the Constitution, each House of Parliament shall regulate its own procedure, including methods of voting.

1.1. In this Paper, I shall briefly trace the manner in which the Speaker is elected by the House of Representatives (Dewan Rakyat) in Malaysia and the methods of voting by the House, and I believe the procedure would be similar in other Commonwealth Parliaments with varying degrees of modifications to suit the particular requirements of each country.

#### 2. MANNER OF ELECTING THE SPEAKER

After a general election, on the first day of the meeting of the House of Representatives of Malaysia the first item of the Order of Business of the House shall be the election of the Speaker.

2.1. Every member of the House who wishes to propose as Speaker a person who is either a member of the House, or is qualified for election as such a member,<sup>1</sup> shall after ascertaining the person's willingness, notify the Clerk of his proposal in writing at least fourteen days before the meeting. At the meeting itself a member addressing himself to the Clerk shall propose some other member (or person)<sup>2</sup> who is present and whose name had been intimated to the Clerk earlier to be elected as the Speaker of the House, and move, "That... (name)...do take the Chair of this House as Speaker." The proposal shall be seconded but no debate shall be allowed.

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<sup>1</sup> With effect from August, 1964 the Constitution of Malaysia was amended to provide that the House of Representatives may, if it so chooses, elect as its Speaker a person who is not elected as a member of the House, but he shall have no casting vote.

<sup>2</sup> Refers to a non-member as in (1).

2.2 If only one member (or person) be so proposed and seconded as Speaker, he shall be declared by the Clerk to have been elected without the question being put to the House. If more than one member (or person) be so proposed and seconded, the House shall proceed to elect a Speaker by ballot.

2.3 For the purpose of a ballot, the Clerk shall give to each member present a ballot paper on which the member may write the name of the member (or person) for whom he wishes to vote and sign it. The folded ballot papers are collected by the Clerk, or an officer of the House deputed by him, and counted by the Clerk at the Table of the House, after which the result of the ballot is declared by him to the House.

2.4 Where more than two candidates have been proposed and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election and balloting shall proceed until one candidate obtains more votes than the remaining candidate or the aggregate votes of the remaining candidates as the case may be.

2.5. Where at any ballot between two candidates the votes are equal, another ballot shall be held; and if at such ballot the votes are still equal, the determination shall be by lot which shall be drawn in such manner as the Clerk shall decide.

2.6. After the ballot papers are counted they shall be placed in a box, sealed and kept by the Clerk for one calendar month and then, subject to any direction by the House, the Clerk shall burn the ballot papers and certify to the House that this has been done.

2.7 Once the Clerk declares that a member (or person) has been elected as Speaker, the newly elected Speaker is escorted to the Speaker's Chair by the proposer and seconder of the motion for his election. The first thing that the Speaker does on his election is to take and subscribe the Oath of office set out in the Constitution.

2.8. The procedure for the election of the Deputy Speaker is nearly the same as that for the election of the Speaker, except that the election shall be conducted by the Speaker instead of the Clerk.

2.9. It might be of interest to note that in the case of Malaysia while during any absence of the Speaker from a sitting of the House of Representatives the Deputy Speaker, or, if he

is also absent, such other member as may be determined by the House shall act as the Speaker, "*The House shall transact no business while the office of Speaker is vacant other than the election of a Speaker.*"<sup>3</sup>

### 3: METHODS OF VOTING

The voting in the House of Representatives is effected either by a collection of voices or by a division. When the House is asked to decide on a question, the Speaker puts the question to the House and then invites members to say orally "Aye" if they are in favour, or "No" if they are against the question; and from the response he receives, he decides whether the "Ayes" or "Noes" have it and announce the result to the House accordingly.

3.1. In accordance with the Constitution, decisions of the House are made on a simple majority of members voting except in the following cases:

- (i) A Bill to make any amendment to the Constitution requires at its second and third reading in the House the votes of not less than two-thirds of the total number of members of that House. However, if such a Bill intends to make an amendment merely relating to the forms of oaths and affirmations, or is incidental to or consequential on the legislative powers conferred on Parliament by certain provisions of the Constitution, it may be passed on the votes of a simple majority of the members voting.
- (ii) When the Election Commission has submitted a report on the delimitation of constituencies to the Prime Minister, the Prime Minister has to submit the report to the Dewan Rakyat together with a draft Order which, if approved by a Resolution of the Dewan Rakyat, will enable the Prime Minister to submit it to the Yang di-Pertuan Agong (King)<sup>4</sup> in order to give effect to the recommendations contained in the report. Such a Resolution must be supported by the votes of not less than one-half of the total number of members of the House.
- (iii) Where a State Legislature enacts a legislation regarding the cancellation of a Malay reserve land, such a legislation must be approved by a Resolution in each House of Parliament with the votes of two-thirds of the members voting

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<sup>3</sup> *Vide* Article 57 of the Malaysian Constitution.

<sup>4</sup> Head of State of Malaysia.

3.2. When a question before the House is determined by the Speaker by "voice Votes", a member is entitled to challenge the decision of the Speaker and request that the question concerned be decided by a division. When such a request is made, the Speaker will ask members supporting the request to rise in their places and will not concede to the request unless at least 15 members so rise. However, the Speaker may himself call for a division in cases where the votes of a specified majority of members are necessary, such as a Bill to amend the Constitution.

#### *Procedure in relation to Divisions*

3.3 Where a division has been ordered, the Clerk rings the bell to summon members who may be present in the premises to take their seats in the Chamber. The Clerk then rises and says, "Honourable Members in favour, please stand" and those members in favour will rise and they will be counted by Tellers who have been previously appointed by the Speaker. The votes of members against, and those abstaining from voting, are obtained in a similar manner. The Tellers will then hand over their figures to the Clerk who will total the number of "Ayes" and "Noes" and those who abstained from voting, and finally submit the result to the Speaker who will accordingly announce it to the House.

#### *Votes and Proceedings*

3.4 In addition to recording all the business transacted in the House, the Papers presented and the names of members present or absent, the Votes and Proceedings record all the votes taken in the House. When a decision is obtained by a voice vote, the record merely states that the House has agreed or disagreed with the question, but if there has been a division then the record will also show the names and the total number of members voting in favour and against the question and those abstaining from voting. The Votes and Proceedings are signed by the Speaker and the House issues them to members the next day after the sitting in cyclostyled form and these are later printed and reissued.

#### *Voting in relation to Motions*

4. Motions can only be introduced in the House after due notice except in the case of procedural motions and motions relating to matters of privilege. Certain motions can only be moved by Ministers. Before a vote is taken, all motions can be debated and amended by the House, except those expressly prevented by the Standing Orders from being debated or amended and these include a

Motion on the election of the Speaker, a motion to alter the time of sitting of the House etc. When dealing with a motion, the House does not go into Committee of the whole House except in the case of a motion on the Development (or Supplementary Development) Estimates.

4.1. When the debate on a motion has been concluded, the Speaker will put the question:—

“Hon'ble Members, I will now put the question: (reads the motion). Those in favour say “Aye” (pause), those against say “No”. The “Ayes/Noes” have it. The Motion is agreed|disagreed to.”

If an amendment has been proposed to a motion, a vote is first taken on the amendment before the original motion is voted on.

#### *Procedure on the annual Development Estimates*

5. In considering this particular motion, the House follows a procedure different from that of ordinary motions, in that like in the case of a Bill, the Motion is debated in two stages: firstly, in the House itself when the general principles of the motion are debated and secondly, in the Committee of the whole House when appropriations for individual Heads of Expenditure are discussed and voted on.

5.1 Debates on the Supply Bill and the Development Estimates are done simultaneously now. This is done through the device that immediately after the Motion for the Second Reading of the Supply Bill has been proposed and seconded—i.e. immediately after the Budget Speech by the Minister of Finance—a Motion is proposed to refer to a Committee of the whole House, the Resolution on the Development Estimates.

5.2. After a debate lasting 11 days, a vote is taken on the Second Reading of the Supply Bill, immediately followed by a vote on the Development Estimates' Motion; and when both have been agreed to, the Bill and the Resolution stand committed to a Committee of the whole House, better known as the Committee of Supply.

5.3. In the Committee of Supply, debates on the Supply Heads and Development Heads of Expenditure are carried out simultaneously but the voting on each Head is done separately, i.e. the Chair proposes the Supply Head concerned first and immediately after a vote is taken on the Development Head:



“That the expenditure shown in Head . . . . . of the Development Estimates for the year . . . . . be approved.”

A voice vote is taken and if the Committee of the whole House agrees to the question, the sum shown against the Head concerned is agreed to and stands part of it.

5.4. When each Head of Expenditure has been proposed by the Chairman in the Committee of Supply any member may propose an amendment to the question, viz., to reduce by \$. . . . . the sum allotted to that Head, or to any sub-head or item of that Head, provided he has given 2 days' notice of the amendment. Any such amendments have to be disposed of first before the original question is proposed for voting.

5.5. When all the questions on all the Heads of Expenditure in both the Ordinary and Development Estimates have been disposed of and the Bill has been passed by the Committee, the Chairman shall put to the Committee for vote the Resolution on the Development Estimates. On the Motion being agreed to, it shall be reported forthwith to the House immediately following the report to the House that the Supply Bill has been passed by the Committee.

5.6. After a motion for the third reading of the Supply Bill has been proposed and the Bill has been read the third time, a Minister shall immediately move for the adoption of the Resolution on the Development Estimates on the following terms:

“Mr. Speaker, Sir, I beg to report that the Committee has considered the motion referred to it and has agreed to it. I accordingly move that . . . (terms of motion as set out in the Order Paper) be agreed to.”

The Speaker would then put the question to vote and if the “Ayes” have it, then the Motion is agreed to.

5.7. The voting procedure on Supplementary Development Estimates would be similar but the time allotted for debates would be much shorter.

#### VOTING IN RELATION TO BILLS

6. The First Reading of a Bill does not involve any voting by members but the mere presentation of a Bill to the House by a Minister constitutes the First Reading.

6.1. The Second Reading of a Bill is the most important stage, for it is here that the general principles of the Bill are debated. A Bill cannot be read a second time until it has been printed and circulated to members. When the second reading of any Bill is reached in the Order of Business; a motion is proposed, "That the Bill be now read a second time" and at the end of the debate the Speaker proposes the question to the House and the voting is done by voice vote (except in a case of a Constitution Amendment Bill, as stated earlier, where a division is ordered). On the second reading of a Bill, an amendment, of which at least one day's notice has been given, may be proposed.

6.2. When the debate on the second reading has been completed, the House will automatically (i.e. without the necessity of a motion) resolve itself into a Committee of the whole House. The Clerk shall then call the number of clause and if no amendment is proposed thereto the Chairman shall propose the Question, "That Clause . . . . . stand part of the Bill" and when all members who wish to speak thereon have spoken, he shall put that question to the Committee for its decision. When all the Clauses are put to vote and agreed to in this manner, then the Schedule/s (if any) and finally the Preamble (if any) are dealt with in the same way. The Minister in charge of the Bill then moves. "That the Bill (as amended if any amendment has been made at the Committee Stage) be reported to the House", and the question thereon shall be decided without amendment or debate. As soon as this is done, the House resumes and the Minister in charge of the Bill reports it to the House and moves for its Third Reading; such a motion shall be seconded and the Speaker then calls for a vote on the third reading, and when an affirmative vote is given the Bill is read the third time and passed.

6.3. When a Bill is referred to a Special Select Committee by way of a Resolution, the Committee will make its report to the House and if amendments have been made to the Bill by the Committee, such report must contain the whole text of the Bill as amended or, if this is not practicable, the text of every Clause or Schedule amended or added to the Bill. The House must formally accept the report on a motion "That the report of the Select Committee be approved." If that motion is agreed to without amendment, the House may proceed to the third reading of the Bill as reported from the Select Committee.

#### *Procedure on the Supply Bill*

6.4. The draft estimates of Federal expenditure for the succeeding year shall be laid upon the Table before the introduction into the

House of the annual Supply Bill (the Finance Minister's Budget Speech is at the second reading stage). (The voting procedure in relation to the Supply Bill is fully detailed while discussing the procedure on the annual Development Estimates). When vote is taken on each Head of Expenditure in the Schedule to the Supply Bill in the Committee of Supply, the question proposed is as follows:

"That the sum of \$ . . . . . for Head . . . . . stand part of the Schedule."

6.5. The procedure for Supplementary Supply Bills is the same as for the Supply Bill but the period allowed for debates is much shorter.

7. Finally, all the Select Committees of the House periodically submit their reports to the House and while any member may move a motion (after giving at least two days' notice) for the formal adoption of any of these reports, in practice a vote is taken only in respect of certain reports to formally adopt them and these are usually reports that contain recommendations which the relevant Committees wish the House to implement.

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THE SPEAKER AND THE USE OF PRECEDENT

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DISCRETIONARY POWERS OF THE CHAIR

Paper presented by Tan Sri Dato Mohamed Zahir-bin Haji Ismail

It would be more convenient for me to join these two subjects under one paper, because I think, both matters are interrelated. In fact to a certain extent whether or not to follow any precedent depends on the discretion of the Speaker. There may be even two or three precedents made on the same matter and it is therefore up to the discretion of the Chair which one to follow or even to create a new precedent. Precedents in most countries in the Commonwealth having young Parliaments depend largely on the requirement of that particular country or, if the Speaker thinks that the precedent as set out in the Westminster is a good one, not being repugnant with any local custom, he may adopt it.

But the main consideration is this. Do Parliaments have to bind their decisions with precedents, irrespective of whether any particular precedent has outlived its usefulness? If this were to be the case then the principle, which may by itself a precedent, that a Parliament cannot bind the future Parliament is rendered valueless. In the judiciary, the highest court in the land normally has the inherent power to set aside its own precedents and the precedents of the lower courts. They will set aside any precedents that are repugnant to the order of the day. Thus, a counsel appearing in the highest court may seek to set aside any precedent that may be in his way, but he cannot do so in a lower court which will be bound by the precedents of the higher tribunal. A subordinate court can however set aside its own precedents which is only, to itself, a persuasive authority.

What is the position in a Parliament then? I am of the opinion that precedent in a House is also a persuasive authority; being the highest Court in the land a Parliament is entitled to follow any precedent or ignore it altogether or create a new one.

Thus looking at it closely, the so-called precedents in a Parliament cannot be regarded as binding precedents that can be relied upon as in the subordinate courts. Although a Speaker will be slow to act against a precedent, yet he will not hesitate to set aside one which he thinks no longer desirable.

It appears in the courts, precedents take in the form of decisions or rulings in a particular case, which can be a substantial factor to decide an issue, for instance, the degree of negligence required to hold a person liable in a criminal case against the accused or, in case of a civil case, against the plaintiff, whereas in the House precedents appear to be more in the form of procedures for the purpose of conducting meetings of the House, because all substantive matters will have to be disposed off by voting.

How then proceedings in the Privilege Committee are conducted? In Malaysia there is a separate law called the House of Parliament (Privileges and Powers) Act 1952. Any person whether a Member of Parliament, a Government Officer or a member of the public who commits any of the offences enumerated under section 10 of the Act, is liable to a criminal charge under the Act with the Speaker acting as the Chairman sitting together with the Members of the Privilege Committee. The manner the case is conducted is similar to board enquiries where counsels may represent any aggrieved party and each Member of the Committee may examine, by turn any witness appearing.

The question whether an Accused is guilty or not is decided by a simple majority of votes. Offences under this Act are quite extensive which includes bribery, assault, intimidation and libel against a Member of Parliament in the course of his or her duty or against the House itself. The Act provides that the law under which evidence will be adduced will be the Evidence Act. However there is an anomaly in this Act in that only the Attorney General has the power to prosecute. The reason for this defect is that at the time of passing this Act, the Attorney General was a Member of Parliament and also a Member of Cabinet. In Malaysia this practice has ceased and now the Attorney General may not be a Member of Cabinet or a Member of Parliament. He is now a civil servant. As such he prefers to bring any case before the Courts under the Penal Code instead of under this Act which is more cumbersome, there being too many cooks presiding, some of whom may have very little experience in law.

When a person is charged under this Act, should the precedents in Courts be followed by the Committee? For instance, what constitute a libel or an intimidation? I am personally of the opinion the Committee should follow these precedents, in view of the fact that they have been tested, after having gone through many discussions and deliberations by learned judges from time to time. But, of course, the Committee may still reject any of these precedents if they are unsuitable to Parliament on the ground that for instance, Parliament should give more latitude for criticism. What may be a libel in Court may not be so in Parliament.

However, in Malaysia, it has been a practice that in spite of the 1952 Act, the Committee of Privileges still can, upon being referred to it by the House, try any person for committing contempt of the House when the House is in session. But when the House is not in session, the Speaker is given the discretion to refer the matter to the Committee if he thinks there is a *prima facie* evidence of contempt. Here the power of the Speaker is absolute as there is no sitting of the House to challenge his decision. Where proceedings are not instituted under the 1952 Act, the procedure adopted in such a case is as provided under the Standing Orders.

In 1625 when there was a struggle for power between the English Monarch and the House, precedents were relied upon by the English Parliament in order to assert authority over the King. When King Charles imprisoned Earl of Arundel to the Tower, the displeased Lords resolved to take the matter into consideration and at the same time "to give no just offence to His Majesty, and yet to preserve the privilege of the Parliament". A Lords Subcommittee of Privileges were appointed to search for precedents, concerning the commitment of a peer. They found such precedent which read as follows:—

"That the Privilege of this House is, that no Lord of Parliament, sitting in the Parliament, or within the usual times of Privilege of Parliament, is to be imprisoned or restrained, without sentence or order of the House, unless it be for treason or felony, or for refusing to give surety for the peace."

Standing Orders have been drawn by every House of Parliament in almost all countries for its own use relating to the procedures by which the Speaker will be guided to conduct meetings. Some of these procedures were before precedents that had been followed for

a considerable period of time, for instance, the manner of electing a Speaker or the manner in which a Monarch addresses both House outlining the government's policy speech.

But there are many matters that simply cannot be embodied in the Standing Orders Book and which are left to the discretion of the Speaker to decide, for instance, (and this is quite a common occurrence) the use of any particular word or phrase in the House, considered to be a borderline case of being parliamentary or unparliamentary. The Speaker here has to use his discretion based on his personal knowledge as to the prevailing meaning and acceptance of the word or phrase, and once he makes a ruling one way or another, then such a ruling shall be a precedent whenever the same situation arises in the future. The interpretation of the Standing Orders is another example.

There are also cases where precedents are created by decisions of the House itself, for instance, a resolution passed by the House directing the country's Police Chief to facilitate attendances of Members to the House. But there are more precedents created in Committees which are usually in the form of procedures for their own proceedings.

In Malaysia, the Privilege Committee recently ruled that for its proceedings the Criminal Procedure Code be followed whenever applicable.

I find that the use of certain discretionary power is most difficult. When I have to limit an Opposition Member his speaking time, or limit his supplementary question, he may remark that the Opposition is not given the opportunity to present their views. When I do so with a Government Member, there is also a complaint that the Speaker is not giving them their fair share of time to govern the country.

Lord Selwyn-Lloyd in his book, "Mr. Speaker, Sir" wrote saying that he made a book which he called "Blue Book" where he recorded the speech of every Member and the time taken by such Member to make the speech. When there was any complaint by any Member, he would refer to the book and would tell the Member how many times and for how long he had already spoken.

The position may be worse if the Standing Orders limit the number of days in order to debate on any particular matter for instance in Malaysia the debate on the Budget has to be completed in 27 days. The Speaker is bound to complete the debate within the time prescribed. What if he fails to complete the debate within the time? Does

this make the decision null and void? I remember in the old days in the Malaysian Parliament if the Speaker overlooked certain requirements of the Standing Orders, he would declare all the previous proceedings to be out of order and expunged them from the records and would order the proceedings to start afresh. It would not be that bad if the proceedings to be taken again were short. But if the matter took days to complete, this would be a waste of time. Fortunately such cases were few.

For this reason in the Malaysian Parliament, the Standing Orders have been amended recently to provide that where in making any decisions there has been a failure on the part of the House or any Committee to comply with any provision of the Standing Orders, such failure will be treated as an irregularity and will not nullify the proceedings taken. This is in line with the rules provided in the Civil Procedure Codes used by the High Courts.

The principle that a Speaker will point to any Member who first catches his eye to speak is not practicable. If this is the case then the persons seated nearest to the Speaker will always be speaking. Thus a Speaker should not follow this rule rigidly, as he would then be inviting complaints from Members who are seated at the back. Since a Speaker can almost see all the Members who are standing to speak, here again there is another discretion for the Speaker to decide who and who is to speak. Notwithstanding the "catch eye" rule I will try to allow every Member to speak, if not in one Bill then in another. Even then there is dissatisfaction. Some Members will even pass notes up to the Chair asking permission to speak.

In Malaysian Parliament, there is another aspect that may not be similar with other Commonwealth Parliaments, in that the Speaker is delegated with discretionary power of granting leave to Members who wish to be absent from attending any sittings for a continuous period of six months. This power is actually the power of the House but it has been proved to be inconvenient for the house to decide on such matter, particularly when the House is not sitting. The Speaker is required to inform the House whenever such leave has been granted. This leave of absence is necessary because our Constitution provides that if a Member is absent for a continuous period of six months, the House may declare his seat to be vacant. In my experience as a Speaker the exercise of my discretion in this respect is more of a formality than anything else, for I never had the occasion to refuse any application for leave and no one has ever questioned any of my decisions.



A number of discretionary powers of the Speaker are especially provided for in the Standing Orders, such as the sitting of the Members in the House, whether a question to a Minister is to be rejected, whether to allow the reduction or dispensation of time required in respect of a notice on any motion, petition or bill. But the question whether to allow an emergency motion to be debated on a matter of public importance comes up quite frequently, as this is a matter which the Opposition usually resorts to in order to attain a great measure of publicity. For instance, whenever there is a collapse of a bank, or if the Government were to resort to a strong arm's tactic in order to remove some illegal squatters, then I can expect there is such a motion forthcoming. The Opposition knows very well that the Speaker will not allow certain such motions to be debated, as they relate to something that has occurred yet they continue to file them for the purpose of bringing the matter to the public.

The wordings of the ingredients in our Standing Orders for this motion to be admitted are "a definite matter of urgent public importance". Thus the motion must comply with three requirements namely, definite, urgent and of public importance. I have found that it has always been easy to conclude that a matter is definite and of public importance. But I would normally reject the motion on the ground it is not urgent, especially when I find out the Government is already doing something about it.

We borrowed this phrase from the Standing order of the House of Commons. There in 1967, these wordings had been already to "a specific and important matter that should have urgent consideration". To me, whose mother tongue is not English, I see no significant difference between the two phrases. In order to free the Commons Speaker from precedents, he is not required to give any reasons for his decisions. I find it rather difficult to envisage precedents forming out of the Chair's ruling on these matters, as there cannot be any two incidents happening in the same manner. I always give my opinions whenever I reject such motions.

Another aspect of the duty of a Speaker that may not be so pleasant is to be attentive all the time in hearing the speeches made by every Member and to check him in his use of words and conduct. There are instances whenever the Speaker checks a Member in the course of his speech, an argument will ensue with the Member trying to explain what he says is quite decent. A word that may be indecent before may become decent as time and value change, like the book "Lady Chatterley's Lover".

Words like "liar" when levelled at another Member or "traitor", "blackmail" or "bloody" all, I think have been regarded as unparliamentary in almost all Parliaments. But there are some words such as "arrogant", "baseless", "big-head", "childish attempt", "cock-crow-ing", or "want of commonsense" which are being allowed in Malaysian Parliament but which are disallowed in the Lok Sabha. (*Parliamentary Law of India by Mukherjee*).

A Speaker who is not attentive and fails to stop an unparliamentary word at the time of uttering such word may encounter a problem if any Member were to bring this to the notice of the Speaker subsequently. By that time the subject matter of the debate is already over and the Member speaking the unparliamentary word is nowhere to be found. I have recently made a ruling on this respect, that any point of order should be brought out at the time of the occurring and if the matter has passed, then the remedy is to bring a motion for a decision for the Member to apologise or to withdraw the offending word. This is a round-about process, but necessary. The motion may even ask for punishment for contempt if the Member refuses to comply with the decision of the House.

The trouble with the attitude of some Members is that they leave the maintenance of order in the House solely to the Speaker and they never consider it their joint responsibility to do so. They expect every Speaker in discharging his duties, in giving or refusing discretions or in following precedents or otherwise to have all the virtues generally expected in a Speaker, that is what is described by A.F. Sturgis in his book. "Learning Parliamentary Procedure" that a Speaker should have "two cups of common sense, well mixed with three pounds of tact and fairness stirred in and plentifully sprinkled with knowledge of Parliamentary law, backed with a few years of experience".

If the cap fits you, then wear it.