

**THE FOURTH MEETING  
OF THE ASSOCIATION OF EUROPEAN SENATORS**

**Madrid, February 28, 2003**

## SUMMARY

### FOURTH MEETING OF THE ASSOCIATION OF EUROPEAN SENATES

MADRID, 28 FEBRUARY 2003

- I. Program of the Meeting.
- II List of Participants.
- III Inauguration of the Fourth Meeting of the Association of European Senates by the Honourable Mr. Juan José LUCAS, Senate Chairman.
- IV First subject: “The role of controlling the Government by the Upper Houses”.

Intervention from the following speakers:

Mr. Christian PONCELET, Chairman of the French Senate.  
Mr. Serguei MIRONOV, Chairman of the Russian Federation Council.  
Mr. Longin PASTUSIAK, Chairman of the Polish Senate.  
Mr. Wolfgang BÖHMER, Chairman of the German Bundestag.  
Mr. Gian-Reto PLATTNER, Chairman of the Swiss Senate.  
Mr. Gerrit BRAKS, Chairman of the First House of the Netherlands.  
Mr. Nicolae VACAROIU, Chairman of the Rumanian Senate.  
Mr. Janez SUSNIK, Chairman of the National Council of Slovenia.  
Mr. Armand de DECKER, Chairman of the Belgian Senate.  
Mr. Pavel PELANT, General Secretary of the Czech Republic.

- V Second subject: “Control of the Government by the Upper Houses in Foreign Policy and European Union matters”.

Speeches from the following Gentlemen:

Mr. Alejandro MUÑOZ-ALONSO, Senator, Member of the Spanish  
Parliamentary Delegation at the European Convention.

Mr. Lamberto DINI, Vice Chairman of the Italian Senate.

Mr. Serguei MIRONOV, Chairman of the Russian Federation Council.

Mr. Gerrit BRAKS, Chairman of the First House of the Netherlands..

Mr. Herwig HÖSELE, Chairman del Bundestag of Austria.

Mr. Armand de DECKER, Chairman of the Belgian Senate.

- I. FINAL DECLARATION OF THE FOURTH MEETING OF THE
- II. ASSOCIATION OF EUROPEAN SENATES.

## **I. PROGRAMME**

### Thursday 27 February 2003

Delegates arrive in Madrid.

- 20:15 -Microbus leaves hotels Palace and Crowne Plaza to take delegates to the Casino de Madrid (Calle Alcalá, nº 15).
- 20:30 -Dinner offered by Mr Juan José Lucas, President of the Spanish Senate, in the Casino de Madrid.
- 22:30 -Return to hotels Palace and Crowne Plaza.

### Friday 28 February 2003

- 09:15 -Microbus leaves hotels Palace and Crowne Plaza to the Senate.
- 09:30 -The President of the Senate, Mr Juan José Lucas, welcomes the Heads of Delegation in the President's Offices.
- 09:45 -Inauguration of the 4<sup>th</sup> Meeting of the Association of European Senates by Mr Juan José Lucas, President of the Spanish Senate.

Subject:“**Government control by Upper Chambers**”.

- 11:00 -Coffee break.
- 11:30 -Debate.
- 13:00 -Family photo of Presidents of Senates in the Former Plenary Hall.
- 13:30 -Tour of the Senate.
- 14:00 -Luncheon offered by Mr Juan José Lucas, President of the Senate, in the Restaurant “Café de Oriente” (Plaza de Oriente).
- 16:00 -Debate :  
Subject:“**Government control by the Upper Chambers on foreing affairs and European Union matters**”.  
Speaker:Mr. Alejandro Muñoz-Alonso, Senator of the Popular Group.
- 18:00 -Approval of the Final Declaration of the 4<sup>th</sup> Meeting of the Association of European Senates.
- 18:15 -Closing session of the 4<sup>th</sup> Meeting of the Association of European Senates

## **II. LIST OF PARTICIPANTS**

### **AUSTRIA**

Mr. Herwig HOSELE  
- Speaker of the Federal Council

Mr. Walser LABUDA  
- Director

### **BELGIUM**

Mr. Armand DE DECKER  
- Speaker of the Senate

Mr. Georges BRION  
- Deputy General Secretary to the Senate

### **BOSNIA-HERZEGOVINA**

Mr. Velimir JUKIC  
- Speaker of the People's Chamber

Mr. Goran MILOJEVIC  
- Deputy Speaker of the People's Chamber

### **CZECH REPUBLIC**

Mr. Pavel PELANT  
-Secretary General

Mr. Jan KYSELA  
-Secretary of the Standing Committee for the Constitution of the Republic

Mrs. Valérie CIRPOVÁ  
-Director of the Protocol Department

Mrs. Eva HELLOVA  
-Protocol Department

## **FRANCE**

Mr. Christian PONCELET

- Speaker of the Senate

Mr. Alain MEAR

- Director of the Speaker's Office

Mr. Cyril ROGEAU

- Diplomatic Adviser to the Speaker

Mr. Jean LAPORTE

- Director of the European Affairs Department

Mrs. Véronique BOCQUET-MEAR

- Administrator of the International Relations Department

## **GERMANY**

Mr. Wolfgang BÖHMER

- Speaker of the Senate

Mr. Gerd SCHMITT

- Deputy Secretary-General

Mr. Claus Dieter KOGGEL

- Legal Adviser

Mrs. Pia HEIM

- Secretary to the Speaker

## **ITALY**

Mr. Lamberto DINI

- Deputy Speaker of the Senate

Mr. Paolo SANTOMAURO

- Secretary General

Mr. Luigi GIANNITI

- Adviser

Mrs. Sara SCRINZI

- Protocol Officer

Mr. Gianmarco BACIGALUPO

- Protocol Officer

## **NETHERLANDS**

Mr. Gerrit BRAKS

- Speaker of the First Chamber

Mrs. Eliane JANSSEN

-Deputy Secretary General

## **POLAND**

Mr. Longin PASTUSIAK

- Speaker of the Senate

Mrs. Anna SAKLENNIK

- Director of the Office for Foreign Relations

## **ROMANIA**

Mr. Nicolae VACAROIU

- Speaker of the Senate

Mr. Constantin NICOLESCU

- Chairman of the Special Commission for parliamentary control of foreign information

Mr. Nicolae Dan FRUNTELATA

- Adviser to the Speaker's Office

Mrs. Adriana Gabriel PESCARU

- Adviser to the Department for Foreign Parliamentary Relations

## **RUSSIAN FEDERATION**

Mr. Sergei MIRONOV

-

Speaker of the Council of the Federation

Mr. Vasiliy ARZHANTSEV

- Director of the President's Cabinet

Mr. Anatoliy VORONIN

- Adviser of the President

Mr. Nikolay ZENKOVICH

- Adviser of the President

Mr. Alexander SHAROV

- Adviser of the President

Mr. Nikolay VIHLIAEV

- Head of the Foreign Relations Department

Mr. Leonid GOLUBEV

- Deputy Director of the Department for Relations with the Parliament of the Foreign Ministry.

D. Dmitriy KAZIMIROV

- Deputy Head of the European Department of the Foreign Ministry

D. Andrey KLEYMENOV

- Secretary of the Foreign Ministry

## **SLOVENIAN REPUBLIC**

Mr. Janez SUSNIK

- Speaker of the National Council

Mr. Primoz HAINZ

- Secretary-General

Mrs. Lilijana ZURMAN

- Legal Adviser

## **SPAIN**

Mr. Juan José LUCAS

- Speaker of the Senate

Mr. Manuel CAVERO

- Secretary General of the Senate

Mrs. Ana María ÁLVAREZ

- Director of Interparliamentary Relations of the Senate

Mrs. María Teresa BUQUERÍN

- Director of the Senate Speaker's Office



## **SWITZERLAND**

Mr. Gian-Reto PLATTNER- Speaker of the Senate

Mr. Aristoph LANZ  
- Secretary General

## **OBSERVERS**

## **LUXEMBOURG**

Mr. Pierre MORES  
- Deputy Speaker of the Council of State

Mrs. Marc BESCH  
Secretary General of the Council of State

**III. INAUGURATION OF THE MEETING OF THE ASSOCIATION OF EUROPEAN SENATES BY THE HONOURABLE MR. JUAN JOSÉ LUCAS, CHAIRMAN OF THE SENATE OF SPAIN**

**PRESIDENT OF THE SPANISH SENATE** (The Right Honourable Mr. Juan José Lucas): Ladies and gentlemen, it is for me a great source of satisfaction to take the floor before the speakers of the European Senate to extend in the name of the Spanish Senate, and in my own name, a very warm welcome to you.

You find yourselves now in one of the most important rooms of this Palace, the *Sala de los Pasos Perdidos*, the Room of the Lost Steps, which is filled with historical memories of this country, called Spain. It is a great honour for our Senate and for Spain, to welcome all of you to this Fourth Meeting of the Association of European Senates. May my very first words serve to welcome all of you warmly to Spain and wish you all a very pleasant stay in our country and very productive results from this Meeting.

I would like the reports presented publicly in this Meeting, as well as the results of any contacts that may take place outside of this Meeting, contribute to strengthening the relationship that already exists between the Senates of the European countries.

Ladies and gentlemen, the Association of European Senates is celebrating its fourth anniversary. The proof of the usefulness of this wonderful initiative of His Excellency Christian Poncelet, the President of the French Senate, who created this Association three years ago, is the continuity of this Meeting that is now celebrating its fourth edition and so we must all feel very pleased.

In the text of the Final Declaration of the delegations attending the World Forum of Senates in Paris in March of 2000, it was made obvious that it is the will of the participating Senates to think further about the role of the Upper Chambers and Senates with respect to the inherent diversity of these Assemblies and with the desire to contribute to the dissemination, consolidation and reinforcement of democratic values.

This spirit and that determination to reflect upon our role have characterised the meetings of Brussels and Ljubljana. In Brussels in November 2001, with the very recent impression left by the tragic terrorist attacks of September 11 and a greater awareness of the dangers presented by the terrorist threat for freedom and democracy in our countries, the participating Senates devoted the Second Meeting to the analysis and condemning of international terrorism.

In Ljubljana, in July 2002, in a less dramatic atmosphere, the work of the Third Meeting focused on the analysis of the quality that the Senates can contribute to the parliamentary and legislative work. Here in Madrid we want to keep on complying with the spirit of the Declaration of the Forum 2000. Along these lines, we would like to study and

analyse the process of controlling the Government which is handled by the Higher Chambers. And I would like to now discuss this point.

According to the constitutional doctrine, control is no doubt the most relevant and characteristic role of our Parliaments today, to such an extent that we can say that the majority of the activities of the Chambers are to a greater or lesser extent manifestations of that role. And that is where the political future of the Parliaments lies, to the extent that if this role is carried out effectively, their survival will be guaranteed.

However, for an effective exercise of the control, I feel it is necessary to have not only the appropriate tools to carry out that task, but it is also necessary to have the material and technical means required in order to control the Executive power. As we know, these Executive Powers have abundant resources as they head a very formidable complex, the Public Government. As the specialists say, the greatest problem of the contemporary Parliament is very often the lack of material and technical means to carry out that task of Government control.

When it comes time to analysing that role of the Upper Chambers, we have to emphasize that even though the general rule in Comparative Law is the impossibility of demanding political responsibility from the Government through the matter of trust or confidence or the motion of censure, it does not mean in any way that said Chambers are excluded from that capital function. Quite the contrary.

As we have already said, the Upper Chambers have in general the specific instruments intended to control and scrutinise the public responsibility of the Governments, apart from the instruments for supervising political responsibility. On the other hand, we have to emphasize that the Upper Houses, while they hold the roles of territorial representation, they also carry out an important task of executive scrutiny in all the areas that affect those territorial entities that these Upper Houses sometimes represent.

In the same way we have to remember that the Government is not a passive element in this scrutiny. The Upper Houses also carry out important tasks in the scrutiny of territorial organisations in those States, and that element of scrutiny is the one that should be strengthened in the future in the Upper Houses following the contemporary trend of territorial specialization of these Chambers. As we have already said, the Upper Chambers do not usually have the specific instruments to determine the accountability of the Governments which the Lower Houses have, and the evidence of this is the fact that the Lower Chamber is the one that has the relationship of confidence or trust with the Government, whereas the Upper Chambers are left out of that specific relationship.

Nevertheless, there are some exceptions in certain countries in which the Second Chamber has also been given powers related to the granting and maintaining of parliamentary trust with the Government.

First of all, we have to remember that, in the states that have a perfect two-Chamber system, that is, those states in which the elected base of both Chambers is very similar, and in which both Chambers carry out identical competencies, that supervisory role is attributed as much to the Upper House as to the Lower House, as is the case in the Italian Senate. The Italian Constitution of 1947 establishes that during the ten days following the formation of a new Government, the Government must appear before the two Chambers in order to obtain their confidence. Thus, the Senate has two classical instruments for making the Government accountable. It has the question of competence and the question of confidence and trust and the motion of censure.

A special case in relation with the foregoing is the German Bundesrat. As you know, the motion of censure can only be presented before the Bundestag. According to article 81 of the Fundamental Law of Bonn of 1949, when the Federal Chancellor has not obtained the trust of the Bundestag and the President of the Republic does not convene elections and the motion of censure is not approved in the Lower House, the Bundesrat can give its approval for the declaration for the “state of legislative need” that will allow the Government to legislate with the exclusive support of the Upper Chamber.

With varying effectiveness but in a very similar way, is the faculty recognised for the Prime Minister in France, who can ask the Senate for the approval of the Declaration of General Policy (according to article 49 of the Constitution of 1958). The tradition in the French Senate is that a Minister should read the programme of the Government or the Declaration of the General Policy, by which the Government undertakes its responsibility before the General Assembly.

However, as we have said, even though the general rule is that the Senates do not have those instruments we have just described, they do have all the other classical instruments for control and supervision of the Government. Let’s have a look at them.

First of all, in the Upper Houses, the Government reports on their actions through questions, interpolations, appearances, etc. In the House of Lords in the United Kingdom, in order to refer to the *mater parlamentorum* are four oral questions discussed at the beginning of each session, and more than four thousand questions with written replies are presented yearly.

The Upper Houses also have the possibility of creating within themselves or with the Lower House, through Mixed Committees – Investigative Committees - which are very important as you all know. This is the case in Italy and France.

Together with those instruments which I have already mentioned – questions, interpolations, inquiries, committees –, we also find the attribution of different powers to the Upper Chambers, that contribute to the control and supervision of the Government. This is the case in Belgium in regard to international treaties and issues, etc.; and in Holland and Germany, in relation with the Declaration of the State of Emergency.

What is the situation of the Spanish Senate? In Spain, as we have an asymmetrical, two-Chamber system, the Senate does not have those two mechanisms of control and supervision of the political responsibility. The Government, in principal, will never be legally forced to resign because of an initiative taken by the Senate. However, the Senate has a wide range of mechanisms for control and supervision of the Government. As far as questions, interpolations and the appearance of Members of the Government go, they are frequent in the Upper Chamber. The Wednesday morning sessions are devoted almost exclusively to questions and interpolations addressed to the Government. On the other hand, the questions and appearances in Committees make up a large part of the work of these vital bodies in the functioning of the contemporary Parliaments.

The Spanish Senate can create within itself Investigative Committees or Mixed Committees, that is, those established jointly with the Congress of Deputies. These Committees in our system can carry out their work simultaneously with the work undertaken by the judicial body.

In addition to these mechanisms, which we must consider as classical mechanisms, we have to say that the Senate has other important channels for obtaining information on the Executive power that imply a certain sense of control or scrutiny over the Government. This is the case of the demands or requests for information directed by the Commissions, as well as the reports that certain bodies have to present before the Chambers. That happens in a mandatory way every year in the General Council of Judicial Power, the Court of Accounts and the Ombudsman, etc.

However, as I was saying at the beginning of this presentation, the control and supervision carried out by the Upper Houses affects not only the Government in its national activities, but also in a stricter sense it also includes the control and supervision of other issues related to the Autonomous Communities or Self-governing Regions. As Art. 69.1 of our Constitution of 1978 states, the Senate is the Chamber for territorial representation, and it therefore has a number of competencies or powers specific to that field. The Spanish Senate may scrutinize or supervise that the Government is respecting the autonomous competencies in the exercise of their powers, but it can also control whether those Self-governing Regions are harming the general interest. In that sense, we have to emphasize the important role carried out by a Committee which was created in this House, the General Committee of the Self-governing Regions, that is in charge of all of the initiatives relating to self-governing, regional matters.

This Committee must report, for example, on all the bills and propositions that may affect the Regional or Self-governing Communities. And if there is a discrepancy, the Senate, together with the Congress of Deputies, has the final word in agreements reached between the Self-governing Regions or Autonomous Communities for the powers and competencies that are shared with the State. And there is an exception to this rule regarding the Harmonisation Laws, because, according to Precept 150.3, the State can produce laws to harmonise the legislation and regulatory provisions of the Self-governing Communities, even in areas in which the powers have already been transferred to the Self-governing Communities, when it affects the general good. In that case, the Parliament, with the absolute majority of each House, has the power to take the pertinent measures.

On the other hand, we have to point out the vital role that the Constitution assigns to the Senate in Article 155 of our Magna Carta, in the event that Self-governing Regions have not met the obligations which the Constitution or other Laws impose upon them (and I emphasize this, that in the event that a Self-governing Region does not meet the obligations that the Constitution and the rest of the legislation impose upon it. -- This is an exceptional precept that has never been employed, but it is fully valid) or acts in a way which harms the general interests of Spain, the Government, with the approval of the absolute majority of the Senate, will be able to take the necessary measures to force the Self-governing Region to fulfil those duties or to protect the general good.

We have to emphasize that in these 25 years of the constitutional period that began in 1978, it has never been necessary to resort to this measure.

>From all of the foregoing, we have to conclude that the Upper Chambers, and amongst them the Spanish Senate, are satisfactorily fulfilling their supervising role. In this legislature, the Government has answered some 20,000 written questions posed to the Senators, and we do not have the power for a motion of censure, as the Congress has, but we must remember that this type of initiative has barely existed in many countries for many years.

Therefore, we can conclude by saying that the Senate has the necessary powers to meet one of the fundamental roles of every democratic system, which is the control of the Government, or the checking up on the Government by the people, and in this case, by their representatives.

Ladies and gentlemen, I would like to conclude my intervention which may serve, I hope, as the basis for later reports, by saying that, according to Hegel, the Parliament is the gateway between the State and the civil society. And that is a beautiful way to express the role that this Chamber should fulfil in the representation of the interests of the citizens and their territories.

In this sense, the role of executive control is an essential activity, and I am convinced that in this Meeting, in this very warm and friendly atmosphere, we representatives of the European Senates are all going to think about the special characteristics of the control carried out by our Chambers and we will all try to study in depth the details with which other Senates and other Upper Chambers work in other countries, with other competencies, but with the same determination and will to serve their people.

Thank you very much.

**THE FIRST SUBJECT: “THE CONTROLLING OF THE GOVERNMENT BY THE UPPER HOUSES”**

**HONOURABLE PRESIDENT OF THE FRENCH SENATE** (Mr. Christian Poncelet): Dear colleagues, I have to say that I am very honoured to meet all of you here and to enjoy this meeting with you in Madrid. I would like to thank our colleague and friend, the Speaker of the Spanish Senate, for this very warm and kind welcome, from which I believe we will all profit.

I am particularly happy because I really think that we have a feeling of family here. We have managed to bring together the great family of European Senates: The Association of European Senates, of Speakers of European Senates, and as has been said here, I can proudly state that I am one of the founders of this Association. It has become a privileged place for debates and for free exchange within a sphere of friendship and tolerance, and one in which we can share our ideas and experiences.

We all have to defend the two-Chamber system because we believe in it and because it allows for a better representation, both of peoples and of territories. And as our colleague, Mr. Lucas, has emphasized, it is also a way for us to improve our respective legislations.

Ladies and gentlemen, Speakers of the Senate, dear colleagues, in the face of these two roles, as representatives of the nation and also as holders of legislative power, I believe that the Parliament also has a third fundamental role, which is that of scrutinizing or controlling the Executive power.

It is, historically, this role of controlling or scrutinizing the Government that has been paramount to the power of the Parliaments, and that is what has led us all towards parliamentary democracies.

The merit of the two-Chamber system is generally acknowledged to the extent that it allows for a better representation of the community and for improvement of the legislative activity. However, unfortunately, we do not place sufficient emphasis on the contribution made by the Upper Houses when it comes to checking on the Executive power.

I believe that it is necessary to stop for a minute and think about this scrutinizing role. In an old and strict concept, the parliamentary control over the Executive power is limited to the possibility of exercising or questioning the responsibility of the Government, that is even to overthrow it.

This concept no longer corresponds to the modern parliamentary system; this decision now tends to fall on the electorate that votes for its Governments. A French politician declared that the opposition cannot, and the majority does not dare to scrutinize

the Government. Can we therefore conclude that Governments are no longer under scrutiny, since they have the almost constant support of their majorities?

In truth, the notion of control on the part of the Parliament over the Executive power has a very different meaning nowadays. Today, this idea is more about giving citizens all the necessary information in order that they may form an opinion. And at the same time, in contrast, due to the pressure exercised over the Government, it is made accountable for its acts within the context of a contradictory debate.

In this way, I believe the Upper Houses can profit from a bonus, a real extra added value, since these Chambers are less subjected to the logic of the majority, and therefore they have an independence that makes them more able to criticise Governmental policy. This is not just a copy of the scrutiny carried out by the National Assembly. Our scrutiny has a special characteristic, because as a Parliamentary Assembly, the French Senate has all the means for scrutiny, and at the same level as the Congress of Deputies. Regardless of whether it is a matter of written questions, oral questions, oral questions in a debate of any issues of current events... all of these initiatives that will be shown on television.

Other instruments of information for the citizens are the Investigative Committees or the Mixed Committees. I have to make it very clear that both Parliamentary Chambers have identical prerogatives, and the only difference between the Senate and the Congress of Deputies as far as the control of the Executive power goes, is in the execution of Government responsibility. The French Senate cannot dissolve the Government; it does not have the possibility of censuring or revoking the Government. That power is only reserved for the Congress of Deputies. But the Constitution of 1958 establishes a series of very strict conditions and huge obstacles, so that the motion of censure has not been successfully used more than once – in fact, it has only been used once in the entire history of the Fifth French Republic, and that was in 1962, an epoch in which the concept of majority emerged, and that made this possibility become a theory.

If the Senate no longer has the power to dissolve Governments, we do have to emphasize the fact that the French Prime Minister can always ask the Senate to approve a Declaration of General Policy. That recourse was first used in 1975, and that was done by the Government that was then headed by Mr. Chirac. And that procedure which leads to a call for a vote is being used more and more often, and we are happy about it.

The current Prime Minister, Mr. Raffarin, who was the former Senator, has committed himself to submit year after year a Declaration of his General Policy before the Upper House, that is, before the French Senate.

The Senate has then powers that are very similar to those of the Congress of Deputies in regard to the control of the Executive power.

That special nature of the control is less common in the nature of the instruments available for use and in the frequency with which it exercises this control.



First of all, bearing in mind its lesser dependence on the Executive power, I have to say that the Senate has used more often, and in a more powerful way, its instruments for scrutiny. We have to emphasize that it was the initiative of the Senate that led to the first Parliamentary Investigative Committee in the Fifth Republic. The Senate is then a forerunner and a leader in leading in the renewal of the role of the Parliament in scrutinizing the Government, a scrutiny that we believe is absolutely vital.

Over the last few years, the requirements for information on diverse issues have multiplied greatly, for example, on science, culture, genetically modified organisms, justice, etc.

The Investigative Committees have been used profusely – more than 10 have been created since 1988 (management of school personnel, security in Corsica, prison conditions, juvenile delinquency, etc.) Two Investigative Commissions are currently working: the first of them is a study on the abuse of handicapped people, and the second, covers the national tools for anti-drug campaigns.

However, when the two Assemblies have created their respective Investigative Commissions for the same matters, and that is what happened with the problems of Corsica or the animal flours; there are different practices in both Assemblies. And then the Commissions prove to complementary, although they work on the same subject together.

Returning to the subject of Government scrutiny, this plays a special role in the Senate. The characteristics of the control of the Senate are explained by the way in which the Senate is selected in a sectorial manner and they are also defined by the length of the term of the Senators, something which influences greatly the way problems of daily life are considered and, above all, it is very important to a greater independence from the Government. It is important that the Investigative Commissions created by the Senate are drawn from a majority of political opinion. The Senate is a permanent body and the function of scrutiny represents a greater continuity and coherence of the legislative powers.

The actions of the Investigative Commission of the Senate in regard to the prison conditions have led to important discussions in public sessions, which have resulted in the proposed parliamentary bill. In general, the recommendations or proposals issued by these Investigative Commissions or the Information Missions are concluded with a public debate which is held with the Government; later on, a bill or act is passed. At least that is the way it is done in our Senate.

The Senate has often played a pioneering role. We have always been very innovative in our scrutinizing functions and so, in 1972, we created a new scrutinizing tool to supervise the application and compliance with the laws by the Governments.

Let's talk now about budget control. The special reports of the Financing Commission normally make use of their investigative powers in regard to the accounts, a

power very similar to that of the Investigative Commissions, in order to control in a practically permanent way, the use of public funds, and achieve more effective public policies and a greater transparency of the State accounts. In turn, the speakers of the Bills for the financing of the Social Security System have held for some time an investigative power, which they have made use of. The Senators have investigative powers. Regarding the control of the European policy, the Senate has created two new and very original ways of exercising scrutiny. We have created the session of oral questions regarding European matters, as well as a permanent administrative body in Brussels, that gathers all the information that is later on discussed by the Senate. These two scrutinizing tools have proven to be very efficient, and they have been recently adopted by the National Assembly.

When I became President of the Senate, I committed myself to scrutinizing the Government, because I am convinced that to renew parliamentary scrutiny is something we wish to do and we have to be able to exercise it. The control by the Senate is crucial in this reformation, an element which will foster democracy and, above all, improve the information for the citizens.

>From this point of view, I am convinced that we still have a lot to learn. We can learn from our respective experiences. Therefore, ladies and gentlemen, I think that those of us in the different Upper Houses should exchange our respective experiences. It would be very interesting to discuss how these reformations are being carried out in the different countries. This is something, in my opinion, that is happening in all of the democracies in the Western world.

Thank you very much for your attention.

**HONOURABLE PRESIDENT OF THE RUSSIAN FEDERATION COUNCIL**

(Mr. Serguei Mironov): Dear Mr. Lucas. Dear Colleagues, I am sincerely delighted to participate in one more meeting of my colleagues, with the desire to continue to carry out our significant investigations.

Before beginning my brief talk, I would like to sincerely thank my colleagues of the German Federal Republic, the Netherlands, Spain, the United Kingdom and the Republic of Slovenia for their supporting the idea, as well as the possibility offered by the Senators of these States to participate in the Seminar on “Constitutional Status of the Upper Houses of the Parliaments”, which has been held two times already under the auspices of the Russian Federation Council in Moscow and which has been, according to the unanimous opinion of its participants, highly useful for our inter-parliamentary cooperation. The next meeting of the seminar will be held in June of this year in St. Petersburg.

The subject presented today is related to what we discussed in our previous meeting in Ljubljana: “Influence of the Upper Houses in the development of democracy and the role of society”. The mutual relations between the legislative and executive branches of power are, in my opinion, precisely what influences most directly the level of democratisation of society and determines the juridical and humanitarian strategy of the development of the State. Obviously, the role of control of the Parliaments and in particular that of the Upper Houses is outlined in the Fundamental Law of each State.

Russia, in the present stage of its history is traditionally considered as a Republic with a semi-presidential form of Government, where the Chief of State is elected by the people, while he himself appoints the Prime Minister and the Government. The Government must enjoy double confidence: that of the Chief of State and of the Parliament. A unique Russian characteristic would be that the Chairman of the Russian Federation, according to the Constitution, is the Chief of State, but is not formally the Head of the Executive Power.

The Chief of State is obliged to guarantee the functioning of all the branches and levels of Government power. The Government is headed by the Chairman of the Government, and it is the Government with its Chairman, the one who will respond before the Parliament for the application of the laws and the federal budget.

The Constitution of the Russian Federation of 1993 furnished the Lower House of the Russian Parliament (the Duma) with competencies aimed at the participation in the process of appointing the Government and the Chairman of the Government, and in the procedure of a motion of censure against the Government. In addition, it is the Duma which annually receives, first of all, like all the laws, the Federal Budget Law to be adopted in four readings.

The Upper House does not participate in the procedure of motion of censure against the Government, but this does not mean that it is separated from the daily control of its activities. In fact, the Federation’s Council does not formally confer the necessary competencies upon it under the Constitution which would allow it to influence the actions of the Government and literally control the execution of the laws on the part of the Government. However, according to the Constitution, the Federation Council appoints and removes from their post, the Vice Chairman of the Treasury House and half of the auditors. I wish to remind you that the Treasury House is the body of parliamentary

control, created joined with the Lower House to verify compliance with the Federal Budget Law of the Russian Federation.

The Accounts Court, whether it be through appeals and interpolations from the Houses of Parliament, or of its own accord, regularly presents information to the Federation Council as well on the compliance of the Federal Budget and results of the controls which it carries out. In the system of the bodies of power, there is another institution whose jurisdiction allows the Federation Council to control the Government's activities. It is the Constitutional Court of the Russian Federation. According to the Constitution, the Upper House of the Russian Parliament has the right to direct itself to the Constitutional Court of the Russian Federation in order to demand that not only the laws, but also the regulatory acts of the Government, be declared anti-constitutional. Such a circumstance makes it possible not only to appeal against the Federal Budget Law, but also verify the constitutionality of the provisions of the Government and the International Treaties.

The main role in the preparation and conclusion of Inter-Governmental Treatises is played, of course by the Government. However, as the ratification of Russia's International Treaties is carried out in the form of a federal law, the Federation Council has the right, even after the International Treaty has been approved by the Lower House, to direct itself to the Constitutional Court to ask that it be declared anti-constitutional.

If we speak about the specific characteristics of the competencies of our House in regard to the control over the Government's activities and compliance with its own legislative activity, we can point out the following: according to the Constitution, the federal bills approved by the State Duma must be examined by the Federation Council when they regard financial matters such as the federal budget, taxes and federal duties, financial, monetary and credit regulations, and customs and currency issues. That means that those laws cannot be enacted by the Chairman, if they have not first been examined by the Federation Council.

Also within the scope of elaboration of laws, mention should be made of the fact that the Federation Council is furnished by the Constitution with the right of legislative initiative and under this function, it has the possibility of initiating the reform of any scopes of social relations. Also closely related to the legislative activities are the audits or parliamentary appearances which are always carried out with the participation of the Government representatives or representatives from other bodies of Executive Power. The parliamentary appearances are also a specific way of controlling the activities of the Government, for they themselves cover those subjects and problems of juridical space and the practice of the application of the right, which makes it possible to show civil society the strategic guidelines for the activities of the state bodies directed at carrying out and protecting the constitutional rights of the citizens.

Other mechanisms which only have legal and not constitutional backing are the interpolations: a Member of the Federation Council has the right to address a question to the Chairman of the Government, Members of the Government and a series of other official posts regarding matters which are within the competency of these bodies and official posts. The answer to the question must be signed by the person to whom said question is addressed and dispatched in a period of no more than 30 days. The promoter of the question has the right to participate personally in the sessions of the corresponding

bodies dedicated to examining the subjects he has raised. Something similar occurs with the establishing of the questions raised to the Government, which are usually divided into two parts: intervention of a Member of the Government on a major problem and his responses to oral questions asked by the Members of the Federation Council. Unfortunately, the law does not foresee mechanisms for an obligatory reaction to the questions raised by the Members of the Federation Council, nor responsibility from the bodies of the Executive Power and official posts.

In conclusion of my speech, I would like to say that the Upper House of the Russian Parliament is furnished with constitutional competencies, which can be divided into two groups: those which we are obliged to carry out and those which we have the right to carry out. However, we are clear that the only origin of the power is the people. Therefore, our activity is such in the realisation of our obligations as in the realization of our rights, which should be directed entirely at the protection and guaranteeing of the constitutional rights of the citizens, who determine, the sense, content and activities of the Legislative and Executive Powers.

Thank you very much for your attention.

**HONOURABLE PRESIDENT OF THE POLISH SENATE** (Mr. Longin Pastusiak): Mr. President, Distinguished Colleagues, Ladies and Gentlemen, I would like to express my deep appreciation for the very warm hospitality extended to us here.

The control is, together with legislation, one of the Parliament's basic functions as a representative body. It is an inherent element of parliamentary institutions since its beginnings. It is crucial today for democratic survival, with balanced division of power. The Polish Constitution states that all organs of state authority are equal in status. This is additionally guaranteed by a system of mutual restrictions forcing authorities on all levels to cooperate with each other.

Subject to parliamentary control are the Government and its agencies. Parliament's task in this field includes the gathering, processing and assessing of information, as well as the publication of its findings. In order to fulfil these functions properly, Parliament needs special legal and judicial instruments, procedures and statutes enabling it to gather and store data on Government projects. Most important in this respect is Parliament's right to obtain such information and call Ministers and other Government officials to its meetings. Under Article 95 of the Polish Constitution, supervision of the Cabinet is reserved solely for the Parliament's Lower House. The Members of the Lower Chamber have the exclusive power of inspecting and approving the Government's budget reports, to appoint the Investigating Commissions, and advise the Government and its Members on their political and constitutional responsibilities. This does not mean, however, that the Senate has no direct control over the Government in Poland. Ever since its reinstatement in 1989, the Polish Senate has to some extent overseen the Government's executive work; it assumes this right as a representative body, as well as through the bills, and through the Constitution.

I wish to point out that the supervision and legislation are closely related to one another. The Senate's legislative work largely consists of processing information about areas requiring legal changes, and assessing the true need for such changes. Under Article 16 of the norm which regulates the Rights of Members of Parliament, the Senate Committee Members are entitled to demand information from the Ministers and other High State Officials. If required, such information must be duly provided.

It is up to the Senate Committees to define to what extent they make use of this right. Intervention is a frequent form of Government control over administrative methods and these interventions can admit public complaints and requests for information from the press or from reports from the Senators themselves. Senators are allowed to control the

work of Public Administration and the activities of Government-controlled and state-owned companies. The Governmental bodies are obliged to provide full information on their activities within two weeks as of the request submitted by a Senator or by the Senate Committee. The so-called Senator's statement is another way the Senate has to influence public life in Poland. These statements are submitted at the end of each session of the Senate. They can be general in content, but also, and usually, they are addressed to a given Member of the Cabinet. There can be a request for comments and opinions and, specifically, the Ministers are obliged by law to reply to the Senator's statements.

The Senate also exercises its supervisory function through other channels, plenary debates on Government-related issues, the resolutions for the Government bodies, and the Senate Committee meetings with the participation of the Members of the Government.

It is also noteworthy that under Article 212 of the Polish Constitution, Poland's Ombudsman is obliged to report annually on his activity to the Senate. Such reports must include analyses of the legal situation in the areas under his jurisdiction, specifically in cases of police negligence, faults committed by the Public Administration, etc. The reading of the Ombudsman's Report is one of the Senate's regular tasks.

Although Poland's Higher Chamber has no true control over the Government, nevertheless it monitors the Government's work in many ways and is considered an important factor in the country's political scene.

Mr. Chairman, in conclusion I would like to say that the Senate has also some degree of control over the President of Poland. The President is obliged to notify the Senate of all ratifications and terminations and signings of International Agreements and Treaties. The President may also present messages to the Senate, and also the Senate participates in the process of impeachment of the President of the Republic. So far this has never happened and they have never used these powers. Thank you.

**HONOURABLE PRESIDENT OF THE GERMAN BUNDESRAT** (Mr. Wolfgang Böhmer): Dear Mr. President, Colleagues of the Senates, Ladies and Gentlemen. First of all I wish to express my deep gratitude to the President of the Spanish Senate for this invitation and my recognition for the wonderful location of this Fourth Meeting of our Association.

It is a pleasure for me to be here for the first time as the President of the Bundesrat, in order to exchange opinions and points of view with you for the first time. During my term, which has only lasted one year so far, international relations are being expanded in the Bundesrat and we are taking on responsibilities in this institution on a European level. This is something that I am attending to personally and we are now in a very important phase. You know that the Convention of the European Union is meeting right now, trying to draft a constitutional treaty. And we feel that it is very important in this case that the role of the Second Chambers should be appropriately taken into account. We should exchange our views right now on what we think is really appropriate.

Another important element for me has been the meetings of the French Senate and the Bundesrat that were held on the 22<sup>nd</sup> of January this year in Paris, on the occasion of the fortieth anniversary of the Treaty of the Elysses between the French Republic and the German Federal Republic. Our colleague, Mr. Poncelet, has used this opportunity to express the fact that both Houses are determined to keep on collaborating and I also hope that we can extend that cooperation to all the Members of our Association.

As to the issue at hand, the control of the Government by the Second Houses, I would like to discuss the following: based on the structure of the German Federal Republic and the different German Länder, which have many powers and competencies of their own. As regards the unlimited use of those rights, there is also the control on the part of the Federal Government. According to the German Constitution, only the Bundestag can control the German Chancellor and he needs the confidence of the Bundestag. The Bundesrat, as the representative Chamber of the different Lander, does not have a direct influence on the forming and revocation of the Government. However, the Bundesrat, in addition to the Bundestag, is also an organ for Government control and this control is carried out above all in the drafting of legislation.

In the Federal Republic of Germany, most of the laws are derived from the Government's bills. The Bundesrat has the first say in the parliamentary handling of the bills, because the Government must present them before the Upper House. This House is



empowered to consider these projects, which especially reflects the power of the Bundesrat.

The Federal Government in this phase of the legislation does not intervene yet, but the first comment that the Bundesrat may make is a very important one in order to see what will be the result of this last voting of the Bundesrat. Therefore, the Federal Government cannot ignore the view of the Bundesrat. The Federal Government presents its opinion in writing in a reply to the Bundesrat's opinion. Later on, the decision made by the Bundestag goes back to the Bundesrat for a second phase. We can check then whether our first input has been taken into account or not. The laws which specifically affect the interests of the Länder can only be enforced if they have been expressly passed by the Bundesrat, and that also applies to any law that modifies the Constitution, and which affects the funding of the Länder or intervenes in the sovereignty of the Länder.

In practice, more than half of the federal laws require approval. In one out of every two new laws, the Government needs the approval of the Bundesrat, and when they make their decision they must take it into account. That shows the tremendous importance of the control activities which the Bundesrat can exercise in Germany.

If the Bundesrat does not approve a bill, a Conciliation Committee can be created with Members of the Bundestag and the Bundesrat in which the possibility of an agreement is studied, so that a compromise can be reached. But if these efforts fail, so will the bill.

The Bundesrat also participates in the legislation, which does not require their approval and they are what we call "laws without a possible objection", in which it appears as a participating party. Should the Bundesrat oppose one of those laws with an absolute majority, that law may be refused by the Bundestag. If the Bundesrat has had two thirds opposition, the Bundestag must also have a two thirds opposition.

Another important role of the Bundesrat affects the rules and regulations for the enforcement of the laws: The Federal Government and certain Federal Ministers require the approval of the Bundesrat, and the right to approval means that the Bundesrat may co-determine equally the content of the law.

In turn, Article 52 of our Constitution establishes that the Bundesrat must be continuously informed about the progress of the activities of the Government, and that means all the activities of the Government, and not only the projects related to legislation,

but also information about the general political situation, the foreign policy and the defence policy. The Bundesrat also has the right to include any Member of Government in its sessions to ask questions, and it may also make extensive use of the Committees. There are also representatives of the Länder in the Government that must intervene whenever they are required to do so and they can be made accountable or give reports or answer questions.

Therefore, there are many opportunities to control the activities of the Government and it can in some cases play a decisive role. This is also applicable to European Union matters. This point is included in our Agenda for the second part of the day, but, unfortunately, as I will be unable to attend, please allow me to make some comments in relation to the Bundesrat in Germany.

According to Article 23 of our Constitution, the Bundestag and Bundesrat intervene in foreign policy. Therefore, the Bundestag and the Bundesrat must be informed as soon as possible of the status of the situation of international policy. The Bundesrat also takes a stance in the face of the directives of the European Union. The power of the Bundesrat must also be taken into account by the German Government; that is, whenever the European directives affect certain areas. This is not a binding stance, but it must be taken into account. As to the competencies or powers of the Länder, the autonomous regions in Germany, the Bundesrat's criteria is decisive. Whenever the legislative capacities of the Länder are affected, the representatives of the Länder can even take a seat in Brussels to negotiate with the other States.

In summary, we can say that the Bundesrat is a very difficult partner for the Federal Government. The Bundesrat, as a Second Chamber, can make sure that the Government cannot impose its own programme unilaterally, for it can force the Government to compromise with the corresponding majority in the Bundesrat. As a holder of broad instruments for control, it is also taking on a great deal of responsibility. The fact that in the previous two legislative terms, more than 800 bills were presented, and only 5% of them failed in the Bundesrat shows that the Bundesrat has been very aware of its responsibilities.

On the other hand, the Federal Republic of Germany very frequently takes a critical stance in relation to this very influential position of the Bundesrat, and it states, above all, that the amount of bills that require its approval is too large, and that is why the possibility of reducing these laws is being studied so that the power is reduced, and consequently, the influence of the Bundesrat as well. I am aware that not all of the

Members of this Association have such broad rights, as the Bundesrat has, and this explains the criticism, which can be made or is made from time to time of the Bundesrat in Germany. Very often the possibilities for action are limited, but we, the Second House, although we have very different powers, should be consistent in the use of our rights. And the difference of opinion and the conflicts with our Government should also be assumed.

The existence of conflicts is also a part of the democracy, but it is precisely in a democracy that we try to find solutions.

And in conclusion, please allow me to talk briefly about European matters. At present, in the Convention, as I have said before, proposals have been made for the strengthening of the European Parliament. There is unanimity in the sense that there should be national control from the different States, and with that we will definitely be on the right track. Only through the right action and through a system of control that takes into account the States and all their cultural differences, will we be able to prolong and strengthen the role of the Second Houses in the different States in Europe.

We, the Second Houses, although in different ways, have controlling powers over our Governments, and we must make the most of them consistently, and in that way I believe we will be able to make a contribution to the improvement of the democratic legitimisation and credibility, as well as the acceptance of Europe amongst our citizens.

And finally, Ladies and Gentlemen, please allow me to take advantage of this Meeting as an opportunity to propose that in the year 2005, the next Meeting of the Association of European Senates, be held in Berlin. I will no longer be in this position at that time, but I am sure that my successor will be honoured to welcome you to Berlin in that year. I hope that you will approve of the possibility of that Meeting.

Thank you very much for your kind attention.

**HONOURABLE PRESIDENT OF THE SWISS SENATE** (Mr. Gian-Reto Plattner): First of all, I would like to thank Spain for having invited me to be here, during the Fourth Meeting of the Assembly of the European Parliaments.

The Swiss Parliament is bi-cameral, the National Council, that is, the Chamber of the People, and the Upper House, the Council of the States, which represents the 23 cantons, with two senators each. They are elected by the majority vote of the people.

These two Chambers have different functions, but they share some powers and this is valid both for the individual election of the different Ministers of the Government, as well as for the legislative process, the budget and, also the general matters of control.

The term of reference for controlling the Parliament has been set forth by the Constitution and by a law that stipulates its main elements. In order to exercise its control, the State Council has different instruments: two special Commissions. One specializes in management and administration, and the other specializes in finances.

This control is exercised continuously in a regular manner. The control exercised by these two Commissions of the State Council covers all the actions of the Government, including difficult subjects such as the police force and military defence. This control is not restricted only to the Government, but also extends to the Supreme Court.

To execute the control function, the different Committees have the right to information. This right is quite ample. The two Committees have almost unlimited access to all the information; they have access to all the Federal Administrative bodies, and the Government cannot tell them that the information is confidential. They have access to all the officials, to all the individuals, and to everyone who can provide further information. In some cases, they can call and take testimony from witnesses, request an expert or request any sort of documentation. And finally, they may also make use of the services of the Administration with or without prior notice.

For important cases, Parliamentary Investigation Committees may be created. The investigation commissions have almost jurisdictional powers. There have only been three cases in the 150 year-long Parliamentary History of Switzerland. In the same way, as in most of the Senates, each Senator may ask written or oral questions and interpolations.

Dear colleagues, the Senate or Council of the States holds and exercises a close control over the actions of the Government and has a very broad right to information. Contrary to the Commission of Accounts, the State Council has a lot of democratic legitimacy, for, as I said, it is the expression of an assembly elected by the people, by a majority vote. This is not the case of the Government Members elected by both Chambers, nor is it the case of the Judges of the Supreme Court.

I am going to conclude with three points: First of all, control is not the solution to all the problems of modern States. Parliamentary control is necessary, but it cannot replace innovation. Control must not block the functioning of the Government.

Second, control must not be inquisitory. The goal of control is not systematic criticism, but rather a counterbalance of the actions of the Executive Powers. And finally, the control improves the transparency and the information of the citizens on the functioning of the State and makes it possible to improve the conditions of democratic debate. I think that this is the main role of the Upper Houses of the European countries.

I hope I have been able to convince you. Thank you very much for your attention.

**HONOURABLE PRESIDENT OF THE UPPER HOUSE OF THE DUTCH SENATE** (Mr. Gerrit Braks): Ladies and Gentlemen, allow me first of all to thank you, Mr. President, for your initiative to organise this Fourth Meeting of the Association of European Senates, and for our warm welcome to Madrid. It is a great pleasure for me to see that so many Speakers have reacted positively to your invitation, Speakers from the Old Europe, as well as from the Candidate Members of the European Union, the Russian Federation and Bosnia-Herzegovina. It appears that Mr. Poncelet's initiative to found the Association has become a success, and that the Association is greatly valued.

As far as the subject of the debate of this morning is concerned, "Government control by Upper Chambers", I must tell you that the Dutch Senate only plays a limited role in controlling the policies and actions of the Dutch Government.

During the debates on the State's budget in the Senate, Members may discuss at large the current and future Governmental policies.

Another instrument for control that the Senate may use is the right to raise written questions. Members are entitled to put written questions to the Government. Questions and their answers are then published as an Appendix to the Official Senate Gazette.

Yet another instrument for control that the Senate may further exercise is the right to question the Ministers and also the right to institute an inquiry (to date, the Senate has never exercised the right to a Parliamentary Inquiry).

The field in which the Senate does play a formal role in controlling the Government is within the framework of the decisions of the European Council of the Ministers of Justice and Home Affairs, a subject which is listed on the Agenda for this afternoon.

I will bring this subject up again this afternoon. Thank you very much for your attention.

**HONOURABLE PRESIDENT OF THE ROMANIAN SENATE** (Mr. Nicolae Vacuroiu): Mr. President, Juan José Lucas, esteemed colleagues; I would like first to thank our host, the Spanish Senate, for this excellent organisation of the Fourth Session of the Association of European Senates, which is very useful to our activities.

We have heard different presentations and different speeches and I have to confess that there are a lot of differences in relation with the functions of the Romanian Senate in regard to control over the Executive power. For us, it is extremely important to hold this Meeting, just like the previous ones, and just like the future ones. If we are successful, we would like to continue these debates in order to amend the Romanian Constitution.

The Committee that has been created to amend the Constitution confronts issues like the establishment of the Parliament and the separation of functions and responsibilities between the Senate, the House of Representatives and the House of Deputies.

The main idea is that there has to be a separation of functions and the Senate should primarily increase its functions related to International Treaties, the ratification of International Protocols, International Relations with various bodies... It can also have legislative competencies and interventions in the organic laws, and it should increase and strengthen the Senate's control over the Executive Power. The idea is that Senators have a greater representation than the Deputies. There is one Senator for every three or four Deputies in Romania. The Senate should have greater power and control over how the Government executes its functions, functions which are granted to it by the Constitution and the Laws. For the moment, this function of control is balanced between the Senate and the Congress. We have the same responsibility as the legislative sphere.

I am going to say something about a subject raised by President Poncelet, the parliamentary political forces are very much important. There are instruments such as: questions, interpolations, simple motions, motions of censure... By using these instruments, the opposition is exercised, whose effectiveness will depend upon the size of the minority parliamentary groups. For example, for a simple motion, you need one-third of the Senators to endorse it. To initiate a motion of censure, which could even result in the fall of the Government, you need 50% plus 1 of the Senators and the Deputies. This does not mean that these instruments are not useful. Very often they are aimed at the communications media. The opposition parties will use these instruments to increase their

number of voters. Of course, the election battle usually starts immediately after the previous elections are over. Interpolations will take place in the plenary session of the Senate and the Ministers will have to be present. If they cannot, they can send a Secretary of State. These debates are broadcast live or recorded on national radio and TV. The answers have to be provided within a period of two weeks. But in the process of the debate, additional questions can be asked, so that there is a dialogue on the issue being discussed.

The motions cannot deal with the general policy of the Government; they have to be specific. They must be debated within a period of five days and one third of the Senators must support the motion for it to be accepted. It is mandatory for the Minister in question to be present in the debate before the Parliament, but unfortunately we have not had cases where the final decision was taken by the parliamentary majority.

One extreme form of control is represented by the creation of Investigative Subcommittees. The fourteen standing Committees of the Romanian Senate (Education, Health, Economy...), each made up of eleven senators, have the right to set up Investigative Subcommittees without requesting anyone's prior approval, for a specific issue.

These Investigative Subcommittees can hire experts and can go on fact-finding tours throughout the country, in order to draw up a report to submit in the plenary session of the Senate, to present as a simple motion or as a censure motion.

The Investigative Committee may be a somewhat more complex route. It has to have the backing of one third of the Senators and there has to be a decision on the clear purpose of the investigation. These Committees will have a President, a Vice-President and a Secretary, and they can hire experts. They can carry out investigations in specific areas and issue by a certain set date, a concrete report before the Senate, based on the decisions made. They can also take legal initiatives on a bill which could finally be approved by the Parliament.

They can also, in the exercise of their functions, summon Ministers for hearings or other Ministerial staff, in order to find information on a specific phenomenon or issue that has been brought to their attention. These hearings will be mandatory – they are not optional –. However, the Senators and Deputies can also ask the territorial or local administrations to provide information on the way the budget is being used at that particular level.



In the Senate we also have a number of special Committees which have Control as their main role, like, for instance, the Committee to combat abuses and corruption. It is a permanent, standing committee which receives a lot of requests or complaints in various domains. They initiate investigations, draft reports and submit them to the President of the Senate or Chamber of Deputies and then they are discussed in plenum.

I might add here that, in the Senate, together with the Chamber of Deputies, we have a lot of institutions that are subordinated to us directly. The National Bank, the Court of Accounts, the Ombudsman, National TV and Radio, Public TV and Radio, the National Audio-Visual Commission... They all have to submit annual reports which we will debate and will endorse, or not.

It is, of course, very important in my opinion as a Senator, when we speak about overseeing functions over the Executive Power, to say that results so far have been positive. However, we have not yet finalised the amendments to the Constitution for the strengthening of the Senate's overseeing function of the Government. There are, however, subjects that are of enormous interest, for example, Romania today has a very serious debate about compatibilities and incompatibilities, a debate which will probably be finalised in about a week or so. And in all sincerity, when we analyse the documents from the respective countries, I have reached the conclusion that there is such a wide diversity that it will be very difficult to find a formula or mechanism that will be satisfactory for everyone at present.

Please allow me to apologise for speaking a little longer than expected, but there are so many subjects to discuss.

Following these few remarks, I thank you once again for listening to me so patiently, and I hope we are successful in increasing the role played by the Senates in consolidating democracy in our countries.

Thank you.

**HONOURABLE PRESIDENT OF THE NATIONAL COUNCIL OF SLOVENIA** (Mr. Janez Susnik): Mr. President, distinguished colleagues, dear friends. To begin with, I would like to thank the President for inviting me to the Fourth Session of the Association of European Senates. May I take this opportunity to congratulate you for your excellent organisation of this Conference, as well as for the hospitality that is being extended to us.

Let us take a look at the role of the Senate in the control of the Government and its importance.

The Government is always responsible to the First Chamber, whereas the issue of its responsibility towards the Second Chamber is regulated differently. In the perfect bicameralism system, the Government is responsible to the Second Chamber as well. In spite of the foregoing, the majority of the Second Chambers have certain competencies attributed to them in their respective Constitutions, which allow them to control the Executive Power.

In the case of Slovenia, the National Council has no competency in the information of the Government, and the Government is not responsible for the National Council either. In the Constitution, there is no specifically determined direct competency for the control of the National Council over the Government.

Constitutionally provided competencies of the National Council are predominantly related to its cooperation in the exercise of the legislative function. As most decisions on the State level are taken within the framework of this function, it is understandable that the powers of the National Council do not influence only the activities of the National Assembly, but the activities of the Government as well, although in an indirect manner. This is valid for all the powers of the National Council in the legislative area.

May I mention first the right of the National Council to refer its opinions to the National Assembly on the matters of its competency. In practice, this means that opinions are raised before the National Assembly and it is this body that decides whether it should take the recommendation under consideration or not, when it comes time to pass the law. The decisions adopted by the National Assembly on this point may be very important to the Government. That is why it may be of great interest to the Government to try to influence not only the National Assembly, but also the National Council, when this is forming its opinion. The Government is aware of the fact that the decisions of the National

Council can create various problems, and this is why the Government becomes strongly involved in the work of the National Council. This is to a great extent valid for the discussions about the laws when the Government tries to convince the Councils not to veto its initiatives.

The relationship between the National Council and the Government is regulated by the National Council. The National Council and its working bodies have the right to request from the State bodies, specifications and data about the methods and the discussion. Furthermore, the representatives of the Government can attend the sessions of the National Council and the different Commissions. A special point on the Agenda are the questions and initiatives which the National Council, may take on subjects of their competency. In this way, according to the Constitution, the National Council is guaranteed the competency to request an inquiry on the matters of general importance, that is, the parliamentary inquiry. This means that it cannot by itself demand a parliamentary inquiry, although it can initiate it upon the request of the National Council, following a decision of the National Assembly. The Regulations of the National Council adopted in 2002 establish the relationships between the National Council and the National Assembly. The parliamentary inquiries can lead to the demand for the political responsibility of the President and the Members of the Government. The National Council can in this way directly influence the relationship with the Government. In the ten years of its functioning, the National Council has used this competency only three times. In practice, the cooperation with the Government is good. The Members of the Government respond to the questions of the National Council, and take part in the sessions of the Council.

The National Council has, according to the Constitution, the power to give the National Assembly opinions about all the matters under its competency, which is, however, carried out only to a small extent. It is only the work groups of the National Council, which give their opinions about the bills in the legislative procedures to the work groups of the National Assembly.

In the end, it is the Second Chamber which controls the work of the Government. This Second Chamber is composed in a different way to that of the First Chamber and it also has different terms of power. The National Council can control the work of the Government in a very efficient way. The corrective process in the legislative procedure is one more of the competencies of the National Council. Unfortunately, the Slovenian National Council does not play an important role, and that is why its supervisory role over the work of the Government cannot be carried out in a more efficient way.

Thank you very much for your attention.

**PRESIDENT** (The Honourable President of the Spanish Senate, Mr. Juan José Lucas): Thank you very much, Mr. Speaker. Thank you for your contribution to this conference and for allowing us to know better the role of the National Council of Slovenia.

Next we are going to give the floor to the Speaker of the Belgian Senate, Mr. de Decker, and we have to say that he is especially loved and appreciated by all the Spanish Senators, loved because of the permanent and strong stand he has taken, as the Speaker of the Belgian Senate, in the fight against terrorism.

Now, we will give the floor to Mr. de Decker.

**HONOURABLE PRESIDENT OF THE BELGIAN SENATE** (Mr. Armand de Decker): Thank you very much for your very kind introduction. First of all, of course, I would like to thank the Speaker of the Spanish Senate, Mr. Lucas, and the Senate itself for welcoming us to this Fourth Session of this Conference of European Senates, which allows us to enjoy his well-known hospitality, and to enjoy Madrid as well. Once more I would like to thank Mr. Poncelet of the French Senate, who has encouraged the creation of this Association, because I am increasingly more convinced of how useful it is to share our experiences, which is especially helpful when some of our Governments question the principle of the two-Chamber system. But also, because it also gives me an opportunity to underline the benefits of this two-Chamber system due essentially to the fact that our Assemblies should be Houses for reflection, Houses for getting together – in the case of the Federal States – and also Houses that look out for the quality of the legislation.

And here I would like to mention an anecdote I heard during the World Conference of Senates, that Mr. Poncelet organised. When the United States adopted their Constitution in 1787, two years before the French Revolution, but under the influence of the Enlightenment, Washington presided over the Convention, while Jefferson was on some diplomatic mission in France. And when Jefferson returned to the United States, he addressed Washington and said: “Mr. President, why have you decided to give the United States TWO Houses?” And Washington replied: “Why are you stirring your coffee?”. “Well, to cool it.” “Well, the Senate, my friend, is also going to cool our legislation.” I believe that explains the philosophy behind our two Houses.

I am going to focus on the role of control of our Government by the Upper Houses.

Dear colleagues, Governments govern and the parliaments control or scrutinize. That is what tradition says; the control of a Government by Parliament can be expressed in different ways, and it refers to different areas of the Government's work. For example, the questions which the Parliamentarians address to the Members of the Government make up the most widely known form of control, even though there are other formulas of parliamentary scrutiny and control, such as the Parliamentary Investigative Committees. The most famous one in the Belgian Senate was created after the events of Rwanda and the death of some of our soldiers in that country in 1998.

I would also like to mention that the right to ask questions is not enshrined in our Belgian Constitution, but it originates from the principle of Ministerial responsibility, which is included in Article 101 of our Constitution.

Since the reform of 1993 which put an end to the integral two-Chamber system, in which both Chambers had the exact same competencies, the Ministers are accountable only before the House of Representatives. The Belgian Senate no longer has the power to give a vote of confidence to the Government or withdraw it. But this does not prevent the Belgian Government from presenting before the Senate, its Governmental Declaration and its annual Declaration of General Policy.

Based on my experience, I would like to say that the fact that our Senate no longer has this sanctioning role has some beneficial and useful consequences, because it gives the Senate greater freedom of speech, thought and action, which reinforces its function and role of "counter power" of the Senate.

Nevertheless, besides this reflective role, the Senate also has a lot of power in the parliamentary control of the Government. Of course, we cannot be surprised by that, since the legislation and the parliamentary control are the two basic prerogatives of parliamentary action. Even though during the constitutional reform of 1993, the Government wanted to reduce the power of control and the capacity of control of the Senators, it wasn't able to do so, because any institutional reform had to be approved by two-thirds, and, of course, the Senators did not admit the possibility of that power being taken from them. How could it be a Chamber of Reflection and Legislation, if it is impossible to ask the Government or the Administration questions at the same time?

Why is there a reference to the procedure of asking written questions to the Senate? We have on the one hand written questions. As the name indicates, we address the questions in writing to the pertinent Minister, and they must be answered within 20

working days, and then, in the Official Gazette, both the question and the answer are published. If the answer is not received, it is published in a different section. There is a regularly published list of questions that have been left unanswered, which is one way to make Ministers aware of the fact that they are not doing their job. And in that case the Speaker of the Senate will complain directly to that Member of Government through the Prime Minister.

The essential advantage of written questions is that it makes it possible to deal with more technical problems. On the other hand, the great drawback of those questions is that in some cases the answer may take too long and sometimes there is no way to react.

A second type of question is the oral question or interpolation. Oral questions, in the majority of the cases, address issues that are of a political nature and they are also of general interest. They may also be urgent in regard to the answer that the Member of Parliament wishes to receive.

These oral questions are usually dealt with during the special hour allocated to questions and answers, which in the case of the Belgian Senate is every Thursday afternoon during the plenary session. These questions are asked in the morning, up until 11:00, and then the Ministers reply as of 15:00.

These questions and answers are drafted in a very precise way because the time allocated is three minutes in both cases. They usually deal with current political events, which from the point of view of the media, are of great interest. The drawback, of course, is that both the question and the answer are very brief, and that other parliamentary Members who would like to, cannot take the floor. The third type of question, which is the most important one for us, are the requests for explanations, which have replaced the procedure of interpolation, with the Government's integral two-Chamber system. With the reform of 1993, the Senators could no longer ask the Government to justify its actions through a motion of censure. On the other hand, it was difficult to completely eliminate the possibility of the Senators' interrogating or asking questions of a Minister, without it being followed up with a period of debate with the intervention of other Senators. All of this is followed, not by the motion of confidence, but by a commentary on the policies applied by the Government. In this way, the procedure for a request for an explanation was created, which is used profusely and often. From 1995 to 1999, during this legislature, 633 requests for explanations were presented, and over 1,100 oral questions. And during this legislature, we have had 965 requests for explanations and more than 1,250 oral questions.

The time allocated to the Senator for these requests for an explanation is 15 minutes, instead of the 3 minutes of the oral question. The other Senators can participate later on for 10 minutes each. The Minister also has 10 minutes for a more complete, detailed answer, which is impossible in the case of the oral questions.

I want to emphasize as well that the Minister will answer that request for an explanation, at the latest, during the week following the presentation. That means that they have a longer time both to prepare their answers. It is also important to emphasize that since 1993, the Senate has always respected the philosophy of the Government, and in the Senate, parliamentary issues have an important informative role. It is true that after having listened to the answer of a Minister, the Senate may, through a motion, say that they agree or disagree with this or that policy. These are the three procedures that we have.

I would also like to add another procedure for control similar to what exists in Switzerland and which exists in Belgium since 1991, which consists of a more detailed control of police services on the one hand, and, of information, on the other.

The police services are controlled by a Control Committee for the Police. The secret service, on the other hand, be it civil or military, is controlled by a Control Commission, made up of three magistrates with investigators, who have the status of judicial police. This Committee drafts a report for the Speaker of the Senate, for the Government and for the Monitoring Committee of those services, made up of five Senators. In this formula, the control is carried out by an intermediate body of Magistrates, between the secret services on one hand and the Senate on the other, and it is a formula which works quite well. It has many advantages. The first being that when the secret services do not respect the privacy of the citizens, they can resort to the Senate in order to verify whether they are actually abusing their power. In most of the cases, this allows the secret service to address a Senate committee and to explain their work, and thus find democratic support for their activity in a much easier way than if they did not have this control.

I believe that the lesser the controls, the more mysterious and complicated is the situation. With this system that has two sides, we have reached a satisfactory situation for the citizens and for the secret services, which also helps to bring a sense of calm to the political world.

Thank you very much for listening.



**HONOURABLE SECRETARY GENERAL OF THE SENATE OF THE CZECH REPUBLIC** (Mr. Petr Pithart): I would like to excuse the President of the Senate and of the Parliament of the Czech Republic, Mr. Petr Pilhart, who has been one of the major promoters of this Association. Today is the third round of voting for the new President of the Czech Republic, and pursuant to the Constitution, the President is elected by the Parliament, and so it is imperative for all of the Senators and Deputies to be present.

Mr. Pithart has nevertheless drawn up his contributions to both of the topics of today's Meeting, which are at your disposal in a written form. The first of them discusses the Czech Senate, which is a Parliamentary Chamber with no links to the Executive power, but which participates in important decisions which affect the sovereignty of the State and its commitments.

The second subject describes the participation of the Senate, within the framework of the control processes of the negotiations in our accession to the European Union, as well as the preparation of its new functions when we are Members.

Mr. Chairman, I would like to take advantage of this opportunity given to me today to confirm once again that the Czech Senate is prepared to hold the next meeting of the Association in Prague, as we agreed in Ljubliana. We proposed holding this Meeting from 22 – 24 September, 2003. We are sure that it would be a good time to discuss Europe's problems. We recommend talking about the main issues discussed in the Convention, as well as the possibility of the existence of a Second Chamber in the heart of the European institutions, whether it be the reformed COSAC or any other institution.

Bicameralism, in fact, represents a general principle which can be materialised in different ways. And it is this question that can stimulate the following phase of our discussions, which are oriented not only towards internal problems of the bicameral system, but also towards general ones as well. We are making progress when dealing with some European issues, but we are regressing with others, and so, even though President Pithart does not consider that these issues have already been overcome, he is nevertheless willing to talk about other things.

Thank you very much in the name of Mr. Pithart for allowing us to make this contribution.

**HONOURABLE PRESIDENT OF THE SWISS SENATE** (Mr. Gian-Reto Plattner): Mr. President, I would like to extend the invitation of the Swiss Senate to host the Association of European Senates in a future meeting. Of course, we will be very happy to be able to go to the Czech Republic in September as has been decided, and we do not want to pre-empt any proposals that have already been presented. However, if it is possible, for the year 2004 or 2005, I think the Swiss Senate would be very happy to host the Sixth or Seventh Meeting of this Association.

I myself will no longer be President, nor even Senator, because this is the last year of my political mandate, but I am sure that my successor will welcome you very warmly.

**PRESIDENT** (The Honourable President of the Spanish Senate, Mr. Juan José Lucas): Thank you very much for such a generous invitation, both on the part of the Czech Republic, as well as by Switzerland, for their institutional generosity and in particular, because these proposals come from individuals, who unfortunately will not be the ones to preside over the Upper Chambers at the time. I ask that the Speakers submit in writing the comments, observations, modifications or changes that they consider relevant to the Final Declaration of this Fourth Meeting of the Association of European Senates, which has just been given out.

**PRESIDENT** (The Honourable President of the Spanish Senate, Mr. Juan José Lucas): Dear Colleagues and Speakers, some words from the Professor of the Spanish University, Mr. Alejandro Muñoz-Alonso. He is a Member of the European Convention and he represents Spain. He will make a brief presentation about the control of the Government by the Upper Chambers in foreign policy of the European Union.

I have to say publicly that I am quite satisfied by the fact that he is an individual who works closely with the universities and who is very active in politics and even quite close to my own political career. Mr. Muñoz-Alonso is here with us today to make some comments regarding this new activity, that is to say, the European policy, and the control that the Upper Chambers should exercise over the behaviour of the Government. Afterwards we will have open discussions.

Mr. Senator Muñoz-Alonso has the floor.

**V. SECOND SUBJECT: “GOVERNMENT CONTROL BY THE UPPER CHAMBERS ON FOREIGN AFFAIRS AND EUROPEAN UNION MATTERS”**

**HONOURABLE SENATOR OF THE SPANISH SENATE** (Mr. Alejandro Muñoz-Alonso): Thank you, Mr. President, Your Excellency, Mr. Speaker of the Spanish Senate, Speakers of the Association of European Senates, Ladies and Gentlemen, I would like to start my presentation by expressing my gratitude and my satisfaction at being part of this working session, whose distinguished and numerous attendance is evident proof of the healthy situations of the Second Chambers, which form a fundamental part of the democratic architecture of our State and of the vitality of our bicameralism, as the best way to guarantee the important functions that our democratic Constitutions have granted to the legislative power.

As a former Professor of Constitutional Law, I would have liked to dwell on the importance of bicameralism and its role at the beginning of the twenty-first century. I am convinced that, far from being a typical nineteenth century instrument of legislative power, bicameralism meets the needs of the political times and the demands of modernisation and for improving our structural institutions. I have to keep my presentation short, and I know that this morning this subject has been dealt with, so I will move on to the functions of control of the Parliament and of the Upper Chambers in relation with European Union matters. I will not insist too much on the general aspects of the control of the Upper Houses, but let's not forget that the control functions of the Spanish Senate are practically identical to those of the Lower Chambers, although they are disconnected from the demand for responsibility, granted to the Lower Chamber by our Constitution.

We also wish to say that closely related to this control function, there is also the doctrine of the momentum function, by virtue of which and, above all, through motions, the Government is urged to apply certain policies. This momentum function is very important, politically speaking, and it plays a major role when talking about European Union policies, that by definition cannot be the object of control by the National Parliaments.

In such cases, both Chambers, especially the Upper Houses, may ask the Government to refer their concerns and petitions, above all to the Council of Ministers, so that through the right procedures, they can be taken into account.

Let's talk about the cases of the fishing and commercial crises with third countries, when our Chambers cannot exercise conventional control because these are competencies exclusively of the European Union, but they can gather information and have done so on many occasions, as well as urge the Executive power to refer the matter to the European Union.

Let's think about the attention given to agricultural matters in our Parliaments, although this is a power shared with the European Union, too. All of this parliamentary activity falls under the umbrella of this momentum function. What is the role of the National Parliaments in the activities of the European Union? This is the focus of a lot of attention from the European Convention that started working on this matter a year ago today, and which I have the honour of representing in this House.

Before going into detail about this work, whose conclusions will be included in the project for the Constitution or Constitutional Treaty, which will be presented in the future Inter-Governmental Convention. It is necessary to explain what is the status of the question in this moment of *lege data*. I do not want to talk in detail about the evolution of the control by the Upper Houses, in the matter of the competency of the Union. It is enough to say that the control functions have evolved in all the countries along the lines of the treaties, and they are very different from country to country, depending upon the democratic and constitutional traditions of the different countries.

In the Spanish case, once the Maastricht Treaty came into force in 1993, the general Parliament approved a law 8/1994, of 19 May, by virtue of which the Joint Commission was created for the European Union, with the aim, according to the first article, that the Parliament would participate in the legislative proposals drawn up by the European Commission, and to gather information about the activities of the European Union. As its name indicates, it is made up of Deputies and Senators, and the Presidency of the Joint Commission is held by the President of the Congress, according to law.

The Joint Commission has broad powers to request and receive information from the Government on legislative proposals issued by the Union. It can have discussions about the same draft reports and establish relationships for cooperation with the bodies of other parliaments, and, in general, to deal with all European Union related matters and the repercussions in Spain. Last year, for example, this Joint Commission created a Sub-commission for the monitoring of the work of the Convention and of the future Inter-Governmental Conference, before which the Members of both Chambers report

periodically. The Commissioner, Mr. Michel Barnier, who is a Member of the Convention, has also appeared before this European Commission.

This law establishes that the Government will appear before the Plenary of the Congress of Deputies after each European Council, ordinary or extraordinary, to order to report on the decisions made and also to maintain discussions with the different parliamentary groups. This is an instrument of control in which the Senate does not participate. We do not know why, because there is no Governmental responsibility involved. It is impossible to keep European Union matters out of the Senate, so we really do not understand why this is so.

The Joint Commission is not a Legislative Commission, of course, and therefore its functions can be defined as control functions. The Joint Commission takes part in the Conference of Bodies Specialised in European Matters, the COSAC, which still operates informally. It first happened in Madrid in 1989. We wish to say that the balance of the COSAC activity was relatively negative, and the Convention, at this time feels that we need reforms, so we can be more dynamic.

On the other hand, and regarding the Joint Commission for the European Union, although it has not yet reached 10 years of age, we can say that the results have been positive. It carries out an intense, dynamic activity, and it holds sessions regularly with the presence of Ministers and also different Secretaries of State, so it is well-informed on European Union issues.

Besides the ordinary participation of both Chambers regarding European matters, we also should mention here some extraordinary instruments such as the Meetings of the Presidents of the different bodies that are normally organised by the countries holding the semester-long Presidency. Sporadic work sessions are held with different Commissions of the European Parliament, by means of which they become more involved in European issues, and this is not only done by the specialised Members of the Parliament, but by all Members of both Chambers.

All of these activities show to what extent we are making progress in what Euro Deputy Giorgio Napolitano called “the reinforcement of the parliamentary pillar of the European Union”. This is just another tool to construct a totally legitimate European order, and this is a necessary tool.

Let's now talk about the work of the European Convention on these matters. Although the afore-mentioned norms and regulations will still play an important role, the future Constitutional Treaty will probably establish some joint regulations that will not only normalise the participation of the different National Parliaments in the European Union, but they will also improve the control functions over the respective Governments.

There should be a greater division of powers, which is part of the draft document which is being studied by the plenary session of the Convention. Article 10 of this bill establishes "the exclusive powers of the European Union", while the Member States will only have powers in those matters as long as they have been authorised by the European Union. Some of the powers will be shared both by the National Parliaments and by the European Parliament, and this is regarding binding legislation. The Member States will be able to exercise their powers only when the Union has not exercised its own. It is also said in this draft document that the coordination of the different policies will be carried out by the European Union. We wish to repeat here that although it is not possible to control the Governments themselves regarding the exclusive powers, the momentum function and the right to information in some way permits some control.

With this background on the distribution of powers, between the union and the Member States in mind, let's talk briefly about the growing agreement about the role of the National Parliaments in the European project.

Although references to National Parliaments are continuous, it is important to mention the report drafted by two work groups, specifically Group IV on National Parliaments, presided over by British Parliament Member Giselle Stuart, and Group I, referring to subsidiarity, presided over by Spanish Euro Deputy Iñigo Méndez de Vigo.

There is a certain contradiction; nobody argues that the Parliaments do not form part of the institutional structure of the European Union, but it is also clear that they must take part in the life of the same, while the European Union is a union of different states, and nobody can argue that the Parliaments are an essential part of it, because they reflect the national sovereignty.

In the final report of Group IV, it is emphasized that the Parliaments have a role to play within the framework of the Union. It is also said that to encourage their participation, they would contribute to reinforcing the democratic legitimacy of the Union and bring it closer to the citizens.

The Group considers that National Parliaments should use all their influential powers through their respective Governments and he feels that several measures could improve the current situation. The effective controls of the Governments' actions should be the main role of the National Parliaments in European issues. It is also recognised that the different national parliamentary control systems each have a different approach to the relationship established between the Legislative Power and the Executive Power, in accordance with the constitutional requirements of each Member State.

Of course, there are many national differences regarding the scope of the National Powers in relation with European matters.

Also, the appearances of the Ministers before the Senate differs in different countries, and also the active participation of different permanent Commissions or Sectorial Sub-commissions of these Parliaments and the role they play in the control function. Moreover, the contacts of the National Members of Parliament with the Members of the European Parliament vary from country to country, along with the availability of support personnel.

The National Parliaments do not always use the control powers that have been granted to them by the Constitution or by legislation. It is also felt that at a European level, no procedure should be established to regulate this control. This is clearly the competency of each country, within the framework of COSAC; there should be an exchange of information about different methods and experiences, and it should also contemplate the drafting of several directives and a code of behaviour for the different National Parliaments, establishing the minimum rules required in order to attain an efficient national control.

It is also necessary to amend the Protocol of Amsterdam by regulating the access of the National Parliaments to Community information.

According to the Protocol, the National Parliaments should receive information from the Governments regarding European Union initiatives. In the future, such proposals should be reported directly to both Chambers in the bicameral parliamentary systems. The six-week deadline should be complied with so that the National Parliaments can study the legislative proposals. In fact, yesterday, two projects were issued, the first about subsidiarity, and the second regarding the role of the National Parliaments in the European Union. I received these documents this morning, and I have not had time to study them



thoroughly, but after a first perusal, I really believe that they will satisfy the needs that I have mentioned here.

Group I has decided to establish an “early or rapid alert mechanism”, which is one of the innovating elements, that would allow the National Parliaments during these six weeks to issue a recommendation whenever there is an apparent violation of the principle of subsidiarity. If less than one-third of the National Parliaments agree on this, the Commission would only have to define the goals of such a proposal for legislation. If it is more than one third of the National Parliaments, the Commission should have to amend or withdraw such a proposal. If some Parliaments insist on their objections, it would be possible that, not directly, but through the Government, they could appeal to the European Court of Justice. Also, the Committee of the Regions could appeal to such a Court.

But, for the time being, the proposals have not been agreed upon. Such an early alert system has been welcomed, and some experts, as Spaniard Gil Ibáñez, say that it has very positive points –more than negative ones-- because it does not slow down the decision making process. Also, it increases the role of the National Parliaments in the decisions of the European Union. It also enforces the relationship between the different Parliaments, as well as prevents the National Parliaments from being co-legislators in the European Union.

After the Mandate of Nice, today there seems to be ample consensus stating that the method used by the Convention is proving fruitful. The Constitutional Treaty should ratify this methodology for the future. If the majority sector of the Convention is made up of National Parliaments, 64 of 107 Members (double, if we consider the substitutes), this mechanism would provide a new way for the National Parliaments to participate, so when the Treaty is amended, in addition to the *ex post* participation, through the procedure of ratification and in agreement with the constitutional specification of all the different countries, they would have an *ex ante* participation in the pre-conference meetings.

Other ideas have been presented for regulating the roles of the National Parliaments in the workings of the European Union. This has been the position in Spain of Professor Rubio Llorente and already in the framework of the Convention, Commissioner Michel Barnier, through a personal contribution, has suggested that when the Council is exercising legislative powers, it would be desirable to have the National Parliaments present in all the delegations. In such a case, it would be necessary to define in the Agenda when the legislative functions are going to be dealt with. This would entail that in those cases, the sessions of the Council should be public. Barnier says that the Council would reinforce its legitimacy as a legislative Chamber.

President of the Convention has also issued a note on the role of the National Parliaments within the European architecture.

The President Giscard d'Estaing, who presides over the Convention, also launched the idea of the Congress of the European People, which should talk once a year about the State of the Union.

This institution would be made up of representatives of both of the National Parliaments and of the European Parliament, and it would be called the Permanent Chamber of the Parliaments (European and National ) of the afore-cited *Presidium* Chamber. It would have the functions of monitoring the subsidiarity principle, and it should also supervise the Treaties signed.

However, we should remember here that the failure of the Regional Parliament Conference of 1990 has increased the reticence when thinking of an institution of this sort.

We also must stress the need for a greater participation of the National Parliaments in the European process. And when we talk about National Parliaments, we are talking about both Chambers. In our efforts to make the European Union a living entity in close contact with the peoples and the citizens, both the National Parliaments as well as the European Parliament play a crucial role. What Hans Kelsen wrote in 1920, continues to be true and valid, "the failure of a parliamentary system is the failure of democracy" and he added the "struggle for parliamentarianism is the struggle for political liberty". In 1955, when there was some ideological controversy and many said that this parliamentary democracy was obsolete, Frenchman Raymond Aron reminded us that perhaps with excessive optimism in his work "*L'Opium des intellectuals*", that parliamentary democracy is really enshrined democracy in Europe, and than "the Parliament had the same future as cars or electricity."

In my opinion that means that the greater presence of the Parliament in Europe would only mean a more solid and more democratic Europe.

Thank you very much.

**HONOURABLE VICE PRESIDENT OF THE ITALIAN SENATE** (Mr. Lamberto Dini): Dear colleagues, first of all I would like to congratulate the Speaker of the Spanish Senate for the warm welcome here today. The subject of the session, that is, the control of the Government by the Upper Houses on European matters, is probably one of the most important challenges facing our Parliaments. In my opinion, this goes beyond the conventional function of control in the Government, currently one of the practical evolutions of the legislative powers.

A growing part of the national legislation issued and studied by our Parliament is based on European Union legislation. Therefore, participation in the drafting of the European legislation cannot be reduced to mere control functions. We should understand control more and more, in accordance with the active role played by the Parliaments in the drafting of the legislation that must be complied with by all citizens.

Naturally, the main way of guaranteeing the participation of the National Parliaments in Community Law is by guaranteeing the controlling functions to the Governments. The Government representatives are the ones who attend European Council meetings in Brussels, and therefore it is the Government officials who are directly drafting Community Law.

The National Parliaments have already been controlling these legislative activities with different results. I will not speak in detail about the procedures established by the Senate Rules and Regulations of the Italian Republic in order to provide control instruments very similar to those granted to the Chamber of Deputies, and they are also very similar to those that are in force in different European countries. I think I should mention here the work of the European Convention, as my colleague Mr. Alejandro Muñoz-Alonso has just done. I have the honour of participating in this European Convention in representation of the Italian Senate.

Although the definition of the relationship between the Government Parliaments has not been included among the undertakings of the Convention for it is of the competency of the national regulations, many of the amendments that have been studied will have a positive impact on these relationships.

First of all let me remind you that it is a general agreement to make the activities of the Council of Ministers open to the public during its legislative activities. This will make

it possible for the public to become much better acquainted with the stances adopted by their respective Government representatives.

Another change in the present arrangement that I have proposed jointly with other Members of the Convention and which could have a decisive impact on parliamentary scrutiny, is to institute a special form of Council with lawmaking functions; a legislative council acting as a Second Chamber representing the States and working side by side with the European Parliament. In fact, the large number of formations of the Council of Ministers today makes it difficult for the National Parliaments to carry out their scrutiny, and they are obliged to monitor the various Ministers, who very often manage to push regulations through in Brussels, which they would find very difficult to get through in their individual National Parliaments. By setting up a single Legislative Affairs Council, the Governments would have to appoint one Minister to sit as a Permanent Minister on this Council, invested with general and across-the-board powers. This Minister would become a clearly identifiable interlocutor of each National Parliament on matters regarding Community affairs.

However, participating in the Community Law-making Process is not only a matter of taking part in the central activity of laying down policy for and scrutinizing the work of Governments. The National Parliaments must continually perform a more active function in the framing of European Law. We can, therefore, understand very well why the Laeken Declaration identifies as one of the objectives of the European Convention the need to clearly spell out the role of the National Parliaments within the architecture of the Union.

In the spirit of the Laeken Declaration, this is an essential step forward to make up for the sense of a democratic deficit in the European decision making process, which is generally accepted and as such, has been highlighted in the early sessions of the Convention.

As a Member of the Convention, and having been a Member of the work group for the application of the principle of subsidiarity, I can assure you that the Convention is coming up with convincing answers to this problem and has suggested the possibility for the National Parliaments to dialogue directly with the organs of the European Union, above and beyond the relationship that each Parliament may have with its own Government.

This direct dialogue can enhance the role of the Senates, thanks to their capacity to represent the different local Government systems our countries have. I think that Professor Alejandro Muñoz Alonso has shared this opinion, and as he said, the most important

findings of the Convention has been the direct involvement of the National Parliaments in the process of framing Union legislation by introducing a mechanism that has been called the “early warning system”. This enables them to play an advisory role regarding compliance with the principle of subsidiarity which is enshrined in Article 5 of the current European Union Treaty, and which is virtually unchanged in regard to Article 8 of the draft of the Constitutional Treaty, which was discussed yesterday and today, at the Convention.

This is a principle which is operating essentially according to political criteria. It provides that the European Union may legislate only insofar as the objective of the proposed action cannot be sufficiently achieved by the Member States. Therefore, by reason of the effects of the proposed action, it can be better achieved by the Community. This “early warning mechanism” provides that the European Commission, as professor Muñoz Alonso has already said, must directly submit all proposals for legislation to all the Chambers of each National Parliament. There would be a direct connection between the National Parliaments and the European institutions, which does not exist today. This is the great innovation that we are requesting from the different institutions, that they directly inform the National Parliaments of the legislative proposals they wish to carry out. The National Parliaments will have six weeks to submit their opinions regarding compliance with the principle of subsidiarity, so that the Commission is not tempted to go beyond its competencies as has occurred in the past.

>From what has emerged in the course of the Convention so far, these opinions will not and should not be binding for the Commission, but should oblige it to incorporate them in the motivation, or, if the opinions are shared by a significant number of Parliaments, to re-examine the text and decide whether to keep it, amend it, or withdraw it.

The effectiveness of the early warning mechanism is therefore essentially bound to the capacity of each National Parliament to liaise with the Parliaments of other countries. If the Parliaments that say that the Subsidiarity Principle has been breached are large in number, the Commission will have to reconsider its proposals and, if necessary, it will have to withdraw, amend or redraft them.

Bearing this in mind, one might envisage giving the Association of European Senates a networking function between the different Senates to make it possible for them to take up pre-established positions on issues of common concern, which could be the object of a common approach to relations with the European Commission.

Furthermore, once a piece of legislation has been enacted, National Parliaments would have the right to file appeals directly to the Court of Justice and not through the mediation of the Governments.

Some Members of the Convention, particularly our British colleagues, have insisted on restricting the right of a National Parliament as a whole. I, jointly with my French colleague, Mr. Haenel, and the representative of the German Bundestag, Mr. Teufel, have rejected this proposal, which has so far not been mentioned in any of the texts coming out of the Convention.

In all bicameral systems, despite the considerable differences that exist between them, the two Chambers are always guaranteed equal constitutional rank. Indeed, in many countries the Senate is a Chamber representing the regions. In Italy as well, because the two Chambers are on an equal footing. The Government must enjoy the confidence of both, because the two play a perfectly equal part in the law making process. The Constitution provides that the Senate of the Republic is elected on a regional basis. These introductions are a peculiarity in the composition of the Italian Senate. Even though the electoral system used for both Chambers is virtually the same, the Constitution provides that every region has a minimum number of Senators to represent it, while the constituencies which are represented by the Members of the Chamber of Deputies are distributed in proportion to the population.

As a result of this system, even though the total number of the Senators is only half that of the Deputies, some small regions may have the same number of Senators and Deputies, guaranteeing each Chamber of every Parliament the right to appeal before the Court of Justice. This is not only in compliance with the constitutionally equal position of both Chambers, but it also provides local and regional authorities with the right to indirectly petition the European Court of Justice.

This question is particularly important because the regions vested with legislative powers are clamouring for the future Treaties to sanction the possibility of being able to directly resort directly to the Court of Justice.

During the meetings of the Convention, however, it became clear that it would be difficult to give all European regions a similar power of petition, for eliminating the State mediation would create confusion in the institutional workings of the European Union, whose protagonists are above all the States, which are accountable for any failure to comply with Community Law.

I, therefore, feel that the most convincing solution is the one proposed in the report adopted by the European Parliament on 14<sup>th</sup> of January by the Italian rapporteur Mr. Giorgio Napolitano, according to which the regions may petition the Court through the filter of the national institutions.

Thus, I believe that the Senates can play an essential role here. All European Senates are, in one way or another, linked to representing their nation's local authorities. They could, therefore, be the most effective national bodies for filtering the needs of the local authorities, which in many systems, like in Italy, are not merely limited to the regions, but also include the lower tiers of Government, primarily at the municipal level.

The incorporation of these two instruments, "the early warning mechanism" and the appeal to the Court of Justice, into the future Constitutional Treaty will be one way in which the Senates can consolidate their specific role in Europe.

This morning, as Mr. Muñoz-Alonso said, the Convention received a copy of the new Protocol for the implementation of the principle of subsidiarity. Here today, we should insist upon the importance of the bicameral systems. In such systems, each Chamber should have clearly defined its right to use "the early warning option" and "the direct appeal" to the European Court of Justice in cases of non-compliance with the subsidiarity principle.

In conclusion, I think, Mr. President, that the challenge is to take Europe into the very heart of the Community decision making process, in regard to that network of demands and interests for which Senates speak in each national constitutional system.

This being so, enhancing the Association of European Senates can contribute to the common commitment of bringing Europe closer to its citizens.

Thank you very much for your attention.

**HONOURABLE PRESIDENT OF THE COUNCIL OF THE RUSSIAN FEDERATION** (Mr. Serguei Mironov): Speaker Mr. Lucas, thank you very much, dear colleagues. Unfortunately I have to leave for the Airport, and so I only want to take just two minutes of your time.

First of all I would like to thank my Spanish colleagues for their hospitality, their warm welcome and the excellent organization of this meeting, and I have one comment to make about the fourth paragraph of the Declaration. I do not propose changes; I do share the viewpoint of the National Parliaments. I only want to say that Russia is not a Member of the European Union, which is why I have to express this oral reserve. Otherwise, I do support the Declaration, and I thank my colleagues very much. It has been an honour and a pleasure being here with you, and I will see you all in Prague, so, until then. Thank you very much.



**HONOURABLE PRESIDENT OF THE FRENCH SENATE** (Mr. Christian Poncelet): Ladies and Gentlemen, Speakers of the Senates, dear Colleagues and friends. I would, of course, like to thank the Spanish Senate for welcoming us here in this particularly warm environment that shows and proves the great hospitality of the Spanish people. All the care that has been taken and all the attention we have received have really touched us deeply.

We would like to talk now about the scrutiny of Government by the Upper Houses on European Union matters. And why this topic specifically?

The essential reason for me is the true change brought about by the work of the Convention. It is clear that National Parliaments are going to be involved in the control of subsidiarity at a European level. Nobody is against that, and that marks the tremendous progress towards a more effective and transparent Europe, a Europe that is closer to its citizens.

Before anything else, I would like to emphasize that the Parliaments are large, and the Upper Houses are specifically the natural defenders of the principle of subsidiarity, first of all, because nowadays in the organisation of the European institutions, nobody is interested in applying that principle of subsidiarity, and nobody has the mission to make it respected. That is why, if the European institutions are left as the sole guardians of the strict application of the principle of subsidiarity, it would be like giving a wolf the role of watching over a few lambs.

To the contrary, then, the National Parliaments and above all, the Upper Houses, really want to make sure that this principle is effectively and timely respected, and they are more interested than the Lower Chambers. The Upper Chambers are directly affected by this principle, because they are involved in the transfer of the implementation of the European Union Guidelines, and because their powers would be affected.

However, as we can see, in the case of the French Senate, these Upper Chambers are also particularly involved with this principle. Usually it is said that subsidiarity is a cultural problem and that France is not familiar with that culture. That might be true within the Government or within the Congress of Deputies, but in the Senate, made up of territorial representatives, they are very sensitive to the fact that decisions should be made as closely as possible to the citizens. That is why the Senate has played an important role in recent months in re-launching this debate from a solid foundation. Also, due to the great

freedom of thinking before the Government, the Senate is an institution that may take effectively much better care of and look after this principle.

And finally, as the representative of the territorial communities, regions, provinces or municipalities, the French Senate is not only the defender of the national powers but also of the local powers or competencies.

The European Union that usually practices an inverse Federalism is not a true threat to the national powers or competencies, but rather to the local ones, especially in the environmental and economic fields. That is quite difficult for citizens to admit at a time in which there is wide movement towards decentralisation. That means that in many cases the Upper Houses have a greater motivation to prevent a greater decentralisation of the European Union and this applies to the Federal States, but also to the French Senate.

The control or the scrutiny that National Parliaments can carry out of their own Governments for European Union matters is in and of itself a very limited scrutiny, and that applies both to Upper and Lower Chambers, because in that field they tend to be on an equal footing.

This scrutiny is limited for practical reasons, because in many cases the representatives of the Member States begin to discuss a proposal when there is no translation yet available into our languages, and when the Members of Parliament are not yet familiar with the text.

Despite the existence of the parliamentary reservation, experience shows that for negotiators it is difficult to go back over a proposal on which an agreement has already been reached, and the Parliament as it is nowadays is limited in its essence. In the Council of the European Union, political commitment is more valuable, and in many cases subsidiarity becomes the victim of this principle. I am going to give you a recent example referring to the compensation of crime victims. The European Commission has just proposed a guideline establishing the minimum rules, and during the examination of the Green Paper of this proposal, the French Senate asked that this be limited only to victims of trans-national crimes. Similar requests have been made to their Parliaments, and the legal service of the Parliament has considered that no provision in the Treaty could justify the European Union going beyond trans-national limits. However, some delegations have considered that it would be possible to go beyond that, or ignore that legal view, and they have actually debated the very substance of the text, and among those delegations is that of the French Government, for which the proposal is not at all problematic. That attitude

means that it is very unlikely that we will be able to reduce or to refuse this European Union Proposal.

That example shows that this control at a national level has its limits, and, therefore, the National Parliaments must also act at a European level. In this sense, and I insist, the Upper Houses play a very specific role. The working group of the European Convention dealing with subsidiarity, led by Mr. Méndez de Vigo, the Member of the European Parliament, has proposed a scrutiny procedure by National Parliaments that has attained quite a wide consensus in the Convention.

This mechanism is based on a double control system, on the one hand, the “early warning system” that would allow all National Parliaments to call the attention of the Members of Parliament, when they believe that there is an initiative that goes against the principle of subsidiarity, and on the other hand, the possibility of the National Parliaments to appeal to the Court of Justice to propose that the principle should be changed. With this mechanism, the Parliaments would be better equipped to carry out their scrutiny, and from that viewpoint, it is necessary for the Upper Houses to have full access to the mechanisms for controlling the subsidiarity.

This “early warning alert” should be possible in each Chamber, but still respecting the legality between the Member States, whether they have one Chamber or two. It would be enough to give two votes to each State.

In the same way, the Upper Houses should have the right to appeal before the Court of Justice. In that way, we would not breach the debate of the role of the regions, which I believe depends on the internal organisation of each country.

Thus, the scrutiny of subsidiarity will provide more effectiveness and more legitimacy. And why more effectiveness? Because the Upper Houses are more motivated to guarantee the principle. And why more legitimacy? Because the control of subsidiarity requires a certain independence before all the political circumstances, and a lot of continuity, and in that sense the Upper Houses are better equipped.

Therefore, it is essential to foresee the full participation of the Upper Chambers in this principle. I believe that we should make sure that this happens.

So, dear friends, I would like to offer here my full and complete support to what Mr. Dini of the Italian Senate has said regarding the involvement of the Upper Chambers in the process for this principle of subsidiarity to be respected.

However, yesterday, the Convention on the Future of Europe has debated this principle again, in regard to the parity between the Assembly and the Senate regarding the early warning mechanism. This is inadmissible and we have a great deal of responsibility at this time. Personally, I believe that yesterday's decision was not all that innocent. They knew that we were here today. If we say nothing, it would be a way of tacitly agreeing to this decision. However, we have already reacted, so it is essential to me to put the two Houses on an equal footing regarding the principle of subsidiarity thanks to the early warning mechanism and the possibility of appealing to the European Court.

I believe that our Association should take special measures on behalf of this just cause and it should do so as soon as possible. This is why I suggest that we complete Section 5 of the draft proposal, as prepared by the Spanish President.

Once more I thank you for your contribution to this work.

**HONOURABLE PRESIDENT OF THE UPPER HOUSE OF THE DUTCH SENATE** (Mr. Gerrit Braks): I am a bit surprised, and, on the other hand, very much impressed by the reports we have got this afternoon. First, from those who are participating in the Convention negotiations, thank you very much. Mr. Dini, I am not so closely involved in these negotiations, but nevertheless at least I am now updated.

It is very difficult for me to take a position, although many of the remarks made by Mr. Poncelet, earlier in the introduction, and by Mr. Dini, personally appeal to me, because the processes of further political integration and institutional integration in Europe are progressing very quickly, and that is the reality. Subsidiarity is a basic element for finding a balance between positions, but my position is a little weak, because I am just the President of the Senate, and I can only talk in terms of majorities. Up until now we did not discuss it in our Parliament. I really hope, and this is a personal opinion, that Europe will integrate and will seek, with the democratic institutions, peace and stability in the future, which will, of course, benefit the standard of living and the balance between the peoples within the European Union.

In the end, it would be very difficult for me to agree on conclusions which talk about the future Constitution, because up until now we have not had the opportunity to discuss it in our Senate. In any case, as I have mentioned earlier this morning, the Dutch Senate does have the formal task of scrutinizing the Government in the fields of foreign affairs and the European Union matters.

It has already been more than thirty years ago, in 1970 to be precise, that the Senate set up a Committee on European Institutions and its Members have expressed their concern about the limited democratic legitimacy of the continuing European integration and the inadequate information that Brussels supplies, and it has tried to minimise the democratic deficit in Europe.

When Schengen was agreed, and later with the approval of the Treaties of Maastricht in 1992 and of Amsterdam in 1997, and the Treaty of Nice in 2000, both Houses of Parliament stipulated the right of approval for legislation and regulations that are binding for the Kingdom of the Netherlands. Consequently, the Program of the Council of Justice and Home Affairs is argued in the Senate through the Home Affairs Commission. The Minister is sometimes asked to supply additional information before the decision for approval can be made.

In 2001, the Senate adopted a motion demanding a minimum period of six weeks between the publication of the text of a draft of a decision on which political consensus had been reached, and the formal adoption of the text – so that this six week period is respected. The motion states that approval will be withheld in those cases in which the 6-week period is not respected.

This is a very formal position, but it emphasizes the fact that we do not accept automatically and without conditions the transfer of the autonomy of our Council. Nevertheless, I do agree entirely with the need to discuss the development and the future of the institutional machinery within the European context. I have been working for a long time in Europe as a civil servant, as a diplomat and as a Minister. Never has Europe been so close to a political and institutional integration, and never has the need to do so has been greater.

Furthermore, each year we have in our Senate a full plenary debate on the report of the State of the European Union, which furnishes one of the better moments in our political discussions. This document is presented to the Senate as an Appendix to the Budget for the coming year on the part of the Ministry of Foreign Affairs. Administrative assistance for Members of our Senate is now provided by a small European Affairs office in the Senate.

One more step towards more transparent decision making in Europe is something we want to improve.

And last, but not least, Mr. President, we are developing in close cooperation with the House of Representatives, a system to follow matters in Brussels as closely as possible. The object is to be able to intervene much more and in much earlier stages in the development of certain decisions in Europe, and to try to close the democratic deficits in Europe as much as possible. That is our aim and that is all that I can commit myself to, but we will commit ourselves to it very strongly.

Thank you very much for the opportunity to comment on this today, and for organising this conference with this topic, which is so vital in the development of the history of Europe, and more specially, to the peoples of Europe.

**HONOURABLE PRESIDENT OF THE AUSTRIAN BUNDESRAT** (Mr. Herwig Hosele): Ladies and Gentlemen, thank you very much. First of all, I feel duty bound to express to the Speaker of Spanish Senate our appreciation for the excellent organisation in this wonderful atmosphere, which, of course, facilitates the exchanging of ideas.

Many things have already been said today by very knowledgeable people, but I would like to emphasize one more point. We are in a phase of public debate today, from which the project of a new Europe must result. We can see the very special role allocated to National Parliaments as the bearers of democratic legitimacy, within the architecture of Europe. The growing rhythm of integration, of which we are all aware, has led to the unity of the European population, and that is where we find the need to increase the confidence of the European citizens.

I am relying on two main ideas in this debate. First of all, we have to be careful not to do the opposite of what the citizens are expecting from us. That is, we must simplify things rather than make them more complex. And secondly, before carrying out any reform of the institutional structure, we must study the role and the way in which the current legislation works and carry out some sort of institutional audit of things as they are, so that we can counteract the loss of the parliamentary democratic element.

We have to apply co-decisions in a more effective way, and the need for the control of National Parliaments before the Government. So we have to find out in which way and to what extent and when our Governments are going to give information to the Parliaments and when they are going to seek their approval.

Please allow me, with the example of the Austrian Bundesrat, to make some comments on this topic. The control or scrutiny of the Government by National Parliaments is vital, because I believe that the most important task of Governments is to inform their Parliaments regularly about what is going on in Europe. Of course, any Parliament, in accordance with its powers, will have to be informed in whatever way each State has decided. In the case of Austria, the two Houses, the National Council as we call it, and the Bundesrat, obtain practically all the documents regarding the European debate, so that they can decide on the Agendas of both Chambers.

But in the Bundesrat as well, there might be deliberations in the plenary session, with 62 Members, or within a Committee of 15 Members with a proportional representation of the different parties.

Another principle that is also applied is that whenever there are issues that affect the Federal Regions of the Union, the Second Chamber acts and gets involved in the legislative process in order to be able to protect its rights. That is why, also in the framework of the European Convention, there are always attempts to increase the influence of the Second Chamber within the European Union. From my point of view, it is important for the competency of the Member States in order to determine their political and constitutional structure and the organisation of the State Authorities, to be duly recognised, in accordance with Section 9.6 of the Constitutional Treaty.

An essential element of this Constitutional Treaty is the importance of the National Parliaments, including the Second Chamber, to prevent their powers from being reduced. That should be acknowledged through the control of subsidiarity. In the future organisation of the competencies, this is an essential matter to preserve the responsibilities in order to accept the political behaviour of the Union.

In the Member States with a two chamber Parliament, as has already been said several times today, both Chambers should be able to use the early warning mechanism, and both Chambers should also naturally be able to appeal to the European Court of Justice when their powers are being affected.

Ladies and Gentlemen, I am sure that the foundation of these proposals in the Constitution is going to strengthen the National Parliaments, and above all, the Second Chambers in the decision making framework within the European Union.

>From the Austrian viewpoint, as Speaker Poncelet said before, the Second Chambers have to become *subsidiary organs* in order to stay close to their citizens. I believe it is fundamental that in order to build a common Europe and a common European awareness, we have a fundamental role to carry out.

I would like to thank you again for our Meeting today and for this exchange of ideas. Thank you very much.



**HONOURABLE PRESIDENT OF THE BELGIAN SENATE** (Mr. Armand de Decker): I would first like to thank Senator Muñoz-Alonso for his contribution. It was a great pleasure to listen to the presentations of those who have spoken before me, especially the presentations of Mr. Dini and of Mr. Muñoz-Alonso, who are Members of the Convention and who have been deeply involved in their negotiations.

We are here today to deal with all these matters, and I think the time is crucial. The European construction has evolved during the past 30-40 years, step by step. We have never really questioned the principles, the main reasons why we want to construct Europe, and what kind of Europe we want. The step by step method that we use has been successful. Nevertheless, we have slowly and gradually exhausted this way of working, and for this reason our Governments, in the Laeken Summit, felt the need to create the Convention and to link the different National Parliaments to the European construction.

Europe could not continue to be constructed by diplomatic conferences alone, as has been the case for the past 40 years. The reason why our rulers have felt the need to change is because up until now, the single market issue has been managed reasonably well, and it led us to the Euro, the single currency. From there any future step towards the construction of Europe must necessarily involve the participation of the sectors directly related to national sovereignty.

The hottest subjects for the next fifteen years will be common defence policies, common security, and common justice. How are we going to deal with these Community affairs in the National Parliament?

Up until today we have always dealt with these issues as if the European policy were the same as our foreign policy, but the European construction and the foreign affairs policy are really separate nowadays. However, the truth is that European policy has a lot to do with the construction and internal administration of our countries, because the European dimension is a complementary but indispensable element for defending national interests.

In Belgium, we have created different Commissions that specialize in different European matters. There is one Commission specialising in European matters in the Congress and another in the Senate, which generally meet together. Every time there is a European Council meeting, the Ministers involved and the Prime Minister or Ministers of Foreign Affairs all appear before the Chambers to explain and defend their positions and then they inform us of the decisions they have made. This is no longer sufficient.

Secondly, in order to delve more deeply into the powers of control given to the different Parliaments, the COSAC was created ten years ago, and it has been very successful. The results have been very positive, and it has been serving us very well for ten years. Things have changed, nevertheless, and this organisation does not only meet today's needs. Because, first of all, the Agenda is drafted by the country that holds the Presidency; therefore there is a lack of continuity. Secondly, the Members of these organisations are generally not specialised in the issues that are being dealt with. The third reason why I think that the COSAC is not sufficient anymore is because it doesn't even have a permanent secretariat.

So what can we do? Personally, I share the opinion of Mr. Poncelet and Mr. Dini, when they say that the Upper Houses should be linked to the European construction. Why? Because at least in a country such as mine, in which the Senate really represents the different regions, the European construction goes beyond the States and it also involves the different territorial organisations of the Member States.

Having said this, I think we have dealt with this matter from the subsidiarity point of view. Here I will join forces with my friend Braks and so I will be more cautious. I think my country is one of the countries of the European Union that most supports federalism. In general we are quite reticent, and I am not giving here my personal opinion and so, we are distrustful (in general, I am not speaking personally, because I fully understand the limits of an excessive federalism). It is true that in my country, we are quite reticent as to a very literal implementation of the principle of subsidiarity. If we are too rigorous in the implementation of the subsidiarity principle, I think we will be hindering some Community policies. We also know that the issues that we will have to deal with in the future are related to national sovereignty.

If we analyse the needs of control of the European Parliament nowadays, and if we ponder about in what field we should be progressing more, then we come immediately to the conclusion that we must concentrate more on foreign policy, defense, justice and internal affairs.

I think we would be able to make more progress in these fields if our National Parliaments were not able to discuss these matters exclusively at a national level. How can we even think that a British conservative politician can ever discuss a common foreign policy if he can only talk about it in his own House of Commons? He has to be able to talk about this matter with colleagues from other countries.

The same goes for domestic affairs, security matters and the fight against terrorism. We have to be able to tackle these subjects from a wider point of view. I have defended the ideas of the President of the Convention, Mr. Giscard d'Estaing, to create an extension of the Convention, and thus create a Congress of the European Peoples.

What would be the characteristics of this Congress of the European Peoples? It would link the European Parliaments together with Members of the National Parliaments.

Therefore, I support a Congress of the European Peoples and would go even further than Mr. Giscard D'Estaing's proposal. He, from his position, must be cautious, and therefore he thinks that this Congress of the European Peoples should be the arena where the State of the Union issues should be discussed, and it should meet once a year. I personally think that this Congress should meet regularly in the form of specialised Commissions.

I know that there are some objections to the creation of this Congress of European Peoples, because they say: "yet another institution". But this is not "yet another institution", for it would really represent the merging of two different institutions. This Congress would be the meeting of the European Parliament and the National Parliaments; that is, it would be a General Assembly for general matters, and then for sectorial meetings, and here is where the principle of subsidiarity would be dealt with. In time, it could evolve into a European Senate. This European Senate would not necessarily have European legislative powers; it would be a European Upper House that would deal with matters of the second and third pillar. That is the only way, in my opinion, to advance the idea of Europe.

To conclude, I would only like to say that I personally think that the amendment proposed by Mr. Poncelet is a very good one because the Upper Houses, due to their nature, should form a part of the joint construction of Europe.

Thank you very much for your attention.

## **VI. FINAL DECLARATION OF THE FOURTH MEETING OF THE ASSOCIATION OF EUROPEAN SENATES.**

*The Presidents of the Upper Houses,  
gathered at the Spanish Senate on February 28th, 2003,  
for the Fourth Meeting of the Association of European Senates,  
under the Presidency of His Excellency Mr. Juan José Lucas,*

- aware that the monitoring function constitutes today the central core of parliamentary activity;
- stating the important contribution of the Upper Houses in their function of monitoring our democratic regimes, due to the peculiarities of their representation;
- knowing that the close ties between governments and stable majorities have altered the significance of the classical mechanisms for parliamentary monitoring, thus entailing a better definition of the position of the minority groups;
- stating the important contribution that can be made from the Upper Houses to the greater transparency of political life, through public debates and the contrast between the multiple political options, with the support of new technologies;
- wishing to reinforce the role of the National Parliaments in the process of building Europe, so as to bring the citizens closer to their governing bodies when they are acting in the sphere of foreign policy and European Union affairs;

### ***HEREBY DECLARE***

- 1.their will to continue working together with a view to sharing their experiences, maintaining the impulse of democracy in their respective States and strengthen the legitimacy of the European Union,
- 2.their conviction that the existence of dual-chamber Parliaments reinforces the monitoring function entrusted to the legislative power by introducing diversification elements in political representation,
- 3.their firm will to deepen their reflections on the transformations in the monitoring function and their consequences on the structure and functions of the Upper Houses,

### ***EXPRESS***

- Their satisfaction for the offer of the Senate of the Czech Republic to organize the V Meeting of the Association of European Senats in September 2003.

- Their gratefulness for the proposals made by the Senate of Poland, the Bundesrat of the Federal Republic of Germany and the Swiss Senate, to host the meetings of the Association of European Senats of 2004, 2005 and 2006.

*The Presidents of the Upper Houses of the Member States of the European Union, and of the candidate countries*

***ALSO DECLARE***

that they have examined with interest the work so far made by the European Convention regarding the role of National Parliaments in the legislative process of the Union.