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Focus on the senate

Modern concepts in the functioning of senates
in bicameral parliamentary systems

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**Welcome address by Ankie Broekers-Knol,
President of the Senate of the Kingdom of the Netherlands**

Chair: Good morning, dear colleagues, ladies and gentlemen. A warm welcome here in the plenary hall of the senate of the Kingdom of the Netherlands. A special welcome to our colleagues from Poland who have arrived early this morning and to the delegation from Ireland, who are here on our special invitation.

Yesterday evening we convened in the century old Hall of Knights. This morning, again, we convene in a century old hall. This hall has been in use as a meeting hall for representatives of the people continuously since 1655. That makes it the oldest of its kind in the world.

When this room was created in the mid seventeenth century, the Golden Age of the Dutch Republic of the seven provinces in the 17th century, it was specifically requested that it expressed a strong international connection. If you look up, you will see people from all over the world looking down on us with a sense of curiosity. If you look closely, you can recognise the Polish, the Persians, the Turks, the Spanish, the Mexicans, the French, the Italians, the Russians, the English, and the Germans. You will have to find it by yourselves. You have a book on the House of the Senate, so you can look it up when you are at home.

From that day to this, strong international connections remain of great importance to the Dutch senate. This brings me to what I think is one of the great merits of a conference like this. It offers the chance to look at developments in national parliaments in an international setting. What I find most appealing of the AES is the compactness of its meetings. It allows for us to exchange thoughts with one another in an open, direct atmosphere.

The focus of this meeting will be on changing concepts in the functioning of senates in bicameral parliamentary systems. Today, we have three interesting themes on the agenda:

The first is hard power vs. soft power: should both houses have the same legislative powers?

The second theme is the composition of the senate: in what way is the political power of a senate determined by its composition?

The third theme is the importance of public opinion: what is the influence of public opinion on the position of the senate?

Theme I: Hard power vs. soft power

Chair: The first theme we will address is 'Hard power vs. soft power'. As is tradition during our conferences, speakers are called to speak in alphabetical order according to the name of their country in English. This means I would now like to invite Mr. Volker Bouffier, Präsident des Bundesrates, to address the conference.

Address by Volker Bouffier, President of the Federal Council of the Federal Republic of Germany

Mr. Bouffier: Madam President, dear colleagues, ladies and gentlemen. It is a great honour indeed for me to be able to address in this historic room with my presentation. It is a great honour and a pleasure to me. Before I make a few remarks concerning the Second Chamber, the Bundesrat, in Germany I should like to congratulate you, Madam President and your staff, on the excellent preparation and organisation of this conference, for having made all these arrangements and for the delightful evening that we enjoyed last night. So, thank you very much for this conference.

Ladies and gentlemen, the Federal Republic of Germany is an association, a federation of sixteen states, which existed before the Federal Republic of Germany was founded. After the Second World War, the victorious powers attached great importance to not having a strong central government in Germany. Instead, they put the focus on federalism. This is a tradition that existed in Germany for many centuries. Almost at no point in its history was Germany centrally governed and when it was centrally governed, it was of disastrous consequences under the Nazi dictatorship. This is something that you need to bear in mind when you discuss hard power and soft power in Germany. There are sixteen states. They are of different size. The smallest one is Bremen with 750,000 inhabitants and the biggest one is North Rhine Westfalia with almost 19 million. My state has a population of some 6 million, so it ranges in the middle somewhere.

In our Second Chamber the big states have six votes while the small states have only three votes. So, there are differences but the differences are not as big as the differences in size between the different states. The Chamber is composed of members of the governments of these states. They are elected and there is no direct election to the members of the Bundesrat. Instead, they are appointed by the state governments. As a rule, it is the prime minister of the state concerned and some members of his government that are dispatched to the Bundesrat.

The Bundesrat has a fairly strong position according to our constitution. The constitution stipulates that the administration of these states shall be a matter for the states. So, whenever it comes to administrative issues the states are always involved. This touches upon our financial constitution, it touches upon the implementation of our acts, of our laws, and there is a third level of government, which is the local level. According to our constitution, the local authorities and the local governments have a particular role to play. Our constitution also stipulates that the subdivision into states is sacrosanct; it cannot be changed. So, this federal structure cannot be changed. I am convinced that the strong position of Germany is an outflow of this federal system, even though legislation is sometimes difficult under this system. The big advantage is that the states, the Länder, compete for the best solutions. According to our constitution our Länder, the states, have a competence descent responsibilities of their own: education, university education, policing. All this comes under the responsibilities of the states. Only the external security comes under the responsibility of the federal government. Of course, you have to cooperate between the state level and the federal level if you want to arrive at good results.

The Bundestag, our First Chamber, has normally the lead in legislation and legislation involves both the Bundestag and the Bundesrat. There are two types of laws. On the one hand we have laws that require the consent and approval of the Bundesrat. If these laws are to become effective, the Bundesrat has to give its consent. On the other hand there are the so-called 'objection bills'. Here, the Bundestag can approve a law and then the Bundesrat can object. In that case, the Bundestag can overrule the objection of the Bundesrat. In political practice however, we normally try to arrive at a compromise. The Bundesrat also has the right to initiate legislation, to submit bills. When the federal government initiates a law, it is first submitted to the Bundesrat before it is submitted to the Bundestag. So, we give a position, an opinion first and this position can then be taken into account by the Bundestag from the outset. When it is a law where the Bundesrat needs to give its consent, the Bundestag will carefully decide and try to make sure that the law actually passes through the Bundesrat. There is also a mediation committee in place and this mediation committee can be invoked by the federal government, by the Bundesrat, and by the Bundestag. This mediation committee is a small body, which tries to arrive at a compromise when the opinions and the positions of the Bundestag and the Bundesrat differ. If the proposal submitted by the mediation committee is accepted by both chambers, then the law can enter into force. So, that is the constitutional system as it stands.

How does it work in practice? The members of the Bundesrat – as I said before – are members of the state governments. This is why you normally have strong members of the different political parties in the Bundesrat. Representatives who represent the states in the Bundesrat are strong political figures within their political parties, so that they also defend the political interests of their party. I for example am the deputy chairman of the CDU in Germany, so I am the deputy of Mrs. Merkel within our party. When we meet together within our party circles, there is Mrs. Merkel, there is Mr. Schäuble and we also discuss legislative issues. With the social-democrats it works the same way. You meet and you try to strike and prepare a compromise. Our motto is first the state and the party.

However, in the different states we have different coalition governments. There are very different interests involved when it comes to matters such as agriculture or tourism in the Alpine region, Bavaria has very strong interests while Hamburg's interests are not so strong. When it comes to fishery matters however, the interests of the coastal states are foremost and very strong. So, there are varying interests on the parts of the states, of the Länder but at the end of the day we have to achieve a compromise.

When it comes to hard vs. soft power let me say that nothing can be done in Germany without the Bundesrat. Things get particularly interesting when the majority in the Bundesrat is a different one from the one in the Bundestag. We have a coalition with a majority of 80 percent in the Bundestag but in the Bundesrat does not have a majority. The Greens are very weak in the Bundestag after the last election but in the Bundesrat they are as strong as never before because they are in nine state governments. This means that we have to get together and talk to each other. At the end of the day, it is admittedly a very complicated system but it has one big advantage. Since we are forced to talk to each other and to negotiate, the divergences in politics are less pronounced than in other states. In many countries you have a situation where one government comes in and goes in one direction and the next government comes in and takes the opposite direction. This is not the case in Germany. This system creates a stable style of government. When we talk about federal elements, we know that this viewed with scepticism in many countries, but in a big country such as Germany the second chamber, the Bundesrat ensures that regional specifics and historic traditions can better be taken into account than in the case of a central government. Therefore, we think that this somewhat more complicated system is a successful model at the end of the day.

Let me also talk briefly about public opinion. Public opinion is a tricky issue. Sometimes it is like this and sometimes it is like that.

Chair: You have just one more minute to go!

Mr. **Bouffier**: Yes, let me come to a close. On the whole the Bundesrat enjoys great esteem. When we decide quickly, we are applauded by the public. If it takes longer for us to decide, there is discontent and people fail to understand why we do not arrive at a conclusion. But that is no different in other centrally governed countries with a single chamber.

In a nutshell let me say that we are happy with our system. We think it is a success and we are happy to have this opportunity to exchange views with our colleagues in the framework of this conference.

Thank you very much!

(Applause)

Chair: Thank you very much, Mr. Bouffier. Is there anyone who would like to ask one question? The reason why I am so difficult in the timekeeping is that we have to be on time at the King's residence. Mr. Giménez?

Mr. **Lucas** (Spain): I would like to congratulate the president for this excellent speech and I would like to say that the Spanish senate just a couple of days ago was invited by the German government. We visited the Länder, Berlin, and Baden Württemberg. We wanted to see for ourselves the examples and we want to copy the stability and the strength of the German system. Thank you!

I do have one question. In any of the Länder do you have any sovereign ideas in the margin of what article 2 or 12 of the constitution provides for, regarding the dignity of people and stipulation that Germany is a federal state. Are there in Länder any references to referenda, their own sovereign referenda?

Mr. **Bouffier**: I should like to give a brief answer to a very complicated question. First of all, you need to know that the German Länder are states in their own right. We are not mere provinces, we are states in our own rights and therefore, we have our own rights, our own constitutions and in these constitutions we have our own regulations. For example, referenda on specific issues are regulated in different ways in different Länder. In some states you need 20 percent of the votes in order for a referendum to be effective while in other states it is 30 percent or 50 percent. Also the question as to what matter may be subject to a referendum depends and varies from state to state.

Also the electoral law varies from state to state. There is also the rule that whatever is written down in the different state constitutions is applicable only if it is not in contrast with the federal constitution. In my state for example, the constitution still provides for the death penalty but it has been abolished in the federal constitution and therefore of course, the death penalty in Hessen's constitution is no longer applicable. But we have certain things in our constitution that do not exist in the federal constitution and this can be understood only against the backdrop of the fact that we are states in our own right. Therefore, my state Hessen has a lot international relations. The ambassadors come to me and when a bishop is appointed by the Vatican I have to give my consent in my capacity as chairman of the Bundesrat. So, we are states in our own right with our own constitutive power which is however restricted by the federal constitution and its basic elements.

Chair: Thank you Mr. Bouffier. I would now like to give the floor to the President of the senate of Italy, Mr. Pietro Grasso.

**Address by Pietro Grasso,
President of the Senate of the Italian Republic**

Mr. Grasso: Dear colleagues, I would like to congratulate the States General, the bicameral parliament of the Netherlands, on the accomplishment of their two-hundredth anniversary. I also would like to thank the Dutch senate and its President Mrs Ankie Broekers-Knol for organising this 16th meeting of the Association of European senates, focusing on such interesting and topical themes. In Italy, the need to reform the senate has emerged as an institutional priority over and over again; several attempts to reform the Upper House were made throughout the past decades, but it is during this parliamentary term that political and scientific debate has focused on reforming our parliamentary system.

As is known, Italy's roadmap for constitutional review aims to overcome equal bicameralism as enshrined in the Constitution since 1948, a system whereby the government is required to obtain the confidence of both Houses of Parliament to be installed and according to our system, bills have to be passed by both Houses of Parliament in exactly the same text. The present government has also promoted a reform of the election law, which was passed by Parliament a few days ago. Although this is an ordinary law, it does have constitutional relevance, for it regulates how the Chamber of Deputies is elected. It does not regulate how the senate is elected, because the senate is in the process of being reformed. The constitutional reform was first passed by the senate and then was amended – again – by the Chamber of Deputies. Now, it will have to go through the senate once again because under our system, a constitutional amendment bill must be passed by both Houses in the same text and in two different readings. If a bill is passed by a majority lower than two thirds in its second and final reading, it will have to be put to a confirmatory referendum.

According to the bill presently under scrutiny of the senate, the senate will change both its membership and functions. The Chamber is elected by universal direct suffrage and is posited to retain the power to vote confidence in the government, to retain full law-making power, government guidance and oversight. The senate would be indirectly elected under this reform, with members elected by regional councils – and a few of them also from among city mayors – and is conceived as a forum representing local interests and a link with the European Union. Presently, parliamentary discussion is focusing on the very sensitive issue of the division of labour the division of competence between the two Houses. The Chamber has amended the text cleared by the senate in the first reading, by establishing concurrent jurisdiction on functions that were initially attributed to the senate alone. The senate would therefore “share” some functions with the Chamber, thereby “contributing” to law-making. This applies, for example, to some constitutional reform bills and where there is concurrent jurisdiction but in other cases the senate does only take part as a consultative body, as an advisory body. On the request of a third of its members and automatically for the budget, the senate may consider a bill passed by the Chamber. On that bill the Chamber, however, is the House of Parliament which has the final say. On Bills protecting the legal and economic unity of the Republic or the national interest, the Chamber may disregard any amendments adopted by an absolute majority in the senate, but only if such bill is passed in the Chamber of Deputies with the same majority, by an absolute majority.

As President of the senate, I cannot delve into the political debate currently under way in Italy. There are however a few questions of principle that I would like to underline. Firstly, I think that the reform of the senate should be seen as parts of several constitutional elements that are being amended, like the election law, party system, changes to the form of government or the form of state that have an effect – direct or indirect – on the role of the Upper House. Secondly, I also think that in order to retain a democratic constitutional system of checks and balances, the senate should be retained as a democratic counterpart to the chamber. A role for the senate as a House of guarantees, of safeguards is essential as the relationship between government and the parliamentary majority, as expressed by one chamber, is getting ever closer. What is required is not the introduction of ways to slow down the legislating process – as is the case in countries where the senate can stall the decision of the political chamber –

than a revision of equal bicameralism going beyond the mere establishment of different functions, to include a viable system of alternative competences and powers for the two chambers, thus giving each of them a clear constitutional identity. The party-political consistency between the Chamber of Deputies and Government, while essential if the Government has to gain the confidence of the Lower House, can dilute the Lower House's willingness to take the Executive to account. The senate may be in a better position to exert the power of enquiry and to assess the work of public authorities. The senate is ideally placed to systematically oversee the implementation of laws, so as to curb overregulation and ensure effective reforms. It can also ensure the necessary democratic control of fiscal developments, thus offsetting the growing ownership by governments determined by the new economic and fiscal governance of the EU. The senate would be a low political intensity senate, with limited party-political bickering, which may and must become not so much a place where many laws are passed, but the place where the best laws are passed. In a word: quality over quantity.

With this vision in mind, the senate as a House of Safeguards is perfectly compatible with territorial representation: this would actually strengthen the Upper House. Through the senate, local autonomies may convey their interests to the government, thus replacing or strengthening existing advisory and decision-making collegiate bodies, which foster cooperation between the central government and local authorities. Furthermore – and I am wrapping up – still through the senate, local government would be able to ensure that the legislative action is done in compliance with the principle of subsidiarity. This means that local authorities, local government is not marginal but is constitutionally placed to make every representative responsible to their community.

The developments of the European Union and the challenges of globalisation call for an adjustment of the institutional mechanism, in terms of efficiency, promptness and decision-making capacity. Reforms aiming to ensure the implementation of government policies and government stability are indeed necessary and cannot be further delayed. At the same time, though, it is essential to protect and strengthen the authoritativeness of Parliament, which remains the cornerstone of democracy and representation. There can be no increase in the legitimacy of institutions without strengthening their legitimacy and their effective and transparent action both within themselves and in their relations with the people. It is therefore necessary to recognise that a balance between powers is first and foremost based on the rule of law, which means that every power comes with and accountability and comes with a requirement for consistency. Institutions should be able to make choices but must be open to scrutiny. Those institutions that can do so are never authoritarian: they are authoritative; they are not self-centred, they are credible, they are not sealed from reality but are open to all citizens, to the whole civil society, because they can become decisive factors in national cohesion and in national unity. Inclusive and shared decision-making is the key to choosing the best policies, policies which will last through time.

Thank you

(Applause)

Chair: Mr. Grasso, thank you very much for your contribution. Just to make sure we will be in time, no questions now. First we give the floor to Mrs. Viviane Ecker from the Council of State of the Grand Duchy of Luxembourg. Then we will have some questions, before the President of the senate of Romania will address this meeting. So please, wait a couple of minutes if you have a questions.

**Address by Viviane Ecker,
President of the Council of State of the Grand Duchy of Luxembourg**

Mrs. **Ecker** (Luxembourg): Madam President, thank you very much. I too, would like to thank warmly for organising this beautiful meeting. Thank you for your warm welcome and thank you for the magnificent gala dinner that was organised in the very beautiful room last night.

It is a great honour for our Conseil d'Etat in Luxembourg to take part in this meeting. As you now, we are only an observer within the Association of European Senates because by law Luxembourg does not have a two-house system but a one-house system only. That was not the case 200 years ago when Luxembourg was part of the Kingdom of the Netherlands. We had a common senate but since the first constitution was adopted in the Grand Duchy of Luxembourg the creation of a senate was excluded, given the small size of the country. It remains the case up to this day. So, we only have one parliament, namely the House of Representatives.

In 1868, the Conseil d'Etat of Luxembourg was given the task to fill for the lack of a Second Chamber and to remedy the lack of a senate the constitution of Luxembourg provided for a special mechanism. Any bill must be submitted to a second vote within a three-month' time limit by the House of Representatives, unless it is authorised not to do so. But the Conseil d'Etat must accept that a second vote does not take place and this is done in public session while any other debate of the Conseil d'Etat is held in camera.

We have to give an opinion on any draft, on any bill as well as on any amendment. Any text amendment in a draft bill must be consented by the Conseil d'Etat before the House of Representatives can vote on the actual text. The Council of State issues opinions and before it does so, it looks at the political opportunity of drafts and bills and it reviews the texts to ascertain their consistency with the EU law, with the Constitution of course and international standards as well as general principles of law. If your Conseil d'Etat identifies inconsistencies with higher norms, higher standards, we can issue what we call formal oppositions. If the legislator does not rectify the bill or the draft text accordingly as advised by the Conseil d'Etat or if the legislator is enabled to provide explanation regarding the inconsistencies by the Council of State, then the Council of State will exert its right of suspensive veto for up to three months, as provided for in the Constitution. In other words, if the Council of State disagrees with the fact that a second vote should not take place, the House of Representatives will have to wait for three months before it can vote on the same bill for the second time.

The Conseil d'Etat does not have the right to initiate the legislative process. However, it can draw the government's attention on the opportunity of new laws or amendments to be introduced in existing ones. In its opinion, the Conseil d'Etat regularly draws the government's attention on such matters and proposes possible amendments to the governments and to parliament. In other words, the Conseil d'Etat intervenes at every step of the legislative process and its opinion is sought, even when the constitution needs to be revised. But at this point, the opinion is only of an advisory nature. The opinion of our Conseil d'Etat is also asked on the national budget legislation. In this case, we do not establish any distinction between the review of the budget and the review of other bills. For any bill or draft text, we do not provide political opinions. But in the future the role of the Conseil d'Etat in the review of the national budget might change and take greater significance, because in the future le Conseil d'Etat will have to check the consistency between the national budget and the norms imposed by the EU treaty on stability coordination and governance, which was approved by Luxembourg through a piece of legislation adopted in March, 2013. In such circumstances, the Council of State might have to oppose formally a budget which would exceed the maximum threshold of structural deficit, since in those new circumstances such a situation would not only be up to the political institutions of the country but would actually constitute a violation of EU law.

From its very creation the Council of State always saw itself as a custodian of the constitution and always stressed any consistency that it could identify between possible bills and the constitution. It is only in very rare exceptions that the Chamber of Representatives did not take into account the formal oppositions issued by our institution. The position of the Conseil d'Etat was strengthened in 1996 by the establishment of a constitutional court. The Conseil d'Etat is in charge of the upstream review of the constitutionality of laws while the constitutional court is carrying out the same role downstream. It happens that this court uses opinions issued by the Council of State in its work. Parliament therefore, should follow the position expressed by the Council of State to avoid any possible dispute before the constitutional court.

As regards bills and draft texts in Luxembourg we have an inter-institutional high level group, which is made off of the President of the House of Representatives, the Prime Minister, and the President of the Council of State. They meet to try and identify priorities in terms of all the texts that should be adopted before the end of the parliamentary session, namely in July, and before the end of the calendar year. So, the urgency of bills and draft texts is reviewed by this committee.

There is no controversy as regards the distribution of powers between the House of Representatives and the Council of State in Luxembourg. However, the fact that the Council of State issues political considerations in its opinion is regularly criticised. Some people would like the role of the Council of State to be limited to a purely legal review of the draft bills. However, a reform of the Council of State is scheduled in the coming months and a broad consultation was carried out among political parties. This consultation showed that the majority of them are in favour of a review of the opportunity for the Council of State to issue political opinions but of course, while suspensive veto is not used for political items but only for legal issues we believe that the reform will not change anything as far as our competencies are concerned. Thank you.

(Applause)

Chair: Thank you very much, Mrs. Viviane Ecker, for your very interesting expose. You still have to wait with questions, because I now give the floor to the President of the senate of Romania, Mr. Călin Popescu-Tăriceanu.

Address by Călin Popescu-Tăriceanu, President of the Senate of Romania

Mr. Popescu-Tăriceanu: Thank you, Mrs. President. I would like to convey from my part also the congratulations for organising this conference and for the hospitality that was awarded to us. Once again, thank you very much.

Your excellencies, President and speakers of the senate, dear colleagues and friends. I would like to begin by sharing with you a famous political anecdote. It is said that Thomas Jefferson once complained to Washington that a solid majority in the Philadelphia convention, as well as the President-to-be, were in favour of a two-chamber parliamentary system. Surprised by such preference, Jefferson kindly asked: why do you want a second chamber? As a reply, Washington responded: why do you pour milk into your tea? To cool it down, was the obvious and candid answer, giving Washington the opportunity to explain that the natural function of any upper house is precisely to “cool down” the decisions of the legislative body.

In fact, the American constitutional arrangement embodied more than the principle of moderation assigned traditionally to the upper house. Madisonian democracy conceived bicameralism as a subset of a different constitutional principle, that of the division of power.

According to that principle, vested with unlimited power, an individual or one group of individuals will abuse it. There is always an eagerness to retain power, to reward supporters, to punish opponents and to divert public purposes to private ends. Consequently, power must be limited.

The only satisfactory method of limitation is to divide power between the different bodies with some sort of scrutiny of each other's actions. Only respect for, if not fear of another power can restrain power. To make the system last, the division is made between institutions, not people.

The most comprehensive set of claims in favour of bicameralism is to be found in the Federalist Papers no's, 62 and 63, probably authored by James Madison.

Their first claim is that the upper chamber is a check on popular passions and thus on the possibility of majority tyranny. In his point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient.

Unsurprisingly, Walter Bagehot, followed a similar logic when describing the process of transforming the House of Lords from an upper house into a second house. He argued that "it is a great gain to society to have two idols; in the competition of idolatries, the true worship gets a chance."

What exactly might be this true worship in our democratic setting? I will try to provide an answer by looking at what makes parliamentary power soft or hard, by briefly introducing an evaluation of Romanian bicameralism and, finally, by suggesting how second chambers could achieve a new political significance in the present crisis of representative democracy.

Let me now define bicameralism as the requirement of simultaneous support of the majority given by distinct assemblies to new legislation. A bicameral system is strong if the two houses enjoy the same legitimacy, and none of them can easily impose its will on the other. How common is strong bicameralism? For a parliamentary system to qualify as strong bicameral, it would seem necessary that both houses be directly elected. As to the strength of the second chamber, it is principally determined by three factors: symmetry – the balance of constitutional powers between the houses – congruence – the extent to which the second chamber is likely to reflect or differ from the partisan composition of the lower house – and legitimacy, whether the second chamber possesses the democratic legitimacy to use its powers.

In symmetrical bicameralism, the two chambers have equal or nearly equal powers: the consent of both houses is usually needed for the enactment of laws, and the lower house cannot unilaterally override vetoes or amendments adopted by the upper house, or can do so only with difficulty. Bicameralism is asymmetrical when the upper house is constitutionally limited to a delaying power, having the right to propose, but not insist, on amendments.

Congruence is the term used to describe the similarity of the chambers in terms of their partisan composition. I will not enter into details. Of course, incongruence is present when the chambers are based on different representative principles, being chosen by different electors, at different times, or using a different electoral system. For instance, the senates of Romania and Italy are highly congruent with the lower house, since in these countries both chambers are simultaneously and directly elected using the same electoral system.

Romanian bicameralism is interesting because during the last 25 years it was subject to two successive arrangements. In Romania, the legislative power is vested in a bicameral legislature consisting of the Chamber of Deputies and the Senate. Both the Chamber of Deputies and the Senate are elected by

universal, equal and direct vote. The Romanian bicameralism constitutes a rather rare example in Europe of a symmetric bicameralism in which both chambers represent the same population.

The Constitution that was adopted in 1991 envisaged a perfect symmetry of the two chambers, elected by proportional representation. Each of them was entitled to examine separately the same piece of legislation. In case of disagreement on the text or whenever different amendments were advanced, a mediation procedure was enforced. But in 2003, a constitutional revision was adopted and now we have different functions of the two chambers. Laws remain in principle bicameral laws, but each chamber has the final and decisive vote according to a division of matters. Once a chamber issues a draft legislation, the other chamber may confirm the vote, modify the draft or reject the draft. In all three cases the final decision belongs to the chamber that is seized in a second position. Second is always conclusive.

However, the Senate has the last grip or, in the language of the Constitution, decisional competency, in every matter related to international treaties and agreements, the public broadcasting companies, the Ombudsman, the administration of justice at all levels, the civil service and the general principles of the local government, education, the organisation and structure of the government, the military, territorial organisation, and the functioning of the Constitutional Court. Hence, the Senate has the power to initiate bills and to amend and vote for bills approved by the Chamber of Deputies. The ordinary legislative process requires the vote of the majority of members present in each Chamber.

The Government is politically responsible in front of both Chambers of Parliament. The chambers may, in joint sitting, withdraw the vote of trust granted to the Government by initiating a motion of no confidence.

Moreover, since 2008, both the Senate and the Chamber of Deputies are elected on a mixed single member and proportional system. Senators are elected in single-member constituencies. It is very important to mention that since 2007, the Romanian Senate is up against a qualified populist challenge. In 2009, at the initiative of the president of Romania, a non-mandatory referendum was held in order to modify the size and the structure of parliament, from a bicameral one to a unicameral assembly with a maximum of 300 seats. With a large majority of nearly 78 percent the electors approved the implicit abolition of the senate. However, there is no constitutional constraint to actually apply such an outcome. Ever since, the abolition of the senate remains on the agenda of number of populist pressure groups because the hard power of the senate is a guarantor that true worship – to use Bagehot's words – or democracy to use our language – is safeguarded.

To conclude, I refer again to Walter Bagehot and *The English Constitution of 1867*, because his analysis on the functions of the parliament proves to be more true than ever. It is not legislation that parliaments really do, considering that the executive has been the foremost creator of norms. Instead, what only parliaments do is the job mirror society, to make it intelligible and “to alter it for the better”.

The expressive and the teaching functions maybe today the core functions of the upper and the second houses, but even in symmetric bicameral systems, the first house has the last say on financial matters. Consequently, in our age, when representative democracy is challenged by various forms of populism, the duty of the upper houses is to make us hear what we would otherwise not hear. Or, in other words, to speak the truth to powers that become less and less accountable.

(Applause)

Chair: Thank you very much, dear colleague. I am looking at the clock. Maybe some of you have pressing questions but the King is “breathing in my neck”. First, I would like to ask you for the family photograph and then have a quick cup of coffee. We have to see whether there is at any moment the possibility for questions. But if you have any questions, do it over coffee.

Family photo & coffee break



Chair: We have two more speakers on the first theme. I would first like to invite the President of the Council of States of the Swiss Confederation, Mr. Claude Hêche to take the floor.

**Address by Claude Hêche,
President of the Council of States of the Swiss Confederation**

Mr. Hêche: Madam President, colleagues and friends, ladies and gentlemen. I too, Madam President, would like to thank you for your warm welcome and excellent organisation.

Dear colleagues. If God would have been Swiss, he would still be waiting for the right moment to create the world. The same reflects a national tradition. In the country of watches, we would rather be on time than ahead of time and, of course, sometimes we tend to get late because of that.

I represent a small region, the Canton of Jura, in the Council of States the Swiss equivalent of your senates. The history of my canton, known for its watchmaking traditions, provides a good example of this particular regard for punctuality. Allow me to take you back in time, 200 years ago, to be specific, at the Congress of Vienna. That is when the great powers decided on the current borders of Switzerland. A small French speaking and catholic area, namely the Jura, was attributed to the Bern Canton. You will agree with me that such a decision reeks of end of negotiation session tiredness and in fact, many of the people in the canton of Jura, were dissatisfied by this arrangement. But as I said, in the country of watches, things can get a bit slow. It took approximately 150 years and several separatist demands before Jura was dissociated from the Bern canton. It became autonomous on 1st January, 1979, thus becoming the 23rd canton of the Swiss Federation. The creation of the canton of Jura was an extraordinary event because it led to a peaceful alteration of the country's internal borders. Switzerland demonstrated its great capacity to challenge itself and it is a source of pride and a model of democracy.

This story highlights the versatility of Switzerland. It also highlights a central aspect of Swiss politics. It is because they saw themselves as a separate entity that the people from Jura wanted their own canton. This is true for the population of each Swiss canton, as it is true for most regions in the world. As you will see, this aspiration pervades our entire political system.

In the Upper House, each canton is represented by the same number of senators, regardless of its size and population. The 70,000 inhabitants of my canton are therefore represented by two senators, elected by universal suffrage, just like the 1.3 million inhabitants of the Zurich canton or the 1 million inhabitants of the Bern canton. The national council, i.e. the Lower House in my country, has 200 members elected at the universal suffrage. In each canton the number of seats for every canton in the Lower House depends on the number of inhabitants but there will be at least two members per canton. Cantons enjoy therefore equal representation in the Upper House but this would not mean much if the Upper House had been granted little power. Interestingly, in Switzerland the national council and the council of states share the same competences and the same roles. Among democracies my country might soon stand out as a unique example. Therefore, both houses have strictly identical functions and competences in an area such as budgetary decisions, adoption of government bills, and both can propose amendments to the existing legislation.

Let me start with the elective function of both houses. Both houses meet to elect the federal government every four years. I believe that Switzerland stands out as an exception in this respect. The seven members of the government, whom we call Federal Councillors, are ministers. They carry the same weight and the government as a whole is the head of state. As government members, they must make decisions in a concerted manner. If there were ever proof that Switzerland is the country of consensus, here it is. Dear colleagues, there were only four cases of non-re-election between 1848 and 2007. In most cases, Federal Councillors are re-elected until they resign.

As I said in my introduction, the population of each canton sees itself as a separate entity. It wants to retain sovereignty over its own territory. This aspiration had an impact on the legislative powers granted to parliament and led to the adoption of a principle that EU members are familiar with, namely the principle of subsidiarity. According to this principle, member states only devolved to the confederation i.e. the central state the functions that the federal state is more suited to perform than they are. In other words, cantons have jurisdiction over education for example, the health system and more specifically the hospitals, the police, while the confederation is for example in charge of the army, foreign policy, and public transportation including railways.

Dear colleague, I am a member and I once chaired the Upper House transport committee by way of example of how the Swiss parliament performs its legislative function. Allow me to tell you about a bill adopted in 2014, to ensure the smooth operation of our railway system.

This project originated from a popular initiative. The idea was to allocate to public transport half of the resources dedicated up to that point to road transport. The Federal Council prepared a counter-project and then submitted it to parliament vote. But before, it reached us the project was first submitted to the cantons, the political parties, the social partners, and organisations concerned with transport issues. In other words, to all organisations and entities that may have something to say on the matter. The Federal Council amended the project a bit on the basis of the results of the consultation and it only later on that parliament received the final draft.

The House of the Cantons gives weight to peripheral regions. The Council of States wanted for railway infrastructure projects to focus not on the most travelled segment but to extend to outer regions of the country as well. After the bill was shuttled back and forth twice between the two houses, it was accepted. Without the consent of both houses on all aspects of the text, the project would not have been adopted and would have fallen.

Since the project involved amendments to the Constitution, it had to be submitted to popular consultation. It was approved at the beginning of the year by 63 percent of the voters and by 22 cantons to one. Both majorities, voters and cantons, were required for the bill to be passed.

The process lasted four years. Someone once said that all things durable are slow to grow. Louis de Bonal, the French philosopher said that evidently the duration of the process ensures the stability of our institutions; stepping back would probably take as much time. When a bill is passed by popular vote, no one would even think of reversing it even if political circumstances had changed.

Dear colleagues. Railways are the irrigation network of a country. To bring mobility to a region is to bring oxygen to it. Parliament clearly understood this when it doubled the amounts allocated to the government bill and also to the benefit of outer areas. But there is also a political agenda behind it: making sure everybody benefits from something is a sure way in Switzerland and is also a sure way to gather unanimous support or at least to obtain the support of a majority.

These were my remarks on an important aspect of Switzerland. While drafting this speech, a parallel with the situation in the Mediterranean region – a matter that concerns us all – kept coming to my mind. In 2015 and in the years to come, we will all have to tackle the same problem. Tens of thousands of people risk their lives to reach our shores. They do so because they are not sufficiently heard in the countries where they are coming from. It is because they are never listened to that they leave. They are ready to die for it. So, extolling the virtues of our democracies – as I have just done – is good. It is even a duty, but facing today's reality is even better and is even more necessary. In Switzerland, we have a system called "péréquation financière" or "financial adjustment" or "equalisation". The system provides for the richest cantons to transfer funds to less and old ones. The wealth of the former benefits all, since it fosters the development of the latter. This distribution of wealth is a way to ensure national balance and stability.

You might say it is a normal occurrence in any given country. We all know however, the squalor behind those migratory movements causes instability and imbalance. We are more and more affected by them, as simple travellers, but also inside our own borders. That is precisely why I am discussing the system of financial equalisation: if our wealth through the training of young people or by supporting democratisation could be used to promote the development of those peripheral regions of the immense African continent and the Middle East, which is now plunged in a blood bath, we would strengthen security for all. To prevent such personal tragedies of a global scale, we must undertake and carry through a concerted action. We must define plans, devote forces and means and ensure a fair distribution of tasks between all European countries. And I insist, I am talking about European countries as countries of the European continent because I am part of the European continent. In our global village borders do not only serve to define sovereignties and identities; they act as bridges to share prosperity and to harness the potential of all our regions of the world.

Thank you very much for your attention.

(Applause)

Chair: Mr. Hêche, thank you so much for sharing with us. I would now like to give the floor to the Lord Speaker of the House of Lords of the United Kingdom of Great Britain and Northern Ireland, Baroness Frances D'Souza.

**Address by Baroness D'Souza,
Lord Speaker of the House of Lords, United Kingdom**

Baroness Frances D'Souza: Madam President. Can I thank you and indeed the senate for your warm hospitality! Dear colleagues, I am delighted to be here.

At first glance, the House of Lords speaks softly and carries a small stick. Our debates tend to be calmer and more measured than are often seen in the House of Commons. When challenging the lower house, the stick we wield has very little procedural weight. Disagreements with the Commons are undertaken in the knowledge that we can ultimately be ignored. But lately, we have been wielding that stick with more authority and assertiveness, and we have become more effective at holding the government to account than perhaps ever before.

This is particularly important as the Lords' legislative powers are of increasing interest to many in the UK, thanks to the ongoing debate on Lords reform. Although the reform debate focuses on composition and democratic legitimacy, legislative powers are inextricably linked. Any democratic reform of Lords membership will have an impact upon the primacy of the lower house. This in turn could complicate and slow our legislative procedure.

Let me summarise our legislative powers as they exist today.

All bills have to be agreed by both Houses before becoming law. But the primacy of the lower house is well established. The Parliament Acts 1911 and 1949 reduced the power of the Lords from an absolute veto over all legislation to one of delay for around a year on most government bills. A Lords' decision may be overruled in the next session by a simple majority in the Commons.

So the Lords ultimately defers to the Commons when there is a significant difference of opinion. It can scrutinise and propose revisions to legislation but it cannot challenge the democratic authority of the Commons. And it has rarely tried; the Commons has invoked the Parliament Acts to override the Lords just seven times in the last 100 years.

However, it is worth noting a number of exceptions and qualifications to these Acts. For example bills dealing with taxation and public money can only be delayed by the Lords for a month. Essentially this means the Lords has no power over money bills and makes no attempt to amend them.

But the Lords has some limited hard power: first, any bill seeking to extend the life of a Parliament can be vetoed by the Lords. That is a constitutional issue of great importance. Second, and more relevant in everyday terms, the limitations on Lords' powers only applies to bills starting in the Commons. Bills introduced in the Lords, around a third of the total, can be vetoed by the Lords. The importance of this should not however be overstated. Any controversial bills which the Government suspects the Lords might veto could simply be introduced in the Commons instead.

On secondary legislation too, which is excluded from the Acts, the Lords retain some hard power; a veto which cannot be challenged by the Commons.

However, these hard powers are very rarely employed, thanks in part to members' sensitivities about public perception. To kill off legislation against the will of the elected House, even when procedurally allowable, would be unlikely to impress the electorate.

And there is yet another major constraint on Lords' hard power; uncodified convention. There are a variety of conventions applying to everything from secondary legislation, to manifesto bills to votes of confidence. Collectively, and together with the Parliament Acts, they have defined the limits of Lords' power for much of the last one hundred years.

So instead the Lords' relies upon soft power, principally its ability to scrutinise in greater detail and at greater length, amending bills as it goes. The House benefits from its procedures in this respect. It is a self-regulating House without the strict timetabling rules or the selection of amendments that happens in the Commons. This means the House is free to debate and amend bills line-by-line. In doing so, it employs a form of constructive delay. In the last session, over four and a half thousand amendments to government bills were tabled, of which about a third were agreed.

When the two Houses dispute an amendment, it shuttles between the chambers in progressively amended form until compromise is reached or one side concedes.

Invariably, a compromise is reached, and it is worth noting that a delay mechanism has advantages over a simple veto. It can be used to encourage the lower house to reflect, and it allows time for greater public and media scrutiny of the disputed issues in the bill. This can bring about a more constructive outcome than might emerge from a simple veto.

So how do all of these powers relate to the issue of reform? The 1999 removal of most hereditary peers established membership of the House as a job rather than an honour. Peers can reasonably claim they have earned the right to sit there. In effect, the House now perceives itself as more legitimate. Consequently, the Lords has greater confidence in holding the Government to account, and a greater professionalism with which to do so effectively. They can increasingly bring to bear expertise which is not always so readily available in the Commons. On constitutional matters and matters concerning civil rights in particular, Lords' opinions often carry real scholarly weight, if not so much procedural weight. For example, the House contains a number of eminent lawyers whose opinions on legal matters are widely respected. When such members disagree with the Government, it can often prompt a hasty re-think and an offer of concessions on the part of the government. Post-1999, the Lords has begun to speak a little louder.

This assertiveness has manifested itself in two principal ways. First, some of the uncodified conventions defining Lords powers have weakened. This has particularly been the case during the years of coalition

government, which we have had for the five past years and with which the UK is not very familiar with, when more secondary legislation was challenged, and members of the Lords did not hesitate to attack bills based upon manifesto promises. Second, the Lords has employed a greater willingness to insist upon its amendments to bills. Of course, the Commons is free to object to this insistence, but in reality it has tended to accept defeat about half the time.

I think most in the UK would agree that the effect upon legislation of the Lords newfound assertiveness has been positive. On issues such as the detention of suspects without charge, a compulsory national identity register, and the incitement of religious hatred, the Lords has successfully challenged the government and secured outcomes generally favoured by the electorate.

But it has also brought the two Houses into conflict more often than in the past. And this has led many to fear that full reform of the House of Lords could risk bicameral stalemate. Providing the House of Lords with an electoral mandate could challenge the supremacy of the House of Commons. Tellingly, this point was raised by the joint parliamentary committee which considered the most recent attempt at democratic reform, a draft bill in 2012. That same bill failed to make progress in the Commons and never even reached the Lords.

Over the past century the Lords has avoided using its powers to their full potential. It has been constrained by conventions which were introduced in recognition of its lack of a democratic mandate. Make it more legitimate, and the purpose of these conventions could be undermined. So in employing its soft powers so energetically over the past 15 years, and threatening the use of its hard powers, the Lords has highlighted one of the problems with further reform.

And it is a problem of particular concern to many in the Commons. Every major effort to make the Lords a wholly or largely elected body has foundered in the Commons, long before any of them had an opportunity to founder in the Lords!

Thank you for your attention.

(Applause)

Theme II: Composition of the senate

Chair: That concludes our debate on the first theme. Our second theme of this morning is 'the Composition of the senate'. We will hear first from the Speaker of the senate of the Kingdom of Belgium. Mrs. Defraigne, you have the floor.

Address by Christine Defraigne, Speaker of the Senate of the Kingdom of Belgium

Mrs. **Defraigne:** Ladies and gentlemen, dear colleagues. Introduction in Dutch : vooreerst wil ik onze zusterinstelling, de Eerste Kamer van het Koninkrijk der Nederlanden, namens de Belgische Senaat hartelijk gelukwensen met haar 200-jarig bestaan. Zoals u weet werden de Zuidelijke Nederlanden, de later Belgische provincies, immers vanaf 1815 verbonden met de Noordelijke Nederlanden. Graag breng ik in herinnering dat de Eerste Kamer van de Nederlandse Staten-Generaal haar bestaan dankt aan de hardnekkigheid van de Belgische afgevaardigden in de Commissie voor de Herziening van de Grondwet van het Koninkrijk der Nederlanden na de val van het Keizerrijk van Napoleon en het Congres van Wenen. Ik wilde u ook hartelijk danken voor de perfectie organisatie.

Chair: Excuse me. Are you going to hold your speech in Dutch?

Mrs. **Defraigne:** No, I will continue in French.

Chair: Okay, because Dutch is not translated. I very much appreciated the way you started your speech, because my colleague from Belgium congratulated our senate on 200 years bicameral system. She also said – which is true – that because of the Belgian nobility we got a senate in the Netherlands!

Mrs. **Defraigne:** Dear colleagues. I want to talk about the evolution of our Belgian Senate that went through a thorough transformation during the latest state reform last year. It is the second major transformation we have gone through in our history. The evolution of our Senate is related to the evolution of the state itself. Since the creation of Belgium we evolved from a bicameral system with an obligation to pass all bills through both chambers to a senate that was modified for the first time in 1993. We still maintained bicameral powers, so we participated in passing federal laws, for instance as to the judiciary. We had a right to decide a second reading of draft laws as well, so we could select a certain number of bills that were examined in the House, even if the House had the last say. So, we had a competence in the field of settling conflicts of interests between communities, regions and the federal state. Finally, we had full power as well to initiate laws and to exercise some scrutiny vis-à-vis the federal government, as the Senate is a federal institution. We could use this power through oral and written questions and interpellations.

Then, last year, with our sixth state reform, there was the major transfer of powers from the federal level to the regions and communities. The repartition of powers is often not very clear-cut and it is quite complex to demarcate the powers of the communities, the regions and the federal state. In this process, our Senate also went through a huge transformation.

Its membership in the past was a compromise, a Belgian compromise, that has not really changed in substance. We had directly elected members, we initially had representatives of provinces as well and later on of the communities and the regions, we had co-opted senators, and, last but not least, we had hereditary senators: the children of the King.

With last year's reform, the Senate has slimmed down. We now have 60 senators : 50 of which are elected at community and region level, and 10 senators are co-opted according to the outcome of federal elections. So our Senate, while being located in the heart of Belgium, is meant to represent the federalized entities.

So to say a new Belgian compromise, 50 senators designated by the communities and the regions and 10 co-opted members. Although the Senate is part of the federal structure, it is not composed on a parity base as there are 29 senators designed by the Flemish community, 20 from the South, i.e. the Walloon region and the French-speaking community and 1 German-speaking senator. So, this is very complex and complicated. I always say that anyone that manages to understand the Belgian situation can really travel around the world and understand world politics without a problem.

This trimming down when it comes to membership implied also a radical change of our powers. We are still a federal institution. We keep bicameral powers, federal powers. We can follow up on federal laws. There is the principle of participation of the federal entities in making federal laws. It is an indirect participation, because we are delegates from the federal entities. We still have a right to initiate laws. But both of these competences are closely linked to institutional issues requiring special majorities in parliament. So for instance, the communities and the regions can interrogate the federal state on its intentions, for example as to the law dealing with the financing. We have jurisdiction for conflicts of interest, that is when a community or a region takes a decision that is detrimental to another community or a region or when the federal state takes a decision that is detrimental to a community or a region, we can discuss the matter in the Senate. We still have the right of initiative, but rather through resolutions than through tabling draft bills. We have the possibility to interrogate the federal government, every senator originating from the communities and regions can freely do this.

So, compromise if you call it that way, I sometimes use the term stem-cells. Because the Senate has a little bit of everything. We have survived the sixth reform of the state in which many competences were transferred to the federalized entities. I cannot predict if the Senate will exist forever. That partly depends of the success of those who have a more confederal view on the future Belgian state. We would like to convey a message. Our Senate also has strong powers when it comes to information reports, a bit like the French senate or the European parliament for transverse issues. We have added value on a certain number of topics, like radicalism. Problems do not stop at the language border; we work on co-parenting for example. We have a think tank, we work on mobility, on child poverty because problems tend to cross the boundaries of the federalized entities on both sides.

The message I want to convey today is a message of political willingness. This forum, this meeting place between communities or regions and between the communities and regions and the federal state is essential in a federal state which respects itself. The Senate is essential a the core of the state. If we do not keep this capacity to talk to each other and share experiences in our small and complex country, how should we deal with matters like education ? Can we manage or share our experience? If we do not have this forum, which is essential to our democracy and which some want to destroy, the state will collapse.

We are not only in the center of a symbolic discussion, we are also in the center of Europe. We host the capital city of Europe, so we need to think about the future of Europe and the way we want to organize it and want it to function. So I would like to draw your attention to the Belgian situation, which may seem to be an exotic situation, a kind of laboratory, but it is an essential question. So we need to defend us, we need to be protected because we are at the heart of the institutional and democratic system. Destroying us is destroying the state.

(Applause)

Chair: Thank you very much for your contribution Mrs. Defraigne.

Mr. Ognjen Tadić, Deputy Speaker of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, may I ask you to give your contribution.

**Address by Ognjen Tadić,
Speaker of the House of the Peoples of the Parliamentary Assembly of Bosnia and Herzegovina**

Mr. Tadić: Ladies and gentlemen. First of all, I would to extend my congratulations to the host for this great jubilee. I am really thankful for the great organisation of this conference. Many of us think that what you heard from our Belgian colleague is complicated but you have not heard what it looks like in Bosnia Herzegovina! That is why I would to respond to my colleague from Switzerland: if God were from Bosnia Herzegovina he would have thought he created a free world. That is why I will not talk about the composition of Bosnia Herzegovina. That is a well-known structure and it is the result of a well-known peace agreement.

My message is very simple and very short. We have to put bicameralism in function of the future. If the house of representatives is the result of public opinion and the house of peoples has had its mission, this mission has to be connected with essential needs in Europe. That is a question of identity. If the house of the representatives tells us what is everyday politics and the upper house has to keep the identity of the country that is served, only in that way we will have the strong light that will show us in which society we are living. The citizens have the house of the representatives and the elements of each country, of each identity have to be represented in the upper house.

In Bosnia Herzegovina we have only 15 delegates in the upper house. That is the house of the people. Five members are Bosnian Serbs, five Bosniaks and five Croats. We have the same competencies as the House of Representatives concerning the legislative process and the other issues. Thanks to that, we keep the peace and political stability. So, we have the equal trend represented in the house of the representatives and specific identities are identities are represented in the house of peoples. In that context, human rights and the rights of politics are clearly seen.

After twenty years of decomposition of our system I am completely sure that it is completely good for our system and for the other system as well.

Thank you.

(Applause)

Chair: Thank you very much, Mr. Tadić. Are there any questions or comments?

Dear colleagues, the speech of Mr. Tadić was the last contribution for the morning session of our conference. We will reconvene for the afternoon session at 15.00 hrs.

Our schedule for the upcoming hours however is rather strict. Let me take this opportunity to discuss some logistical matters.

The Heads of delegation are invited for the meeting with His Majesty, King of the Netherlands. May I ask the Heads of delegation to be ready for departure in approximately five minutes, downstairs at the lobby of the senate? The bus that will bring us to Noordeinde Palace will depart no later than 12H00 in front of the senate. After our meeting with his Majesty the King, the Heads of Delegation will enjoy a lunch in the beautiful ambiance of Museum Bredius. We will return to the senate at approximately 14H45.

Those of you who will be attending the meeting of the Secretaries General are kindly requested to convene in the Hall, where we just had our coffee break.

All members of the delegations are invited to enjoy their lunch in the Noenzaal at 13H15. The Noenzaal is located at the ground floor, behind the reception desk.

All members of all delegations are asked to reconvene in the senate for lunch no later than 14H45.

Thank you. And in case of any questions or uncertainties, please ask your liaison officer or anyone from the staff.

Lunch

Chair: Dear colleagues, dear guests, welcome back in the plenary hall of the senate. Now, I would to continue with our conference. There are still seven speakers left on our agenda. The first speaker will be Mr. Jean-Claude Gaudin, Vice President of the senate of the French Republic. He will continue the deliberations on subtheme II: Composition of the senate. Mr. Gaudin, you have the floor.

Address by Jean-Claude Gaudin, Vice President of the Senate of the French Republic

Mr. **Gaudin:** Madam President of the senate of The Netherlands, dear colleagues. I will dedicate my first words to you, Madam President. Thank you for your warm welcome.

French bicameralism is both balanced and differentiated. The senate of the 5th Republic has its own specificity, its own legitimacy. We are not clones of the MPs. The senate is not a carbon copy of the Lower House. As provided for in article 24 of the Constitution senate members are elected by indirect suffrage and ensures the representation of the territorial communities of France, i.e. municipalities, departments and regions. More specifically, we are elected by the elected representatives of those territorial communities. Those who elect us, are the representatives of more than 30,000 municipalities. They account for more than 95 percent of our electorate. The so-called département councillors and regional councillors also elect us.

Essentially, the electorate system dates back to 1875, already 150 years ago. It resulted from a compromise between the republicans and the monarchists in favour of a counterweight to the risks associated with an omnipotent Lower House. As the rapporteur of the first bicameral legislator in France, the so-called directoire, said in 1795, MPs embody the passion and imagination of the republic, while the elders, the then senators, are the reason of the country. The senate therefore serves as a balancing pole for the republic. Although indirect, the election of senators is universal. We are parliamentarians in our own rights. We possess all the competences associated to the parliamentary function. We enjoy the same status and the same competences as the members of the Lower House. We can initiate the legislative process, we can amend, we can inquire.

This principle of equality prevails until the government gives the last word to the Lower House. This has happened with 10 percent of all bills on average since 1958, when the first republic came into existence. The shuttle system between both houses remains, regardless of the political differences between them, the overwhelming mode of passing legislation. Let's add to that that the senate cannot bring down the government unlike the Lower House, although it has not done so since 1962. Conversely, the government cannot dissolve the senate, which therefore preserves the continuity of the republic. The speaker of the Upper House may act as an interim president of the republic. As parliamentarians we represent the nation. As such we enjoy general competences, the same as the Lower House. We can

discuss financial texts, any text such as the one regarding the merging of territorial entities around the city of Marseille, which is of course a topic of concern for me or on other areas such as the continuation of our military presence, more or less everywhere in the world unfortunately.

I will make no secret of the fact that our voting system raised several criticisms, in particular the issue of over-representation we have alleged of our rural municipalities. But one has to admit that such criticism died down quite significantly after the left became the majority party in the senate in 2011. At the time we heard the senate will never fall to the left, which of course was not true in 2011. Then criticism started to die down.

Should we increase the number of representatives of bigger cities with the associated risks of giving the greatest number of votes to non-elected voters? Well, rightly so, the constitutional council does not allow it. The greatest part of our voters must be elected representatives themselves. Truth be told, the French senate draws its strength, its legitimacy from the decentralised organisation of our republic, as provided for in article 1 of the Constitution. The senate is an expression of the diversity of urban, rural and hyper-rural France. To quote those nice words spoken by Gérard Larcher, the speaker of the French senate, the democracies of numbers and territories must combine to improve the representation of our citizens. In fact, our citizens vote twice for the French parliament. They vote directly during general elections and indirectly during senatorial elections.

Finally allow me to stress once more the importance often underestimated of the renewal per half of the senators, who are elected for a six-year term, i.e. one year more than MPs. The result of such a system is that the senate remains outside of the five-year rotation cycle of the executive branch, while general elections in our country usually follow an identical pattern to the presidential elections. Unlike the Lower House, which has a relation of natural symbiosis with the government, the primary function of the senate is not to support or to fight the government, but to give full expression to the diversity of its territories from which France derives its richness. This absence of synchronicity in electoral cycles and terms gives strength to the senate. Today's senate, whose composition was renewed after the 2014 municipal elections, has a fresher, a more recent representativity than the Lower House, elected in 2011. The two-thirds proportional election system ensures that no group holds an absolute majority of seats in the senate. The pluralistic membership within the senate, less vulnerable to the effects of an overwhelming majority, accounts for the senatorial style of our debates.

Within the senate, freedom of speech, mutual respect of ideas and the quest for the broadest consensus possible prevail, in order to adopt the best possible legislation, passed sometimes under the pressure of the media, sometimes passed hastily. It happens sometimes, when the government does not want discussion in the parliament to adopt decrease. In the French republic decrease is to be considered as loss. This is what is going on at the moment. Of course this is giving rise to a lot of criticism. In the senate we look for the broadest possible agreement and consensus beyond political differences. In our balanced bicameralism it is very often the wisdom of the senate that has the last word. We are quite happy. Of course the French senate has changed quite a bit. The law on gender parity is such that of course the senate has changed a lot. Many women are senators nowadays, where of course in the past there were very few of them.

So I see a long life for the French senate. Those who in the past in history tried to change the senate, those who more recently even thought about it, I wish them good luck if they really want to change it. I do not think they will manage. And so, Madam President, bicameralism does exist in France. We are strong on our feet. It is deeply rooted and we wear it well. The senate will last. I am happy to invite you all to the senate. Please come and visit us whenever you like. Thank you very much.

(Applause)

Chair: Thank you very much. I would now like to invite the president of the senate of the Republic of Poland, Mr. Bogdan Borusewicz to give his views on our topic today. Mr. Borusewicz, you have the floor.

**Address by Bogdan Borusewicz,
President of the Senate of the Republic of Poland**

Mr. Borusewicz: Ladies and gentlemen. I should start with the slogan and with the words you ended, mister speaker. This would suffice in fact. However, for starters I like to thank you Madam President for the hospitality and the invitation. I would like to apologize that I was unable to participate yesterday. We could not participate yesterday because the president sent to the senate a draft referendum, which is very important because it applies to three issues. Besides we have the electoral period. The day after tomorrow we will have the second round of the presidential elections. So, referring to the words of Mr. Popescu, I had to stay in order to be the milk poured into the hot coffee. The senate is this boiling hot coffee and I had to make sure that the deliberations and discussions of such a body as the senate do not turn into an electoral debate. But I decided to come today because I think that my presence confirms that in Poland we are not willing to listen to those who are screaming and shouting that it is going to be better without the senate and that, without the senate, it is going to be cheaper. Sure, maybe some things can be cheaper without democracy at all, but it always turns out that the price of going in this direction is always higher than people think. People are not experts in this area and follow those slogans.

First, a very brief history of the Polish senate. A brief history, even though the history is in fact very long. The Polish senate was established in the 15th century as the Royal Council. Later, in 1508, a principle was adopted, approved by the king because he had to approve it, that no laws could be sanctioned without the parliament, so without both councils. This system in which the Royal Council was functioning, the Upper Chamber, kept functioning for more than 250 years. For better or worse, but it did function. The Royal Council also participated in three elections of the king. At a certain point in time in Poland kings were elected indeed. The first king was Louis de Vallois, the French king. So this is how the senate was functioning. It kept functioning until the partitions of Poland. That was the end of the 18th century. It disappeared along with the Polish state. The senate was reborn between the wars, when we regained our independence.

So in our Polish awareness, we know that when Poland is independent there is the senate. Whenever we lose independence, the senate is eliminated, it is abolished. That was the case in 1946, when communists as a result of a rigged referendum abolished the senate. This condition without the senate lasted until 1989, when the first free elections after the war took place. These were elections for the senate. As regards the Lower Chamber, in this case the governing partner with its supporters had a guaranteed 65 percent vote. Later it broke down. The truly free elections were the ones for the senate. The outcome was horrendous. 95 percent was granted to Solidarność. Out of 100 senators only 1 was outside of Solidarność, the solidarity movement. So this was such a strong political impact that in fact it broke down the then authorities, which were back then in quite a precarious situation. The senate was in fact an outcome of coming to terms with the then power.

The senate was an outcome of the roundtable agreement. The intention was for the senate to balance the position of the president. Jaruzelski was supposed to become president as a representative of the then power camp. The senate was supposed to balance the position of the president, which is why it was possible to enforce totally free elections for the senate. The senate got the same rights to veto bills as the president. So in order to reject senate's veto, just like in the case of president's veto, two-thirds of votes were necessary in the Lower Chamber. The system that was then initiated has changed slightly. The arrangement between the two chambers, the position of the Lower Chamber and the senate, still persists. In a system of stability it is really hard to change the system of the state, even if you thought before that this would only be a temporary system.

After the establishment of the senate, the Lower Chamber got involved with economic reforms, which it carried out very fast, within six months. The senate established self-government. It worked out laws, implemented them and within six months from the first bill we had the first self-government elections in Poland. This was a period of very intensive work. However, the position of the senate was very strong back then, because the senate was the chamber that was elected in fully free elections.

What is the senate's position in Poland? Poland is a Unitarian country with a strong local government position, also at a regional level. We did not have the German traditions with strong diversity at regional level. Throughout the divisions of Poland the tradition did not originate. Poland was changed by the divisions. Poland is not a federal country. So senators do not represent regions. Each of them represents the whole country, as it is the case in the Lower Chamber. The senate's powers are primarily legislative powers, but the senate holds a weaker legislative position than the Lower Chamber. It can examine, assess bills after they are prepared by the Lower Chamber, and refer to them as a whole. Of course amendments are made by the senate to the Lower Chamber's bills. This is the principle role of the senate. Also the senate prepares its own legislation. This legislation has to go to the Lower Chamber in order to come back to the senate afterwards.

The senate also has some powers in terms of referenda. We discussed that at the Polish senate yesterday. The president of Poland has the initiative in terms of referenda. The senate approves such referenda. It also has powers. Sometimes those powers are not clearly limited between both Chambers. So we have in gross some powers of the Lower Chamber in terms of the verdict of the European Court of Human Rights. We specialize in taking parliamentary position in Poland vis-à-vis those verdicts. Historically we also specialize in protecting Poles abroad. It is historically anchored in the first free elections.

The senate does not have any powers in terms of government scrutiny. Such powers belong only to the Lower Chamber. This means that the senate is less politicised than the Lower Chamber. In this discussion about the rationale behind the very existence of the senate I want to argue that the public presents a higher degree of acceptance towards the senate than towards the Lower Chamber. I would like this level of acceptance be even higher, but still it is higher than in the case of the Lower Chamber. From the point of view of the discussion about the rationale behind the senate it is still very important. Of course the senate has to evolve. It is key to the overlap in terms and offers between the Lower and the Upper Chamber in anti-cyclical terms, not to copy the same majority from the Lower to the Upper Chamber. Maybe some other political powers would be needed that would be possible only under a new constitution. It is not possible just now.

Thank you.

(Applause)

Chair: Our third speaker this afternoon will be the president of the National Council of Slovenia, Mr. Mitja Bervar.

**Address by Mitja Bervar,
Speaker of the National Council of the Republic of Slovenia**

Mr. **Bervar** (Slovenia): Madam President, dear colleagues, I would like to greet you on behalf of the National Council of the Republic of Slovenia. I would also like to join the previous speakers and express my gratitude to our host for the excellent organization and warm reception in this setting with such a rich democratic tradition.

Parliaments as institutions should provide answers to a number of fundamental questions about the functioning of modern society. Each community however is faced with specific challenges, which means that various possible solutions are debated in order to resolve issues. In terms of the composition, the organization and functioning of the National Council of the Republic of Slovenia is atypical. It is composed of five interest groups, namely: the representatives of employers, employees, farmers, craftsmen and other independent professions, non-commercial activities and local interests. The latter is also the biggest group. Through a variety of channels the five interest groups contribute diverse or very specialized initiatives and interests of the institutionalized electorate and different forms of civil society to the work of the National Council. It has a special relation towards political parties as well. Its different position in relation with the political parties stems from the fact that there are no political party clubs in the National Council.

I therefore believe that senates are justified when they have a different institutional basis and a different composition from the other Chamber. Two Chambers are needed in order to complement the political representation with the representation of interests. The two Chambers thus cooperate with each other.

The post of a member Councillor is not a professional one, with the exception of the president. They serve for a term of five years, which provides them with greater autonomy in their work and makes them less dependent on the daily politics. It also means that the Councillors have hands-on experience, remain in touch with their professional fields that they represent on the National Council, which is directly reflected in the quality of work carried out by the National Council. The interests of different social groups meet in the National Council in an institutionalized manner. Decisions are adopted on the basis of informed expert opinions presented in debates. Considering their expertise on the subject matter the Councillors can ask the relevant questions about solutions to social problems, give opinions supported by expertise and initiate legislative amendments.

Just like other notable institutions in the country, the National Council plays an important role, because it is closely connected to civil society and different interests. It organizes a number of public consultations and thus enables and encourages civil society to assume an active role in the decision making process when matters of public significance are at stake. Owing to its cooperation with civil society it represents a link between the citizens and daily politics. At consultations the National Council hears many different reasoned opinions on the basis of which it proposes legislative amendments within its powers. For example, the legislative initiative is an important tool, as it enables the National Council to pursue the interests it represents.

The Slovenian experience with two Chambers has shown that more intensive contact between a senate with a modern concept and an organized expert civil society represents the missing link or element needed to reduce the democratic deficit in a world dominated by political parties. Since the National Council contributes the opinions, views and comments of the expert public stakeholders in civil society

and non-governmental organizations to the legislative process, it promotes active citizenship and democracy. When the Councillors are of the opinion that a certain piece of legislation is not satisfactory they use a suspense veto. In this way the National Council requests from the National Assembly to decide again on the piece of legislation, although the deputies or the MPs have already adopted it. In its reasoning for the suspense veto the National Council highlights the unsuitable legislative provisions. It also draws attention to such provisions earlier on in the legislative process. The National Council endeavours to find such procedural solutions that improve the quality of the adopted legislation and prevent complications in the implementation of less than thoroughly elaborated laws. The veto and subsequent repetition of voting in the other Chamber facilitate a broader political consensus about a particular issue.

The National Council also has the power to initiate proceedings before the Constitution Court to assess whether a law or any other general act is in compliance with the Constitution. It has already exercised this right on several occasions. The Constitutional Court has in a number of cases decided in favour of the National Council, thus confirming that the issues raised by the National Council in the legislative process were to a great extent well-founded. The National Council is a corrective mechanism for the hasty decisions of the National Assembly or the other Chamber, which explains its role of checks and balances in the legislative process. Its work is important for the efficiency of the Parliament as a whole and for the provision of legal certainty and other principles of the rule of law and democracy in general. This constitutes an active contribution of the National Council to a better political culture and dialogue in the given political context.

Distinguished colleagues, I am well-aware of the following personal opinion that I would like to share with you. We know that we need to promote the stability of the senate in the future, because it is an important factor in the implementation of democratic standards and democracy in general. We are faced with the circumstances that frightened the existence and development of the Union. It is our responsibility to focus our activities on political decisions that deliver quality legislation on the basis of a consensus between the politics and civil society. We, the representatives of senates, should do our utmost so that senates become more active and have a greater impact on the political system of the European Union.

Ladies and gentlemen, by way of conclusion I would like to officially announce the candidacy of the National Council of the Republic of Slovenia to organize a meeting of the Association of European Senates in Slovenia in 2017. I wish you, dear colleagues, every success in innovative and multi-faceted discussions at this meeting.

Thank you very much.

(Applause)

Chair: Thank you very much for your proposal to host the meeting in 2017.

Dear Mr. Bervar, I would like to thank you for your elaboration. After hearing from the senate of Slovenia, I would like to pass the microphone to the last speaker on this subject, the First Vice President of the senate of the Kingdom of Spain, Mr. Juan José Lucas Giménez. You have the floor.

**Address by Juan José Lucas Giménez,
First Vice President of the Senate of the Kingdom of Spain**

Mr. **Lucas**: Your Excellency, Madam President, dear colleagues. To me it is an honour to participate at this meeting of the Association of European Senates which brings us together today at its 16th session in the city of The Hague. I would first of all – and it is not just a platitude – like to express my gratitude to the senate of The Netherlands for the excellent organization of this meeting, and also take the opportunity to congratulate the senate on the celebration of the 200th anniversary of the country's bicameral parliament. Of course this is reason for great joy, taking into account the difficulties that the parliamentary system is currently facing and the continued challenges at the value of politics, which has led in many countries to a debate on whether or not it is desirable to maintain a bicameral system.

In Spain, this debate has received extra impetus by the economic crisis and the emergence of new political parties. We have seen this phenomenon in other countries as well. These parties are questioning the adequacy of certain institutions such as the senate which, in accordance with the constitution of 1978, must represent regional interest and complement the role of Spain's lower house, the Congress of Deputies. The problem is that there has always been concern about insufficient representation of regional or local interest in the Spanish senate which, based on its current composition, actually reproduces the same ideological opposition as the Congress of Deputies. This means that debate mainly focuses on the principal issues of national policy concern.

The present senate comprises 266 Senators, which is slightly fewer than the 350 members of Congress. The senators are elected by means of a dual procedure. The overarching majority of the senators are elected in provincial constituencies. Every province elects four senators. This is a direct election, just like in the Congress of Deputies, in which each voter can cast three votes. They can cast their votes on different parties. So this way the electoral system is such that ordinarily the political powers of those constituencies have more votes. This is what we see in the senate. We see this happening today. Two thirds of the senate are in the hands of the Partido Popular, which is a governing party. The Congress of Deputies has closed and block lists that cannot be touched or altered. Although the candidates appear on voting papers grouped by political parties, each voter can vote for candidates of different political parties if they wish. Always they have to use the entire voting paper. Currently, 208 Senators are elected like this.

Senators are also appointed by regional parliaments. On Sunday we have elections for most of the autonomous parliaments. The outcome will also have an impact on senators, the senators chosen by the autonomous regions. So the senators are appointed by regional parliaments with one for each autonomous region and another for every 1 million inhabitants of their respective region. This second group of senators varies and has grown in recent years as a result of the increase in population in some autonomous regions such as Andalusia, Valencia, Madrid and Catalonia. This designation is therefore an indirect or second-degree election in the sense that they are not elected by the population but by representatives chosen by the autonomous regions. The only requirement of the Constitution is that there be adequate proportional representation, which means reserving for each parliament to regroup the respective parliament a number of seats proportional to its numerical strength, i.e. the votes that it has received. The problem is that, once they have been elected, we see that each autonomous region regulates the election procedure in its statute. We see that there is a territorial representation. The Spanish Constitution says that the senate represents the regional parliament. It is sort of a regional parliament, whereas all the political forces agree that this proposal or this affirmation regarding the Constitution actually does not tally with these regional feelings. We have to remember that in 1978 there were no autonomous communities at all. The autonomous communities emerged after the Constitution was passed.

The general rule established by the Spanish Constitution is that the senate is a House of second reading. It can veto and introduce amendments to the law referred to by Congress with a total processing period of two months. When the senate vetoes a bill passed by Congress, it can be lifted by the Lower House through ratification of the initial text by the required majority, which fortunately does not happen in other senates. When the senate introduces amendments, they can be approved or rejected by the Congress of Deputies by simple majority. The situation of disagreement between both Houses is therefore ordinarily resolved without having to resort to means of reconciling these differences. And this is precisely where we have the debates future reforms of the senate.

There have been reforms. Various possible methods of reform are being studied in a paper to strengthen the role of the senate, which is performing its tasks with the participation of all political parties in the House. I believe that reform of the senate cannot take place without political will, especially with the majority parties. Some of the main areas of the reform which I can highlight would be: establish in laws with a regional impact that the senate performs the first reading and in case of any disagreement makes use of conciliation methods. Second to determine what goes on in the senate and not in the Congress of Deputies, the taking into consideration or acceptance of the legislative initiatives proposed by the autonomous regions. Autonomous regions have the possibility to take the initiative in legislation. Then we should see that in the senate and not in Congress. Thirdly to establish more demanding requirements so that the Congress of Deputies rejects the proposals of the senate in ordinary legislative procedures. There has even been talk of increasing the processing times of the senate from two to four months in ordinary legislative procedures, whether it becomes the House of first reading or remains the House of second reading.

Ladies and gentlemen, there are people who are claiming further representation of local authorities and entities. But in my country this is an attempt that does not seem to have sufficient support. Particularly in a country such as ours, in which the local authorities have links with the autonomous communities but also with the state central administration, we would have a peculiar system, quite different from the German system, with the "Länder", and quite different from the French system, where there is only a link with the central administration. In Spain the senate is the most appropriate body to represent local interest and regional interest. Currently, there is a Commission of Local Authorities, which has no parallel in the Congress of Deputies, but greater efforts can undoubtedly be made. As we have already pointed out on many occasions in the Committee of the Regions, which I had the honour of chairing for many years, we need to "drop down" to the closest level of the citizens and incorporate this in national decision-making so that their interests are understood and defended. Once again, some colleagues have insisted on this principle of subsidiarity, that no higher administration should do what a lower administration can do better.

I honestly believe that the senate can serve for improving relations between the various regional powers, increasing government control, permitting a second reading or more considered reflection in the democratic process and, finally and definitely, ensuring wider publicity of legislative debate and, therefore, a more informed public at large. It is necessary though to update and strengthen their roles and ensure that they are perceived as useful by citizens. And this is an on-going task to which we can contribute with debates such as that which brings us together today, and which enable us to share points of view on the current situation of our respective parliamentary Houses.

Thank you very much.

(Applause)

Chair: Thank you very much. We have a couple of minutes for questions or comments. Is there anyone who would like to pose a question or wants to come up with a comment? If not, I think we best proceed with our third theme, the importance of public opinion.

Theme III: The importance of public opinion

Chair: The third theme we will address during this conference is the importance of public opinion. May I invite the First Vice President of the senate of the Parliament of the Czech Republic, Mr. Přemysl Sobotka, to take the floor?

Address by Přemysl Sobotka, First Vice President of the Senate of the Parliament of the Czech Republic

Mr. Sobotka: Ladies and gentlemen. Thank you Madam President for your hospitality ensuring our very important conference. The role of senates in relation to the general public is unrewarding to a certain extent. It is far from easy to explain the stabilizing role of the senate. However, it is our duty to communicate this fact. Provided the state, the government and the Lower Chamber of the parliament work well, the senate always has to look for its own and often times less attractive topics. In case the aforementioned institutions make mistakes, the negative assessment affects the entire politic landscape, including the senate. However, I wish to stay optimistic. The trust of the general public in the senate in the Czech Republic is growing on a long term basis.

The growing of the trust in the Czech senate has three reasons in my opinion. Firstly, thanks to the majority election system people usually elect remarkable and experienced individuals into the senate, that do have a strong link to the respective region. Secondly, the senate significantly contributes to the improvement of legislative process quality. Thirdly, it is quite successful in looking at different ways how to open the senate to the general public. Having mentioned the relationship of individual senators to their regions, one has to add that this is practically a spontaneous process. Senate elections create a paradoxical advantage, because the senate is definitely not the main political arena. It is no place for political shooting stars, goal getters and people who need to be patted on their backs continuously.

You may be wondering how successful senate candidates look like in the Czech Republic. It is often times a mayor of the city from the respective region, whose political work significantly contributed to the improvement of quality of life of ordinary citizens. Alternatively, it might be an experienced lawyer, doctor or economic expert, who can make use of his experience in the senate.

The main role of the senate is in legislation obviously. The senate stabilizes the Czech politics because it is not possible to dissolve it, according to our Constitution. Furthermore, I would like to state that the senate truly contributes to improvement of legislative process in our country, irrespective of what the colour of the senate or the Chamber of Deputies actually is. In case the senate returns an amended bill back to the Chamber of Deputies, the Lower House in the overwhelming majority of cases adopts the bill as amended by the senate. Hence, we correct major mistakes in proposed bills. The role of the senate of the Czech Republic was confirmed at the moment the Chamber of Deputies got dissolved and the senate took over a certain part of its competences. It was at this very moment when legal measures preventing a very chaotic situation our legislation has been adopted. The general public's reaction was largely positive.

Let me mention one more figure concerning the number of EU-legislation discussed in the Czech senate. I am quite proud of the fact that the Czech senate is the second most active parliament House in the European Union when it comes to the overall number of EU-bills discussed in the House. The only

country ahead of us is Portugal, but if I am not mistaken this is due to the fact that Portuguese parliament has to discuss these bills according to the current valid national legislation. However, the question is how the resolutions are adopted by the senate taken into consideration both by the Czech government and the European Commission in particular. In other words: we have a great chance to make use of the yellow, orange and lately also the green cards, but this is a task for all Chambers of Parliament of EU-member states.

I have also mentioned the fact that our senate is open to the general public. What is most important in my opinion, are the special seminars with quality experts that we organize and that are open to the general public. In addition to expert seminars we also organize cultural and social events that certainly get positive reception among the general public.

Ladies and gentlemen, I have briefly introduced the Czech recipes for positive perception of the senate. I sincerely hope this provided some food for thought for you. But there is no point in speaking high all the time. One needs to know that we can earn the respect and trust of the general public only by working hard on an everyday basis. I shall refrain from discussing the role of the media, since this would take a long time. To cut a long story short: a good news is no news for the contemporary media and the current media picture very much corresponds to this approach, although our senate is always bringing the positive information. By way of conclusion let me say that I am of the opinion that in the course of the unofficial debates we had yesterday and today during breaks and lunches it is clear that our association should also discuss the major issues of today, such as immigration, the situation in Ukraine, Islamic State and the EU economic situation.

Thank you very much for your attention.

(Applause)

Chair: Thank you very much Mr. Sobotka. Now I would like to give the floor to the Speaker of the senate of Ireland, Mr. Paddy Burke, who has been especially invited to share with us his views on the recent referendum in Ireland on the abolition of the senate.

**Address by Paddy Burke,
Speaker of the Senate of Ireland**

Mr. Burke: Thank you very much for the invitation, the fabulous dinner last night and the opportunity to speak in this magnificent Chamber. Congratulations also on your 200th anniversary. We are here in an observer capacity.

I propose to speak about the Irish referendum of 2013, which resulted in a rejection of the proposal to abolish our senate. 2008 was the year the economic bubble burst in Ireland. Our banks failed and had to be propped up by a State guarantee before being taken into effective State ownership. The Celtic Tiger economy floundered in a sea of unsustainable private debts and excessive public spending, funded by overdependence and tax revenues from the construction industry. Although there was an international context to Ireland's economic crisis, domestic failures played a major part in what happened. Not least of these was the failure of our political system to manage and monitor the economy properly and to provide for adequate systems of regulation. Not surprisingly the Irish people demanded political accountability.

In the 2011 general election they removed the governing Fianna Fáil party from power in the most dramatic defeat of a sitting government since the foundation of our state in 1922. In a climate in which the performance of our political institutions was under scrutiny like never before, the debate began to develop around the question of reform. Reform of the senate was part of this debate. In a bold move in 2009 the then leader of the opposition, now the prime minister, Mr. Enda Kenny, announced his intention to seek to have the senate abolished if his party formed the government after the next general election. He also announced that he would reduce the number of members of the Lower House by twenty from its current 166. He estimated that these measures would save approximately €150 million over a five year parliamentary cycle. In addition to the potential for reducing costs the now prime minister at that time viewed the abolition of the senate as an important element of a broader program of political reform. He concluded that the bicameral system in Ireland was an anomaly in Europe. He said that the parliaments of smaller countries tended to be unicameral. Second Chambers were generally found in larger federal countries.

In 2011 Mr. Kenny's Fine Gael Party and the smaller Labour Party constituted a substantial majority and formed a coalition government together. While there were many reasons for their electoral success, the promise of political reform, including the abolition of the senate, had formed a significant part of both parties' electoral platforms. In July 2013, the legislation necessary to hold the referendum was passed by the government majority in the senate after a debate in which senators from all sides had put up a strong and a passionate defence of the Chamber. The opinion polling suggested a comfortable majority of the people in favour of abolition. In fact, they said at the time that the people were queuing up to get rid of the Second Chamber.

The campaign in favour of abolition had two main messages designed to appeal strongly to public opinion. Amidst allegations of populism the public was offered the opportunity to remove 60 politicians from their jobs to save the public purse €20 million per annum. However, as the debate developed, public opinion became more receptive to the sophisticated arguments in favour of retaining the senate. It was argued by those in favour of retention that the role of the senate in reviewing and if necessary delaying legislation allowed it to check the otherwise untethered power of the government. They believed that abolition was an attempt by the government to reduce accountability by centralizing power. The senate was depicted by its supporters as a representation of specialist expertise, which was well-placed to appraise critically and add value to the legislation coming to it from the Lower House. Attention was drawn to the academic, professional and cultural backgrounds of some of the current members and in particular to significant historic figures who had been members of the senate previously, such as the great poet William Butler Yeats. What the senate lacked in popular representation it made up for in expertise.

Delimited franchise for the senate was a subject of much debate. 43 out of the 60 Senators are nominated by vocational bodies and they are elected by 1,000 local members and 226 members from board houses. 6 are elected by graduates of universities and 11 members are appointed by the prime minister of the day. The case was made that the senate could not present public opinion properly. It appeared that the people did not agree and that they valued the specialism to a greater or lesser degree than the existing system produced. Strong arguments were however made for extending the franchise. In the course of the debate public opinion conversed with a greater number now persuaded by the arguments made in favour of retaining the senate. The gap was finally closed on polling day in October 2013, when the proposal for the abolition of the senate was rejected by 52 percent of the voters. So for the first time since the Constitution was approved in 1937, the senate had received popular endorsement.

The question put to people as required by the Constitution allowed only the options of acceptance or rejection. However, a dominant theme of the debate was the question of reform. The decision to retain the senate was widely interpreted as a mandate for change. Opinion polls taken in the months before the vote had supported this view, with one third of the respondents advocating reform and only 7 percent in favour of retaining the House as it was. Despite the result of the referendum, public support for the senate could not be taken for granted. The difficulty was that there were many different views for reform.

The question of reform of the senate has been certainly an ever present element of political discourse in Ireland. Prior to the referendum there had been eleven reports on reform, but very little implementation of their recommendations. Following the 2011 general election senators themselves were conscious that steps needed to be taken by them to reform the way the House operates. The priority in any reform process had to be a greater level of engagement with the public opinion and civil society to make an impact without a delay that would be required by constitutional and legislative change. The senate established its own public consultation committee. The committee was tasked with providing for direct engagement and consultation between members of the public and the senate. The committee selected top topics relating to the legislative powers of the senate and invites submissions from the public. Contributors are invited to address and engage with the committee. The meetings take place in the senate's Chamber. For instance, next Tuesday the committee will publish a report on farm safety, an important issue in a country with a strong agricultural tradition.

While the public consultation committee is an important indicator of the willingness of senators to respond to the need for greater engagement with public opinion, it is clear that more fundamental change is required. Senators themselves responded to the referendum result by publishing their own legislation, seeking radical change in the way the senate is elected and constituted. It must be said though that getting agreement from all shades of public opinion in the senate has proved a very difficult task. Proposals for electoral reform and reduced salaries for senators have not been welcomed by all senators. Another general election is on the horizon at the end of 2015 and the public still demands reform.

In December 2014 the prime minister appointed an expert working group on senate reform. The working group, comprising of academics and former senators, was primarily tasked with examining possible electoral reforms within the existing constitutional framework. It was also asked to explore ways of reforming how the senate carries out its business. The working group published its report at the end of April. In all of the discussion and the senate reform, whether before, during or after the referendum, the nature of the electoral system has been central. How well can a senate, elected by popular mandate, carry out the specialist roles which makes it distinct from the Lower House? The working group sought to balance these considerations and based its work on the following assumptions. Firstly, a reformed senate needs to have popular legitimacy. Secondly, the senate needs to have distinctive and adequate powers and functions. Thirdly, the senate needs to be distinct in its composition and its electoral

process needs to be designed accordingly. The working group recommended that the franchise (?? Gb 1036 03.03) of the 43 seats which are currently voted for by members of local authorities and parliamentarians be extended to include all Irish citizens, including those living in Northern Ireland and holders of Irish passports living overseas. The prime minister has already committed to bring in forward legislation to extend the franchise to graduates of all the universities.

These two measures, if implemented, should help to make the senate more responsive to a much wider range of public opinion than it is at present. The challenge of making the transition from engaging with the limited electors of about 17,000 at present to global engagement will be difficult. How Senators will engage in practice with such a geographically dispersed electorate remains to be seen, but social media and market and information technology will undoubtedly increase the opportunities for interaction and debate.

The essential message that the Irish people gave to their senate in their vote on the referendum was, I believe, that they valued the potential that a reformed senate had for a more fulfilling and positive engagement with the public opinion and to add value to legislation. They were not satisfied that the senate was currently reflecting their concerns. Radical reform was required to fix this. Although the unprecedented economic and political climate offered them an easy target for punishment, the people showed themselves to be open to the way in which a Second Chamber could enrich politics and public discourse. It is now our task to deliver on the promise of a senate which is more responsive to their needs.

Thank you.

(Applause)

Chair: Mr. Burke, thank you very much for sharing with us your experiences and your views. The Netherlands is the last speaker on our list, which means that I will relocate myself to the lectern.

**Address by Ankie Broekers-Knol,
President of the Senate of the Kingdom of the Netherlands**

Mrs. **Broekers-Knol**: Ladies and gentlemen, colleagues.

When I ran for the presidency of this senate, I stated in my declaration of candidacy that I would do everything within my power to combat the image of an increasingly politicised senate. It was July 2013 – eight months after the government had formed a coalition that did not hold a majority in the senate. During those months, the senate had expressed concerns over legislative proposals on a few occasions, which led to a public debate on the position of the senate in the Dutch bicameral system. Many argued that the senate had become increasingly politicized and even destructive. “The senate: can we get rid of it?” newspapers and twitter feeds asked. Others said “The senate is killing democracy” or reproached “Unruly senators, who are out to make the cabinet fall”.

It was a peculiar experience. I had then been in the senate for 12 years and I had experienced first-hand that the senate had not altered the way it dealt with legislation. The mind-sets of the members had not changed. The senate remained an independent entity, with a constructive outlook on legislation. In my experience, the political climate had not fundamentally changed the way the parliamentary system worked. So how does one counter an image that one knows to be untrue?

Let me start by saying that I am a firm believer in open debate, in respecting differing opinions and in weighing all arguments, both for and against. But I also firmly believe that opinions and arguments should be based on facts, rather than on assumptions and insinuations. When I was elected president of this House, I made it my priority to state the facts as often as possible and to as many people as possible. I determined that I would explain what the senate does, how the senate does it and why the senate does it. That way people would at least know the real story. And if they still disagreed, well, that is exactly what democracy is about.

Since July 2013, I have explained the work of the Dutch senate on numerous occasions. And in a nutshell, this is what it comes down to. The reigning coalition – the second Rutte cabinet – now holds 76 of the 150 seats in the House of Representatives and 30 of the 75 seats in the senate. For every bill a majority has to be found in both houses. The government has to produce really excellent arguments if it wants a bill to be passed by the senate as well. The coalition parties have to work together with opposition parties to reach a political agreement. In order to arrive at this agreement, the coalition government is forced to consult, debate, persuade and compromise.

Once a compromise has been reached and the bill is passed by the House of Representatives, it reaches the senate. In this house we test all legislation for legality, practicability and enforceability. We have a full veto right. Under the second Rutte cabinet, both coalition and opposition members of the senate have on a number of occasions expressed concerns about the quality of legislation. In a few cases this has even led to a bill being rejected. However, of the hundreds of bills submitted in that period, only four were rejected and four more were withdrawn by the government for further reconsideration and alteration.

Bear in mind that in the Netherlands the legislative power is the only power that tests the constitutionality of legislation. We do not have a constitutional court. In the heated political debate in the House of Representatives, constitutionality is not always at the forefront of everyone’s minds. Last year this led to the approval of a bill in the House of Representatives that was in violation of article 78 of our Constitution. The bill gave the National Ombudsman the power to investigate government as well as non-government related cases, whereas the Constitution only allowed for government-related cases. The senate detected this violation early on and encouraged the initiators to take the bill back for reconsideration.

However, this is an exception to the rule. In the vast majority of cases, the senate does not veto a bill. The real influence of the senate of The Netherlands is much more subtle than its veto right suggests. The members of the senate ask questions regarding the implementation of a bill and its congruity with other laws. The answers to those questions are used by, for instance, the judiciary to interpret a bill's meaning once it has been enacted into law. The questions can also lead to a minister pledging to implement a law in a certain way, for instance, to evaluate it after three years. So instead of "shooting bills down for political gain", the senate is out to ensure that those bills are "up to par" and that they are effective in society.

Another image that the senate is stuck with is that it is an "old boys' network". Someone once said that the Dutch senate was a gentlemen's club that tolerates a few female members. This is an image that no senate can ever really shake off, since the word "senate" derives from the word "senex", meaning old man. Admittedly, the average age in the Dutch senate is 58. But contrary to popular belief, the average age of senators and their position in society are not limitations, but strengths. All our senators are part-time politicians who are firmly rooted in society and come from all walks of life. Many of them are lawyers, doctors, mayors, professors or entrepreneurs. For one day a week they come to The Hague for political deliberations. They are uniquely placed to evaluate draft legislation from many different angles. They often have broad knowledge of the subject that a bill addresses and can therefore assess its likely effects on the field.

The senate is more likely to retain those who are less interested in playing an executive role and may have a greater interest in parliamentary scrutiny. Because we do not feel the heat of day-to-day politics, we can afford the luxury of being more independently minded. Another feature that encourages independence is that senators are generally in office longer than members of the Lower House.

Our senate provides an important forum for parliamentary scrutiny, strengthening parliament's overall control over government. The average age of our senators and their position in society helps rather than hinders this.

As I am sure you all know, going against an image that is presented by the media is not always an easy task. But luckily, recent polls have shown that public opinion is actually rather positive. 75 percent of the Dutch population still think that the senate forms a useful part of our parliamentary system. And 50 percent trust the way the senate performs its tasks. In that respect, the senate even ranks higher than the House of Representatives (43 percent), the City council (41 percent), the Provincial council (29 percent) and the European Parliament (15 percent). This shows that we should not always believe everything we read in the newspapers.

Senates have a responsibility to present what they do, how they do it and why they do it in an open and transparent way. The Dutch senate aims to do that:

- through its website, on which the status of a proposal is updated every minute of every hour of every day;
- through its livestream, on which debates (including this one) can be followed from any place on earth;
- and through its President, who strives to explain the work of the Dutch senate by stating the facts as often as possible and to as many people as possible, including the impressive international audience that we have here today.

I must tell you that, after I have held a speech for students or for children at school or older people, they always say: how interesting, I did not know that the senate worked that way, you have to stay there, the senate is important. That is the work I have to do and it is something we all have to do. The public should know that the checks and balances of our parliamentary system are very well-supported by a bicameral system.

Thank you very much!

(Applause)

Chair: Are there any questions or comments on what we have done today?

If not, we have now come to the end of our meeting. Today's theme was focus on the senate, changing concepts in the functioning in bicameral parliamentary systems. I can safely say that concepts in the functioning of senates are indeed changing and unfortunately – or luckily, depending on the way you look at it – there is no one-size-fits-all bicameral system. We have heard today that there is not one system that you can compare exactly to another one. What works for one country does not necessarily work for another country. In each country there is a combination of historically grown customs and modern political structures that create a unique position for our senates.

Today's theme was split in three sub-themes, but after hearing your contributions it struck me how much all themes are intrinsically linked. Changing the composition of a senate invariably affects the way it performs its legislative tasks. When a senate changes the way it performs its legislative tasks it is bound to affect public opinion. In turn, public opinion or public debate can in extreme cases lead to changes in the composition of the senate.

We also learned today that hard powers are not always necessary to influence legislation in a substantial way. Although some European senates have strong veto rights – and I think the Dutch senate has the strongest, because if the majority says “no” to a law it is gone – their influence is usually more subtle. By amending bills, asking questions to the government or reaching a compromise with the Lower House legislation can be altered instead of rejected. In general senates take a critical but constructive view on legislation. That is what we heard today. Even delay can be constructive.

In many countries the focus on the senate has grown in recent years. In several countries there is a public debate on how the senate performs its task or should perform its task. In a few cases this discussion has even resulted in reform, Belgium for instance, or concrete plans for reform, in Italy. Mr. Burke has conveyed to us how important public discussion on the value of the Second Chamber of Parliament is. As Mr. Bouffier said, “nor should we lament on our position”. As Mr. Grasso mentioned “institutions should not be sealed from reality, but open to society”. Mr. Bouffier, I say what you said in German “selbst Beweihräucherung betreiben”. We must be aware and self-critical of our role in the parliamentary system. This conference offers us the chance to learn from one another and to share best practices. I have personally enjoyed hearing your contributions very much. I can only hope you did as well.

To round up. There is no ideal system for bicameralism, but all Upper Houses, each in their own way, do play an important role in the system of checks and balances in political power. Senates are uniquely placed to exercise scrutiny from an independent position. In doing that we complement – and not complicate – the work of the Lower House. We are the milk in the tea that cools everything down. George Washington said that. Baroness D'Souza said that the membership of the Upper House is a job rather than an honour. I would say it is a job and an honour.

Thank you very much.

(Applause)

Announcements on future conferences

Chair: Dear colleagues, we have only one matter left to deal with today and that is of course our future conferences. From my secretary-general I heard that in the meeting of secretaries-general a serious option arose for the organisation of the meeting of the AES in 2016. I understand that we will be informed on this not too long from now, but I cannot reveal anything. There has to be some consideration in a specific country. I propose that we quietly await the letter of the colleague that is seriously considering inviting us in 2016.

Mr. Bervar already proposed that the annual conference in 2017 will be held in Slovenia. I am very grateful for his proposition. I propose that we gratefully accept his offer. Do you agree? Thank you very much.

There is also a proposal for 2018. May I give the floor to the president of the senate of Romania?

Mr. Popescu-Tăriceanu: Dear colleagues. I would like to take this opportunity to let you know that the Senate of Romania would be happy to host the meeting of the Association of European Senates in 2018, since in 2018 Romania will celebrate its 100th anniversary of its creation as a modern state. I would be very grateful if you would accept such an invitation. Thank you.

(Applause)

Chair: Thank you Mr. Popescu. Maybe Mr. Bervar would like to explain why he is inviting us in 2017?

Mr. Bervar: If you will allow, Madam President, dear colleagues. It is a great honour and pleasure for me to be able to inform you that the National Council of the Republic of Slovenia would like to organize a meeting of the Association of European Senates in 2017, because 2017 is very important. It marks the 25th anniversary of its establishment. This will be also the year in which I as a president and Mr. Binder as the vice president will end our terms. It will be a great honour for me if our proposal to host the meeting will be supported here today. I would also like to inform you that the National Council has already reached an agreement with the highest institutions in the state to organize this meeting, so I would really like to ask for your support so that we could launch the preparations early enough. Thank you.

(Applause)

Chair: That is the silver jubilee of your country and a hundred years jubilee for Romania. I do not know what that is, silver, gold, ruby, diamond. Thank you very much and we gladly accept both invitations.

This means that we conclude our meeting. Thank you all very much for your participation, your speeches and for the discussions we could have. I invite you all to have a drink in the hall of the senate.

Bon retour!

**XVIth Conference of the
Association of European Senates**

The Hague, 21-22 May 2015

**XVI^{me} Réunion de
l'Association des Sénats d'Europe**

La Haye du 21 au 22 mai 2015