



NATIONAL
DEMOCRATIC
INSTITUTE
FOR INTERNATIONAL AFFAIRS

**Legislative-Executive Relations:
Governing in Partnership**

*A Workshop for the Members of the
Palestinian Legislative Council*

*Nablus
May 17-18, 1997*

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INTRODUCTION

On May 17-18, 1997, The National Democratic Institute for International Affairs (NDI), in conjunction with Associates in Rural Development (ARD) and the Center for Palestine Research and Studies (CPRS), hosted a workshop in Nablus for members of the Palestinian Legislative Council on "Legislative-Executive Relations: Governing in Partnership." This document is a report of the workshop deliberations.¹

The Palestinian Legislative Council (PLC) has been meeting regularly since its inaugural session on March 7, 1996. Although the Council made substantial progress in the first year of its existence, it continues to struggle to have more of an impact on the legislative process, a more important role in overseeing the activities of the government and a more visible and positive image with the public.

Rationale and Program Goals

This workshop followed previous work undertaken by NDI and the PLC, which included an assessment and report of the first two months of the Council, and a workshop held in May, 1996, on constitutional issues and the Basic Law. NDI's current work with the Council, including this workshop, is part of a 18-month legislative development project that is funded by the United States Agency for International Development. NDI's program is designed around a series of workshops led by international participants on different components of legislative development, including the role of committees, plenary procedures, legislative-executive relations, and constituent relations. For these workshops, comparative legislative materials in Arabic are distributed to Council members.

In addition to the workshop series, two study missions have been organized for select groups of PLC members to visit other transitional legislatures to see sessions first-hand. To supplement these activities, NDI disseminates legislative materials in Arabic, and provides on-going consultations with Council members, including responding to requests for information about legislative issues in comparative contexts.

The goal of the workshop on legislative-executive relations was to bring PLC members together with a select group of legislators to discuss the various facets of legislative-executive relations, particularly in the areas of oversight and accountability, and how this relationship is characterized by conflict and compromise.

Twenty-seven members, from a cross-section of committees and from throughout the West Bank and Gaza, attended the workshop.

To facilitate discussion and present models from other legislatures, international

¹The agenda for the workshop is included as Appendix A.

participants from Nepal, Australia and the United States were invited. They were: Damar Nath Dhungana, former Speaker of the Nepali Parliament; Christopher Pyne, Member of the Australian Parliament, and Louis Fortis, former state representative of the Wisconsin State Legislature. Myrna Phillips, Director of NDI's Program with the PLC, served as chairperson of the workshop.²

NDI is thankful to all those who participated in the workshop, and is hopeful that this report, including its evaluation, will be beneficial to the development of democratic norms and procedures in the Palestinian Legislative Council.

EXECUTIVE SUMMARY

The agenda for the workshop on legislative-executive relations was organized to address the following questions:

- ♥ What are strategies the Council can use to overcome an impasse with the executive, as well as to cooperate effectively with the executive?
- ♥ What are examples of structural mechanisms the legislature can employ to encourage greater government accountability and information-sharing with the executive?

Workshop participants discussed the questions listed above with the international experts. The first day served as an introduction and general discussion of the issues while the second day focused on specific structural mechanisms the legislature can utilize to enhance relations with the executive.

One of the themes that emerged from the workshop was that despite the constraints in which the PLC operates, it is nonetheless possible to forge more positive links with the executive, particularly in terms of information-sharing, and in the process of budgetary review. Everyone agreed that a major priority of the Council is to exert pressure to ensure that the Basic Law is signed by the executive.

The participants also discussed how the Council can use committee hearings to fulfill its oversight function, and how the presence of the media only enhances the transparency of this process.

In addition to the use of hearings, participants discussed several important structural mechanisms, including question period and cooperation in the budget and law-making process, as fundamental components of a healthy relationship between the legislature and the executive.

²Biographies of the international participants are located in Appendix B.

Saturday, May 17
Morning Session

Sean Carroll
Chief of Mission
National Democratic Institute

Welcome and thank you for being here in Nablus with us for this workshop on legislative-executive relations. I will not give you a long introduction to NDI as there is information about the Institute in your welcome packets.

In the more than 10 years that I have worked for NDI, we have witnessed and lent a helping hand to democratic transitions in 89 countries. It is NDI's belief that accountability is one of the keys to democracy. This includes accountability between citizens and institutions, between you and the people who elected you as representatives, and between the legislature and the executive.

We believe, as I know you do, this is a very important issue. We recognize, though, that we have asked our international resource people to do a difficult thing -- we have asked them to come here and talk about legislative-executive relations in the absence of a Basic Law that would help define the relationship between the legislature and the executive. This is a difficult, but not an impossible task. In South Africa two years before there was an election law or a date set for elections, we worked with South Africans on voter education. Our cooperative efforts eventually led to the South African elections commission designing a ballot that was based on the mock ballot paper we used in these voter education workshops.

Before this seminar, we asked the international participants to look at our report of the workshop on the Basic Law that NDI conducted with PLC members last summer, and also at our transcripts of the PLC meetings of shortly after that seminar when you were debating the Basic Law. Those reports remind us that while you continue to struggle to define the terms of the Palestinian Authority, you also have an opportunity, as a legislature, to set precedents that help to set the terms. Just as the South African civic groups and activists helped show their own election commission the way, by setting precedents now for effective accountability and oversight of -- and for constructive relations with-- the executive, you can help show the way to effective, democratic decision-making. In this case, not just the Palestinian Legislative Council and the executive of the executive of the Palestinian Authority will win, but so will the Palestinian people.

Before closing, I would like to thank the Associates in Rural Development and the Center for Palestine Research and Studies for joining us in hosting and organizing this workshop.

Mr. Chris George
Chief of Party
Associates in Rural Development

We are happy to have you here with us today to discuss this important topic. Our organization, Associates in Rural Development, is working with the PLC over the next three years in three broad areas, including constituent relations, legislative drafting, and the topic of our workshop today, legislative-executive relations.

Dr. Ahmad Khalidi
Director
Parliamentary Research Unit
Center for Palestine Research and Studies

Thank you for being here today and welcome. We hope to share with you over the next few days the experience of parliaments from around the world. The Parliamentary Research Unit (PRU) is part of the Center for Palestine Research and Studies, which was established four years ago. The Center undertakes political, economic and strategic studies -- topics integral to institutional development. The PRU, developed last September, focuses on legal studies and review of legislation.

Ms. Myrna Phillips
Director, PLC Program
National Democratic Institute

Our guests have a wealth of information, and will present a variety of international models. They have spent the last week meeting with various Palestinians, including NGO leaders, journalists and district officials.

We want to look at the issue of legislative-executive relations in a way that will be helpful, not confrontational. Often the relationship between the legislature and the executive tends to be looked at in this way, but this is not always the reality. I would ask our guests to look at the cooperative aspects, ways that the legislature and the executive intersect, in areas of drafting legislation, the budget process, and the like. Inevitably, there are tensions in this relationship, but we want to work out ways to overcome this, and if we can pass on ideas and suggestions to you, then we have succeeded.

Mr. Damar Nath Dhungana
Former Speaker, Nepali Parliament

I would like to begin by bringing a message of peace and prosperity. Like you, we have suffered a great deal in Nepal -- seven years ago, we had no democracy, no basic rights. Now, we have democracy, but poverty is eating away at our democracy. Since we are a new democracy, we are in a transitional period, and that is why I am interested in being here. Transition is a very difficult time -- you can see the difficult past, while holding high expectations for the future.

I would like to focus on three things: the principle of legislative-executive relations, your

situation, and what mechanisms are possible under your circumstances. I would also like to touch briefly on my experience as Speaker of the Nepali Parliament.

We know that a legislature needs to represent the will of the people, which is based on the principle of separation of powers, but the legislature and the executive are also interdependent. This is a basic characteristic for a parliament to be a real, democratic legislature.

Unless there is a constitution, it is difficult to know the guiding principles of a legislature. Rules are not enough. You have passed the first reading of the Basic Law, which is now with the executive. The president has reasons to delay its approval, but as members of a legislature, this is a point of frustration. In practice, it will be difficult to assert yourselves and to enact other legislation without the Basic Law. So, what devices, strategies can you use to get the Basic Law passed? First, the media should be used, as well as pressure from interest groups -- everyone must be working together on this issue. There is a role for all members, including the speaker, in this process. I think that the Council needs to take the initiative, and can start with informal meetings. These meetings can be conducted with the speaker, members of the executive, and public pressure must be existent as well. This task is very challenging, but not impossible, as other parliaments have achieved this.

Let me talk a bit about my experience regarding the development of the Nepali Constitution. I was on a Constitutional Committee. There were three members from the Communist Party on that committee, and they were always cooking conspiracy theories, so we organized a meeting with other members to work on drafting a constitution, noting the importance of setting up a legislature first, then focusing later on the separation of power between the authorities.

Right after being elected, our Prime Minister signed a treaty with India about water, and this was supposed to be ratified in the Parliament. But it was not, so it led to pressure for the Prime Minister to come before the Parliament. The Communist opposition worked hard to stop the agreement with India. I tried to find a solution to this problem, and finally, I met with the opposition group. The Communist Party decided to end their work with the Parliament as long as there was an agreement with India. This was a very serious situation; ultimately, I convinced them to attend a session with the prime minister, and to work together to find a solution to this impasse.

Questions and Answers

MPLC (member, PLC): While some members of the Nepali Parliament were demanding the resignation of the Prime Minister, that cannot happen here. Different than the case with India, the Palestinians are constrained by agreements, by the Israeli government, and the fact that there is still no Basic Law. The Council can only work through the people, and with the media, which still is not on the side of the Council.

Mr. Dhungana: You need to develop a strong public opinion in favor of the Basic Law, because

with this, the executive will not be able to bypass the legislature, and you will get what you need. The members of parliament need to listen to the people and stay strong -- if you appear desperate, the link with the executive will be broken.

MPLC: Did the prime minister ultimately succeed in not presenting the treaty before the Parliament?

Mr. Dhungana: The prime minister and the parliament were not enemies--they were part of the same institution. I see similarities with your case because the PA is part of a parliamentary institution, so Arafat is accountable to your institution. In terms of the agreement, a committee was formed and focused on it for six months.

MPLC: [highlighting the [political, economic] constraints facing the Palestinians in their unique situation] We still do not have any independence, and this constrains us.

Mr. Dhungana: Freedom is required, but no one will give it to you -- it is derived. Legislation, including the Basic Law, is needed to counter the occupation. Concerning international agreements, I spoke about the deadlock in Parliament with respect to ratification. According to our Constitution, there were three possible scenarios. The first is that the government does not have to submit agreements to parliament; the second is that an agreement needs a simple majority, and the third is that it needs absolute majority approval. The dispute was over the role of the Parliament in the Constitution.

MPLC: When the problems happened between the Prime Minister and the Parliament, were you in the ruling party? Does the speaker in the Nepali Parliament have to abandon party affiliation?

Mr. Dhungana: When I was speaker, people said that I sided too much with the opposition, while my neutrality was disliked by my party.

Ms. Phillips: At this point, I would like to turn to Mr. Fortis.

Mr. Louis Fortis
Former State Representative
Wisconsin Legislature (US)

It is an honor to be back here again with the founding fathers of the Palestinian Parliament. I come from a very established parliament where things are much easier for me than for you or in the case of Nepal. I was asked to discuss the separation of powers model from the United States, which is different from the parliamentary model. Yours is a mix of both. I was asked to talk about what can be done during this transitional period, given that there are many obstacles. The United States model is the separation of powers; that is, no one from the executive is part of the legislature and vice versa, and this is set forth in our constitution. There are two different models of legislative-executive relations within a separation of powers model:

- 1) the executive can be from a different party than the legislature--this means that the two parties constantly battle each other.
- 2) the legislature and the executive are from the same party. The problem here for a legislature is to figure out how not to be ignored.

I want to talk about the second scenario. Maybe political party differences will develop here over time, but for now, what is important is the development of the strength and integrity of legislative-executive relations without damaging the relations along the way. Lots of communication and negotiations are needed between the speaker and the executive, but you also need to have power to negotiate.

There are three ways, in the separation of powers model, that a legislature has power (in other words, that require the executive to negotiate with the legislature):

- 1) Budget Process
- 2) Committee Hearings
- 3) Media

Regarding the budget process, the legislature controls the budget, but the executive, in all systems, writes the budget. In the budget, priorities are set, new programs developed, and initiatives set forth -- the Wisconsin State [budget] document is over 1,000 pages long. Since the budget is the only bill that *has* to be passed every year, even non-budget items are attached to the budget bill.

Once the budget goes to the legislature, the negotiation process between the legislature and the executive begins. This is a big negotiation process between the two branches of government -- generally, four to five months is spent on this. In many states, the governors have line-item veto power, which strengthens their bargaining position. If you as the legislature gain control over the raising of taxes, dealing with expenditures, then the executive *must* deal with you. I would like to add that the work in the PLC Budget Committee is already showing that they will not be a rubber stamp in this process.

The second important area is committee hearings. These are a very important mechanism, and I want to talk about how they can be used to set priorities, investigate, and conduct oversight of the executive.

As the Council, you can set up hearings to talk about the priorities of the Council. In addition, hearings can be used to educate people and let the public know what is going on. Hearings are very powerful, and you can shape them according to how you want the message to be developed and disseminated. In the United States, hearings are also used for investigatory purposes.

The US Congress has access to *all* documents of the executive (except for some national security files). In addition, the Congress has subpoena power and can force someone to come and speak

before the Congress.

The oversight role of a committee is used when there is a feeling that a government program is not efficient. A committee can investigate the issue, consult with the public, and question the executive to hold them accountable.

The third area is the use of the media. This is a very powerful tool in a democracy. In the United States, elected officials have to learn how to use the media -- their messages have to be simple and clear, as well as focused. In Wisconsin, the Governor was hiring a lot of his cronies, which was an important issue, but if we talked about other issues at the same time, the main issue would be lost. Netanyahu has learned this -- the one issue for him during his election campaign, which assisted in his election, was that Peres would be weak in the negotiations. If we were in your situation (i.e., without a Basic Law), this would be the only thing on which we would focus -- members would make continual speeches about not having a Basic Law, and then the Council would adjourn. If you were to tell everyone that the PLC will not do any more work without a Basic Law, you would then be turning it into *the* issue (by properly using the media), and the executive would eventually have to deal with it. It takes a lot of self-discipline not to talk about other issues, but it is very important.

Finally, I want to add how important it is in a new council for members to foster stronger links with their constituents -- it is critical that you, as elected members, do not lose your popular base.

Afternoon session

Legislative-Executive Relations in Practice

Ms. Phillips: I would like to ask Mr. Pyne to share his perspective with you on the following questions:

- 1) What are the different aspects of legislative-executive relations in Australia?
- 2) How do legislative-executive relations work in practice?
- 3) What are some examples of how tensions are resolved in legislative-executive relations?

Tomorrow, we will look at more specifics of legislative-executive relations.

Mr. Christopher Pyne Member of Parliament, Australia

There are two aspects of legislative-executive relations on which I would like to focus. One, how non-government members of parliament (i.e., the opposition, which is two-fifths of the parliament currently in Australia) relate to the government. Second, how members who are in the government party but are not in the cabinet (i.e., backbenchers) relate to the executive.

Before going into examples, I want to describe the Australian system -- which is modeled on Westminster with aspects of the US system. We have a bicameral, two chamber legislature, and

there is a separation of powers between the legislative, executive, and judiciary branches. They are all part of one system, but they are independent from one other. The executive is chosen from within the parliament -- the prime minister is the leader of whichever party has a majority. Legislation is initiated by the executive; although, in some cases, private members can initiate legislation. When the executive presents a bill, it does not go directly to parliament. It goes to the party (committee, then party caucus) before it goes to the plenary. There are two types of parliamentary committees: one, a committee which has members from different parties, and two, committees composed of just members of the majority party, and are part of the lower house. The first type deals with legislation once it reaches the plenary, and the second can block legislation at the lower level before it reaches the plenary.

The legislature has four types of redress with the executive:

- 1) question time
- 2) committees (parliamentary and party)
- 3) all members of the executive are part of the parliament; therefore, members have a lot of access to ministers
- 4) power to remove executive. In my party, for example, it isn't unusual for the leadership to change, and for a new person to become prime minister. So, if a party feels that they are not being listened to, or ignored, they have the power to change the system.

In Australia, the opposition is very powerful, particularly during question time. During this time, important issues are discussed, and the media is present, which allows for serious scrutiny of the executive and pressure for transparency.

Next, I want to look at how tensions are resolved in the executive-legislative relationship.

- 1) Parliamentary tension: before the last election, the liberal party announced that they would sell one-third of Telecom (important, because communications are so important in our big country), a deal worth eight million Australian dollars. When we won the election, we introduced legislation to do this. Because of our system, what was important was to convince the Senate (upper house) to pass this (it was already passed in the lower house). We had to change minds and convince the independents. Therefore, we allowed an investigatory committee to be formed within the Senate (not just of the majority party members). Then, the government gave concessions (i.e. promises of infrastructure development in return for support of the bill). Eventually, after much negotiation, the bill was passed.
- 2) In 1975, our party controlled the Senate, and we blocked the budget. This brought about a crisis because the government ran out of money. The governor general used power to bring down the prime minister, then the Labor Party gained control. This is an example of the parliament exerting rights over the executive. That the legislature had power of the budget is important, and something not unusual.
- 3) Intra-party tension -- this related to a cable installation issue. There was a concern in our party

about environmental issues. The executive drafted a bill, and our party caucus rejected it three times. Eventually, the bill was changed by the executive. So, in your system, it would be like a Fatah PLC-faction disagreeing with the Fatah executive, and forcing legislation to be changed before it is passed.

From these examples, I wanted to illustrate two methods of power. One is parliamentary, and the other is intra-party, and this latter method might be the more powerful of the two.

MPLC: There are two transitional aspects which shape and affect the work of the Council. One is the transitional agreements with the Israeli Government, and the other is the internal transition from a revolutionary to a democratic system. This transitional system affects economic and financial development as well -- there are problems with the budget, with closures, and delay of funds from the international community. Given these circumstances, do you have any suggestions?

Mr. Pyne: The Australian model is one of the most democratic; therefore, I was discussing an ideal model. In terms of suggestions for the PLC, based on the last four days of briefings I have had, it is clear that there are a lot of powers for the Council in your Standing Orders, but those are not being used to their fullest capacity. It is better to work towards goals, objectives within your power, and not focus on things over which you have no control.

MPLC: In terms of the Basic Law, Israel does not even have one. Therefore, the PLC should focus on other laws, and there should be a mechanism to force the executive to implement laws.

Mr. Pyne: I agree with you -- it would be better to focus first on more limited goals (i.e. focusing on legislation already within the ministries), and having specific objectives.

Mr. Fortis: The point I was making regarding the Basic Law is the importance of focus; that is, to have one-two major issues (not 20) on which the Council focuses to have one clear voice. The Basic Law is the groundwork, foundation. Therefore, this is probably the most important thing on which to focus, particularly since other legislation will be based on this. Unless there is a Basic Law explaining the rules and roles, it is hard to do much of anything else. Regarding the budget, you as Council members should feel proud because the PLC eventually received the budget from the executive, because of pressure.

MPLC: While the information provided by the internationals is interesting, the situation facing the Palestinians is indeed quite different. In the Council, while there are many members of the executive, they are not representing the needs of the people. Moreover, that the Palestinians are still under occupation means that it is not a true democracy.

I wonder if it is better for the PLC to have the majority of ministers from the Council or not. While we would not want a situation where the ministers would not cooperate with the legislature, we also face a problem whereby the executive does not implement most of the PLC's

decisions. How can we make the Council more effective?

Mr. Pyne: I think you have made a good point. If the PLC stands against the Palestinian Authority (PA), then this does show weakness vis-a-vis the Israelis. This is why I talked about internal party committees, where the information is not leaked, so that there can be private discussions. If there is tension, it can be kept within this committee, and you do not have to fear about appearing to undermine authority.

Mr. Fortis: Many decisions need to be made now, even though this is difficult to do. There is a need for the Basic Law and a need to establish the integrity of the Council (by pushing for the Basic Law and receiving it). This is more important than the Civil Service Law, for example.

MPLC: The uniqueness of the Palestinian case is something very important to understand, and cannot be fathomed by people who only visit the Council once. The issue isn't just legislative-executive relations, but the fact that there is no consensus *within* the PLC. For example, if the President vetoes the Basic Law, will the PLC vote in unity? The PLC members have lost confidence in their ability to change the situation. For example, the PLC passes many resolutions. Many members might support a resolution originally, but then it is never discussed again. Members also face a problem of lack of confidence from the public. One way to regain the trust of the public would be for the Council to call for an immediate national dialogue, since people do not trust political parties anymore -- it is the Council which is the political voice. The Council should start with an internal dialogue; then engage in a dialogue with the executive.

Mr. Pyne: I agree with you that this workshop will not provide solutions for all of the problems you raised here, but there are important things that the Council *has* achieved (e.g. the oath before the PLC, not the president), and many questions you raised once you achieve the main goal of an independent state.

MPLC: What is the power of the PLC over the budget? I understand that a parliament usually does not have control over government expenditures. Therefore, what can the PLC do? My second question is the following: I understand from Mr. Pyne that most legislation in the Australian model comes from the executive, so the opposition seems to play a minimal role in this process. If the opposition comes to power, how do they change laws? In general, moreover, how are laws amended in the Australian Parliament?

Mr. Fortis: If you are in a situation in which the legislature is changing the budget (like the PLC now), it makes sense that it would go to the whole plenary. It is critical at that point for the Speaker to be the liaison between the legislature and the executive. Focusing on issues like health, education, is easier than larger issues relating to negotiations.

Mr. Pyne: The Opposition in Australia recently came to power after eight years as a result of the elections. The mechanism you ask about is the process for changing old laws or drafting new ones when the opposition becomes the ruling party. Amendments can be made, or, if they are too

complex, then you would suggest drafting a new bill.

Mr. Dhungana: Despite the fact that we are a parliamentary system, there are still questions that need to be answered by the cabinet with respect to government expenditures. One of the powers that a parliament holds is approval of the budget.

Ms. Phillips: I just want to add that in Canada, if you wish to improve or change an existing piece of legislation, you can pass "an Act to amend an Act."

MPLC: The principle of the separation of powers is very important, but in the Palestinian case, this refers not only to the powers of the legislature and the executive, but the overlap between the PLO and PA as well. This overlap/confusion affects the work of the PLC, and we need extraordinary management to handle this. How can the PLC establish a good relationship with the executive under these circumstances? Also, how can we have an effective parliament without having a state, and dealing with an Israeli government that does not implement UN resolutions?

Mr. Pyne: While we will be more specific tomorrow about the various mechanisms in legislative-executive relations, I would say for now that the first thing is to understand the problem. Then, to figure out what can be done within the constraints, and determine suitable solutions.

MPLC: The PLC is an elected council with responsibility to enact legislation and to oversee the executive, and the Israeli role should be downplayed. It is important to face the topic at hand -- legislative-executive relations and the principle of separation of powers -- which is problematic in that an independent judiciary has not yet been formed. The executive as a whole is in a special situation because it centers around the powers of the Palestinian Authority head, who is both the president and the prime minister. One additional problem is that the executive cannot be held fully accountable (i.e. the president cannot be impeached). The lack of party discipline makes legislative-executive relations difficult, because on any issue, there are up to 88 different opinions, which makes the Council look weak and disjointed vis-a-vis the executive. Finally, the absence of a Basic Law makes this relationship even less stable. The Council should focus on the passage of the Basic Law, as the absence of this will mean continued conflict with the executive. While the passage of the budget helped legislative-executive relations, this was not sufficient, and increased dialogue with the executive and use of the press is needed as well.

MPLC: Approximately two-thirds of the Council are from the ruling [Fatah] party, but there are still members of the opposition. What is their role, particularly in terms of the executive implementing the resolutions of the Council?

Mr. Fortis: In our system, the executive and Congress (majority) are not currently from the same party. If you don't fight on the differences then what is the point of negotiating on the next issue?

MPLC: The PLC has only taken the general form (not content) of democracy, and there cannot be true democracy under continued occupation. Given the lack of political parties, and economic

independence -- how can the executive be pressured? In addition, the lack of an independent media makes executive pressure hard. How can we force the executive to uphold the Council's decisions?

MPLC: If the goal is to strengthen the Council and democracy, then there must be an understanding among members of the situation. The Council is not new in the sense that its members *were* leaders, politicians, and have vast experience. One thing that I learned today is how to be more patient as a legislator, and not always be in conflict with the executive.

The problem we now face is that the Oslo process has come to a standstill, and the Israeli government is ignoring the PLC (e.g., our VIP status is ignored at checkpoints, and we are treated like second-class citizens, not parliamentarians). The problem is not with the executive or with the PLC but with the people who supported the peace process and are no longer doing so. There is no confidence, and we are prisoners of the unknown. We have no idea of the future, and we cannot have democracy with occupation.

But, I think we, as the Council, are defending the people, and *are* passing legislation. We look forward to continued support from the organizations sponsoring the seminar here today.

Mr. Fortis: I want to respond to the concern voiced that the PLC was not able to be completely involved in the budget process because the source of revenue is uncertain (i.e. foreign aid). When I was the head of an NGO, I did not know how much revenue I would have. Since there is no way to know for sure, I needed to estimate and adjust the budget process. Expenditures are what make things happen; therefore, even though it is difficult and uncertain, you still need to participate in the process. One critical thing for the Budget Committee: put your priorities in the budget and focus on efficiency. Make sure that you are achieving and demonstrating results -- this is where public hearings are important.

Regarding the media -- if you are dealing with an important issue, you need to be very focused, and to develop a simple message for the press and feed it to them. In response to the concerns expressed about how democracy can develop under occupation: go back to your constituents and lower their expectations so they understand.

Mr. Pyne: In response to the question regarding the credibility of PLC members: I was elected by the people, and you, as elected members, hold great status among the Palestinian people. If you are failing to get an issue through the use of the media, you can get the message out through grassroots (e.g. visiting constituents, etc.). Now that you are elected, you only have a small step to take to getting issues across.

Regarding strengthening legislative-executive relations through public support: this is a very important idea that, in democratic societies, is probably the best way to both strengthen and clarify the relationship with the executive.

Mr. Dhungana: I want to respond to the question about the opposition bloc in the Council: while you do not have clear party lines, an opposition can evolve, even within the same party. Indeed, it is part of democratic culture for members of the same party to disagree on certain things. The opposition is there to encourage dissent, even during votes.

Dr. Ahmad Khalidi
Director, Parliamentary Research Unit
Center for Palestine Research and Studies

On this topic of legislative-executive relations, I want to focus on three things:

- 1) Is the relationship between the legislature and executive one of conflict or cooperation?
- 2) What are the multiple sources of laws and models in Palestine?
- 3) What is the division of powers between the executive and the legislature in draft Basic Laws.

During the occupation period [1967-1994], international law did not give Israel power to legislate except in areas of military and security. However, because of military orders issued by Israel, the legal regime in the West Bank and Gaza came closer together.

Post 1988: Legal responsibilities return to the Palestinians following the agreements signed during the interim period.

1993: Recognition of the legal and political rights of the Palestinian people. However, there were restrictions placed on the Palestinian Legislative Council. There is a clear recognition of the PLC legislative powers in the Letters of Mutual Recognition. The Preamble of the Interim Agreement, however, recognizes the legislative power of the PLO.

There are examples of other constitutions which limit the sovereignty of the state (i.e. in the Italian Constitution, there are limits on the Italian Government's ability to wage war).

Restrictions imposed on the PA by the Agreements are directed at legislation that contravenes or are contrary to the terms of the Agreements. The PLC may issue all other laws that do not contravene the Oslo Agreement.

International law says that the international recognition of a state does not automatically confirm upon a state its statehood. Other factors are necessary, such as the internal power to legislate. Moreover, non-recognition of a state does not undermine its authority to issue laws and to legislate.

The PLC's legislative authority comes from elections. On the issue of the Basic Law, there can

be a *set* of basic laws which have the effect of a constitution, as is the case in Israel. The PLC could adopt basic laws in different areas. The promulgation of general laws can cover the gap by virtue of the absence of a basic law. A reexamination of the Jordanian and Egyptian laws is necessary in order to unify the legal system in Palestine.

The PLC oversight of the executive's budget cannot be effective without a Budget Law. Even if this law is limited, it is important for overseeing the executive (i.e. monitoring budget expenditures).

The PLC can have full authority to legislate by virtue of adopting laws giving the PLC this power. The PLC also has power vis-a-vis the executive in the areas of: investigation, no-confidence, questioning and interrogation. The threat of a no-confidence vote in the executive can be a useful oversight tool.

MPLC: The existence of two constitutions in the West Bank and Gaza does not cater to the establishment of a Palestinian state. While the Jordanian and Egyptian constitutions have been used to control Palestinians in the West Bank and Gaza respectively, a Basic Law for the interim period can help to unify different legal systems. As there are three Palestinian authorities (legislative, executive, judiciary), we need laws to set out their powers and independence.

MPLC: The speaker said there are other ways besides the budget that the Council can conduct oversight -- what are these?

MPLC: Regarding the Basic Law, for precedents to become norms, they have to happen more than once. We want to be ruled by norms, not customs. How can precedents be established and respected by the executive?

MPLC: The speaker was referring to norms "in the popular sense." That is, the PLC, with a two-third's majority, can pass a law after the legislation has been with the executive for 30 days. The legal situation is ambiguous not because of a void, but because of duality. Because of this, there needs to be unity of laws between the West Bank and Gaza, one Legal Department within the PLC. The PLC should focus on the Independence of the Judiciary Law, as the existence of such a third power will help the democratic process.

In my experience in the PLC, I cannot recall a time when the limitations of the Declaration of Principles represented an obstacle to the work of the Council, and this should not be used as an excuse.

Dr. Khalidi: I will start with the comment that there are two sources of law -- these can be of benefit to you, as you can use the authority from these two systems. As you know, these systems are still in effect. Regarding the Basic Law for the interim period, this does not mean that all provisions of the law must be interim -- some can last longer.

In response to the comment that the PLC is not a true legislative body: that the PLC derives its authority through the people, through democratic elections, proves that it is truly a responsive legislature.

As for international law (and agreements) taking precedence over internal law, this is not always the case. What is in the agreement does not necessarily take precedence over PLC laws.

I agree with the suggestion that the Council focus on the Independence of the Judiciary Law. I also agree with the comment that there is not an absence of laws. What I meant by "customary laws" are rules that have been in place from which we can draw in the absence of a constitution.

MPLC: Dr. Khalidi mentioned how the Council could benefit from the constitutions already in place in the West Bank and Gaza, but these might give more power to the executive. The solution is a unified law between the West Bank and Gaza, one not imposed on the people.

Dr. Khalidi responded by saying that the existing legal structures cannot be canceled. The constitutions of 1952 and 1962 are existent and will stay so until annulled, and the executive can use them, as can the Council.

Sunday May 18

Morning Session: Structural Mechanisms Where the Executive and Legislature Intersect

Ms. Phillips: I want to start with a few comments from yesterday. I think we had a very good discussion about general issues in legislative-executive relations. Today, I would like to focus on three specific areas. We realize the constraints of the Oslo agreements and the continued political difficulties, but we would like to focus today on what can be achieved, despite these obstacles. A legislature is here to legislate, to act. All of you ran for election because you want to implement, change things and make decisions. Today, our guests will talk about three areas in which goals can be accomplished.

I want to comment on several things. First, when Mr. Dhungana was elected, the entire legislature and executive were new, similar to the situation you are facing. But, as one member mentioned, you are already bringing a lot of collective experience to the PLC. You have the skills that match any other member of parliament in the rest of the world. I do not think you should view yourselves as having failed in the first year -- democracy is a slow process, and it takes four to five terms to determine whether a legislature is a success. So, there is a need for patience. Probably if you did an assessment of where you were a year ago, you would realize that you have learned a lot. Today, in our discussion about law-making, question period and the budget process, we hope you will feel that you have learned more.

The first area of discussion is law making. You spend a lot of time on this in your legislature. We hope to look to other models to increase the efficiency of this process and to cooperate with the executive to accomplish goals.

Mr. Keith Schulz
Senior Technical Advisor
Associates in Rural Development

Law-making is the most important aspect of what a parliament does. The fundamental principle of law-making is problem-solving. Different parliaments have different systems. For example, in the Westminster model, the executive controls the legislative process (the executive submits legislation to the legislature which enacts it). In the Congressional system, the legislature initiates. In Palestine, there is a hybrid of the two systems -- both the legislature and the executive can initiate legislation.

The question for today is how the legislature and the executive can cooperate in the law-making process. We want to ask our international guests how the legislature and the executive can effectively work together to develop legislation to solve problems.

Mr. Dhungana: There are several issues I would like to touch upon. The first is the notion that members of both the executive and the legislature are responsible to do their best in the area of drafting laws, and that both conflict and cooperation characterize this relationship. Moreover, on the issue of drafting legislation, it is critical that members have [legal] resources to do this, and that members are given enough time to review draft bills before the debate. The second idea is the critical role of the speaker in balancing the ruling party and the opposition.

In the first year of the Nepali Parliament, only 25 bills were passed. The government thought that the delay on the part of the Parliament was a filibuster, but this was not the case.

Finally, I would like to emphasize the importance of ministers attending the sessions of the PLC. In Nepal, ministers often like to pretend that they were too busy for the Parliament, but this is unacceptable, and you, as legislators, should make sure this does not occur here.

Mr. Schulz: In essence, what you have expressed is that the legislature must take an active role in the legislative process, and that, according to the Standing Orders, the work of the parliament regarding legislation should take place in the relevant committee. In addition, it is important for the minister, representative of government, to be present to explain and defend the draft law.

Perhaps we can talk more about the role of the executive coming to the legislature to present views and discuss the purpose and background of legislation. Myrna, I believe that all draft laws that come to your [Manitoba] parliament have reports?

Ms. Phillips: In Canada, where we follow the Westminster model, ministers present the bill and give a bill summary to members about the principle -- the "why" and "how" of a bill. With this, members can discuss the principle of a bill before the line-by-line debate. I recollect that with your Monetary Authority draft law, there was some confusion regarding the principle of the bill. In our system, the finance minister would have introduced such a bill, and spoken to it in second

reading to make the principle clear to all of the members. Some members might not agree with every article of a certain piece of legislation and that is dealt with later; but first, the majority must agree to the principle.

The debate in our second reading focuses on principle. Any member can participate in this, but the line by line consideration of amendments occurs in committee between second and third readings. The important thing is that there is communication and understanding between the legislature and the executive. Also, once a bill (a draft law is called a bill until it is passed and then it is called an Act of Parliament) is printed and distributed at first reading, members and the public can discuss it formally and informally -- both of these channels are important.

Mr. Schulz: If I understand the Council's Standing Orders correctly, draft laws from the executive should have a preamble.

MPLC: The bills submitted by the executive are accompanied by a preamble and explanatory note.

Mr. Schulz: The Council has the ability to control the legislation it considers. If it expects the executive to include a more extensive explanatory note, it can push for this. Once the bill is discussed in committee, are the ministers in attendance, Chris?

Mr. Pyne: In the first reading, the bill is introduced to the parliament. Then, after second reading, it goes to committee stage for line-by-line consideration. For that entire time, the relevant minister will be present in the House. Votes on amendments are held immediately.

MPLC: Not all of the bills presented to the PLC from the executive contained a preamble and explanatory note. The legislature lacks experience in drafting legislation, and the executive has even less experience in this area, and this is troublesome because all of the laws come from them. Bills are not given sufficient attention. It seems that eighty percent of the bills that have been passed have been changed by the Council. The bills that we really needed were not prepared well by the executive, and so members end up developing ideas into a draft bill on their own.

MPLC: In addition, when the Office of the Council receives the bill, it is first sent to committee. After that, it is presented to the plenary. However, there is a problem with this system, because a minister can prevent a bill from being voted on ("withdrawing a bill"). This is part of our Standing Orders. We tried to change this, but were unable to do so.

Mr. Schulz: In a parliamentary system, the government does not have the power to withdraw a bill.

Mr. Pyne: Once a bill is presented to the parliament, it is in control of the House, and ministers can only withdraw a bill with the approval of the House.

Mr. Dhungana: Regarding the presentation of private members' bill -- they can withdraw it at

any time.

MPLC: Draft laws received in the PLC do, in principle, have an explanatory note, but this is not a sufficient explanation/summation of the bill. What needs to be in such a note is reason, rationale, the “why” behind a bill, and members have received nothing like this from the executive. Such a note is important because it enables members to be more interested and involved. I have a question for Mr. Dhungana. I understand that in the first year of your parliament, more than 20 bills were passed -- this is a huge number for a new parliament. We spent more than six months before discussing laws.

Mr. Schulz: I would just add that the Nepali experience is not unusual -- in Cambodia, the parliament enacted about 15 laws in its first year.

Members of this Council have talked about the importance of creating a unified body of law for the West Bank and Gaza. In other legislatures, there are committees like the “Law Review Commission” [California] which discusses changing existing laws. Such a committee is composed of parliament members, legal experts. Does this exist in Canada?

Ms. Phillips: Such a committee is not a standing one, but it can be formed and has resources. This committee can be used by members, particularly members of the opposition, interested in revising current legislation. This is definitely something that could be set up for the PLC.

Mr. Schulz: In some parliaments, I understand that there are formal links between the legislature and the executive, for developing ideas for legislation. Louis, is this true?

Mr. Fortis: Certainly, it is much wiser to foster positive legislative-executive relations at this stage, at least on an informal basis so as to avoid a stalemate.

Mr. Schulz: Is there a focus on two to three issues where legislation was needed where the legislature and executive would work together?

Mr. Fortis: Every time after elections, several issues would emerge as the most important, and no one knew how it was these issues. Maybe it was interest group influence. In my state, the biggest issue was high taxes, and the problems associated with businesses leaving the city due to the high tax rate. Once a big issue like this emerged, there was a need for the legislature to sit down and discuss it with the executive.

MPLC: This information, particularly regarding how bills are submitted to parliament, and how ministers interact with legislatures is very helpful. In the case of legislation in the Palestinian Authority, the executive, to date, has drafted all of the bills, but it is unclear who within the executive is drafting the bills. Moreover, these bills from the executive often are missing a preamble, so they come to the Council in incomplete form, which is burdensome for members. This has been a problem with the Basic Law, and has contributed to the stalemate.

There are other cases where we tried to include a preamble on a bill drafted by the executive, but this, along with amendments to the bill, was not accepted by the executive. This is a big problem, and causes the executive not to return bills for the Council's approval. Therefore, it would be better if a comprehensive bill was presented to us in the first case.

Another problem is that the cabinet does not discuss bills. Once the Council completes the reading of a bill, we submit it to the cabinet, which never meets. We try to meet with ministers, both formally and informally to pressure them, but they do not respond.

We need to know the *exact* power of ministers. I think that we, as Council members, know our roles, but ministers do not know their roles, and they use this as an excuse. If our cabinet does not convene, what is the solution?

MPLC: The idea of a Law Review Commission is a good one, as it would work with both the legislature and the executive. Such a commission would be a very important development for the PLC, since we want to draft good laws. It would also help if the Council had subcommittees and knew what mechanisms would allow it to promulgate laws and have them approved by the executive.

MPLC: Do other parliaments have a legal department? If so, what is its function?

MPLC: If the government has presented a draft bill and it is sent to the relevant committee, is it the right of the government to have the principle of the bill voted on (first reading)? Is it not an infringement on the power of the executive to not vote on a bill before the legislature makes amendments?

Mr. Pyne: In the Westminster system, the legislative, executive and judicial branches of government are independent but interlinked, and the legislature is the supreme law-making body. If the legislature makes amendments that the executive does not like, the executive can try and convince the legislature not to vote on them. The executive is really a tool of the parliament in the Westminster system.

Mr. Fortis: In our system, you vote yes or no. If I were presented with a bill and even wanted to make the slightest change, I would vote no. If you let a bill go through the amendment process, it is more likely that there will be greater support for it by that point as compared to the situation whereby a bill is voted on immediately.

Mr. Schulz: How did you use the legal department in your legislature?

Mr. Fortis: The legal department is non-partisan, and its role is to take ideas from members for legislation and to draft laws accordingly. As a member, you explain to the people in the legal department what you want them to do with your draft legislation. Then, they take these ideas and put together a piece of legislation. This can take a few weeks or several months, depending on

the topic. Then, the member receives the draft back from the legal department, and you review it line-by-line to refine the bill until it says exactly what s/he wants to convey, in the appropriate legal language.

Ms. Phillips: On this topic, there is one basic principle -- the flow of information between the legislature and the executive. If the legislature makes amendments to the executive's bill, you need to give them information, just as the executive needs to give information to the legislature. Ministers need to come to the plenary to participate in the discussion of amendments to their bill. There is a need for Council members to really push ministers to come to your sessions, and this is particularly important as many ministers are PLC members, and it is their responsibility to be there. Regarding the right of the legislature to put forth legislation, this is your right according to your Standing Orders, and the development of your legal department is an important step towards this goal.

Before I was speaker, I developed child care legislation as a member of the Manitoba Assembly. For this process, I sat with people from the social services department, as well as with the legal department of my legislature. After the bill was drafted, I gave it to the minister, discussed it in my party caucus, then it was ready to be presented to the plenary. In the plenary at first reading, the minister introduced the bill and it was distributed. There was no discussion at that point. At second reading, the minister made a 40-minute speech on the principle of the bill only, and then the issue was open for debate by other members. After this discussion, a vote was taken on the principle of the bill, and as the vote was carried, it was sent to committee.

So, if there are several ministers who you find you can work with on legislation, you will be setting good precedents and will encourage other ministers to come to the PLC more often. Since the ministers are also new, they need your help as well.

Mr. Schulz: As for the budget oversight process -- how can the legislature and the executive interact and cooperate both in terms of enacting the budget and monitoring government expenditures?

Mr. Fortis: Yesterday, I talked about how the Budget Committee can conduct oversight and public hearings. I want to focus on a case study: education. Here in Palestine, there is a problem with student/teacher ratios. If, as a PLC member, this is the most important issue to me, what would I do? First, I would become a member of the education and budget committees. Then, I would draft legislation on the subject. There are three ways to accomplish this. The first is to sit down and negotiate with a minister, to try and convince him to put the item in the budget. This is a good idea, but it takes time, and is not usually successful. So, what members need to do is garner public interest and support by mobilizing the people through the holding of public hearings. By holding committee hearings, visiting schools, etc., the issue builds, and this is even more successful when the media is involved. As a member, you would continue to build on this issue, and this process can take several years. If this process begins to occur here, with the Council, then you, as members, will be more convincing when you meet with ministers.

But, what if this does not work? The next step would be to go to the budget committee and talk with the chairman about the education bill, and work with him to convince him to put money into this (which, of course, means taking money from somewhere else). Then, you would talk to other members of the budget committee and try to convince a majority of them to support this. But, it is important to note that if this is approved, it takes money away from other programs, so you need to encourage efficiency in *other* programs. Realistically, since this involves the shifting of money, it is critical for you to know the amount of incoming revenue. Thus, unless there is understanding of the whole picture, the budget committee cannot do its job.

Let's say that you were unable to convince the budget committee; therefore, you would have to go to the entire Council and get 45 [a majority] members on your side. There are two things you have to do. First, you have to make your issue greater than just your issue, which means involving NGOs, unions, and other groups to create outside backing. This builds momentum and makes it a big issue. Every executive, everywhere in the world, wants to do things its way, so you, as legislators, have to *push* them. Secondly, it is critical to note that if you, as the PLC, do not have an understanding of the revenues and expenditures, the executive can always tell you that there is not enough money for your bill.

Mr. Odeh (CPRS): I would only echo what Mr. Fortis said regarding the importance of knowing revenues, and figuring out, even in this context, how to monitor government expenditures.

MPLC: Before the PLC Budget Committee worked on the actual budget, they worked on the budget bill. This bill was sent back to the plenary from the executive. Our view is that the PLC has the right to increase/decrease the budget of any ministry, line-by line, as the Council decides on the appropriation of money to the executive. This is our school of thought from which the PLC drafted the bill, and it is in complete contradiction with the view of the finance minister. The three sections of the bill which members considered as the most important were: how the budget is prepared, budget approval, and oversight and monitoring of government expenditures. If this bill is passed, then the legislature holds all of the money. But, if we approve the budget without this bill, the executive will have more power (i.e., without the bill, the Council could not add/subtract from the budget). The taxpayer needs to have confidence in the authority, to know how their money is being spent.

Mr. Fortis: I agree with what the member said about the need to set up a situation in which the Council is in control of the budget process. This does not mean a total change of the executive's budget, but that you, as PLC representatives, represent the people and their concerns. The legislature is the truly democratic institution, so if there are issues very important to your constituency, it is your responsibility to make sure that you, as a PLC member, voice these concerns to the executive. If you can make something a big issue, things can change dramatically.

MPLC: I have two questions on the topic of the budget:

- 1) Should the Council give priority to certain budget issues, or should priority be to have a

member of the executive give a full explanation of the budget to the Council?

2) Do most parliaments have the power to change items in the budget according to their wishes, or does this happen only under the direction of the government?

Another member posed the following questions:

- 1) When is the budget presented to the parliament?
- 2) How is the budget discussed in parliament (e.g. line by line?)
- 3) What should be included in a budget?
- 4) How can the Council know if the budget includes all revenues?
- 5) How can the Council monitor expenditures?

Mr. Fortis: It is true that our system in the US is very different; but, there are also a lot of similarities. General concepts are what are important from these international examples. Regarding changing the budget: the legislature can *totally* change the budget. If you are dealing with the same party in the executive, you won't do this, but you will if you are dealing with the opposing party. This happened two years ago in the United States [Newt Gingrich (Republican) as Speaker of the House of Representatives].

So, to answer the question: yes, you can change the budget as much as you want, but it is a process of negotiation. With respect to choosing what is the most important thing to focus on -- the process.

In the United States, the budget is presented in the first month of the new session, and it is presented by the president, who comes to the legislature and makes a speech. This used to occur in the morning, but now it is at night, when there is more media access. The executive will discuss the new issues -- those they want to make important -- and they will spin issues to their advantage. Also at this time, any new initiatives should be discussed.

In terms of knowing revenues -- the budget committee, as well as other committees, need to hold investigations, perhaps through a hearing. In terms of monitoring expenditures, again, use committees (e.g., the education committee investigating schools). Also, you can look at other models, budgets of other legislatures (i.e. Jordan).

Mr. Pyne: I want to comment on two things. First, in Australia, the budget must include any and all expenditures. Secondly, I want to highlight the importance of knowing that the budget includes all revenues. In 1975, our Finance Ministry was raising money overseas and not accounting for it. At the election, after people found out about this unaccounted for money, the

Labor Party defeated the government in a huge victory.

Ms. Phillips: At home, at both the federal and provincial levels, when the new session begins, the prime minister or premier makes a speech and presents the government's policy. This is debated for ten days. Following this "throne speech" at a time determined by the government, the finance minister presents the budget and explains how the government's policies will be funded, and how the revenues will be divided between departments. For example, in the 1930's in Canada, there was massive unemployment, farmers were losing their land because of drought, but the government said that no money was available to fund social security programs, job placement programs, farm relief programs, etc. But when the Second World War broke out, suddenly the prime minister announced that there were millions of dollars available for the war effort. So, the lesson was that money is available, but members have to push to see that it is spent on the issues which they consider to have priority.

In terms of the question of accountability -- we had auditors who monitored my department (social services). I, as a civil servant, had to justify every expenditure -- if I recommended a special expenditure for a citizen, I had to get it authorized by having the director's signature on the file. This ensures that every penny that the government spent is accounted for. Also, as a civil servant, if I was not fulfilling my role, a member could make this an issue and call on the minister to attend to it. Thus, the process of monitoring works both ways.

Finally, one point about the budget. The legislature must have the final say in the budget. A government will live or die depending on whether they have support for the budget.

MPLC: The Council faces a unique situation with regard to the budget, in that the president, who is separated from the Council, has special authority to give ministers extra expenses out of the budget. Again, legislative-executive cooperation is a must, and the Budget Committee did not probe enough for details behind the proposed expenditures of the Executive. The items in the budget are in total figures, lacking any details. Given the lack of a clear process of budgetary oversight, what is the mechanism used in other parliaments with respect to monitoring? Are government loans incorporated into the budget? If taxation is not included in the budget, can the government propose taxes during the fiscal year?

Contrary to what Mr. Fortis said, there are differences between the budget here and in the United States. In the case of the PLC, the government is totally running the Council, and the press lacks freedom, so the Council cannot use this to increase access. The Council's communication with the public continues to be weak. Regarding the budget, even though the Council has spent a lot of time reviewing this, the Authority still does not have a system for expenditures, which makes the Council's job very difficult.

Mr. Fortis: When the question of oversight was raised, it was with a negative connotation, but this certainly isn't the case. In response to the question about loans: yes, they are definitely in the budget, as is projected taxation. Even with the closures that you face as Palestinians, revenue

estimates can still be made (e.g. how much money will be lost with a closure). If you had a fiscal department in the Council, they could be charged with this task.

MPLC: How can we conduct oversight through the fiscal year? Can we use auditors?

MPLC: Are the interest on loans included in the revenues?

Mr. Fortis: Regarding oversight: auditors would be part of this fiscal department about which I spoke. In the Wisconsin Legislature, for example, we have an Audit Committee that investigates several programs a year, so auditing is a continual process.

Mr. Pyne: In Australia, we have a Public Accounts Committee to oversee budget expenditures. As for the issue of interest on loans, they are included as expenditures in our budget.

Ms. Phillips: Now, I would like to turn the discussion to another very important area of legislative-executive interaction. I call on Mr. Pyne to give us an outline of how question period is structured in the Australian Parliament, and how this can be of use to the PLC.

Mr. Pyne: Let me begin by quoting one of the members who said that the PLC needs to define the roles of the legislature, executive and judiciary, and to make the executive accountable to the legislature. Question period in the Westminster model is unique, but there are similarities between the Australian Parliament and the PLC which I would like to highlight. In Australia, there are one and one-half hours of question period every day that the Parliament meets, and for this time, every minister, including the prime minister, is present. Any member can ask a question on any topic, and ministers are required to respond. This is televised live, which signifies the importance of this to the people as well.

Why is question time important?

In the Westminster model, it is important because it leads to increased accountability, transparency and equality between the legislature and executive, and illustrates the importance of public scrutiny in this process. With respect to the opposition, this time is important because they can expose the perceived failings of the government, and they can use it to expose the weaknesses and embarrass the government. Question time is usually the lead item on the evening news, so it is taken very seriously by the public as well. It is not unusual for question period to be the impetus behind the resignation of a prime minister.

From the government's point of view, question time is a period to seek and present information, to present new policies, and to show that they are at the front line of government activity. Also, this is an opportunity to announce changes in government policy. It is never the time, from the point of view of the government, to embarrass ministers.

Question time is also the opportunity for government to embarrass the opposition by revealing

their weaknesses and divisions. Question time is different throughout the world -- in Australia and Canada no notices of questions are given to the ministers beforehand. In other systems, however, ministers get the questions beforehand.

MPLC: Who organizes the questions, and who moderates this discussion? Can the member who asked the question respond? Can a member ask more than one question? Can members call for a vote of no confidence if they don't like the minister's response?

Mr. Pyne: A member cannot respond to a minister except for when a supplementary question is allowed, which is very rare. Regarding the organization of questions -- in the opposition party, there will be a meeting in the morning to determine a theme for question period that day (i.e. health care, education). Sometimes, the theme can last for more than one day if it is very critical. So, this meeting serves as an agenda-setting exercise. The leader of the opposition will ask the backbenchers (members of the government party who are not ministers) to ask questions -- they will stand during the session and will speak when called on.

Something like this will also occur on the government side, but this agenda-setting meeting will focus on something positive to emphasize during the question period.

MPLC: If the minister's answer is not convincing, is there a vote of no confidence proposed on the spot? Is question time necessary before having a vote of no confidence? What is the difference between question period and interrogations? Can the council turn to the judiciary or executive if there are criminal allegations versus a minister?

Mr. Pyne: The opposition can stage a vote of no confidence, but it is rarely successful since the opposition is a minority. But, this will receive a lot of media attention, and if there are a series of issues against the minister (i.e. several no confidence votes), then the prime minister will force the resignation of the minister.

Question time is usually before a no confidence vote, unless a decision is made to have a vote of no confidence in the entire government.

Interrogations [which are questions of a more serious nature implying issues of wrongdoing or misconduct which could lead to formal charges or a no-confidence vote] are rare. If there are any allegations of criminal acts, the minister will step down during the investigation, and in general, the prime minister will dismiss the minister before the investigation.

MPLC: If a minister has committed a criminal act, who handles this: the legislature, executive or judiciary?

Mr. Pyne: There are a number of ways that this is handled. One is through a parliamentary committee, although it is more likely that it will be handled by the prime minister or attorney general, then the director of public prosecution. Then, the issue will be taken to criminal courts.

MPLC: If I understand correctly, question period occurs every day. How many days a week does parliament meet? Are ministers members of parliament?

Mr. Pyne: In the Westminster model, all ministers are members of parliament. The Australian parliament sits for two weeks every month for eight to ten months of the year. There are about 70 question periods a year, which are not as many as in Canada or Britain, but in Britain, the prime minister is not there every day that question period is held, and the period only lasts for a half-hour.

MPLC: Are ministers and members of the parliament authorized to be involved in private business?

MPLC: What are the duties and responsibilities of members of the Australian Parliament?

Mr. Pyne: If there is outside business, a minister must establish a trust which is managed by someone else, so that the minister does not know the details of the holdings. This system is such to eliminate potential conflicts of interest. Rules are not as strict for members, although as a member, you are required to declare conflicts of interest.

Ms. Phillips: In Canada, there is conflict of interest legislation which requires members to fill out forms to declare one's assets. Therefore, members cannot vote on issues in which they have a conflict of interest. We also have trusts.

Mr. Pyne: In Australia, we have a registry of interests (i.e. number of bank accounts, mortgages, property holdings), which ensures complete entire transparency.

Mr. Fortis: If you have a business and are elected to the Wisconsin Legislature, you are allowed to keep it since the Legislature is part-time (80%). But, there are strict rules regarding conflicts of interest -- as a member, you cannot use your position to help your company, or even to *appear* that you are helping your company.

Mr. Pyne: We also have a document called a "code of conduct" which covers ministers' business interests (i.e. how to handle them with trusts), and what is expected of them in question period. This code is constantly used by the opposition to show weaknesses in the government. In addition, all members must fill out a register of interests. Thus, the system is very transparent. In terms of the duties and responsibilities of members, it depends on the individual. Some are more serious than others, better with constituent issues, etc., while others are more complacent.

Ms. Phillips: As for question period, one of the most important aspects is information-sharing. Therefore, you should focus on how you, as PLC members, can get access to information and to have a consistent, institutionalized question period, as stipulated in your Standing Orders. You need to pressure for access to information to make question period successful, and to have accountability on the part of the executive.

Ms. Phillips: I would like each of our international guests to make a final statement.

Mr. Pyne: I would like to leave you with one idea. We all know that there are problems with the Palestinian Authority, flaws and lack of implementation of agreements, continued occupation, which all mean that you have limited power. But, there are areas in which you *can* implement change. So, I would suggest that you work within those limits and do what you can do, well. The task at hand now is to set goals, work towards them, and strategize towards achieving them. These goals could include budget scrutiny, the Basic Law, question period, agenda-setting. I would suggest that you choose one or two and focus on them, because if you focus on too many different things, you won't achieve anything.

Mr. Dhungana: When I used to be a student, I was concerned about why people suffer like you -- you are facing a great struggle, and getting the Basic Law is the most important element of this struggle. You must remain committed to this process, and there is no reason why you should feel disappointment, given all that you have accomplished. You have accomplished a great deal, and developments are always slow in the beginning.

I feel honored to have learned so much from your experience.

Mr. Fortis: I want to thank you for the honor and opportunity to be here, in the three workshops in which I have participated, and to have had the chance to meet so many different people. When I compare you, as PLC members, to the members I worked with in the Wisconsin Legislature, I think you are very talented and committed, and I wish we had people like you in Wisconsin. I have great respect for the situation in which you are working, and I look at you with awe.

I want to say one thing -- your situation is difficult, but you cannot use that as an excuse. There is a lot you can do to work within this situation. The degree to which you can build democracy will only strengthen Palestine. People are watching the PLC, and want you to succeed. Democracy is powerful because it is the will of the people -- you have the opportunity to shape this will.

PLC MEMBER EVALUATION

The enthusiasm of PLC members in this topic was apparent from the questions asked and the discussions generated, and requests for further information on this topic. Questionnaires were distributed to the workshop participants at the end of the workshop, where, among other things, participants were asked to assess what they found most and least useful from the workshop, what other topics could have been addressed, as well as suggestions for future activities from the three participating organizations.

The comparative focus of the workshop was well-received by members, specifically, the methods of legislative-executive interaction in both the presidential and Westminster systems. The discussions regarding the budget and law-making processes were highlights for many of the members. Most members found all of the topics of the discussions useful.

In addition to what was covered in the workshop, members expressed an interest in learning more about how members develop legislation, how an independent judiciary develops, as well as its relations to the legislature, and how to conduct committee hearings. In planning its future activities, NDI is taking these suggestions into account.

APPENDICES

APPENDIX A

LEGISLATIVE/EXECUTIVE RELATIONS

"GOVERNING IN PARTNERSHIP"

Saturday, May 17, 1997

10:30-12:30

**Welcome by Local Staff
Introduction of International Guests**

International Presentations:
"SHARING THE POWER"

Mr. Damar Nath Dhungana
Former Speaker, Parliament of Nepal

Mr. Christopher Pyne
Member of Parliament, Australia

Mr. Louis Fortis
Former State Representative, Wisconsin State Legislature (United States)

- * An overview of legislative/executive interaction;
- * Structural mechanisms used to facilitate/manage this relationship;
- * Examples of methods used to resolve tensions and conflicts.

Presentations from two guests will be made before lunch, and two after lunch. Discussion with PLC Members will follow each presentation.

We would like this to address the overall framework of legislative-executive relations in your respective systems, as well as the specific mechanisms that are used to manage this relationship. In particular, we would look to you to provide examples of tensions between the legislature and the executive, and to discuss what methods were used to solve these conflicts in your legislature.

The plenary discussion with PLC Members will give you a chance as an international participant to gain insight and hear first-hand the opinions of the PLC Members regarding legislative-executive relations. This will help to shape further workshop discussions.

12:30 - 1:30

Lunch

- 1:30 - 3:00** **Presentations from two international participants will be followed by discussion with PLC Members**
- See above descriptions.*
- 3:00 - 3:15** **Break**
- 3:15 - 5:00** **Overview of Legal Framework: Dr. Ahmad Khalidi, CPRS
Plenary Discussion with PLC Members and international participants**
- Structure outlined in Interim Agreement and envisioned in Basic Law (August 1996 Draft)

Sunday, May 18, 1997

- 9:30 - 1:30** **Structural Mechanisms Where the Legislature and Executive Intersect**

The purpose of these workshops is to stress the importance of mechanisms in parliament that reinforce the relationship between the legislature and the executive, particularly in the areas of creating legislation, question period, and the budget process. Our idea is not to encourage an antagonistic relationship between the two branches of government, but to look at the overall interaction between the legislature and the executive, a relationship that should be characterized by both friction and cooperation.

We have divided the international participants and the local organizations into specific topics, so please note the area in which we would look to you to share your expertise and knowledge.

Workshop #1: LAW MAKING

Chair: CPRS

Resource: Mr. Dhungana

Legislation from executive

- what background information should executive provide to Council?
- what reports should Council provide to executive re: amendments etc.

Legislation from Members

- what resources do Members require to draft laws?
- can Council Members initiate laws?

-when should the Council act by law and when by resolution?

We would like this workshop to focus on the roles of both the legislature and executive in the law-making process, and the type of relationship that needs to be fostered to make this an efficient and democratic process.

Workshop #2: QUESTION PERIOD

Chair: NDI

Resource: Mr. Pyne

Ministerial accountability

Information sharing

We want to stress that question period is something that exists in many parliamentary systems, and is a mechanism that allows for Council members to ask questions of the executive (a form of oversight), but also can foster stronger relations between the two branches. Specifically, if there is an institutionalized time during the plenary when information can be conveyed and discussed between the legislature and the executive, it follows that relations could be enhanced (i.e., Members can obtain information from ministers that can be passed on to their constituents).

Workshop #3: BUDGET OVERSIGHT PROCESS

Chair: ARD

Resource: Mr. Fortis

Roles of the Budget Committee and the PLC

-Analyzing and amending the national budget

-Monitoring government expenditures

We would like you to focus on how a budget is developed and government expenditures are monitored, and the respective requirements of and resources needed from the legislature and the executive in this process. What is a realistic time-frame for this process? How are amendments processed?

1:30 - 2:30

Lunch

2:30 - 3:30

Closing Remarks by Internationals and Members

INTERNATIONAL PARTICIPANTS

The Honorable Mr. Daman Nath Dhungana

Mr. Dhungana has served in public office in Nepal since 1991. He was elected as Member of Parliament in 1991 and also as served as Speaker of the House of Representatives from 1991 to 1994. Mr. Dhungana played a key role in drafting Nepal's 1990 constitution and was a Member of the Constitution Recommendation Commission. Mr. Dhungana was the Vice President of the Nepal Human Rights Committee on the Nepal Bar Association. He has been an ardent campaigner for better, more transparent government in Nepal and was the chief spokesman of the Nepali Congress Party on the eve of the Pro-Democracy Movement in 1990. Mr. Dhungana is a lawyer by profession.

The Honorable Mr. Christopher Pyne

Mr. Pyne has served in public office at the state and national level for many years in Australia. He was elected to the House of Representatives in 1993 and 1996. He is a current Member of the Financial Institutions and Public Administration House Standing Committee and Employment, Education and Training House Standing Committee. He was a former Member of the Aboriginal and Torres Strait Islander Affairs, Transport Communications and Infrastructure, and Legal and Constitutional Affairs House Standing Committees. From 1994-1996 he also served as Parliamentary Secretary to the Shadow Minister for Social Security and Seniors. He is the Chairman of the Australia/Israel Parliamentary Group. Mr. Pyne is also a Member of the Commonwealth Parliamentary Association and Inter-Parliamentary Union. By profession, Mr. Pyne is a lawyer.

Mr. Louis Fortis

Mr. Fortis is currently the president of The Fortis Group, an economics and business consulting firm in the state of Wisconsin. From 1987-1993, he served a representative in the Wisconsin State Legislature, where he was chairman of many committees, including Financial Institutions and Insurance Committee, Select Committee on Health Care Financing and the Joint Survey Committee on debt financing. Prior to that, Mr. Fortis was the Executive Director of the Wisconsin Community Development Finance Authority. In addition to Mr. Fortis' legislative experience, extensive work in management and business development, and international consulting experience, he has also taught university courses, published economics reports, and has participated in numerous conferences on issues relating to community economic development.



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The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices and institutions. The Institute works with courageous democrats who are struggling to promote peaceful political reform. It establishes partnerships with political leaders who have begun the difficult task of building stable pluralistic institutions and creating better lives for their citizens.

Democracy depends on: legislatures that represent citizens and oversee the executive; independent judiciaries that safeguard the rule of law; political parties that are open and accountable; and elections in which voters freely choose their representatives in government. Acting as a catalyst for democratic development, NDI bolsters the institutions and processes that allow democracy to flourish.

Since 1983, NDI has compiled a remarkable record of achievement. Strictly nonpartisan, the Institute supports the efforts of democrats in every region of the world to:

Build Political and Civic Organizations: NDI helps build the stable, broad-based and well-organized institutions that form the foundation of civil society. Democracy depends on these mediating institutions, which link citizens to their government and to one another by providing avenues for participation in public policy.

Safeguard Elections: NDI is the world leader in election monitoring, having organized international delegations to monitor elections in dozens of countries worldwide, helping to ensure that polling results reflect the will of the people.

Promote Openness and Accountability: NDI responds to requests from leaders of government, parliament, political parties and civic groups seeking advice on matters from legislative procedures to constituent service to the balance of civil-military relations in a democracy. NDI works to build legislatures and local governments that are professional, accountable, open and responsive to their citizens.

International cooperation is key to promoting democracy effectively and efficiently. It also conveys a deeper message to new and emerging democracies that while autocracies are inherently isolated and fearful of the outside world, democracies can count on international allies and an active support system. Headquartered in Washington D.C., with field offices in 38 countries, NDI leverages the skills of its highly committed staff by enlisting volunteer experts from around the world, many of whom are veterans of democratic struggles in their own countries and share valuable perspectives on democratic development.

