Agenda

Standards Committee

6th Meeting, 2004 (Session 2)

Wednesday 5 May 2004

The Committee will meet at 12.00 pm in Committee Room 4.

1. Conference: The Committee will consider an invitation to a seminar in Sarajevo on ‘Codes of Conduct’, organised by the Organisation for Security and Co-operation in Europe (OSCE) for Members of the Parliamentary Assembly of Bosnia-Herzegovina.

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Please find attached papers on the following:

Agenda item 1
Conference:

Paper from the Clerk
Terms of Reference: note by the organisers
Terms of Reference for Seminar on Parliamentary Codes of Conduct, May 2004: note by the organisers

ST/S2/04/6/1
ST/S2/04/6/1a
ST/S2/04/6/1b
SIXTH MEETING OF THE STANDARDS COMMITTEE
INVITATION TO SEMINARS IN SARAJEVO AND BANJA LUKA
ORGANISED BY THE OSCE MISSION TO BOSNIA AND HERZEGOVINA
PARLIAMENTARY SUPPORT PROGRAMME

Background

1. The Standards Committee has been asked to participate in a series of seminars on parliamentary codes of conduct which will be held in Sarajevo and Banja Luka between 17 and 21 May 2004. The seminars are being organised by the Organisation for Security and Co-Operation in Europe (OSCE) as part of its Parliamentary Support Programme (PSP) in Bosnia-Herzegovina and the National Democratic Institute for International Affairs. The PSP is an interactive programme that facilitates the exchange of experience and expertise between Members of Parliament (MPs) of Bosnia-Herzegovina, MPs from Parliaments of other OSCE member States and OSCE personnel. Its main objective is to assist MPs and their staff in Bosnia-Herzegovina in the exercise of their legislative, oversight and representative functions. The three Parliaments in Bosnia and Herzegovina will shortly begin developing their own codes of conduct and the seminars are intended to assist this process. Further information about the programme for the seminar series is attached.

2. The Standards Committee’s work in both Parliamentary sessions on developing a Code of Conduct and a complaints process has attracted considerable interest from both within and outwith the UK. Participation in the seminars should enable an exchange of ideas and experiences on developing codes of conduct which in turn will inform the Standards Committee’s further work in this area. The seminars may be particularly relevant to the Committee’s current work on developing a Committee Bill on Members’ interests. Participation will also serve to raise the profile of the Scottish Parliament’s work in this area to an international audience. The event will also build on developing links between the Scottish Parliament and the Parliamentary Assembly of Bosnia-Herzegovina. The Parliament hosted a visit from the Speaker last year and in 2002 three Committee Clerks from the Parliamentary Assembly undertook a work shadowing programme in the Parliament. The organisers of the seminars have also indicated that they would welcome the attendance of an official to have working level discussions with the Bosnian Parliamentary Secretariat on drafting the new code.

Cost

3. All travel, accommodation and subsistence costs will be met by the OSCE.

Next Steps

4. If the Committee agrees to accept the invitation, the approval of the Conveners’ Group and Parliamentary Bureau must be sought. Attendance will also be cleared in advance with the SPCB.
Decision

5. The Committee is invited to consider whether a member of the Committee accompanied by a Committee Clerk should participate in the seminars on parliamentary codes of conduct organised by the OSCE Mission to Bosnia and Herzegovina between 17 and 21 May 2004.

STANDARDS COMMITTEE CLERKS
MAY 2004
Terms of Reference

Seminar: “The Code of Conduct in Parliamentary Practice”

Participants: MPs in Bosnia and Herzegovina at the three major parliaments
PABIH 42+15, FPBiH 98+58, RSNA 83+28

Seminar Trainers: Scottish MP, Macedonian MP

Proposed Dates: May 16-21, 2004 (Monday to Friday)

Locations: Sarajevo and Banja Luka (The Plenary Room of each Parliament)


Summary:
OSCE and NDI are organising three seminars on the use of codes of conduct in parliamentary practice. Seminars will be held for the members of: 1) the Parliamentary Assembly of BiH (PABIH); 2) the Federation Parliament of BiH (FPBiH); 3) the Republika Srpska National Assembly (RSNA). The seminars will feature presentations from MPs from 1 regional (Macedonia) and 1 western parliament (Scotland).

Objective: To stimulate the three major Parliaments in BiH to develop their own codes of conduct that would guide MPs as they attempt to fulfil their roles as legislators and elected representatives, as well as serving to establish a commitment to serve the public interest with integrity.

Format: One five-hour seminar for each Parliament with presentations of experiences from visiting MPs.

Background:
Parliaments in many democracies have established their own principles of integrity, or a “Code of Conduct,” which obliges legislators to behave in a way that is appropriate to their position as bearers of the public trust. These codes are not intended to control the behaviour of legislators but to:

• Serve as a guide for proper behaviour (to help MPs better assess required decisions and proposed actions);
• Establish and make known public standards on the basis of which their behaviour may be assessed;
• Provide a detailed basis for responding to behaviour which is regarded as unacceptable.
• Strengthen public confidence in MPs and the institution of parliament.

In BiH, in October 2002, the OHR imposed a Law on Conflict of Interest. This Law defines conflicts of interest for elected and government officials and sets out
comprehensive requirements for disclosure. The Law is being implemented and administered by the BiH Election Commission.

While this Law and the Election Commission constitutes a framework for defining, assessing and responding to conflicts of interest, this does not necessarily constitute the establishment of an effective and sustainable ethical regime for MPs. For instance, while most parliaments have their own code of conduct, this BiH Law on Conflict of Interest lumps together elected and government officials and does not directly address the unique authority and responsibility of MPs to act as law-makers and representatives of their voters. This may be due to the fact that MPs in BiH have not yet participated directly in a process to examine and define the principles that should guide their behaviour.

In order to work towards a sustainable and effective ethical regime for law-makers, MPs need to be given the chance to reflect on their specific circumstances and to begin to develop ethical standards for their own behaviour. It is hoped that the Parliaments will then develop their own codes of conduct that are in line with the Law on Conflict of Interest. Finally, it is hoped that MPs will present these ethical regimes to the citizenry (through press conferences, etc) as their commitment to fulfil the trust placed in them by the public, as well as a standard by which they will be judged.

These seminars should provide MPs with a starting point to develop and adopt their own Ethics Regime/Code of Conduct

**Presentation:**
In terms of general approach, we have found that the most effective method when conducting seminars for MPs from transition countries is not to dictate to any particular model, but to share professional experiences from other parliaments, the pros and cons of particular parliamentary practices and systems, and to suggest how they might be adapted to the local situation. We usually leave ample time for questions and discussion. Often this exchange is the most valuable part of the session. Seminar presenters are welcome to use multi-media, such as power-point or other materials. Handouts, such as copies of the presentation, are encouraged. Please send us these asap for translation. Note that simultaneous translation will be available for all.

**Western Experience (Scotland)**
We would ask you to make a presentation of your particular Ethical Regime for MPs’ conduct. This presentation should include:
1) A brief introduction to the Scottish Parliament
2) The initial impetus for the code of conduct
3) Overview of the development process
4) Structure of Ethics Regime : Principles and Enforcement
5) Presentation of the Code to the Public and Media
6) Actual Practice
7) Evaluation of the Regime: Pros and Cons

The entire presentation should be no longer than 60-90 minutes. You may wish to break the presentation, for example, into two 30 min segments with questions following each section.
Regional Experience (Macedonia)

We would ask you to present your recent experience in developing a code of conduct and future plans for its implementation. This should include:

1) A brief introduction to the Macedonian Parliament
2) The initial impetus for the code of conduct
3) Overview of the development process, including details on the Public Hearing
4) Structure of Ethics Regime: Principles and Enforcement
5) Presentation to the Public and Media

The entire presentation should be no longer than 60-90 minutes with questions to follow.

Program Outline

May 16-21, 2004

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<td>Briefings</td>
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Terms of Reference for Seminar on Parliamentary Codes of Conduct, May 2004

It has been noted that in recent years, but over the last ten years in particular, a number of democracies have adopted Codes of Conduct for Members of Parliament.

The purpose of such Codes of Conduct is not to control the behaviour of politicians, but to:
- Set clear public standards of behaviour for parliamentarians
- Provide a foundation for the assessment of proposed actions
- Provide an agreed outline for responding to behaviour which is considered unacceptable
- Reassure the community that parliamentarians are accountable for their actions and, thus, worthy of trust in the carrying out of their role.

Codes of Conduct provide a number of benefits for both parliamentarians and the public, including:
- Clarity as to the standards expected from Members during the carrying out of their public role
- Increased legitimacy (both for individual MPs and political institutions)
- Increased public and media confidence (both in individual MPs and political institutions)

BiH already has a Law on Conflict of Interest which applies to both elected and government officials. It is hoped that a Code of Conduct for Members of Parliament could be the next step in the process of the construction of an ethics culture in BiH. It is hoped that following the drafting and adoption of a Code of Conduct for Members of Parliament, such codes could eventually be adopted for Ministers and public servants as well.

Please note that, as members of the international community, OSCE and NDI are providing seminars on Codes of Conduct to the Members of the BiH parliaments as the first step in the process of Members drafting their own Code of Conduct. Members of Parliament must note the benefits to themselves, both in clarifying the ethical action to take in certain circumstances, and in the increase in their personal and institutional legitimacy.
Aspects of a Code of Conduct

Codes of Conduct are generally composed of three aspects. These are:

1. a Code of Conduct which outlines the expected behaviour of legislators, sometimes including general principles;
2. ethics rules which provide guidelines as to how the Code of Conduct is to be interpreted and applied in relation to certain aspects of Members’ actions;
3. a regulatory body to advise on and enforce the Code of Conduct.

1. Code of Conduct

A numbers of countries include a set of General Principles as a precursor to the Code of Conduct. These General Principles, in essence, constitute a Code of Ethics on which a more prescriptive Code of Conduct can be based. They provide a quick reference for Members and are the principles which should guide legislators in all aspects of their activities as Members of Parliament. The text of the Code of Conduct is often then constructed around these principles, providing a more detailed code of standards to which Members should adhere.

It would be useful for Members of the BiH parliaments to hear how the Scottish Parliament decided what principles should be stated at the beginning of the Code of Conduct. Was there conflict over what principles should have been included? How were any conflicts resolved?

2. Ethics Code

Codes of Conduct, due to their conciseness, are often accompanied by a guide that sets out in more detail what is expected from legislators in regard to certain aspects of the Code of Conduct.

3. Implementation and Enforcement

Three distinct approaches to the implementation of a Code of Conduct exist, each of which has been adopted by various parliamentary bodies in certain countries. Essentially, the methods of implementation are: self regulation, regulation by an autonomous body, or a combination of these two elements.

a. Regulation by an Autonomous Body

The first approach involves the establishment of an external body to administer the Code and its implementation and report to either the legislature or a designated committee. Under this approach the role and power of the body is enshrined in legislation. This approach is somewhat problematic, however, as it removes the ownership of the Code and its implementation from the sphere of parliamentary members.
b. Self Regulation
The second approach involves the internal implementation of the Code. Each house has its own Code and its own ethics committee. This committee is the sole investigating body with regard to issues relating to the Code of Conduct. This approach has been criticised as it requires individuals elected as legislators to act as investigators and judges. There is also the danger that the committee will split along party lines and decisions will be taken due to political reasons rather than on the evidence presented. The complete internalisation of investigations could also be perceived as seeking to cover up misdemeanours rather than presenting an image of honest, fair and impartial investigations.

c. Combined Approach
The third approach is to designate an independent parliamentary commissioner to oversee the adherence to the Code, established under standing orders or a resolution of the House. This body or individual would report directly to the legislature or to a parliamentary committee. This approach allows for a level of independence in the investigation process, through the parliamentary commissioner, whilst still permitting Members or Parliament to retain ownership of the code.

It is vital in the case of the BiH parliaments that the implementation and enforcement mechanisms are seen to be transparent, impartial, and fair. The experience in the Scottish Parliament with relation to this would be especially appreciated. Why was the combined enforcement mechanism chosen as the most appropriate for Scotland? Has Scotland’s experience of this mechanism been positive? Would there have been a better alternative?

Other issues
The recent renewed interest in Codes of Conduct for Members of Parliament started in ‘Western democracies’, but is now increasingly spreading around the world to transitional democracies. A Code of Conduct is an especially useful tool in the development of transitional democracies as it covers issues which may not have been part of the previous political culture of such countries, for example accountability, transparency, and the supremacy of the public interest. The mere process of discussing and agreeing on standards for Members of Parliament is also important in a transitional country such as Bosnia and Herzegovina.

It should be stressed that the introduction of a Code of Conduct does not imply that all Members are corrupt, or are liable to become corrupt. The process recognises the ethical dilemmas Members of Parliament face. Members must often decide between competing interests: national, constituency, political, and personal.
A Code of Conduct in BiH must seek to, and be able to, foster trust in parliament, parliamentarians, and the system of parliamentary democracy. It must be applicable to the unique situation in Bosnia and Herzegovina and must refuse to allow this situation to be used as an excuse for lower ethical demands on members of parliament.

A Code of Conduct in BiH must allow public attention to focus on policy and deliberation, rather than the ethical conduct of parliamentarians. As part of this process, Members of Parliament and the public must have complete faith in the enforcement mechanism introduced with the Code of Conduct. For optimal benefit to the Members of Parliament, and the political institutions of BiH, the public must have knowledge of, and accept, the Code of Conduct.

Macedonia

The seminar will also be addressed by a Member of Parliament from Macedonia, Zoran Sapuric, who is the Chair of the Committee on Political System and Inter Community Relations. There is currently no Code of Conduct in the Macedonian Parliament, but this MP is leading the current drive for the Macedonian Parliament to adopt a Code of Conduct.

NDI in Macedonia has been working with Members of the Macedonian Parliament, and in June 2003 conducted a public hearing on legislative ethics and a Code of Conduct for MPs. This public hearing was addressed by Members of Parliamentary Groups, Chairs of Macedonia Parliamentary Commissions, academics, NGO representatives, and members of the media.

The proposed Code in Macedonia is still in procedure. A report from the public hearing has been prepared, and the panel members are currently in the process of reviewing it. Once it has been approved, the report will go to the plenary session of Parliament to seek recommendations from all MPs.