

**THE CHANGING ROLE OF REGIONAL LEGISLATORS, IMPACT OF
THE CURRENT FEDERAL REFORMS
CONFERENCE**

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REPORT

The conference was opened by **Vladimir Platonov**, chairman of the Moscow City Duma. He expressed his confidence in the fact that discussions with Russian and foreign colleagues on questions of parliamentarism were important for everyone concerned. He noted that in 2006, Russia would celebrate the 100th anniversary of the Russian Parliament.

Jos Douma, Deputy Head of Mission of the Royal Netherlands Embassy to the Russian Federation, remarked that he had long known the work of the EWPPP, and had even travelled to Moscow as a project participant. He also headed the MATRA program, which supports the project.

The head of the TACIS program, Mr. **Dybman**, discussed various initiatives. He questioned whether the 'vertical' movement that often refers to the economy is only coming from the top down, and not also from the bottom up.

Vladimir Podoprigora, vice-governor of the Novgorod region, welcomed the participants on behalf of the EWPPP. He discussed the project's history, reflecting that it has existed for 15 years, and has covered many issues with regard to the Russian Parliament and Russian regional parliaments. For example, the problem of lobbyism was dealt with in Udmortia, in Tatarstan the problems of economic development in an investment climate were discussed; and in St. Petersburg the problem of separation of powers on different levels was deliberated. He told about the seminars devoted to the 1992 constitution, in which **Viktor Sheinis** and **Vladimir Lysenko** participated. So, he noted, these are not just discussions, they are really practice sessions, leading to concrete measures on a federal and regional level. The new cycle opened by the current seminar is scheduled to run for three years, in places like Novosibirsk, Ekaterinaburg, Nizhny Novgorod, and St. Petersburg.

Olga Sidorovich, director of the Institute of Law and Public Policy, opened the discussion. She further expanded upon the themes raised by Podoprigora. The institute is often involved with projects connected with regional institutes. People often refer to big politics and small regional politics, there should be one big politics, a living system with inter-connected parts and global changes. The regions should be reinforced, and should be more responsible for the condition of legislation. The second major point is that politics can only be effective when economic, judicial and administrative reforms have both the active participation of and are understood by the people. Reforms can only be carried to their logical conclusion when the people trust the politicians – and that depends on the professionalism of those who represent their interests. Open and honest discussion is needed for this.

Vladimir Platonov, Chairman of the Moscow City Duma, was the first to speak. Speaking from the experience of one of 89 parliaments of the RF, the 1993 Constitution granted the regions a lot of autonomy in executive and legislative bodies. How effective, he asked, have these 12 years been? The objective of the Moscow City Duma was to adopt priority legislation on the elections of mayor, deputy memory, city Duma deputies, self-governing bodies, and electoral commissions. That was followed by legislation on taxation and the budget. He noted that they were beginning to feel legislative gaps. Since 1994, the deputies adopted 628 laws; some, like the budget, were only for one year. Today in Moscow there are 195 laws, 69 of them in the sphere of economics and finance, 60 in administration, and 61 in the sphere of urban construction. He went on to explain that 50-80% of the draft laws come from the executive branch. The executive and legislative branches are part of a single city power, and there are a huge number of laws on joint jurisdiction. He further discussed federal laws and matters of housing, like Law 122 – the re-planning of apartments, for which the

government set rules. The legislative bodies could not regulate what was going on, so they adopted a rule on reconstruction whereby neighbors' signatures were required first, in case anything went wrong. They lost a lot of authority in administrative matters, for example, their administrative punishment on the propaganda and dissemination of Nazi insignia was much more effective than that stipulated in the federal legislation. The situation in different regions is different than in Moscow. They would like, for example, to have more power to regulate gambling, because, he maintained, Moscow has turned into one big casino since this authority was taken away.

In the last two years, the deputies have become more active. The parties have started to actively work through parliament. He went on to discuss the fact that the power of parliaments to nominate has good sides and less good sides. It is good that the authority of the legislative branch is increased, but that also increases responsibility. Previously, if a region was freezing, it could be claimed that the (elected) governor was a thief. But now all the responsibility for electing leaders of the executive branch is in the hands of the president and parliament. However, he noted, parliament was not given extra functions for the realization of control.

Finally, Platonov turned to elections. Recently in connection with elections, there has been much interest in the Moscow Duma. Everything that is happening in the Duma also has to do with the fact that the deputies working there were elected on the basis of prior legislation, which was a compromise of four leading parties: Fatherland, Unity, Union of Right Wing Forces, and Yabloko. First there were 35 deputies, then 45, he expressed that the number of deputies could only be increased in accordance with the number of Moscovites. Elections and the number of deputies should serve their interests.

Malcom Bruce, Member of the House of Commons, UK, asked about the State Duma's power to nominate governors, and whether the president had not taken away that power. Platonov answered that the federal law had changed. In the past, governors were directly elected in regions. Today the president nominates candidates to the regional legislature. If there are three rejections of these candidates, he can disband these regional parliaments.

Vladimir Lysenko noted that some years back everyone was criticizing Tatarstan for the ten percent barrier for entering the Gossovet. What, he asked, was the logic of a ten percent threshold for political parties? **Platonov** responded that the leaders of all of the political parties lived in Moscow, which also housed their headquarters. They are governed by the results of the State and city elections. He concluded that the 10% barrier was not undemocratic, that federal law regulated this, and they executed it.

The next speaker was **Igor Mikhailov**, deputy of the St. Petersburg legislative assembly. He pointed out that the Russian Federation was in the process of establishing new democratic traditions and finding a balance between the three levels – the federal, the State Duma, and the Federation Council. In St. Petersburg, there is a budget surplus, if they have extra money, they try to help the citizens. He proceeded to discuss the fact that Russia does not yet have established forms of its own, so they borrow from others, and study their mistakes (Japan's privatization of postal services ultimately led to re-elections). Judging from his practical experience, and as the head of the committee on legislation, Mikhailov considered that the parliamentary form works best when there is a highly developed legal culture, which is not the case in today's Russia. At the level of the subjects of the federation, only two articles can be adopted – the first is that tomorrow everyone should prosper, the second is that this will be determined by the executive authorities. He went on to say that 80% of the bureaucrats are representatives of the executive branch, which is dictated by the constitution. In this period of

transition today, he asserted, Russia should slowly be moving towards a period of a parliamentary republic where parliament has responsibility and enough authority to be responsible for its consequences. He cited an example of the traffic situation in his electoral district of St. Petersburg, where they ultimately closed off roads to protect pedestrians. He Mikhailov went on to maintain that the legacy of the Soviet period and collectivism is that everyone has their own agenda.

Further, Mikhailov, lamented the fact that there is no procedure that would guarantee that more than half of the 89 subjects of the federation agree on something. Lots of questions remain as topics of the sub-nationals. There is no procedure for how to go from the 'bottom-up'. How many subjects should have to agree on something for it to be discussed and decided in the Kremlin and on Okhotny Riad, he asked. As a former professional athlete, Mikhailov asserted that the level of manipulation could be reduced. Russia is a mighty state, if the law is well considered it will reach the standard of the FRG, but should not be driven into the European model at a gallop. He concluded by stating that time was needed, and that these questions should not be decided by shooting at the White House, but by discussions, and clarity on where power should lie, he also spoke in support of Platonov.

The following speaker was **Vladimir Lysenko**, President of the Institute of Modern Policy, Professor of Political Science, who discussed the appointment of governors and the mixed system of elections in the regions. He discussed two innovations and their relation to the legislative powers. He explained that he was in the process of finishing a book on Russia's governors. Lysenko noted that many interesting ideas were coming from the Kremlin and if they were to be implemented before the end of the century it would be wonderful. He recalled how when Putin talked about appointing governors through the legislative assembly, that everyone was excited that the role of the assemblies would increase. He remarked that he was waiting for one appointee to be rejected, or questioned as problematic, and already 35 governors have been appointed without a single rejection. He lamented that there have been no major changes in the role of legislative assemblies. They would like to reject candidates, but then the Duma could be dispersed. Furthermore, he explained that governors have been warned that if there were disagreements and appeals to the Constitutional Court, there could be problems and undesired risks. There have been some appeals to the court, and this has been an act of civic duty on the part of some deputies, who are in fact opposing the president, saying that his decision runs counter to the Constitution of the RF. However, he asserted, the government knows how to punish the Court if they adopt the wrong decision. Lysenko noted that in the Yaroslavl region, when there was a rejection of the President's candidate, after two days it was passed. He noted that they live in a very specific country. In many European countries with federative systems, and in America and Canada, elections are only once every four years, the President and governors are elected. In Russia, Putin appoints when he wants, so there are many questions and issues. Lysenko went on to say that 66 out of 89 governors are members of the leading party, so the President really has nothing to fear in moving toward a parliamentary republic since United Russia controls most of the legislative assemblies today. He lamented the fact that the current situation is much like it was in 1996, and they are hostages of leading political elites. Effective systems of power are not being set up in the regions.

The second innovation of the mixed system is one of the better recent reforms – when the Kremlin dared to have half of the deputies elected along party lines, the parties became more active in the regions, and the people became more interested in elections, because almost all parties also have federal analogies. Today the governor in a legislative region tries not to allow a monopoly of United Russia in the legislative assembly, because he understands that if this party has the majority it will dictate to him what to do, so they quietly support

other parties, and sometimes strange coalitions form. Unfortunately, the multi-party system today is not ideology based, and has not developed sufficiently for the needs of their government. Lysenko further observed that the number of regions today with paternalistic regimes is increasing, in 1/3 or even ½ of the regions, despite the fact that they have parties, these parties are under the aegis of the governor or president of the republic. In most regions a multi-party system can be seen. (He noted that experts do not believe that there is a two party system in Tatarstan.) Russia needs to move from a presidential to a parliamentary form of development of the subjects of the federation. Lysenko went on to say that it would be a disaster if they were to move to a purely proportional system, that many regions are not prepared to do so and move ahead, even if Moscow and St. Petersburg are. He concluded by saying that the legislative authorities were not increasing, but are coming under the influence of the executive authorities. He considered that Russia was becoming a less democratic country. However, if the party system is further developed on the federal and regional level, there is a real chance of solving these problems along an evolutionary path.

Willem Henrik de Beaufort, former General Secretary, Dutch House of Representatives, commented on Lysenko's remarks on the diminishing ideological base of parties. He asked what kind of ideological bases would best facilitate democratic development and functioning, including on the regional level. Lysenko answered that sometimes during election campaigns coalitions are formed on the basis of other than ideological priorities. Parties have other problems too. When business people donate money, they ask that it remain anonymous. He explained that soon an international conference would be held on Russian electoral legislation, which can hardly be given a name today.

Viktor Sheinis remarked that the complaint from the Yaroslavl regional Duma was not the only one, there was also an individual complaint from the Novosibirsk province with respect to the violation of his rights, he wondered if Lysenko could comment on the prospects for resolving these complaints. Lysenko answered that the Constitutional Court hasn't really addressed these questions, because if they did say that these acts were in accordance with the Constitution, the world would doubt its competency.

The next to speak was **Vladimir Lopatin**, vice chairman of the executive committee of the Russian Union of Lawyers. He discussed the effectiveness of legislation, law-making, and legality. He lamented that they had departed from the basic essence of government, that is, the safety and security of the state, and its citizens, and the realization of their rights. The state is a corporation, a situation that may have far-reaching consequences. The goal of any corporation is to derive profit, then authority becomes the means of capitalism. This, he continued, also explains the growth of corruption which is also happening in the country. The second point he made was that Russia returned from the edge of an abyss that would have broken it up into separate princedoms and possibly created the pre-conditions for civil war. Despite the many criticisms of the president, many of them justified, they should not forget the fact that Russia stayed whole. That explains the prestige given to the present government.

Gennady Burbulis, chairman of the commission on methodology of implementation of constitutional powers of the Federation Council, discussed the expansion of powers of the legislative bodies of the subjects of the RF in the oversight of legislation and law-implementing practice. He presented some of the serious results of the last three years of their program on monitoring law. He explained that they were so engrossed in theory, methodology, and monitoring because they were professionally dissatisfied with the laws that were adopted, and the effectiveness of their implementation. Starting with themselves, they had to develop methods to ensure accordance with the Constitution, the Federation Council

either adopts or rejects. It acts, thus, as a political-legal filter, and then passes the law onto the president for signing. They rethought the theory and methodology of monitoring the law, created an inter-governmental work collective and made the monitoring procedure absolutely clear, approved by most bodies of the government. He asserted that the function of monitoring should be built in. In order to have more effective collaboration, special structures could be created. They are even considering special university courses on this subject, and they already regularly hold seminars and conferences. Burbulis announced that the first bulletin on monitoring would come out this year. The problems are connected with the fact that this work is not enshrined legally, they are trying to have the task of monitoring protected by laws. The second problem is that of human resources, there are not enough specialists in this area. Many initiatives are being undertaken for larger working groups, he expressed the hope that the discussion could also move to the European parliamentary level.

Yuri Popov, deputy of the Moscow City Duma, discussed the regional legislature, and the correlation between the role of executive and legislative branches after changes in election. The fact that heads of administration in the subjects are no longer directly elected is seen as a curtailment of the democratic right to direct elections. He himself considered it to be in direct violation of the constitutional rights of citizens of the RF. He went on to say that if we take the President's postulate that one of the key factors of stability in Russia is the observance of the constitution, then making changes in the election of heads of the legislature of the subjects of the federation is both dangerous and unconstitutional. It is a violation of the rights and freedoms of individuals, he continued, and of one of the cornerstones of democracy – the principle of division of powers. Popov pointed out that the Constitutional Court does not allow the formation of one branch at the expense of, or with the help of the other. This is all exacerbated by the fact that the President of the RF, who has the constitutional right to form the federal executive authority, and significantly head it, and can even chair sessions of government, has the exclusive right to present candidates as head of administration of the subjects of the federation, leaving the representative organs of power little alternative but to choose among the President's creatures.

As far as Moscow was concerned, he thought that the charter of the city and the regulations of the Moscow City Duma should be changed, as well as many Moscow legislative acts on various issues regarding the separate authority of the legislative and executive branches. The mayor should not have the possibility to veto or sign laws. He also suggested that other changes be made that would enhance the system of checks and balances.

Vladimir Podoprigora posed a question to **Gennady Burbulis** about making the monitoring process automatic. Just as the light goes on when a car door is opened, there would be some kind of alert to decisions that contradict the constitution or are not in accordance with federal laws.

Burbulis answered that today the task of monitoring is seen as important, even mandatory, and it is being systematized. The translation of the results of the monitoring into concrete practical results that would change, for example, the relationship of the legislator to the end product of his activities – the law – is still a matter for the future. He observed that it is difficult to increase the responsibility of the organs that safeguard laws in the 2-3 years of work that has been done, and there are different legal cultures from region to region.

Vladimir Lopatin also posed a question to Burbulis on their dependence on international law, which is increasing, and brings with it different interpretations. He asked how soon there would be monitoring of international laws that might initiate changes in Russia. Burbulis

answered that it is enshrined in the Constitution that Russia recognizes the priority of the norms of international law. They do try to evaluate every law adopted by Parliament and follow it to see if it corresponds with the current norms of international law. He went on to say that there should be qualitative changes and an increased role of parliamentary institutions.

Andrey Paramonov, ILPP Project Expert, second class state councillor of the RF, Internal Affairs Department of the Administration of the President of the RF, discussed issues relating to whether the Constitution is what the Court thinks it is. He noted that the status of parliamentarians in Russia corresponds to the state of the state. (**Vladimir Podoprigora** disagreed that the present day status of the State Duma is in keeping with the state of Russian society). He further discussed procedures for elections, the response of lawmakers to changes, and procedures to change the formation of parliament. He noted that in many federal states the reform of the legislative system goes from top to bottom. Up until 2000, many laws were rejected as a result of legislative procedure, the situation has now improved. He mentioned the new somewhat mysterious institution of the Public Chamber, and the institute of parliamentary investigations. He expects that they will have an impact on the status of parliamentarians.

The next to speak was **Zoran Sapuric**, Minister of Environment and Physical Planning, Member of Parliament of Macedonia. He discussed the complicated relationship with the central government. Macedonia, with its two million inhabitants, has some experience with federalism, and they have started to build democracy. They have moved rapidly toward this end in the last thirteen years, the legislature finished 80 laws last year.

Malcolm Bruce, Member of the House of Commons, UK, noted that old democracies have to change. He discussed the emancipation of Scotland, and how power was transferred to the Scottish parliament. Much was taken from the Belgian constitution. Parliament was established, as well as a proportional system with 13 different political parties. No party has an overall majority. He observed that the Russian colleagues were anxious that regional parliaments would pass laws different than the federal law; in England this is only a concern when it is incompatible with the home policy. Parliament campaigned and got things implemented, such as overdue land reforms. He went on to say that the responses to the demand for autonomy within the union helped ease the threat of secession. Bruce concluded that all democracies have to change, and that the Russians are responding to excessive centralization with fear of disintegration.

Tatyana Derkach, head of the department of analysis and systematization of legislation of the Novosibirsk region Council of Deputies, discussed local self-governance. She told of how in Stavropol and Novosibirsk there has been realization of a new federal law on local self-governance. They have over 450 municipalities, urban and rural settlements; they did not have a two-tier system on the regional level. Territorial bodies of state power were delineated, the state power implemented a law that resolved the issue of maintaining governance. Derkach went on to say that they are in a transition period. They are beginning, for example, to develop their own budgets. Siberia is special because the region has a major town with small settlements. In December of 2004 there were elections of deputies and heads of municipal regions, it was set forth by law that the formation of the first convening of the representative organs would be by direct elections. The size of the deputy corps was

determined, as were their terms in office. They strove for equal representation of every settlement. After nine months of work on this problem, they have concluded that they need to make amendments in the federal law when it comes to matters of local jurisdiction. Finally, she argued that there should be authority on a local level to determine issues on cultural preservation, child-care, care for the elderly, teenagers, youth, sport.

Viktor Sheinis asked for clarification on the issues that arose with regard to determining the numerical strength of municipal bodies. **Evgeny Buzmakov** replied that two federal laws have different interpretations. **Elena Gritsenko**, ILPP Project Expert, asked about the law delineating sources of revenue, and talked about Law 131 whereby the government should adopt regulations on property. **Derkach** answered that the delineation of jurisdiction for Law 131 would happen this year. The next question came from **Thomas Remington**, professor of political science and EWPPP program advisor. He noted that next year the federal budget provided for growth and resources to outpatient clinics. He asked if the allocation of resources was implemented, to what extent can those resources be distributed to satisfy the needs of public health care. She answered that if this decision is adopted at a federal level, there would be regulations that hospitals would be subordinated to the municipality. **Vladimir Podoprigora** asked if there was also an economic infrastructure or economic base for independent activity. She noted that in the plan for realizing Law 131 only municipal regions were created, until then there had been urban settlements. One of the specifics of Siberia is that infrastructure exists, but everything is connected to regional centers, and enterprises are concentrated there. Animated discussion ensued. **Willem Henrik de Beaufort** concluded by saying that clearly there was much interest in the situation in Siberia, where one of the upcoming seminars would be held.

The following speaker was **Andrey Oshurkov**, head of apparatus of the legislation committee of the St. Petersburg Legislative Assembly. He had previously been a deputy, even chair, of a St. Petersburg regional assembly. He discussed the many interrelated reforms in Russia, all based on different laws, local self-governance, budget laws, housing laws, and the sometimes contradictory quality within and among these laws. St. Petersburg has had local self-governance for the past eight years, and has 111 autonomous municipal entities as stipulated in the federal law of 1997. The smallest such municipal formation is 100 people, the largest 142,000. Law 131 curtailed the possibilities for legal regulation of many questions, including those on the level of the subjects of the federation, that is, the possibilities of regional parliaments were curtailed. He pointed out that many questions of local substance are essential to all subjects of the federation except for Moscow and St. Petersburg. These are completely different objects of study, everything changes faster there, issues can be decided through their legislative assemblies. He concluded that much work lies ahead on the exact, unambiguous technology for the resolving of questions of local significance. Numerous questions were raised, including the fact that Moscow and St. Petersburg had very different systems with regard to local self-governance. Law 131 corresponds to the positions of the legislative bodies, but there are special legal forms in the Moscow and St. Petersburg models. **Ruud Nederveen**, Amsterdam City Council member, pointed out that in the Netherlands, Amsterdam and Rotterdam have their own interpretation of questions of local government. He wondered what kind of budget the lowest political entity of St. Petersburg had, and how large the population there was. **Oshurkov** answered that the smallest budget was in an area where 100 or 500 people live, about 3-4 million rubles. In places where trade and industry are highly developed, and land expensive, the budget is usually 40-50 million rubles, so there are great differentiations.

The following speaker was **Darko Fras**, National Councillor of Slovenia. He noted some characteristic features of Slovenia, in the 18th century there were local charters, certain cities won certain rights. After the acquisition of independence in 1991 Slovenia moved toward a system of local self-governance and the standards of democracy upheld by the European Union. A country of two million, Slovenia has a specific system of local self-governance, and does not blindly copy other models. After the transition, in the course of eight years, Slovenia moved from 62 to 200 municipalities, with the very positive results in serving the local population, and the growth of participation of the population in the process of making decisions that concern them, which leads to higher quality decisions. He emphasized that the essence of local self-government is to create conditions that affect the level of the standard of living. The experience in Slovenia is that the organs of local self-governance are much better positioned to suit the needs of the citizens or take care of problems than the state or state administrative organs. Slovenia today is striving to further reform local self-governance and increase the authority of municipalities, to de-centralize governance. The limitations, apart from opponents of de-centralization, are that some municipalities are too small and unable to perform tasks adequately. It is difficult to find a recipe that suits all, the history, the development, and the specific conditions of each municipality have to be taken into consideration. There are also large distinctions among the regions, and the standards need to be evened out. He concluded by stating that the Slovenian approach is based on the philosophy that they think people should better learn to catch fish than be fed endlessly.

There followed questions from, among others, **Alexey Starovoitov**, ILPP Project Expert, on what the stumbling blocks to de-centralization were, and whether there are minimum social standards in Slovenia. **Fras** answered that there was sometimes a lack of mutual cooperation, from the top-down and the bottom up; the process needed to be streamlined, and carried out on the basis of a well-defined methodology, taking into account all the features of particular districts. Municipalities that receive more means can use them for further development and various projects in accordance with these budgets. **Elena Gritsenko**, ILPP Project Expert, asked if there was any mid-level between central and lower level, like in Macedonia. **Fras** replied that Slovenia has not created a second level for self-government, and consensus on this issue has not yet been forged. **Fras** expressed hope that a one-track system would prevail, because it would increase the role of local self-governance and is overall a more rationally organized system.

Dmitry Kataev, deputy of the Moscow City Duma, discussed the advantages and disadvantages of centralization and de-centralization as they relate to Moscow and the federal government. In Moscow and St. Petersburg, along with the election of mayors the direct election of governors was abolished. He categorically disapproved, and felt that this deprived Moscow of self-governance at the highest level – that of the city. Elections to the organs of local self-governance in Moscow were weak as a result of this legislation, in St. Petersburg these organs get 2% of the city budget, in Moscow 0.4%. Therefore, there remain almost no powers, only stewardship over orphans and disabled people. It is also important for these organs to have the authority to be able to coordinate urban construction, so that people do not just do as they will. The fact that the distribution of power is not adequately handled is not unique to Moscow. He also noted that the formerly Soviet public is not enthusiastic about the idea of local self-governance, of autonomy at a lower level. He himself advocated local self government with its powers, but thinks Moscovites are pretty indifferent to these problems. Only 8-9% of the electorate came to the March 2004 municipal election. Federal legislators should take a good look at what problems of a big city can be decided locally. He concluded

by stating that the city authorities should transfer substantial authority and resources to local self-governing bodies.

The last speaker of the day was **Rudolph Nederveen**, Member and speaker of the Amsterdam City Council. He discussed the challenges and limitations of the city of Amsterdam as a local legislative entity.

[A transcript of his talk follows]

The East-West Parliamentary Practice Project has asked me to speak to you today about legislative practices in Amsterdam. I am happy to oblige, and I would like to thank the EWPPP cordially for their invitation. I do so, however, with some trepidation. In no way do I wish to suggest that legislative practices in Amsterdam are the best of all possible systems, nor do I wish to suggest that they should serve as an example for Moscow or other cities in the world. The Dutch system of relationships between the legislative processes of the city and those of higher levels of government has developed over a period of 150 years, however, and it is at this day definitely not a subject of any politically driven hunger for change. To demonstrate clearly that the Amsterdam legislative system cannot serve as the perfect example in relation to other governments, I will provide an actual example of its weaknesses in practice later on.

In the Netherlands, the fundamental relationship between municipalities and the central government is specified in the Constitution and in the Municipal Law. Both documents refer to the concepts of autonomy and co-governance. Using the expression co-governance I should apologize to the translators, for as I understand it the word does not exist in English. Usually the term used to express this Dutch legal phenomenon is 'shared powers'. But I don't want to use it, because in my view this is not the right translation. I should like to elaborate upon these concepts of autonomy and co-governance.

Autonomy refers to a situation in which a city is free to regulate and govern its 'own' affairs or, as the law still reads, its own housekeeping. What does the 'housekeeping' of lower-level legal entities entail? Documents from the 19th century refer to three levels of housekeeping: the nation, the province and the municipality. These levels were presented as if they stood for three intentional, well-established spheres. This specification was the liberal democratic reaction to the meddlesome centralistic government that had characterized the period in which the Netherlands had been annexed into the French Empire by Napoleon. Higher authorities had no business interfering with those matters that the people – particularly those at the municipal level – had regulated (or at least meant to regulate) for themselves.

It became clear, however, that this arrangement was not viable. 'Housekeeping' is a fluid concept that must be considered within the context of a unified but decentralized state. Tasks that a higher body appropriates as part of its housekeeping necessarily disappear from the housekeeping of the lower bodies. This situation does not impoverish the lower bodies, however. Experiences over the last 150 years have shown that new responsibilities are continuously added to the jurisdiction of the municipality, as it is closest to the needs of the public. Some tasks disappear, but others keep emerging. In many respects, municipal councils have been (and still are) pioneers with regard to the phenomenon of the expansion of governmental tasks.

The areas of autonomy that have disappeared from the authority of municipalities and provinces have not necessarily disappeared from their sight. In many cases, they have remained as responsibilities of the lower-level entities, albeit in the name of co-governance. What is co-governance? Since time immemorial, provinces and municipalities, in addition to their own housekeeping, have been expected to cooperate in the implementation of higher-governmental regulations – laws, administrative measures or provincial ordinances –

whenever it was expedient. Such cooperation (for example, the organization of elections, the implementation of mandatory military service) was so self-evident that the requirement to do so was not established in the Constitution until 1887. In contrast to autonomous tasks, that originated in the elected provincial and municipal councils, co-governance was seen as a sort of mechanical, uninteresting work that was assigned rightly to the executive committees. This does not negate the fact that the term co-governance indicates that municipalities and provinces, by cooperating, did not lose their identity as decentralized bodies, only to function purely as organs of the central government. With time, the co-governance gradually increased in breadth, as well as in importance and local freedom. The emphasis shifted towards governmental activities that were not so much appropriated as they were coordinated by the central government. The Housing Act of 1901 is one example. This act sought to bring order to the regulation of public housing - and these regulations were the result of the autonomous ruling by several municipalities - by requiring all municipal councils to establish building rules that would cover a number of topics that were specified in the law. The rules were subject to approval by higher authority. Since then, the situation has repeated itself frequently and in various forms. Legislators who re-assume responsibility for intervening in some matter almost automatically call upon the cooperation of the provinces and municipalities, at the same time presenting the basic outlines of what is expected of them.

The result of this development, in which matters continuously disappear from the autonomous sphere while remaining with the municipality and province as tasks of co-governance, is that the lower bodies still occupy a central position in public administration. It has been estimated that more than half of all public expenditures are dispersed through the lower bodies! And furthermore: whenever local regulations are brought into the sphere of co-governance, we as a city never hesitate to demand the necessary financial resources in order to comply. A demand, I must say, that is usually met by the state-government.

Nonetheless, complaints are often heard within municipal circles that the higher authorities, with their regulatory competence and financial provisions, in effect function as custodians of the lower-level governments. Some argue that the higher levels prescribe the policies to be implemented in many different terrains in such detail that hardly anything remains of the significance of decentralization, the ability of lower-level authorities to tailor policy to local conditions, needs and desires. These complaints are not entirely unfounded. Actors within the central government have gradually come to realize that the continuing process of centralization is largely responsible for the diminishing administrative capacity, effectiveness and efficiency of public administration. This has given rise to a number of decentralization projects, whose goals are to redistribute governmental tasks in the Netherlands. Such projects strive to expand the array of tasks to which lower-level authorities attend through their autonomous and co-governance responsibilities.

In short, Amsterdam is authorized to make policy in any area that it may choose, as long as it serves a public interest. That is the autonomy aspect of its authority. This autonomy is limited by the obligation to carry out higher-level legislation. In the realization of such policies, however, local governments may make choices that are tailored to local circumstances, to the extent that the higher law allows for or demands such choices. This is the co-governance aspect of Amsterdam's authority.

The city government of Amsterdam is not the lowest level of government. Amsterdam chose to establish fourteen districts, all with their own legislative council and executives. Although the number of politicians in the city has increased dramatically as a result – a frequently heard complaint – this arrangement has saved approximately seventy million euros annually. The savings are realized primarily through reductions in the number of employees in the civil service.

The motivation to establish the districts actually lay in a need to bring political administration closer to the citizenry. The districts acquire their authority through a general delegation of municipal authorities. The ordinance therefore places heavy emphasis on the autonomous authority of the district councils. Elements of co-governance are not specified in the ordinance. As a result, the municipality needs the voluntary cooperation of the districts if it wishes to work with the district councils to enact a citywide policy. In practice, therefore, education, monument preservation, local taxes, event policy and other policy areas require a protracted process of negotiation, which can have varying results.

Everyone who has visited Amsterdam, and I hope that many of you have done so, is familiar with the Amsterdam canal boats. Systems are currently being developed in which some canal boats (for example, the museum boat) maintain a transport link for the city. The boat makes stops in various districts, each of which has its own requirements for the stops. This arrangement makes it impossible to achieve the uniformity and name-recognition that is desired by the boat operators. This is a simple example of the consequences of an imbalance between autonomy and co-governance.

In the future, I believe that Amsterdam will need to work toward a formulation of the co-governance responsibilities of the district councils. The councils are likely to perceive such reformulation as encroaching on their authority, and they are therefore likely to be reluctant to contribute to the process. I nonetheless feel that the districts have good reason, based on well-considered self-interest, to improve the balance between autonomy and co-governance. Such reformulation will reduce inter-district differences, which are incomprehensible to the citizenry. Furthermore, such a project can succeed only if the central city government in its turn refrains from the unnecessary appropriation of authority.

I will now conclude, ladies and gentlemen. The Dutch system of autonomy and co-governance that I have attempted to present is a system that is constantly in search of balance. I believe that the distribution of authority or, if you will, the distribution of power among the higher and lower levels of government is always dynamic. Each timeframe requires its own solution, but every political issue also requires its own solution. The consideration and redistribution of authority amongst various governmental entities will always be only a means; it will never be an end in itself. For in my opinion, the ultimate goal of the political process is to advance the general interest and the prosperity of the citizens.

Various questions were raised, including one that addressed the issue of removing authority from the municipalities. The result could be that quality politicians will not enter the elections of these municipalities because they have no power, consequently, the quality of the governance becomes more and more diminished. Other questions concerned the exact budget of Amsterdam. Finally, one participant pointed out that the term 'co-governance' resonated with Russian lawyers because one of the principles of reform of federative relations and local self-governance was to move away from co-financing and power sharing, because it would ultimately be too difficult to identify who was responsible for executing authority, either on a federal or regional level. To the question of whether there was any precise delineation of powers, **Nederveen** answered that the organ that makes the decision on a particular element of the law in Amsterdam is responsible for its realization, thus the system stays flexible.

Day 2: October 7, 2005

The second day was opened by **Thomas Remington**, Professor of Political Science, Emory University, and EWPPP Program Advisor. He noted that the original topic of the seminar was how their efforts could impact positively on the quality of life. Putin regularly asserts that the purpose of legislative work is to improve the well-being of the people, and the activity of politicians in the legislative assembly should be of benefit to them. Remington pointed out that the main issue is how that work can actually do so, elections decide who gets the power, the electors should have a choice of who gets the mandate, they should be able to choose between alternative platforms, and these platforms should then be able to be translated into practice. He went on to say that politicians can make people benefit by controlling the activity of officials, thus monitoring is central to democracy. He added that the centralization and vertical movement of power in Russia today does not ensure improvement in the quality of governance. The government is simply too big to properly control all of the bureaucrats. He further observed that direct elections do not necessarily guarantee democracy, because there can be pressure, falsification, etc. He considered the prospects very good when the election model of elites competing with one another is employed, it better ensures accountability, these elections are a counterweight to bureaucratic stagnation, and there is participation of the voters in governance. Elections can also contribute to structuring conflicts, because these always exist, even if they are often behind the scenes. He concluded that elections on a higher level, and on a regional level, may be a condition for developing democracy.

Alexei Starovoitov, ILPP Project Expert, talked about changes in legislative powers and the future and prospects of regional legislatures. There are a range of views concerning the legislative organs of the subjects of the federation. They go from positive to quite negative, Starovoitov noted, and regional parliaments might play the role of a facade for federalism. With less legislative authority and increased power of governors, the role of these organs will decrease even further. He went on to present statistics supporting the various points of view, looking to who the recipients were. He discussed housing, the civil code, the forestry code, and how the regions received minimal powers, the objective should be to delineate power, to break matters down into developmental sectors. He pointed out that some of the stronger regions have more powers, and argued that there have to be favorable legal regimes, and that the laws of the subjects of the federation should be in accordance with the Constitution and federal legislation. He considered co-governance and joint-jurisdiction to be useful concepts. Starovoitov maintained that as the level of professionalism of regional legislatures grows, there will be decentralization; they need to participate more in questions that are now being resolved on a central governmental level. He concluded that if the regions do not move toward separatist tendencies they will grow and prosper.

Olga Sidorovich asked what he meant by granting significant powers, what his definition of federalism was, and what the role should be today of administrative reform. Starovoitov then explained and discussed the efficacy of certain administrative reforms, ‘budgetary determinism’, and the importance of monitoring the effectiveness of the executive authorities. Many of these questions deserve more careful examination. There were other questions with regard to whether political or economic concerns dictated certain decisions. **Mikhail Tarkhanov** pointed out that the legal techniques and standards of laws adopted by the federal Duma are low. **Andrei Oshelkov** addressed the issue of blanket provisions for executive bodies that weren’t necessarily common sense.

The following speaker was **Viktor Sheinis**, professor of economics, senior research fellow of the Institute of World Economy and International Relations of the Russian Academy of Sciences. He talked about recent changes in electoral law. He did not discuss organizational matters, but political issues. He explained that changes in electoral legislation expressed themselves in shifts between the federal and regional elites and the institutions of state and civil society. He noted that the building up of a vertical of power could be seen, and that counter-reforms are vividly reflected in the electoral law. Sheinis lamented that law abiding citizens must abide by the law, but it is a painful issue when there has been a transfer to a system in which governors are appointed and not elected. He cited an article by the German constitutional professor, Otto Liukhtenhardt, called “Russia on the road to imitating federalism”. That author notes that if a U.S. president would employ the mechanism of appointing governors – justifying the move as a mechanism of safety from terrorism – he would be impeached for an act of this kind. He noted that Mr. Paramonov might say that these deliberations interfere in the internal affairs of the RF, but he considered the article worthy of the ILPP journal.

He then turned to a discussion of the electoral law as it was adopted in 1994. It had a positive impact because it met important requirements. In 2002 the mixed electoral system was introduced, which was a positive modification. He observed that if one looked at the publications of the last ten years, it was not hard to see that people like himself were in favor of the proportional element in the electoral system. Sheinis recalled that **Thomas Remington** mentioned an important principle in the electoral, process: placing lawmakers in a position where they are dependent on the will of the voters. These changes in the law lead to a situation where voters could be excluded from the process. He asserted that banning electoral blocs was bad and negative, that prior legislation had better guarantees, and that overall many voters are being deprived of representation. Sheinis called what is happening today a U-turn. He noted that 50% of the Federation Council today is populated by appointees, or people appointed by appointees. He went on to comment on the analogy with Soviet institutions in the enormous rights that the Federation Council’s chair has acquired to delay or prevent appointments. His general conclusion was that electoral counter-reform has been implemented, and if Russia wants to return to the road of democracy, the system has to undergo instrumental changes or perhaps be demolished.

Nikolai Voronin posed a question on why the liquidation of electoral blocs was bad. Sheinis answered that there was no ideal electoral system, because any norm of an electoral law could be used for good or evil purposes. The existence of electoral blocs opens the possibility for closely allied political parties to be represented in the legislative organs. The advantages of such a possibility allowed by law outweigh the disadvantages. He further commented with respect to the number of deputies that responsible professionals could play a huge role in parliament, and a significant role even within a small group. Political parties should fight to get one or two deputies into the regional legislature. He considered, for example, that 35 deputies for the Moscow City Duma did not constitute the necessary critical mass. Discussion and questions ensued on the policies of the nineties that allowed the subjects to pass laws that contradicted both federal laws and the Constitution. Sheinis noted that he wanted to continue discussing these issues and write about them as well. **Vladimir Podoprogora** commented on the fact that the sovereignty of Tatarstan was being viewed as something negative. He pointed out that the living standards of Kazan and the thriving economy may be thanks to the fact that Tatarstan could justify its unique features to the federal authorities. He was one of the authors of the law on mayoral elections in the nineties for Moscow, which is also thriving thanks to rights gained in fighting the Supreme Soviet, they gained much sovereignty. He reminded those implementing reforms not to forget their roots. **Aleksei Starovoitov** asked

about a draft law by the president to change Article 18 on the general principles of the organization of the organs of state power and the law on political parties. Sheinis noted that it is a decorative measure, comfortable for the Kremlin's party – United Russia.

The following speaker was **Valery Uteshev**, head of the department of the oversight of legislative activity of the apparatus of the government of the RF. He noted that there were some overlaps with the earlier presentation of Starovoitov. He discussed the progress achieved during the reforms. The president undertook these measures on the basis of the constitution, and they should lead to more discipline in the executive branches in the country. He commented on the necessity to clearly define the authority of the various levels of public power, including in the sphere of norm establishment, this is one of the most complicated questions in juridical science and practice. He believes that the potential for perfecting the legislative activity of the government would be in the securing of closer cooperation between the organs of the government and the subjects in the legislative process. He further analyzed that this work should include the necessary explanatory work with the population, positive responses to drafts on laws with regard to joint cooperation, and systematization, analysis and presentation of these results in practice.

The next to speak was **Willem Henrik de Beaufort**, former Secretary General, House of Representatives, the Netherlands. He discussed the expansion of the representation of political parties in the legislature of the federal subjects and the effectiveness of legislative work in committees. He noted that the word 'political party' was used often but no one seemed to be talking about political parties. If one were to look at the list of the Moscow Duma, there are also no party affiliations recorded. De Beaufort talked about how the ideological sets of political parties do not provide all the answers, but people often orient themselves within the framework of parties. His experience in Parliament taught him that assemblies cannot work practically when there is not faction based organization. He understood that in Russia today there is a tendency to say that only large parties that exist in all of Russia have the right to participate in elections. He illustrated the practical importance of creating parties and factions by saying that parliament could not function effectively if everyone wanted to participate in debates, it would lead to chaos, and be a threat to democracy. Parliament should be organized in such a way that a number of people speak on behalf of others in the major debates. The formation of clear factions is necessary for stability and endurance. De Beaufort added that maybe distinctions should also be made between the smaller legislative organs of 20-50 members in less populated regions, and larger assemblies in dense regions.

A number of questions followed, including what the minimum numerical strength of a faction should be. De Beaufort answered: one person; the Dutch parliament recognizes three such factions. There were also questions regarding the situation whereby independents unite in groups in parliament, and what rights they should enjoy. He replied that the Dutch do not have such experience. In Holland, if one has a faction, they are entitled to office support, secretarial help, etc. If you unite, that is lost. The European parliament maintains different standards, requiring 30 MP's to form a faction. Lively discussion ensued.

Mikhail Moskvín-Tarkhanov, deputy and co-chairman of the Commission of the Moscow City Duma and the Government of Moscow on the Legal Foundation of the Long-term Development and City building in Moscow, talked about urban construction, and architectural and territorial development. He explained that all of these have constitutional legal implications. The legislation on urban construction is complicated, and when there is a conflict, regional law prevails. There are also questions that are regulated as matters of joint

jurisdiction. Tarkhanov discussed, for example, the ownership, use and dispossession of land, environmental protection, monuments to cultural heritage, and the prevention of emergencies. These issues were reflected in the construction code of 1997. Various sectors have no single method of regulation. Assets owned by the sub-national are regulated by the laws of the regions. He further discussed many of the specifics with regard to urban construction legislation. There is a need for dialog with federal authorities, negotiations and mutual participation. He explained that he was a major proponent of federalism, that the logic of economic development would dictate broad social-economic powers to the regions to realize a civil society in accordance with their own traditions and level of development. Starovoitov noted the lack of cooperation in key areas of urban construction, and the reflection of general political issues in these problems.

The next speaker was **David Skaggs**, executive director of the Center for Democracy and Citizenship, the Council for Excellence in Government, former Member of Congress, USA. He discussed the role of political parties at the state and federal level in the U.S. He noted his background as a recovering politician, with six years in the state legislature in Colorado, four years as party leader, twelve years in the American Congress – eight years majority, four years minority. He observed that if legislation is like sausage, then parties are the spice and seasoning. The American party system is state and federal, the states come first, the nation second, there are constitutional limits on federal power, and certain powers are reserved for the states. He pointed out that the notion of state loyalties or identities has faded with the increasing mobility of the population. Sovereignty of the people, and just power from consent of governed are some of the guidelines for American practice. He further discussed binary elections being equal to binary politics. Skaggs observed that idiosyncratic political parties are becoming increasingly irrelevant to most Americans' lives and sense of involvement in public affairs. There is a drift in the general population away from party identification, and disenchantment with the ideological edginess of parties. He further discussed policies and accountability; markets versus regulation in the economic sphere; social policy and authority with regard to the individual or state; and national and international issues on security and cooperation. He noted the harmonization of the major parties in the last 25 years. He explained the nature of American Party membership: no dues, no duties; self-selected; party registration. Several states have open primaries, and ballot access is a matter of state law. State parties feed into national parties. National parties are based primarily on state delegates, which reflects the federal system. He also noted the tension between officeholders and the party rank and file. A number of questions and discussions ensued. Senator **Raynell Andreychuk** of Canada noted the trend against political parties because they mostly serve themselves. David Skaggs emphasized the importance of educating young people about government and democracy.

The following speaker was **Evgeny Buzmakov**, advisor to the committee on city building and charter legislation, Novosibirsk region council of deputies. He talked about the structure of the legislature meeting certain criteria. It should carry out its central task, adopting laws of the subjects of the federation, and facilitate the deputies' control of their implementation. It is also essential to determine the role of parties, and the structure and role of the staff. Important questions are how big or small factions should be, and if there should be representation if it passes the post. He further discussed the specifics of Sverdlovsk and the Stavropol region. In Sverdlovsk the structure of committees and commissions is a true reflection of what a legislative organ should be. In Stavropol the situation appears to be the opposite. The major task of the legislature is law-making, so the legal department is important. Buzmakov noted that gaps should be identified, and attention should be given when laws of the region conflict

with federal law. He discussed several of the problems with which they are confronted, including the questions regarding factions and deputy groups. An optimal structure will ultimately enhance the quality of law-making, bring the population into the law-making process, allow regional legislation to improve the quality of life, and better secure the rights, and freedoms of the people. **David Skaggs** asked if subpoenas could be used to force witnesses to come before committees. It has apparently not occurred in Russia thus far. Someone cannot be required to appear, they can be invited to answer questions, and there can be a vote of no-confidence.

The last speaker was **Raynell Andreychuk**, Senator from Canada, who discussed the positive and negative experiences with regard to the implementation of federal reforms in diverse federal subjects and the challenge of accommodating local variation. Two different nations – the French and the English – founded Canada in 1867, two nations sharing a large territory, with more and more provinces, and different capacities and needs. They inherited the British form of government, and looked to the U.K. for international matters, consequently the court of final resort was in England. This colonial heritage influenced the development of Canada. When they united, foreign policy bound them, and the provinces had a local flavor. She went on to explain that responsibility for peace, order, and good government rested with the federal government, which curtails provincial power. Andreychuk explained that difficulties have arisen because many issues are not enshrined in the Constitution. The provinces replicated parliament, though the smaller ones do not meet as often. Accountability to the citizens is their driving force. They turn to the provinces for such issues as education. Issues like autism loom large for a number of parents who have been told to go to the provincial government, which in turn sends them to the federal government. Is this a health issue, a citizen issue, or a public school issue, she asked.

Andreychuk went on to explain that the constitution provides for equalization, and the federal government has full power of taxation. In the first 50-75 years of Canadian history, the citizens did not expect much of their government. After World War II, there was an increased need for a social safety net. University education and health care became important. At that point, the federal government became more involved in the business of the provinces, but they didn't resist because they received more resources. The provinces were then able to administer the programs and deliver the services. Broad consensus remains impossible, but equalization means understanding differences. She further discussed the tensions between the provinces and the federal government. In a federal system, she asserted, the key word is compromise. The constitution has caused numerous problems, but usually solutions are found. Sometimes steps are taken that have no constitutional basis simply because they constitute good politics. There followed questions about the influence of the French parliamentary system, and a comment on the fact that there is not a Minister of Education on a federal level, which means that education is strictly in the hands of the provinces. Senator Andreychuk answered that the provinces delegated authority and created rural and urban municipalities, which is a result of both French and British influences.

Thomas Remington closed the seminar by recognizing how many common issues were being faced, and how interesting it was for the representatives of the various countries to discuss and examine the concepts of co-governance and joint jurisdiction, and seek new forms, because none of the existing forms is perfect. In the end, he concluded, the criteria for success is the well-being of voters.