ing that, they proceeded this morning unanimously in the other place to pass the motion with which we are now seized, inviting us to join in this joint committee.

The terms under which it is proposed to set up the committee are unexceptional. The number of senators and members of the House of Commons is a total of 17—12 members of the House of Commons and 5 members of this place. That is the same number in each case as constituted the membership of the special committee that studied Canadian foreign policy earlier in the present Parliament.

• (1410)

I can only appeal to honourable senators for their support of this motion. It asks the Senate to participate in the joint committee. I believe that that will, first of all, meet the convenience of many witnesses who wish to take advantage of this process. I believe that whatever the Committee of the Whole of the Senate may wish to do with the accord, the establishment of a joint committee will make for a better organized, more coherent and more efficient consideration of this important matter.

Finally, I express the hope that in the circumstances, and notwithstanding the decision that a majority of honourable senators took on Thursday last, honourable senators would not place the Senate in the position of refusing an invitation of this kind from the other place. That, I believe, would constitute a very undesirable parliamentary precedent.

Senator Frith: Honourable senators, to pick up exactly where the Leader of the Government left off, for reasons that I think honourable senators will understand, I believe that to support and concur in this motion would be a very bad constitutional precedent. It would not at all create a bad precedent for the Senate to refuse to join with the House of Commons on this resolution for a joint committee.

I want to make it clear that I am speaking to senators, that I am speaking as a senator, that I am not speaking as a Liberal or as the Deputy Leader of the Opposition—

Some Hon. Senators: Oh, oh.

Senator Phillips: That's new!

Senator Frith: —or as a Conservative—

Some Hon. Senators: Hear, hear!

Senator Frith: —or as an Independent, or any of the above. I am speaking as a senator, and I am speaking to all of you not as Liberals, not as Conservatives, not as Independents, but as senators.

Before I explain why I believe it would be a very bad precedent for the Senate to concur in this motion, let me deal with the feelings that were behind the groans, the "ohs" and the "ahs" we heard from the other side a few moments ago, and that is to try to avoid—though it may be hopeless to do so—any one of my colleagues in the Senate or members of the House of Commons or members of the press putting a mischievous spin on what I am about to say. Let me come to grips with that immediately.

This is not a challenge to my colleagues, who may very well vote in favour of this motion; this is not a challenge to the leadership of Mr. Turner; this is not a challenge to the leadership in the Senate. If it is a challenge at all, it is a challenge to the House of Commons, and a respectful one, of course.

Why do I think we should not have a joint committee? Well, let us look at why people say we should have a joint committee. People say we should have a joint committee because we had one in 1981 and 1982. They say we can have both a Senate committee and a joint committee because we had that in 1978. So, let us go back to 1981, 1982 and 1978 to understand why I say we should not have a joint committee.

In the Fulton-Favreau report there was a useful and, I believe, scholarly and generally accepted review of the amending process that had taken place up to 1981-82. It reviews all of the cases of amendments, and points out that there was a great deal of variety in the amending procedures used in the sense that in some cases all of the provinces were consulted, and in some cases they were not. In some other cases only provinces affected were concerned.

The first one reviewed is the British North America Act of 1871. It goes through all of them up to the time of the British North America Act of 1960, and then tries to draw general principles from the amending procedure.

Remember, honourable senators, that at that time the Constitution was amended by the Parliament of the United Kingdom; it was not amended in Canada. In every one of the cases that I have mentioned, the amendment was done in London.

The authors then draw some of the conclusions that can be drawn from those years of experience. They state:

> *The first general principle* that emerges in the foregoing resumé is that although an enactment by the United Kingdom is necessary to amend the British North America Act, such action is taken only upon formal request from Canada. No act of the United Kingdom Parliament affecting Canada is therefore passed unless it is requested and consented to by Canada. Conversely, every amendment requested by Canada in the past has been enacted.
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> *The second general principle* is that the sanction of Parliament is required for a request to the British Parliament for an amendment to the British North America Act. This principle was established early in the history of Canada's constitutional amendments, and has not been violated since 1895. The procedure invariably is to ask amendments by a joint Address of the Canadian House of Commons and Senate to the Crown.

I emphasize "joint address".

So, in 1978 the existence of a joint committee was quite consistent with precedents to that date, because on Bill C-60 it would have required a joint address for the amendment.

In 1982, when the present amending formula was established, the method used was a joint address, that is to say, it was effected by a joint address of the Senate and the House of Commons. We also had a joint committee for our joint