THE ROLE OF THE INTER-PARLIAMENTARY UNION IN STRENGTHENING PARLIAMENTS IN AFRICA

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DECLARATION

I, **RAHILA ASHIRUMUN AHMADU** hereby declare that apart from references made to other people's work, which have been duly acknowledged, this work is the result of my own research, and has neither in whole nor in part been presented for the award of another degree elsewhere.

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CERTIFICATION

This is to certify that the research work for this thesis and the subsequent preparation of this thesis by **R.A. AHMADU (PG-LAW/UJ/12723/10)** were carried out under my supervision.

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DEDICATION

This Thesis is dedicated to African Parliamentarians present and future.

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I thank the Almighty God, from whom all blessings flow, for giving me the strength and ability to embark on this research.

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LIST OF ABBREVIATIONS

AG	-	Attorney General
ASCON	-	Administrative Staff College of Nigeria
ASGP	-	Association of Secretaries General of Parliaments
BIRD	-	Bureau for Institutional Reform and Democracy
BPE	-	Bureau for Public Enterprises
ECOSOC	-	Economic and Social Council
EDF	-	European Development Fund
EU	-	European Union
FAO	-	Food and Agriculture Organization
ICJ	-	International Court of Justice
IGOs	-	International Governmental Organisations
ILO	-	International Labour Organisation
INGO	-	International Non-Governmental Organization
IPU	-	Inter-Parliamentary Union
JLS	-	Journal on Legislative Studies
PARLINE	-	Parliaments on Lines
PARLIT	-	Parliamentary Literature
QC	-	Queen's Counsel
UDD	-	Universal Declaration on Democracy
UN	-	United Nations
UNDP	-	United Nations Development Programme

UNESCO	-	United Nations Education, Scientific and Cultural Organisation
US	-	United States

ABSTRACT

The parliament, as one of the institutions of democracy, is unique. For democracy to take root, citizens need ways to make their voices heard and incorporated into policy decisions. Parliaments provide such ways to articulate popular will. They serve as the peoples' branch of government alongside the executive and the judicial branches as necessary institutions for democratic good governance. Parliaments in Africa face enormous capacity challenges, especially in countries where a strong executive or the military has dominated the political system. In such circumstances, the Inter-Parliamentary Union (IPU) has been a leader in developing strategies and tools to assist parliaments effectively perform their fundamental tasks of representation, lawmaking, and oversight. Consequently, the study focuses on an overview of the IPU experience in parliamentary strengthening in Africa with particular emphasis on Nigeria. It describes what the IPU has done and is doing to promote responsive and effective parliaments in Africa and highlights ways in which improved parliamentary performance has strengthened democracy in Africa. Our findings revealed that the effort of the IPU at strengthening parliaments in Africa include building support for democratic reforms within Parliaments; improving the capacity of Members of Parliaments in lawmaking; enhancing legislative oversight of the executive branch, ensuring sound management and improving infrastructure at development. The study further reveals that the strategies adopted by the IPU included study tours, conferences and workshops to expose Members of Parliaments to the wealth of experience existing in long established democracies. Similarly, the IPU conducts conference on comparative parliamentary practice and procedure to expose parliamentarians in Africa Parliaments to lessons and experiences from other Parliaments. Finally, the study revealed that the IPU has sponsored series of workshops to build support for reform and modernisation of parliaments, strengthening capacity of legislators for effective representation, skills acquisition in the lawmaking process and assisting in handling substantive issues that parliaments need to address such as constitutional development, rule of law, federalism, accountability, corruption, resource control and good governance. It was also discovered in the course of the study that these programmes have broaden the horizon of parliamentarians in handling their day-to-day duties with a deeper understanding of their role in a democratic system.

CHAPTER ONE
INTRODUCTION

1.1 GENERAL BACKGROUND

Democratisation and transnationalisation are two fundamental trends in the evolution of international affairs. In parliamentary affairs, they come as international parliamentary institutions. They provide multilateral fora where parliamentarians and staff learn from each other to advance their skills, knowledge and share experiences. The emergence of international parliamentary institutions has given rise to parliamentary diplomacy. One of such international parliamentary institution is the IPU. It is an international organisation with membership from Parliaments of democratic countries[1]. It represents the legislative branch of government on a global scale. It was founded in 1889 by William Rander Cremer of the United Kingdom and Frederic Passey of France who were parliamentarians. Its headquarters is located in Geneva.

Its objectives include fostering peace and security among its members; promotion of democracy and respect of human rights and contribution to the development and strengthening of parliamentary institutions. In the pursuit of these objectives, it brings together representatives of national parliaments to discuss issues of mutual concern.

The organisation has more than 100 members. It is a precursor to one of the most prestigious international legal institutions, the (ICT), which is one of the organs of the United Nations. The IPU has been performing exceedingly well since inception. This is discernible from the remarkable interventions it has made in strengthening parliamentary institutions, especially in Africa. It has also contributed immensely to effective management of global problems in the area of small and large scale wars,

[1] See Article 1 of the Statutes of the Inter-Parliamentary Union adopted in 1976, as revised and amended in 2003.

intentional disarmament, human rights violation, monitoring of elections, health, gender and the environment. The machinery through which these interventions is carried out include the Inter-Parliamentary Assembly (IPA), the Governing Council, the Executive Committee, and the Secretariat.[2].In spite of these remarkable achievements by the IPU not all democratic nations in the world are members of the organisation. Similarly, many parliaments, especially, those of the newly established democracies are unaware of the activities of the organisation.

1.2 STATEMENT OF THE PROBLEM

The long years of military rule in Nigeria impacted negatively on the development of the legislature at national and state levels. This is so because during the military rule, the function of the legislature and the executive were fused. Consequently, upon return to civil rule in 1999, the National Assembly and the State Houses of Assembly were hampered in their capacity for effective discharge of their constitutional mandate. The role the National Assembly and the State Houses of Assembly were expected to play and were playing was not matched by resources available to them out of the national resources. There was also the problem of institutional capacity weakness as reflected in the calibre of legislative staff, most of whom were seconded from the civil service. They owed their allegiance to the executive. Further, absence of a Parliamentary Service Commission compounded the problem of inefficiency, indiscipline and career profile for the staff. Bureaucratic inertia was entrenched and affected the services of staff to members of parliament.

Furthermore, the National Assembly and the State |Houses of Assembly lacked the capacity to respond to the challenges brought about by democratisation and the increasing demand of the people for effective and good governance. Thus, the inadequacy of resources and capacity gaps led to the Federal Government and State

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[2] For a detailed history of IPU, see Sterzel, F., The Inter-Parliamentary Union, (Stockholm: P.A. Norstedt & Soner, 1968).

Governments to seek for assistance from international community. It was for this reason that the European Union decided to support economic and political reform in Nigeria. Among the assistance was a Democracy Programme Supporting Parliament and State Houses of Assembly. The overall objective was to contribute to the development and reinforcement of democratic system in Nigeria through a programme of assistance to help the National Assembly and State Houses of Assembly to perform their functions efficiently and effectively.

1.3 RESEARCH QUESTIONS

From the statement of the problem the following questions are discernible:

1. Why was the IPU established?
2. What were the capacity gaps in the Nigeria legislature?
3. To what extent has the IPU programmatic interventions in Nigeria impacted on the capacity of the National Assembly and the State Houses of Assembly?
4. What were the constraints faced by the IPU in the process of implementation of its intervention programmes?
5. What is the way forward?

1.4 AIMS AND OBJECTIVES

The trust of this research is primarily to identify and examine the impact of the IPU activities in strengthening parliamentary institutions in Nigeria. It examined the capacity gaps in the National Assembly and the State Houses of Assembly, the impact of the intervention programmes of IPU in the National Assembly and the six focal states and the challenges that IPU faced during the implementation of its activities in Nigeria.

In addition, the research aims at meeting the following objectives:

1. examine the role of IPU in strengthening the capacity of members and State of the Nigerian legislature;

2. examine the role of IPU in the entrenchment of democratic culture, maintenance of international peace and security though parliamentary diplomacy;
3. determine the role of IPU in strengthening some National Parliaments in Africa;
4. bring to fore the strategic position of IPU as an international forum for dialogue among democratic nations;
5. examine the role of IPU in the promotion of better understanding and international cooperation;
6. examine the role of IPU in providing guidelines for best practices on parliamentary practice and procedure;
7. make recommendations for effective intervention programmes that will enhance effective parliamentary practice and procedure in Nigeria.

1.5 JUSTIFICATION AND SIGNIFICANCE OF THE STUDY

The National Assembly and the State Houses of Assembly would not be able to discharge their constitutional roles of law making, oversight and representation effectively without sound knowledge of parliamentary practices and procedures. At the beginning of democratic rule in 1999, the National Assembly and State Houses of Assembly were faced with fundamental difficulties that apparently hindered effective discharge of their functions. Some of the difficulties include lack of understanding of the working of the legislature, inadequate access to research and information, poor oversight capability and ineffective organization and facilities. Thus, the effectiveness of the National Assembly and the State Houses of Assembly has been profoundly moderated by these capacity gaps. To address these problems and other constraints, intervention programmes and activities were designed and carried out by the Federal Government, State Governments and international organizations. Some of these programmes and activities were ad-hoc and limited in scope. The IPU is one of the

international organization that provided programmatic interventions, even though on an ad-hoc basis for the National Assembly and six focal States to strengthen their capacity for effective performance.

Undertaking a study on the role of the IPU in strengthening parliamentary institutions in Nigeria is significant in many ways. At the inception of civil rule in 1999, the National Assembly and the State Houses of Assembly were classified as rubber-stamp legislatures because of their inexperience comparative to the executive and judiciary in the discharge of their constitutional functions. Many studies were carried about the capacity gaps in the Nigerian legislature.

However, none of the studies did approach the topic from the role of the IPU in strengthening the capacity of the National Assembly and the State Houses of Assembly. In contrast, this research examines the role and impact of programmatic interventions of IPU in strengthening parliamentary institutions in Nigeria. The study reveals the weakness and strengths of the National Assembly and the State Houses of Assembly. It also animates the desire to have a permanent institution that will be charged with the responsibility for capacity building for members and staff of both National Assembly and State Houses of Assembly comparative to the National Judicial Institute and the National Institute for Policy Strategic Studies. In the main, the study is significant because of the existing capacity gaps in the National Assembly and the State Houses of Assembly.

1.6 SCOPE OF RESEARCH

As reflected in the topic, the work limits its scope to the workings of IPU in Africa and Nigeria in particular. A critical examination is given to the constitutional provisions relating to the legislature in 1999 Constitution of the Federal Republic of Nigeria. In this regard, a detailed examination of the legislature is undertaken in terms of its evolution, establishments, practice and procedure and functions as

provided in the constitution and other legislation. This is done to show the important role legislatures play in a democratic arena and why the IPU intervention is not only beneficial but crucial in strengthening democracy in Africa and in Nigeria in particular. A cursory comparative study is undertaken of IPU's activities in African countries but with greater emphasis on Nigerian's legislature.

1.7 RESEARCH METHODOLOGY

The study adopts two methods. These are the library survey and document survey. These approaches are essentially doctrinal. The library survey involves a review of relevant literature in the area of study. The libraries visited to source these materials include the IPU Library Geneva, the National Assembly Library, Abuja, University of Jos Library, the National Library Abuja, the National Institute and Policy and Strategic Studies Library, Kuru, Plateau State and the internet. The library survey involves a methodical and orderly analysis and interpretations of the literature on the role of the IPU in strengthening parliaments.

The documents survey involved the examination of reports of IPU programmatic interventions in strengthening parliamentary institutions with particular reference to Nigeria; the IPU statute and IPU bulletins. The essence of examining these reports, statute and bulletins is to ensure support for the Library sources.

1.8 LITERATURE REVIEW

The review of literature in this study addressed the following themes: The evolution of the IPU and its role in strengthening parliamentary institutions, the Nigerian legislature and the IPU programmatic interventions in Nigeria. Ojo in his work, "The Nigerian Legislature: A Historical Survey",[3] treated extensively the

[3] Ojo, T.I., The Nigerian Legislature: A Historical Survey (Lagos, Ascon Press, 1997).

evolution, objectives, structure, procedure, processes and practices of the Nigerian legislature. Ojo's treatise which is a collection of materials on the Nigerian legislature did not address the problem of capacity gaps in the National Assembly and State Houses of Assembly.

Dunmoye et al (eds.) in their work "The National Assembly: Pillar of Democvracy[4] observed that the performance of the National Assembly in terms of law making, oversight and representation was short of the high expectations of Nigerians. The work which is an edition of papers presented at an orientation programme organized by the Management of the National Assembly for newly elected members of the National Assembly covered areas such as history of Constitution making in Nigeria, Federalism, Democracy and National Economic Empowerment and Development Strategy and the Millennium Development Goals, the role of the legislature in socio-cultural change, the role of legislature in foreign policy process, the powers, privileges and immunity of the legislature, the Standing Orders/Rules of the Senate and the House of Representatives, the functions of the National Assembly as encapsulated in Section 4 of the 1999 Constitution, the opening of a new parliament and legislative process. The material is an incisive and valuable hand book on parliamentary practices and procedures but it has not addressed issues of capacity gaps in the National Assembly and State Houses of Assembly.

Nwabueze in his book entitled "The Presidential Constitution of Nigeria",[5] supplied the necessary knowledge of the 1979 Constitution and its workings and provided insight into the general principles of the presidential system of government as contained in it. The supremacy of the law of the Constitution, the division of powers between the Federal Government and State Governments, the executive presidency, separation of powers, participatory democracy, constitutional guarantee

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4 Dunmoye, A.A. et al (eds.) The National Assembly: Pillar of Democracy (Abuja, National Secretariat of Nigerian Legislatures, 2007)

5 Nwabueze, B.O., The Presidential Constitution, (Enugu, C. Hurst & Company, 1982)

of rights, judicial enforcement of constitutional limitations and the responsibility of government for the well being of the people are analysed in detail in the work. The book also discussed the organs of government and their relationship with each other. Nwabueze extensively discussed the nature of the Nigerian legislature, its functions and the limits of its powers, but the issue of capacity gaps was visibly absent.

Further, Nwabueze in a five-volume book titled "Constitutional Democracy in Africa"[6] extensively analysed and discussed the structures, institutions, organising principles of a government, the virtues of constitutional democracy, the evil of authoritarian rule, the pillars of constitutional democracy and the factors and processes involved in constitutional democracy. Chinwo in his book "Principles and Practice of Constitutional Law in Nigeria"[7] analysed the 1999 Constitution relative to subjects such as the military and constitutionalism, state and local government councils, fundamental rights and contemporary happenings in Nigeria, but Chinwo's work did not take into account the role of the IPU in strengthening parliamentary institutions in Nigeria.

Furthermore, Yakubu in his book "Constitutional Law in Nigeria"[8] discussed the 1999 Constitution. He made a succinct review of the historical development of the Constitutions of Nigeria beginning from the colonial era to the 1st day of October 1960. The work examined the various Constitutions that Nigeria used since independence, the military and the evolution of the 1999 Constitution. The work commendably dealt with constitutional principles as encapsulated in the successive Nigerian Constitutions. However, with respect to the Nigerian legislature, the work does not deal with the capacity gaps in the National Assembly and State Houses of Assembly and the efforts that the IPU made to address these gaps.

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6 Nwabueze, B.O., Constitutional Democracy in Africa. (Ibadan, Spectrum Books Ltd., 2004)

7 Chinwo, C.A.J., Principles and Practice of Constitutional Law in Nigeria. (Port-Harcourt, Davis Printing & Packaging Co. Ltd., 2007)

8 Yakubu, J.A., Constitutional Law in Nigeria. (Ibadan, Demyaxs Law Books, 2003).

African legislatures are largely absent from the comparative body of literature about parliaments and their members. Some parliaments in Africa have been described as 'emerging institutions of horizontal accountability'[9]. The growing literature on democratisation pays little attention to African parliaments[10]. Most of the existing studies to-date paint a bleak picture of powerless parliaments in Africa. More recent contributions to the literature have only just begun to identify important variations in the strength of African parliaments.

The scholarly literature on parliaments in Africa mostly dates back to the early years of independence and has its substantive focus on assessing the strength of the parliaments. This first generation of studies, comprising mostly case studies and contributions comparing a small number of cases[11] examined the impact of several key variables, such as colonial legacies, the appointment and dismissal powers of governing parties, executive control of state resources and role perceptions of legislators. They uniformly concluded that these factors contributed to the institutional weakness of parliaments vis-à-vis strong executives as well as to their limited role in

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9 See the Report by the Africa All Party Parliamentary Group on Strengthening Parliaments in Africa: Improving Support, March, 2008, p. 23.

10 Although the number of studies of legislatures in emerging democracies is growing, the literature is still dominated by analyses of parliaments and parliamentarians in the established democracies of Western Europe and the U.S. Gamm and Huber (2004) report that 85 percent of the articles published about legislatures in the *American Political Science Review*, the *American Journal of Political Science* and the *Journal of Politics* between 1993 and 2001 dealt with the American experience. The American specialised journal *Legislative Studies Quarterly* (LSQ) shows a similar focus on American legislative politics. Less than 25 percent of the articles in *Legislative Studies Quarterly* between 1995 and 2002 dealt with the legislative experience outside the US. The British *Journal of Legislative Studies* (JLS), on the other hand, devotes most of its space to parliaments outside the U.S. However, African legislatures are absent from both the LSQ and the JLS. The LSQ has published no articles about African legislatures, while the JLS has only published one article on an African legislature by P. Burnell in 2002. Since the early 1990s, when a wave of liberalisation and democratisation started to change the political landscape on the African continent, many African countries resumed multi-party elections and democratic practices but even the growing body of literature on the so called 'third wave of democratisation' has paid little attention to legislatures. *World Politics*, one of the important journals in comparative politics, has published no articles on legislatures since 1992. Nor has the *Journal of Democracy* published any articles (since mid-1993) in which the legislature or the legislative process is the primary focus of discussion. See Gamm and Huber (2004).

11 Loewenberg and Patterson (1979: 337) included the case of Kenya in their seminal work *Comparing Legislatures*. Their discussion of the Kenyan case was mostly based on the data gathered by Barkan. Le Vine (1979) presents a comparative analysis of the development of parliaments in 14 francophone African countries in the period from independence until 1975 and concludes that parliaments in the former French colonies do not play an important role in policy-making.

policy and law-making[12]. Other early studies that examined African parliaments in a broader cross-national comparative framework also emphasised their institutional and policy-making weaknesses, but stressed their roles in legitimising government policies, recruiting and socializing new elites, and mobilising public support for political regimes[13]. With the post-independence emergence of authoritarian regimes throughout the African continent, scholarly interest in African parliaments ebbed away. There are, however, a few studies of national parliaments in the context of a single party state. Barkan showed that, even within the constraints of a single-party regime, the Kenyan legislature played an important role in the development of a largely agrarian society by linking widely dispersed local constituencies to the state[14].

More recently, the resurgence of democracy on the continent has renewed scholarly interest in Africa's parliaments. Like the first generation of studies conducted soon after independence, the recent studies typically focus on single countries and routinely point to the institutional weakness and limited decision making role of parliaments in Africa[15].

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12 Hakes and Helgerson (1973) looking at the first parliaments of Zambia and Kenya, explain how the executive's control of state resources and powers to appoint and dismiss members are used as currency in a bargaining process, thus compromising the role of individual MPs. Stultz (1970) in his case study of the first Kenyan parliament, also emphasizes the importance of executive-legislative relations and the partisan context in which parliament operates, as well as its function of legitimization. Stultz concludes that the decisional function of the Kenyan parliament is relatively unimportant and that MPs are lacking a sense of meaningful participation in decision making. Hopkins' (1970) study of Tanzanian MPs similarly reveals that in Tanzania's first parliament the party exerts an influence which renders MPs ineffective: 'the role of the MP in the actual legislature is quite minor'. According to Hopkins, Tanzanian MPs are generally supportive of cabinet ministers because anything to the contrary compromises one's chances of being appointed to positions of influence.

13 Mezey M.L. ''The functions of legislatures in the Third World'' Legislative Studies Quarterly (1983) Vol. viii, No. 4, p. 511.

14 Barkan, J. '' Bringing Home the Pork: Legislator behaviour, Rural Development and Political Change in East Africa''in J. Smith and L.D. Musolf, eds, Legislatures in Development: Dynamics of change in old and new States (Durham, Duke University Press, 1979) p. 125.

15 Thomas M.A. and O. Sissokho '' Laison Legislature. The role of the National Assembly in Senegal'' Journal of Modern African Studies'' (2005) Vol. 43. No. 1. p. 97.

A study conducted by Barkan, Ademolekun and Zhou[16] on the strengths and weaknesses of four African parliaments, concluded that although parliaments in Africa are often labeled as weak, there are important cross-national variations. Their study found that 'the authority of the parliament ranged from being very weak in Senegal, to moderately strong in Kenya with Benin and Ghana falling somewhere in between' and hypothesises about three sets of variables that might explain this variation: contextual variables relating to the structure of society, variables relating to constitutional provisions and formal rules and variables relating to the internal structure of the parliament and the resources available to members. Although these studies offer insights into the structure and operation of certain parliaments, none examined the role of IPU in strengthening parliaments in Africa. This problem is not only evident in the first generation of studies conducted immediately after independence, but also plagues some of the more recent studies. Thus, the legislature has suffered much neglect in terms of the dearth of literature on its nature, functions, structure and organisation. Apart from few articles and papers written on one aspect of the legislative process or the other, there has not been an extensive research on the workings of the legislature especially as it relates to its relationship with IPU. The IPU seemingly has not captured the attention of the intelligentsia and the academic circles. The scanty literature in the area are monographs, reports of proceedings and pamphlets produced by the Secretariat of the Union. Lack of awareness about the Union and its activities is largely responsible for the dearth of materials in the area. Furthermore, the few people that ventured to write on the subject only discussed peripherally on the activities of the Union. Much of the literature on IPU is contained in the IPU Annual Reports and publications such as the 50th Anniversary publication, Quarterly Bulletin, Conference Proceedings, Annual Reports, Statutes and Documents

[16] Barkan J. D., Ademolakun J. and Y. Zhou "Emerging Legislatures: Institutions of Horizontal Accountability'' in B. Levy and Kpundeh, eds, Building State Capacity in Africa (Washington, World Bank Institute, 2004) p. 211.

etc. The foregoing sources provide but scanty information on the effectiveness of the IPU as a forum for strengthening parliamentary institutions. This work is therefore intended to build and improve on the existing literature.

CHAPTER TWO

AN OVERVIEW OF INTER-PARLIAMENTARY UNION

Democracy is based on the existence of well structured and well functioning institutions, standards, rules and the will of the people. Democracy is founded on the right of everyone to take part in the management of public affairs. It requires the existence of representative institutions at all levels in which all components of society are represented and which have the requisite powers and means to express the will of the people by legislating and overseeing government's action[1].

The foregoing statement represents the importance of the parliamentary institution and the central role it plays. The International Community has shown substantial interest in the parliamentary institution and has provided it with increasing assistance so as to promote democracy. It is therefore, not surprising that the IPU has placed great premium on capacity building of parliament. The scope of the support to parliaments have expanded over the years. As rightly observed by the Secretary-General of IPU[2] projects are no longer limited to strengthening the infrastructure and technical capacities of parliament but are also aimed at improving its political functioning. This is usually achieved through a range of activities covering both the institution and members of parliament.

In this regard, the boundary between the smooth functioning of parliamentary institutions on the one hand, and democracy, good governance

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1 See Universal Declaration on Democracy by Inter-Parliamentary Union in 1997.

2 Anders B.J. "Ten years of Strengthening Parliaments in Africa, 1991 – 2000: Lessons Learnt and the Way Forward". Report of a Joint IPU/UNDP Survey 2003 Geneva p. 2.

and human development, on the other, most often serve as a justification for launching projects. The concern of the IPU is to strengthen the capacity of parliaments by ensuring that they are equipped with the necessary tools to perform their role expectations efficiently, both at the international and national levels with a view to promoting democracy across the world.

2.1 THE CONCEPT AND PURPOSE OF THE IPU

The Inter-Parliamentary Union is an international organisation consisting of Parliaments of Sovereign States.[3] The purpose of the IPU is specifically provided in Article 1 of its Statutes[4] as follows:

> The purpose of the IPU is to promote personal contacts between members of parliament, constituted into National Groups, and to unite them in common action to secure and maintain the full participation of their respective states in the firm establishment and development of representative institutions and in the advancement of the work of international peace and cooperation, particularly by supporting the objectives of the United Nations. With this end in view, the IPU shall express its views on all questions of an international character suitable for settlement by parliamentary action and shall make suggestions for the development of parliamentary institutions, with a view to improving the working of those institutions and increasing their means of action.

From the foregoing, it can be summed up that the IPU represents the platform for global parliamentary dialogue and strives for the achievement of peace and co-operation among peoples and for the firm establishment of representative democracy. It is with regard to the foregoing that the IPU fosters contacts, co-ordination, and the exchange of experience among parliaments and parliamentarians of all countries, considers questions of international interest

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3 See Article 1 of the Statutes of the Inter-Parliamentary Union, 1983.

4 Op. cit.

and concern and expresses its views on such issues in order to bring about action by parliaments and parliamentarians. It also contributes to the defence and promotion of human rights,[5] contributes to better knowledge of the working of representative institutions and to the strengthening and development of their means of action. Mikhail Gorbachev had the foregoing in mind when he made the following declaration:

> I think the new style in international relations implies extending their framework far beyond the limits of the diplomatic process proper. Parliaments, along with governments, are becoming increasingly active participants in international contacts, and this is an encouraging development. It points to a trend towards greater democracy in international relations.[6]

The IPU is therefore an organisation which has succeeded in bringing together members of parliaments from all countries in spite of differences in race, nationality, language, opinion, and temperament. The Union also supports and compliments the work of the United Nations, whose objectives it shares, while at the same time co-operates with regional inter-parliamentary organisations, inter-governmental and non-governmental organisations which are motivated by the same ideas.

The concept of the IPU as an international organisation is premised upon the fact that an international organisation connotes an association of states. It must be noted here that most descriptions of international organisations, particularly those emanating from a legal perspective, adopt a more or less

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5 Which is an essential factor of parliamentary democracy and development.

6 Quoted in Zarjevski, Y., "The People Have the Floor" – A History of the Inter- Parliamentary Union. (Aldershot; Darmounth Publishing Company Limited, 1989) p. 7.

formal approach. A good example of the formal approach was provided by Bindschedler[7] when he opined that:

> The term international organisation denotes an association of states established by and based upon a treaty, which pursues common aims and which has its own special organs to fulfill particular functions within the organisation… since international organisations are necessarily based upon multilateral treaties…, the law of treaties forms part of the law of international organisation.

Despite the foregoing opinion, Bindschedler also admits that an international organisation may still be recognised as such even though it might not be subject of a treaty. In this regard, he concludes that:

> The formation of an international organisation is also possible by means of corresponding provisions in the municipal law of the individual countries involved, as was the case in the first period of… the Nordic Council. This will not, however, be an international organisation in the sense of international law unless its status as a… subject of international law can be based upon customary international law.[8]

Schermers also recognizes the exceptions to the criterion of independent statehood and mentions those organisations composed of specialised government departments which he places on the dividing line between governmental and non-governmental organisations[9]. Sharing the same opinion Brownlie[10] and White[11] express the view that while treaties may be used as the yardstick for the creation of the status of international organisations there are in practice exceptions. In other words they are of the view that while formally

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7 Bindscheler, R.L., "International Organisations, General Aspects", in Bernhardt, R., ed., Encyclopedia of Public International Law, Vol. 5, 1983, p. 120.

8 See Berg, A., "Nordic Council of Ministers" in Bernhardt, R., Ed., Op. Cit Vol.6, pp.261 – 263.

9 Schermers, H.G., "International Organisations, Membership", in Bernhardt, op. cit. pp. 147 -148.

10 Brownlie, I. Principles of Public International Law, (5th ed). (Oxford: Clarendon Press, 1998) pp. 678 – 680.

11 White, N.D., The Law of International Organisations (Manchester University Press, 1996) p. 29.

treaty-based organisations may be the norm, other possibilities exist, and the related question of international personality remains separate and distinct. In associating himself with this position, Morgenstern[12] draws attention to the UN legal opinion[13] which asserts thus:

> It may well be that a new customary rule of international law is emerging under which a legal person can be created by an agreement concluded solely by autonomous public entities, such an agreement being governed by international law pursuant to another new customary rule.[14]

The IPU is unique in its combination of aims and purposes with a representative character. It is distinguishable from non-governmental organisations and private voluntary organisations in its membership of parliaments, the public legislative organs of states, rather than of private or personal interests. It is worth mentioning that the IPUis a universal organisation in the sense that its membership is open to all parliaments that satisfy the requirements of Article 3 of its Statutes, just as the United Nations is open to all states satisfying the requirements of Article 4 of the UN Charter. More so, the Union, like other international organisations is representative in character.

2.2 THE ORIGIN AND EVOLUTION OF THE IPU

The IPU originated in 1889 from the initiative of two great parliamentarians and men of peace, William Randal Cremer[15] and Frederic Passy[16] as the first permanent forum for political multilateral negotiations. The

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12 Morgenstern, F., Legal Problems of International Organisations (Gretius, Cambridge, 1968) pp. 19-22.

13 UN JYB 1971, p. 215.

14 This UN legal opinion generated a lot of controversy.

15 From the United Kingdom.

16 From France.

IPU evolved out of a desire for the promotion of the concepts of peace and international arbitration. Despite the role played by these people in the emergence of the Inter-Parliamentary Union, Robert Von Walterskirchen[17] drew attention to the necessity of closer contact being established between members of parliament in all countries. Following the heels of Robert Von Walterskirchen, Don Marcoartu[18] played a very active part in the convening of the first parliamentary conference. Having previously advocated the idea of contact between members of parliament, Don Marcoartu in his writings offered a prize of three hundred pounds for the best essays on the creation of an international assembly[19]. He also undertook a tour of Europe in 1876 for the purpose of preparing an international conference of parliaments. It must be stated here that he was favourably received in Rome and there and then, an assembly of Italian Deputies[20] decided among other things, to take part in the inter-parliamentary conference proposed by him.

It is worth noting here that the attempts made by Don Marcoartu laid the foundation which was subsequently built upon by other fore-runners. Effort would be concentrated on the activities of the two persons who are referred to as the fathers of the Union[21].

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17 The Austrian Deputy, even though his remarks on the subject at a meeting on 27th August, 1870, passed unnoticed. For details, see Prof. Quidde, L., The creation of the Inter-Parliamentary Union. (Geneva: Payoff and Co. 1939) p. 3.

18 Then member of the Spanish Senate.

19 The offer was made during his speech at the banquet of the London Congress.

20 Which met on 10th March, 1876 in the Parliamentary Building.

21 As they are properly so referred to by Prof. Quidde, L., Op. Cit. p. 8.

William Randal Cramer and Frederic Passey played a critical role in the Evolution of the IPU[22]. William Randal Cremer was born in 1828 in Fareham, Hampshire, United Kingdom of a working coach-painter father who abandoned his home. He was brought up in harsh circumstances. This humble beginning led him to start attending public meetings and it was during one of such occasions that he heard of international disputes and of a system for settling them amicably. According to Howard Evans, this occasion later influenced Cremer and inspired his activities that eventually led to the formation of the IPU. Writing on the biography of William Randal Cremer, Evans states thus:

> I have to tell the story of a life that was comparatively uneventful, except in relation to the one grand purpose to which he was devoted. For nearly forty years Cremer set before himself a task which might have daunted the greatest statesmen in Europe, and for the greater part of the time he had but a languid support from most of those who theoretically accepted the principle of arbitration. He said, "This one thing I do", and to this one thing every other consideration was subordinate. Yet he was by no means a man of one idea. Compulsory and free education, public libraries, common preservation, registration reform, taxation of ground values, nationalization of the land, religious equality the right of free speech, the deliverance of trade unions from judge-made law, the protection of weaker races, the emancipation of oppressed nationalities were all causes dear to his heart in which he took a keen interest; but he felt the necessity of concentrating his whole strength on the tremendous task before him, on which the future of humanity so largely depended[23].

This exposition of the early life and activities of William Randal Cremer is very illuminating and provides an insightful foundation for a discussion on the personality of the person who contributed so much to the emergence of the IPU.

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22 http://en.wikipedia.org/wikipedia/inter-parliamentary_union/.

23 See Hawared, E., From Sir Randal Cremer, His Life and Work (London, 1909).

Frederic Passey was born in Paris in 1822 and belonged to a family that was associated with the old nobility producing ministers, peers, academics and deputies. He took up a post of auditor in the council of state after he was called to the bar following his law studies. Passey came into limelight in 1867 when he wrote a letter to Nefftzer[24] asking him to campaign for negotiated solution to the Luxembourg affair than embittering Franco-Prussian relations[25]. Passy's letter caused sensation everywhere in the pacifist circles, with the industrialists and in workers' unions and as a result, a conference was convened under the auspices of the Prime Minister, William Gladstone, following which the neutrality of Luxembourg was proclaimed and a war avoided. Encouraged by this success, Passy agreed to head the international and permanent peace League that Henry Richard had founded in London. Both Cremer and Passy became advocates for peace and disarmament and were later elected into the parliament of their respective countries without meeting each other. On 1st January 1887 Passy tabled a motion in parliament asking the government of France to negotiate with other countries ways of resolving international disputes through mediation and arbitral adjustment. In this motion, he argued that law was mightier than force, that national pride had to give way to reconciliation, and that love of one's country and the friendship of the peoples were not conflicting sentiments. He continued and argued further that before weaponry could be

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24 Director of the Journal "Le Temps".

25 At this time, the King of Netherlands was preparing to sell to France the Grand Duchy of Luxembourg, whose capital was occupied by Prussian troops. Emperor Bismarck advised him to abandon the idea, which Napoleon III had understood that he had no objection.

reduced, minds had to be disarmed[26]. The effort of Passy attracted him to Cremer. In 1888 Cremer then wrote Passy a letter and visited him in July of the same year. Consequently, they decided to organize an autumn meeting of French and British parliaments. This meeting was held on 31st October 1888. At the meeting, it was resolved that a subsequent meeting involving a greater number of parliamentarians be held the following year in Paris[27].

Following the effort of the duo of William Randal Cremer and Frederick Passy a conference that was to mark the birth of the IPU was opened. The conference was attended by 95 deputies, comprising 56 from France, 28 from Britain, 5 from Italy and 1 each from Belgium, Denmark, Hungary, Liberia, Spain and the United States[28]. Even though the attendance was not commensurate with the number of invitations that were sent out and the number of written promises to attend the conference, the number of participating countries was sufficient to uphold the international character of the conference. The title adopted for that conference was "Parliamentary Arbitration Conference[29]. In 1892 the title was renamed "Inter-Parliamentary Conference for International Arbitration". Later, the conference metamorphosed into the Inter-Parliamentary Conference for International Arbitration[30]. The Statutes of the IPU were adopted at The Hague in 1894[31]. The first chapter of the Statutes relates to the aim and membership of the

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26 See Zarjevski, op. cit. p. 38.

27 See Quidde, L., The Creation of the Inter-Parliamentary Union, (Geneva: Payot and Co., 1939). p. 10

28 Ibid.

29 According to Zarjeveski, the letter of invitation to the 1889 Conference bore this heading "Parliamentary Arbitration Conference". See Zarjeveski, op. cit. p. 62.

30 The shortened form as known today Inter-Parliamentary Union – did not reach its statutes until 1908.

31 The Adoption was to be made in 1893 at the meeting that was to hold at Christiana.

Union. Chapter two relates to the General Assembly of the Union while Chapter three relates to the Assembly of Delegates. Chapter four focuses on the Inter-Parliamentary Bureau. There have been series of amendments to the Statutes since its adoption in 1894[32].

It must be noted that the task of promoting arbitration was primary in the minds of the founders and this accounted for the inclusion of the word "Arbitration" in the title of its early conferences. The expression "Inter-Parliamentary Union" never appeared in the resolutions of the early years. Today, the IPU operates as an international organisation with membership comprising of over 140 member-states[33].

2.3 MEMBERSHIP AND STRUCTURE OF THE IPU

International Organisation has been viewed in recent times as the vanguard of an emerging world government. This view is increasingly true when considered along the rapid development within the present century of the elaborate structure which International Organisations have assumed for its proper function[34] Bennet[35] postulates common characteristics which an Intergovernmental Organisation (IGOs) or International Non Government Organisation (INGOs) must possess which are:

(a) a permanent organisation to carry on a continuing set of functions;

(b) voluntary membership to eligible parties;

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32 For instance in 1976 and in 1999.

33 Membership as at April, 2004.

34 See Bennet A. L. International Organisation: Principles and Issues (London: Prentice Hall 1982) int. ed. p.2.

35 Ibid, p. 3.

(c) a basic instrument stating goals, structure and method of operation;

(d) a broadly representative consultative conference organ; and

(e) a permanent secretariat to carry on continuous administrative, research and information functions.

Therefore, to be ascribed with an International Status, an IGO must satisfy this minimum criteria to be able to operate on the international plane. It is important to point out that the functions exercisable must be such that are relevant to the international community or to a majority of its members.

The Statutes of the IPU[36] provides for the membership, character and purpose of the organisation. Under Article 1(1) of the Statutes of the Union, states that membership shall be composed of National Groups representing their respective parliaments. In other words, the Membership of the IPUis restricted to parliaments as the representative organs of sovereign states and as such, the organisation is not open to membership by individuals.

Also, Article 3(2) of the Statutes provides that a National Group:

> shall be created by decision of a parliament constituted in conformity with the laws of a sovereign state whose population it represents and on whose territory it functions.

In this regard, only one National Group may be formed in each parliament, and in a federal state like Nigeria, only the Federal Parliament[37] is qualified to be a member of the Organisation. From the foregoing, it can be deduced that membership and representation here is contingent on a parliament that is legally

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[36] As subsequently adopted in 1976, revised and amended in 1999.

[37] See Article 3(3) of the Inter-Parliamentary Union Statutes.

constituted, which represents the people of the state concerned, and which is functioning in the territory of that state. The corresponding effect is that parliaments existing in exile are not qualified for the membership of the IPU. Furthermore, where a parliament of a sovereign state ceases to exist, for example, by reason of a "*coup detat"* as was the case with Nigeria[38] during the military rule, such a sovereign state cannot be a member of the IPU[39]. It is worth noting that, Associate membership is open to international parliamentary assemblies established under international law by states which are represented in the Union by a National Group[40]. For instance at the April Conference in Brussels in 1999, the Council[41] decided to affiliate the European Parliament as Associate Member. The membership of the Union has continued to grow and as at April 2004[42] there are 140 with 5 regional IPA as Associate Members.

2.3.1 The Structure of the IPU

As earlier noted an IGO must possess a broadly representative consultative conference organ as well as a permanent secretariat to carry on continuous administrative functions.

The IPU seeks to accomplish its mission through the activities of its principal organs[43], which are:

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38 The Parliament of Nigeria was re-affiliated in the Union in 1999 at the Berlin Conference.

39 See Article 4(2) of the Statutes.

40 As at 1st January, 2000, the following regional International Parliamentary Assemblies were affiliated: Andean Parliament, Central American Parliament, European Parliament, Latin American Parliament, Parliamentary Assembly of the Council of Europe.

41 Decisions on affiliation, re-affiliation and suspension are taken by the Inter- Parliamentary Governing Council on the advice of the Executive Committee.

42 See Proceedings of the 110th IPU Assembly of 15 – 23 April, 2004, p. 21.

43 With the adoption of the Reform of the Union at its 108th Conference in *Santiago de la Chile* in April, 2003, the two Principal organs, namely; The Conference and the Council were renamed the Assembly and the Governing Council respectively.

(a) The Inter-Parliamentary Assembly (IPA)

(b) The Inter-Parliamentary Governing Council

(c) The IPU Secretariat

2.3.2 The IPU Assembly

This is the principal organ through which the IPU expresses its views on political issues. The IPU Statutes[44] requires that the Assembly meets twice a year. Under Article 1 of the Statutes, the Assembly is empowered to debate issues falling within the scope of the mission of the Union and to make recommendations thereon. Thus, every National Group is under obligation to submit the resolutions of the Union to its respective Parliament in an appropriate form and to communicate such resolutions to the government. Also, the National Group is under duty to stimulate the implementation of the resolutions and to inform the IPU Secretariat as to the steps taken pursuant thereto and the results obtained[45]. The IPU Assembly is assisted in its work by three plenary study committees[46] namely: Peace and International Security, Sustainable Development, Finance and Trade and Democracy and Human Rights. The debate on the two main agenda items as well as any supplementary item takes place in these committees at the end of which a draft resolution is tabled before the Assembly for consideration and adoption.

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44 See Articles 10 -17 of the IPU Statues.

45 See Article 8 Ibid and also Conference Rule 39(2).

46 Before April 2003, there were four Study Committees.

2.3.3 The IPU Governing Council

This is the plenary policy-making body of the IPU that draws up the annual programme and budget, decides on membership and expresses views on issues put before it by series of permanent or ad hoc subsidiary bodies. The Governing Council which meets twice a year[47] determines and guides the activities of the Union and controls their implementation in conformity with the purposes defined in the Statues. The Governing Council is composed of three members from each Parliament, one of whom must be a woman[48]. The Council has subsidiary bodies[49] to facilitate its activities.

2.3.4 The Executive Committee

This is the organ that oversees the administration of the IPU and assists the Council in an advisory capacity. In practice, the Executive Committee is not just an administrative organ, but the "think tank" of the IPU. It also prepares all the work of the Governing Council. The Council takes its decisions on the basis of proposals submitted by the Executive Committee[50] which may even summon the Council in case of emergency. Also, it controls the administration of the Secretariat as well as its activities in the execution of decisions taken by the IPA or by the Governing Council[51].

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47 See Articles 18 - 22 of the IPU Statues.

48 Prior to the Reform, two members from each National Group of the IPU were represented in the Council.

49 The Committee on the Human Rights of Parliamentarians, the Group of Facilitators for Cyprus, The Committee on Middle East Questions, Committee to Promote Respect for International Humanitarian Law and the Gender Partnership Group.

50 See Articles 24 – 25 of the IPU Statutes.

51 See Article 26 Ibid.

2.3.5 The IPU Secretariat

The Secretariat is responsible for carrying out the IPU's programme of activities in keeping with the decisions of its Statutory Organs. It also liaises between the Union and other international organisations[52].

It must be noted here that the meeting of Women Parliamentarians now form part of the IPU official structure without being considered as one of its Statutory Organs.

2.4 THE INTER-PARLIAMENTARY UNION AND THE UNITED NATIONS

Today, parliaments all over the world are being recognised as playing a fundamental role in the entrenchment of democracy and good governance. Indeed, it is the traditional responsibility of parliaments to debate and pass legislation that provide legal framework for good governance and the rule of law. In addition, parliaments through the exercise of their oversight functions ensure transparency and accountability which are cornerstones and indispensable ingredients of democracy and good governance.

In recent times, there has been a steady increase in the number of countries undergoing fundamental structural changes involving transition towards multi-party parliamentary democracy. In many of these countries, the process is accompanied by the introduction of a market economy which requires the adaptation of existing laws and the adoption of new legislation. One element

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[52] Agreement between he Swiss Federal Council and the Inter-Parliamentary Union to settle the juridical status of the organisation in Switzerland of 28th September, 1971.

which appears common to all these countries is the significantly enhanced role which new national constitutional framework assigns to parliaments.

These developments have been accompanied by a growing awareness in the international community of the need to assist both long-established and fledgling parliaments to cope with the new challenges confronting them. This is particularly relevant for the new parliaments as many of them have emerged from conflict situations, or after long years of military rule and as such are fragile and most often lack adequate resources allocated within the national budget. Besides, the legislative agenda is often very extensive, sometimes overwhelming, and the parliaments lack the required experience, trained staff, adequate information and material to serve its members efficiently.

It is with regard to the foregoing that the activities of the IPU which is a mother organisation of parliaments of the world, are fashioned towards the provision of technical co-operation through which it assists national parliaments particularly in the world's emerging democracies and developing countries, to improve the organisation of their work and strengthen their infrastructure. This chapter analyses the activities of the IPU with particular focus on its programmes aimed at strengthening of parliamentary institutions, as well as provision of assistance to elected parliamentarians. It is significant to note that the IPU is empowered to deal at the global level with matters having parliamentary dimension and to co-operate with other competent organisations, particularly those of the UN system. In recognition of the above avowed

objective, the Statutes of the IPU shares the same objectives of the UN and emphasised the co-operation between the organisation and the UN.

Article 1(2) of the IPU Statutes provides that:

> as the focal point for worldwide parliamentary dialogue since 1889, the IPU shall work for peace and cooperation among peoples[53] and for the firm establishment of representative institutions.

Article 3 of the Statutes further provides that:

> The Union, which shares the objectives of the United Nations, supports its efforts and works in close cooperation with it.[54] It also co-operates with the regional inter-parliamentary organisations, as well as with international, intergovernmental and non-governmental organisations which are motivated by the same ideals.

The above provisions calls for the proper understanding of what the objectives of the UN are, which the IPU seeks to support. The preamble to the Charter of the UN gives a historical basis for the establishment of the UN. The preamble to the charter provides:

> We the people of the UN determined to:
>
> (a) save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind;
> (b) reaffirm faith in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small; and
> (c) establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained and to promote social progress and better standards of life in large freedom.

The above affirmation forms the purposes of the UN as expressed in Article 1 of the Charter of the UN which provides:

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53 Underlining mine.
54 Uunderlining mine.

> to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

The provision of the above article and indeed the other objectives entrenched in the Charter of the UN forms the objectives for which the IPU shares and seeks to support. Therefore, the IPU as an international organisation of parliaments pursues a parliamentary dimension and dialogue to the attainment of world peace and security in addition to the objectives set out in the Statutes of the IPU[55].

In the revised plan for the year 2007 to 2010 which also contains an overview of the activities of the IPU on peace building, it is set out that from its earliest days, the IPU has promoted dialogue between political adversaries both within and between countries. It played a pioneering role during the cold war when it gave impetus to the Helsinlai process through an East-West parliamentary dialogue. It initiated a similar exercise in the early 1990s that led to, among other achievements, the Barcelona process for Euro – Mediterranean Co-operation. The IPU is now expanding these activities to parliaments in South-East Asia to assist them in establishing their own parliamentary mechanisms to promote regional security and co-operation.

The IPU also fosters political dialogue in an effort to resolve certain protracted conflicts. Over the years the IPU has set up direct contact between

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[55] See Article 1(2) IPU Statutes.

political representatives from the northern and southern part of Cyprus that eventually led to meetings on the Island itself and political negotiation under the aegis of the UN. Similarly, the IPU has brokered direct talks between Israeli and Palestinian Legislators and is seeking to re-establish this political dialogue following elections in that region. Furthermore, it is planning to expand these activities to other conflict areas in Africa and the Middle East. More details of the IPU and UN co-operation shall be examined in our further discussion.

2.4.1 Administrative Machinery of IPU

The IPU was founded in 1889 as an integral part of the movement for peace. In this regard, the IPU has actively promoted, among others, the establishment of a permanent mechanism for the settlement of disputes between states, disarmament, the formation of a "universal organisation of nations", and it has sought to study and seek solutions for a wider range of international issues suitable for parliamentary action[56].

The internal affairs of the IPU are governed by its statutes. This considered, from the point of view of other states or from the context of relations with the host state, among others; the IPU is governed internally by a legal and administrative system which is distinct and separate from that of any states[57]. It is to be noted here that, even though without going into much detail, the staff members of the IPU are considered as international officials or

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[56] See generally Sterzel, F., The Inter-parliamentary Union. (Stockholm: Norstedt & Sover, 1968) for a fuller analysis of the evolution of the IPU.

[57] See Rene-Jean D, A handbook on international Organisations, (Haque Academy of International Law, Martinus Nighoff, 2nd ed. 1999) pp. 377–391.

international civil servants by the host state of the IPU. And most importantly, international matters are subject, in the event of a dispute between a staff member and the organisation, to the jurisdiction of the Administrative Tribunal of the ILO. This Administrative Tribunal is itself, as observed by the ICJ in 1956, an international tribunal[58]. The work, proceedings and administration of the IPU is clearly subject to the rule of law. This is evident from the regularity, neutrality and objectivity of its affiliation and suspension procedures, the rules applicable to its organs and committees, and its acceptance of the jurisdiction of the ILO Administrative Tribunal. In this regard, the Union is accountable to its governing bodies.

2.4.2 The Activities of the IPU

It must be noted from the outset here that the recognition by government of the activities of the IPU, whether in regard to funding or to its functions, lies in its implied recognition of the IPU as an organisation which operates at the international level in the affairs of states, as a representative of parliaments, and parliaments as representatives of peoples of the world and an interlocutor on matters of international concern as contained in its statutes, including general matters affecting relations between states and matters of specific concern to parliaments, such as the human rights of parliamentarians.

The activities of the IPU are premised upon the understanding that the organisation is the focal point for world-wide parliamentary dialogue and works for peace and co-operation among peoples and for the firm establishment of

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[58] Judgements of the Administrative Tribunal of the ILO, Advisory Opinion, ICJ Reports, [1956] pp. 77-79.

representative democracy. In relation to this, the IPU strives to ensure contacts, co-ordination, and the exchange of experience among parliaments and parliamentarians of all countries. Reflecting on the foregoing, Urbain, R.[59] made the following declaration:

> what makes the Union eminently worthwhile is the dialogue involved and the multilateral character of the institution… one can lend substance here to what would otherwise be materially impracticable in the course of a year, namely the possibility of meetings and the possibility too of associating young parliamentarians coming for the first or second time only… In IPU contacts and this multilateral dialogue, we get to know other ways of thinking and the difficulties of what I may call the complexity of international dialogue, as well as getting to know the roles of democracy as it were… what is important is how parliamentarians act on returning to their national parliaments after discovering realities here that nowhere else could they discover in quantity and all at once[60].

There is no doubt that the foregoing statement of Urbain captures the rationale for the fostering of contacts between parliaments undertaken by the IPU. Justifying the essence of parliamentary meetings as a measure for preventing conflicts and fostering international peace. Kant[61] holds the view that both old and young parliamentarians owe their education to the Union and that the excessive and incessant preparations for war, and the ensuing destitution, induces states to what reason could just as well have taught them without its costing them such grievous trials, that is, to forsake the anarchical state of savagery to enter into a community of Nations. There, each state, even the smallest, could expect its security and rights to be guaranteed, not by its own

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59 Urbain Robert was the Chairman of the Belgian Inter-Parliamentary Group during the 78th Conference of the IPU.

60 Fragments of an interview granted by Urbain R., at the Union's 78th Conference.

61 Kant E. cited by Zarjevski, V. in The People Have the Floor (Vermont, USA: Gower Publishing Company, 1989) p. 139.

power and appreciation of its right, but solely by that larger community of Nations, that is, by a united force and a decision taken by virtue of laws founded upon an according to wills.

Having regard to the impact of international cooperation on world peace and security, one cannot help but agree with the submissions of Kant, particularly from the context of a world that passed through the grievous trials of two world wars. While the IPU makes significant impact in the area of fostering contact and coordination among parliamentarians who are in turn representatives of peoples of the world, the readiness of states to yield to its resolutions, abide by its precepts and bow to its verdicts stands ever in need of goading. It is also for the IPU to do this, from the lofty terracing of its extraterritorial prestige; for its members too, in the familiar setting of home ground and constituency. The IPU achieves its objective of fostering contacts, co-ordination, and the exchange of experience among parliaments and parliamentarians of all countries through its regular meetings. The General Assembly of the IPU meets bi-annually and during such meetings, World parliaments constituting themselves into national groups attend and participate at such meetings. Apart from the meeting of the Governing Council or the Assembly of the Union, the Union further gives parliamentarians the opportunity of interacting at other levels, for instance, the IPU in collaboration with the UN organises a yearly parliamentary hearing at the sessions of the UN General

Assembly in New York[62]. In addition, IPU facilitates specialised conferences for parliamentarians[63].

With respect to collection and dissemination of information on parliaments as a measure of fostering contact between parliaments, the IPU carries out series of publications on nations contemporary issues[64]. Besides, the Union's specialised Library collects and disseminates information on national representative institutions. Materials collected in this regard, includes reference texts, books, studies and articles containing data on and analysis on the role, structure and working methods of parliaments[65]. Further to the foregoing, the IPU maintains a collection of basic texts containing, for each sovereign state, a copy of its current national constitution, the national electoral law or code, and the rules of procedure/standing orders for the Houses of parliament and any amendments thereto. In addition to the foregoing, IPU has developed a database on parliaments[66]. This database contains factual data on the role, structure and working methods of national parliaments. It is to be observed here that the "PARLINE" database continues to be the most frequently visited section of the IPU's Website[67]and as a result of its popularity, there has been a steady increase in the number of requests for information on parliaments, their work

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62 The IPU parliamentary hearing at the 2004 UN 59th session of the UN General Assembly will hold at New York on 19th – 20th October, 2004.

63 For example, the specialized conference on the "Contribution of Parliaments to Democracy in Africa" was held in Harare Zimbabwe on 1st - 2nd April, 1998.

64 Examples of such publications are: Democracy: Its Principles and Achievements 1998, Code of Conduct for Elections 1998. Women in Politics 1998, Chronicle of Parliamentary Elections 1997 and a host of others.

65 See Reports of Activities of the IPU in 1999, I(Geneva : IPU Publications, 1999).

66 Known as Parliaments on Line (PARLINE).

67 With about 1,500 visits for the English version and 500 for the French.

and role, as well as on the IPU itself. In 1995, IPU also developed another database known as parliamentary literature[68]. This database contains all bibliographical references which have been registered over the years by the Union's library and which relate to the functioning of national parliaments and parliamentary elections. In relation to this, a lot of information on the working methods of parliaments all over the world is facilitated by the IPU. There is no doubt that this development represents a fundamental input towards the strengthening of parliamentary institutions globally.

It is important to note here that the IPU in continuation of its normative work in support of efficient parliamentary institutions compliments the various modules of its databases with corresponding monographs. For instance, in 1999, the IPU completed a new monograph entitled "The Parliamentary Mandate". This study was carried out on behalf of the Union by Marc Van der Hulst[69]. It contains a detailed comparative analysis of existing practices and experiences in some 130 parliamentary chambers looking particularly at the nature, duration and exercise of the parliamentary mandate including parliamentary immunities. In the monograph Hulst asserted that conferring special rights on members of parliament does not mean that they are above the law but rather recognition of the fact that, given the importance and magnitude of the mandate entrusted to them by the people, they require some minimum guarantees to be able to

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68 Simply referred to as "PARLIT".

69 Marc Van der Hulst is a Senior Official of the Belgian House of Representatives.

discharge this mandate independently and without hindrance[70]. In another development, the IPU also commissioned Professor Guy Goodwin-Gill[71] to carry out a study on standards of conduct in public life. This study which was published in 2000, focuses on such concerns like the links between conduct in public life and democracy; standard-setting in national parliaments including procedures and sanctions; the distinction between public and private life and concludes with a statement on parliaments and standards of conduct in public life. It is obvious that these studies[72] carried out by the IPU serve as a major contribution to the development of international instruments which are both comprehensive and factual and can serve as a reference for parliamentarians and persons wishing to have information on the workings of democratic institutions.

One other major activity of the IPU is in the provision of technical assistance to parliaments of the world. According to Anders Johnson[73], the international community has shown a renewed interest in the institution, providing it with increased assistance in order to promote democracy. As a result of this evolution, both the nature and goals of the technical assistance offered parliaments in Africa have undergone striking change. Projects are no longer limited to strengthening the infrastructure and technical capacities of parliament but are also aimed at improving its political functioning. This is achieved through

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70 See the Parliamentary Mandate (IPU publications, 1999).

71 Guy Goodwin-Gill is a Professor of International Refugee Law, University of Oxford and a member of the English Bar.

72 See also Goodwin-Gill, G., Codes of Conduct for Elections (Geneva: IPU, 1998). Goodwin-Gill, G., Free and Fair Elections; International Law and Practice, (Geneva: IPU, 1994).

73 Anders Johnson is the Secretary General of the Inter-parliamentary Union.

a range of activities covering both the institution and the activities of MPs, including their relations with their constituencies[74].

The aim of providing technical assistance to parliaments by IPU is to ensure that parliaments are well equipped to perform their role efficiently at both national and international levels. This is in itself very central to IPU's work and desire to promote democracy. While seeking to justify the rationale for the provision of technical assistance to parliaments, Anders J. said:

> The substantial enlargement of the scope of technical assistance to parliaments was only natural since it was clearly perceived as contributing to democratisation and the establishment of good governance parliament, an institution that is central to the state, is the interface through which citizens participate in the management of public affairs. Parliament does not exist in a vacuum and its ties with society at large, its relationships with civil society and political parties and the interest it displays in public affairs, all have a considerable impact on its functioning. Institutions with a mandate to support the democratisation process throughout the world therefore tend to conceive of technical assistance to parliaments in the broadest possible manner[75].

Premised on the foregoing justifications, the international community responded at both the bilateral and multilateral levels, with various forms of support to parliaments, mainly as part of effort to strengthen governance. Moreover, the strengthening of parliaments has become a standard feature in the programmes of the Inter-parliamentary Union[76].

Also, worth mentioning in the sphere of IPU's activities, is in the promotion of democracy. Democracy requires the existence and the exercise of

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74 See, IPU, Ten Years of Strengthening Parliaments in Africa, 1991 – 2000 (Geneva: IPU, 2003) p. 2.

75 Op. cit.

76 In fact, IPU's programme of assistance to parliaments, initiated in the early 70s has witnessed an exponential growth since the early 1990s.

human rights and fundamental freedoms, and the IPU has continued to promote and defend these rights. To this end, the committee on the Human Rights of parliamentarians set up by the IPU over twenty years ago has continued to defend the human rights of members of parliament in order to help them play their role as guardians of human rights and freedoms to the full[77]. Indeed, in the last three years, IPU has reaffirmed its unshakeable belief in democracy as the system for governing a country in which the people exercise the right to make political decisions through representatives who are chosen by them and who are responsible to them. Besides, IPU strongly strives to uphold the view that democracy can only have real meaning if both halves of the population – men and women – take part in the decision making process on a basis of equality both in law and in practice. In realization of this, in 1994, the IPU adopted a comprehensive Plan of Action to redress the imbalance in the participation of men and women in political life. At the Fourth World Conference on Women, IPU's presence was forceful as the Union published a complete report on women in parliaments in which it provided details of when women obtained the right to vote and be elected in each one of the world's sovereign states and how many held seats in national parliaments over the last five years[78]. Mention must be made here of the fact that the most spectacular achievements of the Union's activities in the promotion of democracy in the last three years occurred under

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77 See Sorour, A.F., Parliamentary Diplomacy, (Cairo, 1997) p. 27.

78 At the Conference, IPU also organized a Panel discussion on Women's Right and Children's Rights.

its technical co-operation programme. Through this activity, the IPU offers advice and technical assistance to strengthen national parliaments[79].

Sorour opines that:

> the services the Union can offer in this field are unique and increasingly recognised as such in international circles because the Union can count upon the support of its membership, with parliaments in the south as well as in the north… In the last three years the Union has elaborated assistance projects worth at least 12 million dollars and has helped parliaments, identify funding from multilateral and bilateral sources of which two thirds has so far been found[80].

The IPU has also carried out a lot of activities in the promotion of international peace and security. In this particular respect, the IPU has been playing an important role in ensuring international co-operation which will shape a better world security. The primary aim of the IPU is to prevent armed conflict and war and to maintain and foster the environment for sustainable development[817]. In connection with this, IPU has championed the strengthening of multilateral regimes for the non-proliferation of weapons of mass destruction, small arms and light weapons and for disarmament. IPU in the recent past organised many hearings and conferences on arms control and disarmament. For instance at the April, 1999 conference, the IPU held a debate on the topic of parliamentary action to encourage all countries to sign and ratify the Comprehensive Test Ban Treaty[82] prohibiting all nuclear resting, to encourage universal and non-

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79 The political dialogue and negotiations on issues of democracy carried out by the IPU over the last three years have been supplemented by a rich programme to promote the parliamentary institution which has involved collecting and disseminating information on the role structure and functioning of parliaments.

80 Ahmed, op. cit. pp. 29-30.

81 See Annual Report of the Activities of the IPU of 2000.

82 Usually referred to as CTBT.

discriminatory nuclear non-proliferation measures and to work towards the eventual elimination of all nuclear weapons. That conference called for the commencement and early conclusion of negotiations on a non-discriminatory and effective verifiable treaty banning the production of fissile materials for nuclear weapons or other nuclear explosive devices. The effort was followed up in 1999 with the holding of a conference on security and cooperation in the Mediterranean in Ljubana, Slovenia at the invitation of the Slovenian Parliament[83]. The question of small arms and other weapons was also addressed in the context of the resolution of the 102nd IPU Conference in Berlin[84].

The IPU has also made tremendous contributions to the defence of human rights and humanitarian law. The IPU considers the promotion of human rights as an essential factor of parliamentary democracy and development. Human rights issues are a component of almost all substantive items placed on the agenda of the IPU conferences and are regularly raised by speakers on the occasion of general debate on the political, economic and social situation in the world. In addition, the IPU has a mechanism which enables it to deal with individual cases of alleged human rights violations. In 1976, the IPU set up a committee on the Human Rights of parliaments and entrusted it with investigating complaints of violations of the human rights of parliamentarians. For example, the committee sent a mission to Belarus to investigate the cases of several members of the 13th Supreme Soviet. The purpose of the mission, which

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83 The report of this conference placed emphasis on the question of small arms which have claimed 26 million victims since the end of the Second World War.

84 The theme of this conference was "Contribution of Parliaments to Ensuring Respect for and Promoting International Humanitarian Law", on the occasion of the fiftieth anniversary of the Geneva Conventions.

enjoyed all the necessary support and co-operation from the authorities, was to gather information on the cases to enable the committee to clarify a certain number of points on which information submitted respectively by the authorities and by the complainants was at variance. Two essential and original features of the IPU activities in this areas compared to other similar international human rights procedures are the fact that the IPU pursues the study of any case until a settlement is deemed to be satisfactory and the involvement of member parliaments in the follow-up given to the resolutions which the Governing Council adopts on individual human rights cases.

One other major activity of the IPU is in the area of Sustainable Development. Sustainable Development is one of the crucial subjects on today's world agenda. Indeed the issues that triggered the holding of the RIO Summit in 1992, the UN Conference on Environment and Development and its action plan Agenda 21, are just as valid today as they were five years ago[85]. For developing countries, the globalization of markets and means of production has not produced the expected economic success. While the global economy has quintupled over the last 45 years, the consumption of basic foodstuffs has tripled and of fossil fuels quadrupled the gap between the rich and the poor is still growing, there is increasing Third World debt, and environmental degradation. In view of this development, the IPU is determined through parliamentary actions, to close this gap. Accordingly, the IPU has set up a

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[85] For example, over production and over consumption by the developed nations in a manner that is not sustainable for the world, and the production patterns in the developing countries that are harmful to the environment because of the absence of environment friendly technology

committee for Sustainable Development to evaluate the whole situation and as a follow up, held series of conferences and hearings on such issues as Biodiversity[86] The IPU as an organisation of parliaments and an instrument of democracy and the expression of the rule of law believes that there is a close relationship between world and regional security and sustainable development, and that no economic development can be achieved without political stability and security. To this end, the IPU strives to ensure a functioning parliament all over the world as the most effective means of ensuring social and sustainable development. The IPU has therefore been supporting all major international initiatives in this field, such as the Food and Agricultural Organisation (FAO) special programme for food security in low-income food-deficit countries, which combines the philosophy of national responsibility, social equity and people's participation with sustained international action aimed at ensuring viable agricultural production in these countries. Besides, IPU has been a strong advocate in encouraging governments to adopt economic and social policies that are in full conformity with the principles and commitments of the World Food Summit[87].

2.4.3 The IPU Cooperation with the United Nations

The relationship between the IPU and the United Nations dates as far back as the League of Nations. In those days, the IPU resolutions were even

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86 See Results of the Proceedings of the 111th IPU Assembly and Related Meetings, 25th September to 1st October, 2004 Geneva Switzerland.

87 IPU also played a key role in the preparations for the special session of the UN General Assembly entitled "World Summit for Social Development and beyond: Achieving Social Development for All in a Globalizing World" also known as the Copenhagen + 5 Session held in Geneva 26th – 30th June, 2000.

published in the League's official Journal and the Secretariat of the League was represented by an observer at IPU Conferences. At the establishment of the United Nations, the IPU took up the question of future collaboration, and in a confidential letter dated 27th June, 1946, the IPU Secretary General[88] sought the advice of the then Deputy Secretary General of the UN, Adrianus M. Pelt on the matter. Referring to Article 71 of the UN Charter[89], and non-governmental organisations concerned with issues in its field of competence, he therefore enquired whether it might not be possible in any event to establish a relationship, among others, of information sharing and 'active' observer status for the UN secretariat in inter-parliamentary meetings.

It is worth mentioning here that, although it is clear that the IPU, even in 1946, saw itself as needing a different type of relationship with the UN, decision on the issue was overtaken by events. For by the time Adrianus Pelt replied[90], Economic and Social Council (ECOSOC); committee on arrangements for consultation with non-governmental organisations had already submitted its report to the UN. In the report[91] the committee adopted an extensive and non-differentiating definition of its own, of the term "non-governmental organisation" thus: "any international organisation which is not established by inter-

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88 Then Leopold Boissier.

89 Article 71 of the UN Charter provides: "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence. Such arrangements shall be made with international organisations and, where appropriate, with national organisations after consultation with the member of the United Nations Concerned".

90 On August 22, 1946.

91 See ECOSOC res. 72/3, 21 June 1946: ESCOR (11) 14, pp. 360 – 365. It is to be noted that Pelt A., enclosed copies of this report in his reply to Bossier, M. See ECOSOC res. 72/3, 21 June 1946: ESCOR (11) 14, Pp. 360 – 365. It is to be noted that Pelt A., enclosed copies of this report in his reply to Bossier, M.

governmental agreement". Besides, the committee's interpretation of Article 71 and particularly its view of the 'principles governing the nature of consultative arrangement', maintained a hard distinction between Articles 69 and 70 of the UN Charter[92], on the one hand, and Article 71[93], on the other. This therefore left little or no space for the essentially political character of the IPU, or for the development of a working relationship such as had been proposed by Bossier, M., and which had since emerged in practice consequent to the foregoing. In 1947, the IPU Executive Committee, in the absence of any other alternatives, applied for a consultative status with the UN under Article 71 of the UN Charter[94]. As the IPU developed over the next forty to fifty years, however, the consultative status became yet inappropriate for other practical reasons, particularly, in that it excluded the Union from working with the main political organs of the UN, particularly the General Assembly. Obviously, the value of cooperation in this field became recognised by the UN General Assembly itself in 1995 as it requested the Secretary General to take the necessary steps to conclude an agreement on co-operation with the IPU[95]. It is interesting to note that this agreement was signed the following year, on 24 July, 1996 by the then UN Secretary General, Boutros Boutros-Ghali, the President of IPU Council, Ahmed Fatty Sorour, and the IPU Secretary General, Pierre Cornillon[96].

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92 Allowing participation without vote in the deliberations of the Council.

93 The arrangements for consultation.
See Sterzel, op. cit. pp. 51-52, 81-82. And note also that at the time, this move was sharply criticized by same delegates at the first post-war IPU conference in Cairo, who feared that the Union might thereafter became a 'subordinate organisation".

95 Resolution 50/15 of 15th November, 1995.

96 Ibid.

Article 1 of the Agreement acknowledges respective responsibilities, and the UN recognizes the IPU as the World Organisation of parliaments; Article II provides for co-operation and consultation between the two organisations, while Article III provides for appropriate representation - this specifically entails reciprocal invitations to attend IPU meetings and conferences and plenary meetings of the UN General Assembly and for the IPU to also participate in the meetings of the main committee of the General Assembly and of subsidiary organs[97]. In the year 2001, IPU was granted observer status to the UN[98] and ever since then IPU has sought to enrich the work of the UN by organising debates on issues that figure prominently on its agenda. These debates serve the triple purpose of channelling parliaments' views to the UN, allowing Member of Parliaments to become better acquainted with the topics in question, and producing recommendations for follow-up action by parliaments and others[99].

In addition to the cooperation with the UN[100] the IPU has also signed co-operation agreements with the Food and Agriculture Organisation (FAO) and the United Nations Education, Scientific and Cultural Organisation (UNESCO)[101]. These agreements largely follow the model of that with the UN[102].

The UN High Commission for Human Rights and the IPU Council signed a MOU in 1999. This Memorandum of Understanding builds on the UN-IPU

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97 Entitlement to participate depends on there being a subject falling within the purview of the IPU's competence, activities and expertise.

98 See Report on activities of the IPU of 2001.

99 See 111th Assembly of the IPU held at Geneva, 28/9/04 to 1/10/04 Documents of 27/9/04 p. 1.

100 See Reports on activities of the IPU of 2003.

101 UN Doc. A/5L/456.

102 For example, the IPU is to be invited to participate as an observer at meeting, of UNESCO and have the right to take part without vote in debates on matters within its competence.

cooperation agreement and provides a framework of concrete activities that will jointly be carried out in the coming years between the IPU and the High Commissioner's Office. Also, in April, 1999 IPU signed an agreement of cooperation with the ILO. This agreement provides for consultations and exchange of information, mutual representation and areas of co-operation including the organisation of joint activities. It provides that the IPU can henceforth participate in the International Labour Conference with the status of an official organisation[103].

The attention paid to the goals, the international and representative character of the IPU is evident in its activities carried out over the years on various international issues. While IPU adopt resolutions of general nature, it seeks to focus its attention on the role of parliaments as guardians of human rights, on international humanitarian law, standards on democracy, the promotion of international peace and security, sustainable development and technical assistance.

Inspite of its tremendous achievements in the fore-mentioned areas however, the IPU does not have the resources to take on full range the activities it seeks to carry out on issues on the UN agenda. It has therefore been setting priorities and determining the issues which are sufficiently important and relevant to the work of parliaments.

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[103] See ILO Doc. GB.274/10/1, 224th Session, March 1999, Appendix, Art. 111.3.2.

CHAPTER THREE

THE LEGAL STATUS OF THE IPU

The period following World War II and the internationalization of democracy has been marked by a proliferation of world wide and regional associations of nations. The expanding number of international organizations, with many claiming identities as independent legal entities separate from their constituent states has created novel problems of legal status under international law and domestic law. Under international law, the status of international organizations is generally understood in the context of international juridical personality. Personality in this sense represents the capacity to act on the international level. However, such representation is not determinative of status within the legal system of any state. Issues of legal status of international organization may arise in a variety of contexts such as the capacity to sue and be sued, to make contract, to own property, their immunity from judicial process, the inviolability of their premises and documents.

3.1 THEORIES OF LEGAL PERSONALITY

To provide a context for deeper understanding of the legal status of the IPU, it is considered logical to examine some theories of legal personality. The fact that a human being is a person has been recognised by law from the earliest existence of human society. On the other hand, the concept of legal personality which presupposes that artificial things/ inanimate objects, are capable of receiving recognition and being treated

as "persons" by the law has developed into a legal doctrine and is now firmly established as part of most legal systems of the world.

According to Salmond,[1] different legal systems have given legal personality to artificial objects. For instance, the *hereditas jacens* (vacant inheritance) was a person under Roman Law. So was the Hindu idol in Indian Law. In Africa, certain idols, shrines, trees, rocks and rivers are not considered merely as sacred but also as possessing legal personality under customary law. In modern times, Associations - incorporate and unincorporated - have been given legal personality. Jurists have tried to rationalise and explain the phenomenon of artificial persons, and a number of plausible theories have been propounded on the subject.

3.1.1 The Fiction Theory

This theory is traceable to Sinibald Fieschi, Pope Innocent IV in the 13th century AD. Savigny, Salmond and Wolff are its main protagonists. According to this theory, the ascription of legal personality to artificial things is a fiction. They are not persons as such, but are merely treated as if they are persons, What therefore happens is that these artificial things are deemed to conform to the pattern or character of human beings for certain procedural purposes. Wolff says, "Whatever may be the nature of Corporations, all that interests us is that they are endowed by law with legal capacity as if they were human beings."[2] Savigny, however, places strong stress on the incomparable dignity and importance of the human

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1 See Salmond on Jurisprudence, 12th ed. (1966) p. 1.

2 Wolff, "On the Nature of Legal Persons' (1938) 54 LQR. 494.

person. "All law exists for the sake of liberty inherent in each individual, therefore, the original· concept of personality must coincide with the idea of man."[3] In other words, the idea of granting legal personality to artificial objects is purely for the convenience of human beings, no more, no less.

This theory appears to be historically correct because law was indeed originally concerned with man and only created artificial persons by analogy at a later stage of society's development. In customary law, the concept of artificial legal person was a late developer, and was made to imitate the characteristics of the human person. Thus in Nigeria, for instance, some idols are endowed with the right to exist and cannot be destroyed without some dire consequences befalling the perpetrator of such a destruction, while other idols or "gods" are deemed to eat, drink and even marry. These juristic persons also owe certain duties to the persons or communities recognising them, e.g., to make their women fertile, their farm yields high, their infants survive, or peace to reign in the particular community.

This theory implies that the personality of the artificial person is somewhat inferior to that of a natural person, though, according to Kelsen, there can be no justification for this conclusion.

English jurists embrace the fiction theory partly because it is a - political, non-pretentious, non-meta-physical and flexible.

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[3] F.K. Von Savigny, System des Leutigen romischen Rechts II, 2-3; 60. Cf. Dias, Jurisprudence, 5th ed. (1985) p. 4.

3.1.2. The Concession Theory[4]

In a sense, the Concession theory is a mere variation of the Fiction theory, and is held by the same jurists. Its premise is that corporate bodies within the state have no legal personality except in so far as the dignity of being a juristic person is conceded to them by the state. The only difference, therefore, between the Fiction and the Concession theory is that for the Concession theory, law is identified with the state but with the Fiction theory, this is not so. Although, both Savigny and Salmond thought that the two theories are compatible with each other, i.e., legal personality being conceded by the state by means of a fiction modelled on the real human personality, in its extreme form, in which the state is said to confer legal personality of exactly the same kind on human beings and artificial beings alike.

Since the concession theory tends to ascribe to the state unlimited power to deal with group associations, it is politically dangerous. It was used to justify the confiscation of Church property during the French Revolution. It could also be employed to attack Trade Unions and. other such groups in society. For instance, it could be used to ban or proscribe active or socially vocal groups in society. Hence, Wolff has criticised it as denying the principle of freedom of association.

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[4] Cf. Dias, op. cit., 268-269. In its rule by law approach to government, the Nigerian militocracy seems to embrace this theory in its routine proscription of various trade unions in the country.

Of particular significance is that the theory does not explain where the state itself gets its own legal personality from, or who conceded its personality to it. This question may be linked with the intractable problem that the supreme source of law cannot jurisprudentially be explained. That is, it cannot be identified in legal terms, but only by reference to historical or other social facts. Perhaps, it may be jurisprudentially necessary to trace the historical or social facts to the ultimate, God Himself as the Author of law and order.

3.1.3 The "Bracket" or "Symbolist" Theory[5]

This theory is an analytical approach to the idea of legal personality. Jhering is its leading proponent. According to it, only human beings are persons. Legal personality of an artificial body is ordered to facilitate the achievement of the purpose of the group concerned as if bracketing together all its individual members, together with their rights and duties so as to be able to treat them as a unit.

3.1.4 Hohfeld's "Procedural" Theory[6]

According to this theory, legal personality is simply a procedural formula being used to simplify for immediate application the legal relations between individuals comprising a particular group while the details of these relations are left to be worked out at a more 'convenient time. Hohfeld's postulate-is that only human beings have rights, duties and other possessions known to law and that all transactions are

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5 Salmond, op. cit., 329; see further, Curzon, L.B. Jurisprudence (1979) p. 7.
6 Dias, op. cit., 267.

conducted by them and they are the ones who are ultimately entitled and responsible at law.

The theory is concerned with an explanation of the legal personality of associations only without adverting to the position of other artificial persons having no human members.

It also fails to explain situations such as foundations for the benefit of mankind or for animals, nor does it take account of judicial policies that lead to divergent court decisions, such as, for instance, why some groups are treated by the courts as persons and others not, or why the "veil" or mask is lifted in certain cases but not in others.

3.1.5 The Realist Theory

This theory asserts that the so-called artificial person is a real person and not a fiction, nor is it dependent upon state concession for its existence. Gierke is the foremost proponent of this theory. Maitland and Dicey developed it.[7] According to them, the group is a living force with a real will of its own. Dicey declared:

> "When a body of men bind themselves together to act in a particular way for some common purpose, they create a body which by no fiction of law but from the very nature of things differs from the individuals of whom it is constituted."[8]

In other words, for this theory, it must be accepted that what exists in fact exists in law. Jethro Brown emphasised it better when he said that, rather than say that the Corporation is the creature of the law it will be

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7 See Gierke, Political Theories of the Middle Ages. See further, Maitland's Introduction Salmond, op. cit., 329 note (b). Cf. Dias, op. cit., 269.

8 Curzon, op. cit., ibid.

truer to regard it as an entity which has compelled the law to grant it official recognition. In reality therefore, the function of the state in the matter is declaratory, permissive and regulative rather than creative or constitutive.

3.1.5 Kelsen's Theory

Kelsen characteristically rejects the distinction being drawn between natural and artificial persons. To Kelsen, legal personality is always a matter of law. It is simply a capacity for rights and duties, and this capacity is the same whether conferred on human or artificial persons. The biological characteristics of human beings may distinguish them in fact from artificial persons, but the concept of legal personality has nothing to do with biology. Although the theory concedes that the human being may have a wider range of rights and duties than artificial persons, this does not alter the fundamental similarity in their legal personality.

Kelsen rejects the idea that "person" means an entity having claims and duties and says that in fact, the totality of claims and duties is the "person" in law. In short, it is “claims and duties” that constitute "person" in law and outside claims and duties, there can be no entity called person at law.

Kelsen's analytical approach is not concerned with the issues of policy, factors which often lead to variations in the decisions of the courts, nor is he concerned with the reasons why the "special rules" are

usually invoked in case of Corporations but not in the case of Partnerships, trade Unions etc. whereby the former are accorded recognition as legal persons but the latter are denied it. Kelsen's theory is sometimes referred to as the "Bundle" theory because, according to it, the legal personality of both natural and artificial persons is nothing but a bundle of rights and duties recognised by law.

3.1.6 The "Enterprise Entity" Theory[9]

The theory of the "Enterprise Entity" is an utilitarian theory of legal personality. An associate of Brinz's Purpose Theory, this theory asserts that the corporate entity is founded upon the reality of the "Enterprise Entity," i.e., the enterprise that underlies the group. Thus, when the corporate form is approved by law, this establishes a *prima facie* case that the assets, liabilities, activities and responsibilities of the body are part of the enterprise and are consequently treated as such by the courts. This theory explains the attitude of the law towards associations where the assets, liabilities, activities and responsibilities of the associations are not treated as being part of the enterprise. It also rationalises the situations whereby the law ignores the corporate entity by treating the members as individuals.

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[9] Berle, "The Theory of Enterprise Entity". d. Dias, op. cit. 267-268. (1947) 47 Columbia L.R., 343; Lord Wilberforce in BRITISH RLY. BOARD V. HERRINGTON (1972) AC. 877 at 911-922; (1972) 1 All ER. 749 at 769; DHN. FOOD DISTRIBUTIONS LTD. V. TOWER HAMLETS LOND. BOROUGH COUNCIL (1976) 3 All ER. 462 (1976) 1 WLR. 852.

3.1.7 The "Purpose" Theory

Although this theory was initially propounded by Brinz, it was Barker that developed it. According to the theory, the term "person" is applicable only to human beings since only human beings have the capacity of being subjects of jural relations. Those non-humans being ostensibly treated as "juristic persons" are not persons but merely "subject-less properties" created by man for the achievement of certain legal ends, but jural relations cannot vest in them. Thus, whereas real persons can owe duties towards these juristic persons, the latter cannot owe any duty towards the former.[10]

This theory cannot stand the test of modem legalism as associations and other juristic bodies do owe duties to human beings both under civil and criminal laws nowadays.

Some theories such as the Fiction and Realist theories confuse factual existence of a thing with its legal existence, by wrongly equating the one condition with the other. Thus, the Fiction theory contends that because a human being exists as a fact therefore he must have legal personality. Similarly, at the other end, the Realist Theory asserts that simply because an Association exists in fact, it must have legal personality. But, this seeming confusion can be avoided by distinguishing factual from legal existence. The Supreme Court of Nigeria

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[10] And where such duties are imposed or implied, they are unenforceable against the artificial persons directly.

did in the case of ***Gani Fawehinmi v. N.B.A***.[11] when it drew a distinction between an entity enjoying some recognition as a juridical body, but lacking juristic personality.

In the main, which of these theories represents the court's attitude in their administration of justice. According to Friedmann's critical observation, the answer is that:

> "While each of these theories contains some element of truth, none can easily by itself adequately interpret the phenomenon of juristic personality. The reason is that corporate personality is a technical device, applied to a multitude of diverse aggregations, institutions and transactions, which have no common political or social denominator, whereas each of the many theories has been conceived for a particular type of personality".[12]

3.1.8 Domestic Legal Personality of International Organizations

Legal capacity is generally regarded as the capacity to possess rights and duties under a specific legal system. The status of an international organization as legal, juridical or juristic person under domestic law is a prerequisite for entering into legal relationships and for being a party to legal proceedings before domestic courts. Thus, only an international organization endowed with domestic legal personality can be subjected to judicial proceedings in national courts. In practice, national courts do decline to exercise jurisdiction over disputes involving international organizations because of their non-recognition as legal person under domestic law. Thus, the issue of legal personality, both international and domestic, of international organizations has to be addressed in

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11 (1989) NSCC p. 43.

12 Funso Adaramola, Basic Jurisprudence (Lagos: Jet Printing Press, 1992) p. 145.

the context of immunity and other jurisdictional issues relating to international organizations. The case of **Manderlier v. Organization des Nations Unies and Etat Belge**[13] illustrates this point aptly. In this case, the United Nations was sued before a Belgian court. The court held that UN could not be sued before the Belgian courts because of its absolute immunity in accordance with the General Convention. The Civil Tribunal of Brussels explicitly held that the UN was competent to appear in legal proceedings in Belgium as a result of the legal personality it enjoyed in the territory of each member state by virtue of Article 104 of the UN Charter.

In another Belgian case of **Centre pour le development industriel v. X**,[14] the legal personality of an international organization as a prerequisite to bring suit was analysed. The plaintiff in this case was an international organization with its Headquarter in Brussels. It was set up within the framework of the Lome Conventions in order to facilitate the development of the industrial sector in the African, Caribbean and Pacific States. The defendant was employed as marketing adviser to the plaintiff. When the defendant's employment contract was unilaterally terminated by the plaintiff, the defendant sought and obtained an arbitral award granting him substantial damages. Thereupon, the plaintiff sued the defendant in a Belgian court seeking to annul the arbitral award. The defendant raised an objection to the effect that the action should be declared inadmissible because the plaintiff lacks domestic legal personality. The court upheld the objection of the defendant and the case was

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13 Civil Tribunal of Brussels, 11th May, 1966, Brussels Appeal Court, 15th September 1969.

14 Tribunal Civil de Bruxells, 13 March, 1992.

accordingly annulled. This case illustrates the point that international juridical personality is not enough to confer domestic legal personality on international organizations, especially where the international organization is sued before a court in a non-member State.

What then are the sources of domestic legal personality? As in the case of international legal personality, a treaty or a rule of customary international law may form the basis for the domestic legal personality of an international organization. Since questions of domestic legal personality become relevant primarily before national courts, the determinative rules must be the ones that are applicable under the national law. In this sense, the method of granting domestic legal personality depend primarily upon the domestic legal order.[15]

Further, international agreements or treaties setting up the international organizations do contain express stipulation either directly granting legal personality or imposing an obligation to provide for it domestically.[16] Most treaties constituting international organizations contain explicit provisions on the domestic legal personality of the organization in question.[17] Domestic legal personality of an international organization may also be provided for in agreements other than those establishing an international organization.

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15 C.F. Amerasinghe: "International Legal Personality Revisited" (1955) 45 Australian Journal of Public and International Law, p. 123.

16 For instance, the agreement between the United Nations and Australia for establishment of the European Centre for Social Welfare Training and Research of 24 July 1974 contained the following obligation for Austria: "The Host Government shall take the necessary steps to establish the Centre as an autonomous non-profit making entity, having legal personality under Austrian Law".

17 See Article 104 of the UN Charter, Article IX(2) of the IMF Agreement, Article VII(2) of the IBRD Agreement, Article XVI of the FAO Agreement, Article 39 of the ILO Agreement, Article 66 of the WHO Agreement, Article 107 of the ITU Agreement, Article 27 of the WMO Agreement, Article 12 of WIPO Agreement.

Multilateral treaties such as the UN General Convention[18] and Special Convention,[19] bilateral headquarters agreements and other treaties relating to the recognition of an international organization's status by a member or by non-member country are examples.[20]

It has been argued that some constituent treaties of international organizations not containing any provisions dealing with domestic legal personality[21] must be deemed to have explicitly conferred such personality.[22] This argument closely resembles the implied powers doctrine pertinent at the level of international legal personality.[23] For example, provisions contained in a treaty establishing an international organization concerning separate property of the international organization, the representation of the international organization, or providing for the capacity to own property, receive gifts, legacies etc. are evidence of such implicit legal personality.

Additionally, where the constitutive treaty does not contain provisions on domestic legal personality or where the issue of legal personality in a non-member state is concerned, custom becomes relevant in the determination of the domestic legal personality of such an organization.

When a national court is confronted with the issue of the domestic legal personality of an international organization, it is a rule of domestic law that

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18 Article 1(1) of the General Convention.

19 Article 11(3) of the Special Convention.

20 Article 7 of the OPEC Fund Headquarters Agreement with Austria of 1981 in which the Government of Austria recognized the juridical personality of the fund. See also Article 1(1) of the 1946 Interim Arrangement Between the UN and the Switzerland. Providing that the Swiss Federal Council recognizes the international personality and legal capacity of the United Nations.

21 For instance, the Universal Postal Union.

22 See Articles 113, 115 and 117 of the UPU Rules of Procedure.

23 Ibid.

determines the legal status of such an entity within the domestic legal sphere. Thus only domestic law can define or attribute the status of domestic legal personality. The incorporation of international rules concerning domestic legal personality may be achieved through various techniques such as adoption, general or specific transformation. Normally, the constituent treaty leave it to the state parties to design legal mechanisms to confer domestic personality. In Nigeria for instance, the constituent treaty must be enacted into law by the National Assembly in conformity with the provisions of Section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria which provides that no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. Domestic legislation on the issue of legal personality of international organizations become relevant in most legal order only when they are expressly incorporated by an Act of Parliament. Consequently, domestic legal personality of international organizations entirely depends upon the existence of domestic rules providing for such personality. Many countries have enacted legislation enabling them to confer domestic legal personality upon international organizations. In dualist counties, those provisions are necessary to implement international obligations because even if a domestic legal personality is granted in a constituent treaty, it becomes operative only upon national implementing measures. In UK for instance, the International Organizations Act of 1968 grants legal capacity of a body corporate to any organization of which the UK and one or more foreign states are members. In United States of America, Section 2(a)

of the International Organizations Immunities Act of 1945 provides for domestic legal status to be accorded to international organizations.

Closely related to the problem of domestic legal personality of international organization is the influence that member states should exert on the activities of international organizations. The extent and scope of influence of individual states on international organizations are usually provided for in the constitutional or internal law of the organization, its founding treaties, its organizational practice and rules. The argument for the protection of international organizations from the adjudicative power of national courts maintains that international organization should not be subjected to additional and external commands through any state organ, especially, the courts. This consideration was one of the main arguments raised in the UN **Amicus Curiae brief in the Broadbent v. OAS**.[24] To justify a scope of immunity for international organizations different from that of states. The UN reasoned that:

> Intergovernmental Organizations may be considered as collective enterprises of their member states. Their constituent treaties define precisely the influence each member is to have on the operations of the organizations and how that influence is to exercised generally through collective organs. If individual members could this exert additional influence on those organizations, largely through the for tuitions circumstances of where their headquarters, or the offices or officials or assets, happen to be located, this could drastically change the constitutionally agreed sharing of power within the organizations. Thus, the immunity granted by states to an intergovernmental organization is really their reciprocal pledge that none will attempt to garner unilaterally an undue share of influence over its affairs. [25]

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24 See "The Practice of the United Nations, the specialized agencies and the International Atomic Agency concerning their status, privileges and immunities study, prepared by the Secretariat". Year book 1967, Vol. II p. 229.

25 Ibid.

This position was also echoed by the European Commission of Human Rights in **Richard Waite and Terry Kennedy v. Germany**,[26] where the Commission accepted the protection from unilateral interference by individual governments as the main rationale for privileges and immunities. The Commission was of the view that:

> The constitutional instruments of intergovernmental organizations elaborately define their decision-making processes and in particular the type and degree of influence each government is to have in respect of the organization. It is therefore considered unacceptable for individual governments to be able, whether through executive, legislative or judicial organs, to require an international organization to take certain actions by commands addressed to the organization itself or to any of its officials.15

The decisions in **Broadbent v. OAS** and **Waite and Kennedy v. Germany** serve as a shield from domestic adjudication.

3.1.9 Evaluation of the Legal Status of IPU

Perhaps the oldest of the Inter-Governmental Organisations which has exercised considerable influence as an international organisation is the Inter-Parliamentary Union, which was established as far back as 1889 even before the United Nations. The essence of role of the IPU as an international organisation revolves on its possession of "international legal personality". It was generally believed that only states were subjects of International Law. However, one of the important development in contemporary International Law is the widening concept of international personality. It is now recognised that apart from states,

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[26] Ibid. see also the Fourth Report on relations between states and international organizations on the topic, status, privileges and immunities of international organizations, their officials, exports etc. extracted from the Yearbook of the International Law Commission, 1989, Vol. II(1) p. 157.

other subjects of International Law have emerged and can be conferred with international legal personality. What legal personality entails for international persons are not necessarily identical. This is so because one international person may have capacity for one activity but not for the other, while another international person may have capacity for the latter but not for the former, yet another may not have for both activities but for a third and so on[27].

In its advisory opinion, the ICJ also supports the above assertion when it observed as follows:

> the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights and their nature depends upon the needs of the Community[28].

Certain criteria have been set out by the advisory opinion of the ICJ in the ***Reparation Case*** to determine the international legal personality of inter-governmental organisations like the IPU. Firstly, it is settled that the question of international legal personality depends on the terms of the instrument i.e. statutes, charter etc establishing the organisation.[29] Schoutheete[30] has opined that the easiest way for an international organisation to acquire international legal personality is to include a specific mention to that effect in its constituting charter. Shaw[31] also asserts that if states intend the organisation to be endowed specifically with international personality this will appear in the constituent treaty

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27 Umozurke U.O. Introduction to International Law (Ibadan: Spectrum Books Ltd) 1999.

28 See ***Reparation for Injuries suffered in the Services of the UN*** (1949) ICJ 174.

29 Shaw M.N. International Law (14th ed) (United Kingdom: Cambridge University Press 4th Edition) 1977.

30 Shaw M.N. op. cit p. 909. See also article 210 of the EEC Treaty 1957 see also ***Costa (Flaminio) V. Enel*** (1964) ECR 585. See also Article 205 (1) EC Treaty, Article 6 first paragraph ECSC Treaty.

31 Op. cit .

and will be determinative of the issue. Applying this condition to the IPU, Article 1 of the Statutes of the IPU states that: *"the Inter-Parliamentary Union is the international organisation of the parliaments of Sovereign States".* The Article clearly evinces the intention of the founding states of the IPU to cloak it with international legal personality or capacity.

Secondly, the ***Reparation Case***[32] also laid down the "purpose, function and practice" principle of determining international legal personality. The principle is complementary to the first discussed condition. This is so because the mere mention in the constituting charter or statutes of an international organisation that it is endowed with international legal personality without showing in its statutes the functions, purpose and practice of the organisation which would accord it a legal space in the international plane would not give effect to the first condition. Shaw[33] opines that "personality on the international plane may be inferred from the powers or purposes of the organisation and its practice". This condition was settled in the ***Reparation Case*** *"supra"* where the ICJ noted that international legal personality was indispensable to the UN in order to achieve the purposes and principles specified in the Charter. The court:

> Acknowledged that its [i.e. UN's] members by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged[34].

The Court arrived at this opinion after a thorough examination of the UN Charter and relevant treaties and its practice to determine the constitutional nature of

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32 *"Supra".*
33 Shaw M.N. op. cit p. 909.
34 Op cit p.185.

the UN and the extent of its powers and duties. The ICJ also examined the obligation of members towards the UN, its ability to enter into international agreements and the provisions of Articles 104 and 105 which enable the organisation to enjoy such legal capacity privileges and immunities in the territory of each member states as a necessity for the fulfillment of its purposes and execution of its functions.

Applying the "purpose" and "function" principles to the IPU, the Statutes of the IPU give a clear purpose and functions of the organisation which accord it the capacity to act on the international plane. Article 1(2) of the Statutes[35] provide *inter-alia:*

> As the focal point for worldwide parliamentary dialogue since 1889, the Inter-Parliamentary Union shall work for peace and cooperation among people and for the firm establishment of representative institutions. To that end, it shall:
> (a) Foster contacts coordination and the exchange of experience among parliaments and parliamentarians of all countries;
> (b) Consider questions of international interest and express its views on such issues with the aim of bringing about action by parliaments and their members;
> (c) Contribute to the defence and promotion of human rights which are universal in scope and respect for which is an essential factor of parliamentary democracy and development;
> (d) Contribute to better knowledge of the working of representative institutions and to the strengthening and development of their means of action.

Subsection 3 further provides that:

> the Union, which shares the objectives of the United Nations, supports its effort and works in close cooperation with it. It also cooperates with regional Inter-Parliamentary organisations which are motivated by the same ideals

35 Statutes of Inter-Parliamentary Union as amended in October, 2007.

Flowing from the above provisions, it can very be categorically stated that the IPU has global focus. Its functions are directed towards encouraging worldwide parliamentary initiative for global peace and cooperation. This can only be achieved within the framework of an international legal capacity or personality.

Also, Article 3 of the IPU Statutes as amended, shows that the organisation draws its membership from parliaments of sovereign states (subjects of international law) represented by each state National Group. This therefore raises an irresistible conclusion that the IPU enjoys an objective legal personality derived from the intention of the members who have ascribed to it the functions and endowed it with the purpose in Article 1(2) of the Statutes. The above position no doubt satisfies the opinion of the ICJ in the ***Reparation Case***[36].

Furthermore, another important criteria for determining the legal personality or capacity of an international organisation is the treaty making powers or the capacity to enter into agreement of the international organization. These agreements could sometimes concerns the location of the headquarters of the international organization, the immunities and privileges enjoyed by its staff, immunities of the premises and property from search, requisition and confiscation and other forms of interference by the host state, exemption from local taxes except for utility charges and freedom of communication as well as the obligation of member states towards the organisation whenever the

36 ***'Supra'*** p. 179.

organizations presence or activities are conducted in member states[37]. It was held in ***Mendavo v. World Bank***[38] that the reason for granting the immunities to international organization was to enable them to more effectively pursue their functions and in particular to permit organisations to operate free from unilateral control by a member state over their activities within its territory. [39] Such agreements are binding on state parties to them and they are obligated under International Law to respect the agreement and cannot plead the provisions of municipal laws to obviate such international obligations[40].

The IPU has long fulfilled these criteria. For example, in 1971, the IPU entered into agreement with the Swiss Federal Council on the juridical status of the Union. The former expressly recognised the personality and the legal capacity of the IPU, due to it by virtue of its status and guaranteed the independence and freedom of action belonging to it as an international institution[41]. The status, privileges and immunities extended to the IPU and its staff parallel those due to other international organisations and indeed, those generally accorded in the context of diplomatic relations[42]. These privileges and immunities extend to inviolability of premises and archives of the Union,

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37 See e.g. UN headquarters agreement with the US for the UN headquarters in New York. UN Office agreement with Switzerland for the UN Office in Geneva in 1947. Note Similar agreements may cover regional offices.

38 92 ILR p. 92 at 97 to 99.

39 Shaw M.N. op. cit p.925.

40 See ***Applicability of the Obligation to Arbitrate Case*** [1988]ICJ report P. 12 see also p. 33 to 34

41 See Agreement between the Swiss Federal Council and the Inter-Parliamentary Union to settle the Juridical Status of the Union in Switzerland of 28 September, 1971 in particular Articles 1 and 2 note in Common with a number of other International organisation, the IPU is also party to the Jurisdiction of the ILO Administrative Tribunal.

42 See Article 21 Vienna Convention on Diplomatic Relations (1988).

exemption from all direct and indirect taxation[43]. Also, Article 6 of the agreement is of current importance as it grants freedom of access and residence, under which Switzerland agrees to facilitate the entry of all persons, irrespective of nationality, invited on official business by the IPU.

It is important to further note that under the practice of the IPU similar undertakings as above are accepted by States in regard to meetings on their territories of the Inter-Parliamentary Union.

In addition, evidence of the organization's capacity to operate on the international stage is to be found in the agreements for the holding of IPU conferences. These are generally signed by a President or Speaker of a host Parliament, but evidently as representatives of both Parliament and State. Such agreements contain binding obligations, financial and others that can only be carried out with state consent. The agreements[44] include not only financial undertakings but also commitment with regards to sovereign powers over the admission of individuals to state territory. Significantly, Article 5 of the agreements IPU has signed for decades with every host parliament of the IPU conferences provides:

> In conformity with the Union's principles, Inter-Parliamentary Conference can only be held if all the National Groups duly affiliated or requesting affiliation to the organization, as well as the observers on the list established by the Inter-Parliamentary Council are invited and if their representatives are assured of receiving the necessary visa for participation.

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43 See Article 3 (inviolability) 4 (fiscal Status) in the matter of customs clearance, Article 5 expressly declares that the IPU shall be subject to the same regulation as applicable to International Organisations.

44 See for example, the agreements by the IPU with the Parliament of the Russian Federation (1988).

The additional protocol makes further provisions in this regards under which the host National group is to make arrangements for the issuance of visas free of charge to delegates.

Furthermore, the Government of the United States of America on whose territory IPU established a liaison office in 1998 has likewise designated IPU as a public international organization entitled to enjoy the privileges, exemptions and immunities conferred by the International Organization Immunities Act[45]. The Act provide a legal capacity in regard to a public international organisation in which the US participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation and which shall have been designated by the President through appropriate Executive Order[46] as being entitled to enjoy such privileges, exemptions and immunities.

In 1999 the Secretary-General of the IPU, Mr. Anders B. Johnson in an attempt of further lay to rest issues concerning the legal personality of IPU sought and engaged the services of Ian Brownlie, QC and Guy Goodwin-Gill two prominent Professors of International Law whose opinion are very influential on issues of international law to determine:

> Whether the IPU as an international parliamentary, political and representative organisation, possess international legal personality, within the area of its functional responsibilities, whether it ought to be considered as an international organisation in international law, and if so, what are the legal implications of such status for the IPU's relations with government and other international organizations.

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45 See United State Department of State, Letter of 28 August, 1998 from Molly K. Williamson, Acting Assistant Secretary of State for International Organisation Affairs to Anders B. Johnson, Secretary-General IPU; Executive Order, 7 August, 1998, Inter-Parliamentary Union.

46 See United States International Organisation Immunities Act, 59 (1945).

In its advisory opinion Brownlie[47] after a careful examination of the Statues of the IPU, its rule and functions in international sphere, its cooperation with other international organisations, its procedure as well as public international law as it affects the IPU as an international organisation expressed the following opinion:

> The IPU possesses international legal personality and is an international organisation *sui generic* that is, it is an international parliamentary, political and representative organisation. It is a universal organisation, in that its membership is open to all parliaments satisfying the requirements of Article 3 of its Statutes just as the United Nations is open to all States satisfying the requirement of Article 4 of the United Nations Charter. Like other international organisation, it is representative in character and subject to the rule of law, and governed by its constitution.

Membership of IPU is reserved to parliaments that is, to the representative organs of sovereign States. IPU has been expressly recognized by the two States in which it is physically located, Switzerland and the USA, as an international organisation entitled to the appropriation of privileges and immunities. The IPU is recognised as having the capacity to act on the international plane in representing the interest of Parliaments and Parliamentarians. States and international organisations dealing with the IPU have recognised its standing authority and capacity to act on the international plane within the area of its functional responsibility as the international organisation of Parliaments… The IPU is empowered to deal on a worldwide basis with matters giving a parliamentary dimension and to cooperate with other competent organisation particularly those of the United Nations system. The General Assembly has

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47 See Brownlie I., on "The International Legal Personality of the Inter-Parliamentary Union" being an Opinion expressed on the instruction of the Secretary-General of IPU Mr. Anders B. Johnson - Genever 31st May, 1999.

recognised the IPU's unique status and its complementary role in providing the parliamentary dimension in international affairs… without seeking to anticipate all the consequences of IPU's international legal personality and international organisation status, it can be concluded nevertheless that it enjoys powers commensurate with its functions and representative organs of states to make agreements with the United Nations, specialized agencies and other international organisations, and to intervene with states on matters relating to the human rights of parliamentarians and otherwise the terms of its statutes[48].

The above opinion coming from renowned Professors of international law cannot be faulted and represents an affirmation of the international legal personality of the IPU. It is important to note that in April, 1999 the Council of the IPU authorized its President and the Secretary-General to conclude on behalf of the IPU an agreement of cooperation with the International Labour Organisation that had previously been approved by the latter's governing body. The agreement provides for consultations and exchange of information, mutual representation and areas of cooperation, including the organisation of joint activities. It also provides that the IPU can henceforth participate in thee international Labour Conferences with the status of an official international organisation[49]. In presenting the agreement for prior consideration and approval by the ILO Committee on legal issues and international labour standards, the ILO administration stated that:

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48 See Brownlie et. al, Op. cit "Opinion Statement on International Legal Personality of IPU".
49 See ILO Doc.GB.274/10/1.274th Session March (1999) Appendix, Art. III.3.2.

> as an association of parliaments the IPU has a special status and in 1975 the governing body approved the recognition of the jurisdiction of the ILO Administrative Tribunal by the IPU. This approval implied recognition of the IPU as the equivalent of an Inter-governmental organization for the purposes of the statute of the Tribunal since, under the statute: the Tribunal was at the time open only to international inter-governmental organisation[50].

The above recognition further establishes the international legal capacity of the IPU. The above analysis shows that by all ramifications, the IPU has satisfied the criteria of international law to justify its status as an international legal personality. Subscribing to the decision of the ICJ in the ***Reparation Case***[51] that the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, we can without hesitation justify our conclusion that the Inter-Parliamentary Union as an international inter-governmental organization of parliaments of sovereign states enjoy international legal personality commensurate with its functions and representative character.

50 See ILO Doc. GB 274/LIIS/1, March 1999.
51 Supra.

CHAPTER FOUR

THE NIGERIAN LEGISLATURE

4.1 EVOLUTION OF LEGISLATURE[1] DEMOCRATIC GOVERNANCE

A parliament is an institution consisting of a group of people who are elected to make laws and to represent their constituents in discussions that concern their needs, aspirations, concerns, interests, opinions and feelings with a view to factoring them into the policy-making process. This explains why Polsby has called the Parliament the "nerve-endings of the polity"[2]. Members of parliaments not only represent the diversity and differences in their respective countries, they also mediate among the various interests they represent; approving budget based on national needs.

Furthermore, Parliaments perform oversight on the executive arm of government to ensure that the executives implement policies legally, effectively, transparently, and according to the intents and purpose of the Parliament. They are critical stakeholders in the fight against corruption and graft; reducing poverty; domesticating treaties; international agreements; memoranda of understanding and fostering international cooperation with a view to promoting

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1 The term "Legislature" and "Legislation" derive from the Latin root word lox, meaning "law". The lawmaking branch of a government is the legislature. In the United States, the national legislature is the Congress, comprising the Senate and the House of Representatives. In Great Britain, it is the Parliament, comprising the House of Lords and the House of Commons. It is also known as Parliament in Canada, where it comprises the Senate and the House of Commons. In Russia, it used to be the Supreme Soviet of the Union of Soviet Socialist Republics. In Nigeria, it is the National Assembly, comprising the Senate and the House of Representatives. In general their functions include initiating, writing, considering, and amending laws. Broadly defined the legislature process includes all factors and functions involved in the enactment of laws. The legislature in any truly democratic country has the power to pass laws (statutes) which all citizens must obey. We, therefore, we speak of a congressional system, a parliamentary system, debating, moving motions, voting, passing bill, and appropriations, we are referring to the legislature and its functions.

2 Polsby, N: Presidential Elections: Contemporary Strategies of American Electoral Politics: (New York, Free Press, 1988) p. 368

conflict resolution at home and abroad. There is a growing focus on the role parliament can play to help prevent conflict, bring peace to conflict situations, and resolve the issues which lead to conflicts.

Parliaments grow and develop in a continuum of maturity and improvement. Rubber-stamp parliaments where they exist simply approve whatever the executives request them to approve without vigorous and rigorously discussing or debating same. They tend to simply endorse or "rubber-stamp" whatever they are requested to approve. In such cases, a very strong leader dictates what should be done in the parliament. However, as they acquire more skills, power, maturity and sophistication, they grow and develop into Transformative Parliaments. These parliaments not only represent diverse societal interests, but they also shape budgets and policies. They amend legislation and budgets received from the executive arm of government, initiative their own policy proposals, reach out to citizens, and conduct public hearings. Within the continuum between Rubber-Stamp and Transformative Parliaments are a number of Emerging Parliaments at various degrees of maturity and sophistication.

Such parliaments exercise greater influence over government policies and perform oversight more effectively. Thus, a combination of history, tradition, psychology of the people and political awareness makes up some of the factors that determine where parliaments fall on the above continuum of parliamentary growth.

Modern democracies are characterized by shared decision making between the legislature, executive and judiciary. The constitution does provide the framework for the interaction while in practice; precedent and habit fill in the gaps to create the political system under which a government operates on a daily basis. Because circumstances differ considerably in each country, democracies vary widely in how political power is shared and the relative influence each branch of government has over policy formulation.

The need for strong parliaments stems from the very meaning of democracy: "rule by the people"[3]. In order for the people to rule, they require a mechanism to represent their wishes, make policies and oversee the implementation of those policies. Parliaments serve these critical functions and provide fora for debate on vital issues.[4] Many parliaments are dominated by the executive branch because they lack the organization, financial resources, equipment, experienced members and staff to serve as a mature and autonomous point of deliberation in the policy process."[5] Amid a legacy of executive branch dominance, legislators in these countries are frequently unable to envision, let alone create, a level playing field in which the parliamentarians can meaningfully participate in lawmaking and check executive power.

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3 http:www.rulebythepeople.org

4 Parliamentary scholar Philip Norton remarks, "parliament is the essential link between citizen and government." "Strengthening Parliament" (London: Commission to Strengthen Parliament, 2000), p. 4. While acknowledging the lawmaking and oversight functions of legislatures, Secretary General of the Inter-Parliamentary Union Anders B. Johnson notes, "the very essence of parliament is representation." "Key- Note Address," Second International Conference on Legislative Strengthening, Wintergreen Resort, Virginia, 5 June 2000, p. 1.

5 Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore: Johns Hopkins University Press, 1999), p. 98.

Despite the executive dominance in many countries, the relative balance of power between the legislative and executive branches in a country can be changed. If African parliaments are going to play a central role in governance, they need to build strong parliamentary institutions, assert their authority in the regular lawmaking or oversight functions, or through specific structural changes via constitutional amendment, legislation or rules of procedure.

The type of governmental system under which a country operates fundamentally influences the structure and tenor of legislative-executive relations. Most democracies may be classified as either parliamentary or presidential. Some systems have blended features of both and are known as hybrid systems.[6]

The classic example of parliamentary government is the Westminster system. In this system, the head of government and cabinet are members of the ruling party in the legislature. The government is dependent on the support of the legislature and is subject to removal from office by a vote of no confidence. Members of parliament, chosen in fair and meaningful elections, select the head of government in a formal parliamentary vote that may follow internal negotiations among party leadership. The legislature has the power both to appoint and dismiss members of the government. In addition, while the prime minister in a parliamentary system typically possesses greater political power

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6 Additional information on differences in governmental design can be found in a United Nations Development Programme document entitled, "Governing Systems and Legislative-executive relations." Available at: http://magnet.undp.org/doc/parliament/governing%20system.htm

than fellow ministers, the cabinet as a whole tends to operate in a collegial manner. Decisions are generally reached by consensus.[7] The well-established convention of "collective responsibility" often dictates that a minister who wishes to publicly disagree with fellow cabinet members must first resign from the cabinet.[8]

Collective responsibility is further bolstered by standards that protect the confidentiality of government discussions.[9]

The United States is an example of the classic presidential model that separates the legislative and executive into two distinct branches with their own independent electoral mandate. It is therefore possible and not uncommon to find situations of "divided government," where the members of the legislature and its officers belong to a party different than that of the president. The legislature in this system can remove the president by impeachment which requires a super-majority vote. Impeachment proceedings usually require that the officer is guilty of gross misconduct in the performance of the functions of office or some jurisdiction, be found to have acted improperly. The vote of no confidence in the Westminster parliamentary system is a function of political

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7 *Ibid*. For additional information on the collective nature of ministerial decisions, see Michael Laver and Kenneth A. Shepsle, eds. *Cabinet Ministers and Parliamentary Government* (Cambridge: Cambridge University Press, 1994), pp. 298-300.

8 For a simple description of "collective responsibility" in cabinet decision-making, see the New Zealand Parliament website at http://www.dpmc.govt.nz/cabinet/guide/1.html#1. See also, John P. Mackintosh, *The British Cabinet* (London: Stevens and Sons, 1997), pp. 531-536.

9 In Ireland, the Constitution provides that "the confidentiality of discussions at meetings of the Government shall be respected in all circumstances save only where the High Court determines that disclosure should be made." [Art. 28§4.3] Available at: http://www.irlgov.ie/taoiseach/publication/constitution/english/contents.htm.

support or lack thereof. A president appoints[10] and dismisses members of his cabinet. Presidential cabinet members, like their parliamentary counterparts, wield significant power over their respective agencies. Unlike parliamentary ministers, however, they tend to be advisers and subordinates to the president, rather than potential successors.[11]

An increasingly common option combines elements of both parliamentary and presidential systems. France represents the classic case of this mixed or hybrid system. There, the electorates choose both the parliament and the president. The president then appoints the prime minister and the cabinet based on proportional party representation in parliament which may require the president to appoint a prime minister from a different party than his own. This cohabitation increases political competition within the executive branch.[12] Because the hybrid system incorporates aspects of both presidential and parliamentary systems, it has been argued that in practice it operates as one or

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10 In the presidential systems of Nigeria, the Philippines, and the United States, the legislature plays a role in executive appointments. Legislative authority varies, from the power of outright rejection, to an advisory role (for example, the U.S. Senate's "advice and consent" on presidential appointments). Legislatures in some presidential systems possess the ability to censure cabinet members, a process which leads occasionally to their dismissal by the president. For additional information, see Shugart and Carey, *Presidents and Assemblies*, pp. 106-130; and David Close, ed., *Legislatures in the New Democracies in Latin America* (London: Lynne Rienner Publishers, 1995).

11 Arend Lijphart, ed., *Parliamentary Versus Presidential Government*, (New York: Oxford University Press, 1992), p. 3.

12 The result of cohabitation in the French case was the division of policy arenas; the president traditionally assumed primary responsibility for foreign affairs and the prime minister assumed control over domestic issues. Such a strict division is not the case today, however, as Prime Minister Lionel Jospin (of the Socialist Party) and President Jacques Chirac (of the Neo-Gaullist party) have come to a bipartisan agreement on French foreign policy. "Background Notes: France, June 1999," U.S. Department of State, Bureau of European Affairs. Available at: http://www.state.gov/www/background_notes/france_9906_bgn.html.

the other depending on whether the president and the parliamentary majority are of the same party."[13]

For a long time, political governance has continued to pose significant challenges to both the executive and the legislature. The judiciary similarly has had to face challenges and pressures because of bad governance. Nigeria attained political independence in 1960 with a parliamentary system of government with a bicameral legislature comprising of the Senate and the House of Representatives at the Federal level and a unicameral legislature at the regional level.

The effort towards forming constitutional government started gathering greater momentum during the seventeenth and eighteenth centuries when powerful middle class people emerged in Western Europe challenging the political absolutism of ruling aristocracies.[14] The democratic nature of the revolutionary movements during this period put governments under pressure and succeeded in making the government responsible for their acts.[15] In Great Britain, the parliament successfully rebelled against the political absolutism and arbitrary rule of the Tudor Kings which eventually resulted in the 1688 English Revolution. The British system owed much to the revolution hence the principle

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13 Michael L. Mezey, "Legislative-Executive Relations," in George Kurian, ed., *World Encyclopedia of Parliaments and Legislatures* (Washington, DC: Congressional Quarterly Books, 1998), p. 781. Also, see Arend Lijphart, "Theoretical Observations," in Juan L. Linz and Arturo Valenzuela, eds., *The Failure of Presidential Democracy* (Baltimore, Md.: Johns Hopkins University Press, 1994).

14 Akintola A. Jimoh, Law, Practice and Procedure of Legislature, Learned Publishments Ltd, Lagos, 1999 p. 6.

15 Professor A.V. Dicey, The Law of the Constitution (1st Ed.) 1885, pp. 2000-2002.

of parliamentary sovereignty which forms the cardinal basis of the British democratic tradition.

The revolutionary events in England spread to America and the rest of Europe.[16] The walls of British imperialism and monarchical dominion over America were pulled down in 1776 by the America Revolution which gave way for the emergence of the American Congress and planted the seed of democracy based on the American Constitution and the declaration of the right of man. France presents the most celebrated history of the democratic tradition where oppression and human rights subjugation were more popular and entrenched than other countries of Europe. This was characterized by suppression and servitude and epitomized in pronouncements of Louis XVI and Marie Antoinette who during the great march for freedom by the French people on the street of Versailles at the dawn of the revolution ordered for more bread to be baked, to satisfy the demand of the people for "bread". Events of the early years of the French Revolution soon proved to the monarch that what the French people wanted was more than bread.[17]

As a result of the revolution which broke out in 1789, the French people constituted their National Legislative Assembly, and on December 1792, a criminal indictment was filed against the King by the French National Assembly. Louis XVI was charged with treason[18] by using national resources to pay troops raised by émigrés abroad and with attempting to overthrow the Constitution.

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16 The Beard's New Basic History of the United States, pp. 107-111.

17 Grant & Temperley, Europe in the Nineteen and Twentieth Centuries 1789-1950, 6th Ed. (ed) Lillian M. Penson, Longman 1952 pp. 13-50.

18 Similar provisions are contained in the Nigerian Constitution, Section 1(2) and (3) of the 1979 Constitution of the Federal Republic of Nigeria State.

The Assembly unanimously voted for his conviction and he was found guilty. Louis XVI was publicly guillotined on January 21st 1793 and that was the origin of the French formidable democratic order.

The history of legislative governance and constitutionalism in Nigeria like most developing countries has been a chequered one. The British Colonial Government produced various Constitutions for Nigeria[19]. These Constitutions were promulgated by British proclamations. Pursuant to the proclamations various legislative Houses were created at various interval of time at different regions of the country. The legislature was not given full law making powers as they were intended to be only deliberative Houses.[20] In other words, the Legislature was a mere window dressing and toothless institutions. In discussing the evolution of the legislature it will be imperative to look at the political system of Nigeria generally.

4.2 THE NIGERIAN FEDERAL STRUCTURE

Although the origin of the Federal system of Government in Nigeria could be traced back to 1914 when the Northern and Southern group of provinces were amalgamated to form the political entity called Nigeria, the administration of the two entities remained unaltered until much later.[21] In terms of periodization, one can safely say that the era of formal federal structure began in 1946 when Sir Auther Richards, then Governor of Nigeria, promulgated a

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19 These were the 1922, 1933, 1946, 1951 and 1954 Constitutions.

20 B.O. Nwabueze, A Constitutional History of Nigeria, Longman Chapters 2 and 3, 1982.

21 Timothy Ibikunle Ojo, The Nigerian Legislature: A Historical Survey Vol. III, ASCON Legislative Studies Series, ASCON Press Lagos, 2007 Chapter I.

Constitution[22] which opened the political space to accommodate the diverse groups for greater participation by the people in the governance of their own affairs.[23]

The Richard's constitution introduced a federal structure that took a tripartite form in terms of the Northern, Eastern and Western regions. Regional Legislative Councils were created for these regions. However, the Richards Constitutional arrangement was criticized as being an imposition on the country since it did not derived from the people.[24] Secondly, the constitution did not give the Regional Assemblies legislative powers.

Accordingly, in order to correct the major errors of the Richards Constitution, Sir John Stuart Macpherson after extensive consultations, introduced a new constitution which vested legislative powers on the Regional Assemblies. In the arrangement, the House of Representatives replaced the Legislative Council. It had 148 members consisting of 136 regional representatives, six ex-officio members and six special members while the President of the House was appointed from outside.[25]

Under the arrangement, each of the Regions sent representatives to the Centre by nominating from among their own members in the respective Regional Houses of Assembly and Chiefs in the North and the West and in the Regional

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22 Charles, without consultation with the generality of the people.

23 Timothy Ibikunle Ojo, Ibid, p. 1.

24 But Sir Richards, after a close study of the political papers of his predecessor in office, consulted with his top officials and also sought views of some members of the Legislative Council as well as top level members of the public who, regrettably, were remote by their life style, from the masters.

25 Timothy Ibikunle, op. cit. at p. 2. And see also B.O. Nwabueze, A Constitutional History of Nigeria.

House of Assembly in the East. These representatives were made spokesmen for the respective Regions. The resultant effect of this arrangement was that the Centre was very strong while the Regions were weak.[26] The Federal Legislature was also competent to legislate on all matters within regional competence.

The Kano riots of 1953 brought out a significant weakness of the 1951 Constitution,[27] which seemingly introduced a unitary system. Consequently, a full-fledged Federal System of Government was introduced by the 1954 Constitution which secured to the Federal and Regional Governments an autonomous existence with a full apparatus of government such as Legislative Assembly, the Executive and the Judiciary. The McPherson Constitution was reviewed, following which the political parties[28] and the imperial power agreed on:

- a better federal constitution for the country with the removal of the residual powers from the Centre to the Regions;
- self-government in 1957 for any of the three Regions which might want it indeed, both the West and East achieved self government in 1957, and the North allowed suit in 1959;
- Lagos, as the Federal Capital to be separated from the West.

The Macpherson Constitution was reviewed in September, 1957 to enlarge the Central House of Representatives, headed by a Prime Minister in the person of Alhaji Sir Abubakar Tafawa Balewa. In 1959 the Federal House of

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26 The Regions were given powers only over a limited range of matters as specified in the Constitution and over such other matters as the Federal Legislature might in its discretion delegate to them, any power so delegated being revocable by the Federal Legislature.

27 See Nwabueze, Loc. Cit.

28 Timothy Ibikunle Ojo, op. cit. p. 4.

Representatives passed a motion for Nigeria's Independence. Federal elections were held later that year, resulting in two of the three major parties, Northern Peoples' Congress and the National Council of Nigeria and the Cameroon, later the National Council of Nigerian Citizens forming a coalition government and the third party, the Action Group forming the Opposition.

Nigeria became an independent sovereign State on 1st October 1960 with a parliamentary system of government.[29] On October 1st 1963, Nigeria became a Federal Republic.[30] In 1964, there was a general election into the Federal Legislature but no single party emerged as majority. Thus, the NPC, NCNC and a faction of the AG called the United People's Party formed the Government with the remaining faction of the AG forming the Opposition.

After the army interregnum a second civil regime came into being, but now under a presidential system of government recommended by the Constituent Assembly and approved by the Supreme Military Council.[31] The present system of government in Nigeria derives from the Constitution of the Federal Republic of Nigeria 1999. The 1999 Constitution like its predecessor, the 1979 Constitution, is based on presidential system of government.[32] The political system is based upon the principles of democracy embodying a plurality of

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29 This system had a Prime Minister with executive functions and a ceremonial Head of State – the Governor-General – as the Queen's Representative. In like manner, each of the three Regions was headed by a Premier with a Governor as the ceremonial Head. In August 1963, a fourth region, the Midwestern Region was created out of the Western Region.

30 Here, the title of 'Governor-General' was changed to 'President' thereby shedding off the monarchical attachments, but remained within the British Commonwealth of Nations of which the Queen is the Head.

31 See Federal Republic of Nigeria Official Gazette (Extraordinary No. 38, Vol. 69 of 11th August, 1978: A27) for the 1979 elections, the Federal Electoral Commission had exercised its power under the Federal Electoral Decree of 1978; and for the 1983 elections, under the Federal Electoral Act 1982.

32 The President being the Chief Executive. In it, the Executive, the Legislature and the Judiciary function *pari pasu*, each within its own separate (but not water-tight) compartment.

parties, periodically seeking the peoples' mandate as their representatives in the National and State Houses Assembly.

4.3 SOURCES OF LEGISLATIVE PRACTICE AND PROCEDURE

The Standing Orders of a Parliament are the Rules resolved upon and adopted by that Parliament to regulate its own proceedings and practice mainly, the conduct of its business, and to some extent, the conduct of its members and of others involved in its business. They form the bulk of practice and procedure of a Legislative Assembly for the conduct of legislative business and without doubt, the success or failure of such an Assembly is dependent on the quality of its practice and procedure. Good practice and procedure are essential for the growth and development of any legislative body and for its stability. According to **Griffith** and **Ryle:**

> Procedures are not sacrosanct; they are servants, not masters. Procedures, once adopted, must be followed but if they do not work well, or produce results acceptable to those whose operations are conditioned by them, they can and should be changed. The House remains the master of its own procedures. It can do what it likes, not individual members not majority or minority groups and not the Speaker or its Officers and unless and until the House, collectively and formally changes its procedures, they are binding on all its members and officers[33].

The authority for the adoption of a body of rules for the conduct of legislative business in the National Assembly and State House of Assembly, referred to as the Standing Orders, is derived from sections 60 and 101 of the 1999 Constitution which provide that:

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33 Mr. E.U Ojogwu: ''Standing Orders in Parliamentary Proceedings and Committee System'' being a paper presented at a Two-day Retreat for National and State Houses of Assembly, held at the Nicon Luxury, Hotel Abuja, ''12th -15th January, 2009. p. 1.

> subject to the provisions of the Constitution, the Senate or the House of Representatives or the State Houses of Assembly shall have power to regulate its own procedure, including the procedure for summoning and recess of the House.

In contrast to other areas of public law, legislative law, practice and procedure do not emanate predominantly from the provisions of statutes or the decisions of courts. Indeed, it is a subject hardly taught in institutions of higher learning except cursorily as an aspect of a subject dealing with Constitution or the political set-up in a country. Resort to fundamental texts and law reports may be of very little assistance. This is so because of the basic fundamental principle of every democratic system, which unequivocally admits the inherent right of each legislature to regulate its own affairs.[34]

Arising from the provision of sections 60 and 101, it is clear that the legislature has power to regulate its practice and procedure. In the National Assembly, these regulations are contained in the Standing Orders.[35] The practices and procedure at the State Houses of Assembly are not at variance with the system in the National Assembly. Thus to understand the workings of the legislature, it is necessary to be familiar with contemporary practice and procedures of modern legislatures as well as formal rules.[36] The following are major sources of legislative laws, practice and procedure.

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34 Dr. Okwu v. Dr. Wayas and Senator Wali, New Nigeria 23rd March, 1981, p. 3. See also the United States case of Roudebush v. Hartke 405 US 15 (1972).

35 It is a fact that newly elected members would need time to learn and appreciate the workings of the legislature. Nowadays orientation or 'freshers' courses are arranged to accelerate the learning period.

36 Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 21st Ed. (ed) C.T. Boulton et al. London: Butterworths 1989 pp. 1-6.

4.3.1 Practice and Procedure

Legislative laws, practice and procedure develop largely from the ways and manner in which legislatures conduct their businesses everyday. Some of these rules and practices are laid down by the legislative Houses in the form of orders, standing orders or resolutions, which are repeatedly adopted and recorded in Journals of the legislative Houses. The reading of Bills and the use of select committees are some of the established practices which legislatures adopted over the years. At times some of these practices establish new rules or invent new form of machinery for the conduct of the business of the House. These established practices of a legislative House form a good precedent just like the decisions of the courts.[37] Whenever a case emerges which could not be readily decided based on known rules of practice, the practice is for the House to appoint a committee to search the journals for precedents of what had been done in like cases in the past. The House could also order proceedings from the journal, which are conducted on analogous or related cases. Such proceedings are read at the table and necessary adoption follows.[38]

4.3.2 Standing Orders

The Standing Orders provide a second major source of legislative laws, practice and procedures. The Standing Orders are read and applied in conjunction with the practices of the Houses, as they do not form an exclusive code of conduct of business. They are usually used to enhance and expedite actions and progress on the various transactions before the House by way of

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[37] Professor Jack Davies, Legislative, Law and Process, West Publishing Co. 1975. pp. 200-213.

[38] Akintola A. Jimoh, Law, Practice and Procedure of Legislature, op. cit. p 10.

reducing the length of time spent on debates. Standing Orders are developed by way of motions put before the House and debated before being passed by the House. Once such motions are duly passed, a further order of the House is required through a resolution declaring such rulings as a Standing Order of the House.

4.3.3 Ad-Hoc Orders and Resolutions

Legislatures often make orders and resolutions to regulate the conduct and transactions of certain special legislative businesses. They are used in most cases for a limited set of objectives and matters during the session when they are made. For this reason they are sometimes regarded as sessional order. Where however no period is fixed for their application or duration, legislative orders and resolutions are of permanent validity.

4.3.4 Rulings from the Chair

In legislative practice, the ruling of the Speaker (or President of Senate) is like the judgment of a court. Rulings from the chair include rulings from the Chairman of committee of the whole House. Consequently, where a question is put before the House, the House is expected to reach a decision which is pronounced by the Speaker. Once the Speaker pronounces his ruling, a precedent is thus established which becomes binding and applicable in subsequent or further proceedings of the House.[39] It is the right of the Speaker to interpret the provisions of the Standing Orders. His rulings constitute precedents by which subsequent Speakers, Members and Officers are guided.

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[39] J.A.G, Griffith and Michael Ryle, Parliament Functions: Practice and Procedure, Sweet and Maxwell, London, 1989, pp. 141-149, 179.

Such precedents are collected and in the course of time, formulated as rules of procedure or followed as conventions. Rulings of the Speaker cannot be questioned except on a substantive motion. For instance on Wednesday, 2nd August, 2000, Hon. Bunmi Bewaji, citing the Rules of Privilege, referred to a publication in some national dailies on contracts awarded in the House of Representatives. He claimed that his privilege had been breached and he had prepared a compendium of the allegations drawn from the said publications. He sought the leave of the House to raise the issue under Matters of Privilege**.** Rising on a Point of Order, Hon. C. N. Ughanze claimed that the issues raised by Hon. Bewaji did not amount to a breach of his privilege and should not be entertained. In a landmark Ruling, the Hon. Speaker dismissed Hon. Bewaji's claim of alleged breach of privilege as unparliamentary and unprocedural, an abuse of parliamentary practice and process and should not be entertained. That Ruling has since become a precedent.

4.3.5 Constitution

The 1999 Constitution is replete with provisions on practice and procedure in the conduct of legislative business[40]. Where a country, as is the case in Nigeria, has the benefit of a detailed constitution, the constitution constitutes the primary source of legislative law and practice. For instance, under section 50 (1) (a) and (b) creates the offices of the President of the

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40 Section 9, prescribes the mode of altering provisions of the Constitution; Section 54, on Quorum of the Senate or the House of Representatives; Section 58, on the mode of exercising Federal legislative power in respect of Bills of general nature and Section 59, on the mode of exercising Federal legislative power (money Bills); Section 67, on the right of attendance of the President of the Federal Republic of Nigeria to attend any joint meeting of the National Assembly or any meeting of either House of the National Assembly for the purposes stated therein.

Senate, Deputy President of the Senate, Speaker of the House of Representatives and the Deputy Speaker of the House of Representatives. These officers are to be elected by the members of that Houses from among themselves. The section also provides the way and manner in which they shall administer the conduct of business within their respective legislative Houses. Similarly, sections 52 and 57 prescribe the procedure for summoning, dissolution, language and voting. Sections 58-62 of the constitution prescribe the modes of exercising legislative powers on money and non monetary Bills and the use of committees within the legislative Houses. The constitution constitutes the primary source of legislative law, practice and procedure in Nigeria. This may not be so in some other jurisdictions where constitutions are largely unwritten and where same are not as elaborate as the Nigerian Constitution.[41]

4.3.6 Judicial Decisions

Judicial decisions are other primary sources of practice and procedure in parliaments. In *Nigeria, few judicial decisions* were recorded which formed precedents in proceedings in the two Chambers of the National Assembly on the constitutional and powers of the National Assembly. One of such cases involved the determination of whether the Electoral Act, 2002 was validly passed into law by the National Assembly by its veto of the President of the Federal Republic of Nigeria vide a motion instead of the constitutional requirement of two-thirds of the members of the two Chambers. The Court of Appeal held on procedure for

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[41] Legislative Houses (Power and Privileges Act), Cap.208, Laws of the Federation of Nigeria, 1990.

passing a bill into law without Presidential assent as required by Section 58 subsection (5) of the Constitution that the specific provision of the Constitution with which such Bill must comply to become law without the requirement of the assent the President is: "the Bill is again passed by each House by two-thirds majority." The Court held that the words 'again', 'passed' and 'two-thirds majority' are essential requirements of Section 58(5). Consequently if a Bill must become law without Presidential assent, it must fulfill the following essential conditions:

(a) it must once more pass through all the seven stages which it went through first before it was sent to the President for assent; and

(b) the repeat passage must be by two-thirds majority of the total number of members in each House of the National Assembly.[42]

There is no provision in the Constitution for the National Assembly to override the veto of the President by a mere motion. Similarly in the case of **Mallam Nasir Ahmed El-Rufai V the House of Representatives & 2 Ors**[43], the court was called upon to determine the extent and scope of investigatory power of the House of Representatives.

The appellant was at the material time leading to the action, the Director-General of the Bureau for Public Enterprises, (BPE) Abuja. In the exercise of its investigative powers under the 1999 Constitution of Nigeria the Respondents invited the Appellant to appear before the House in respect of its investigations into the privatization of NITEL. After the House sitting, the Appellant had cause

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42 Mr. E.U. Ojogwu, Loc. Cit.
43 Mr. E.U Ojogwu, Ibid.

to answer and address questions on matters arising from the investigation which the Respondents regarded as contemptuous and defamatory of the House.

Accordingly, the House issued a letter Ref: NASS/CHR/116/11 dated 20th March, 2002 summoning and compelling the attendance of the Appellant before the House Committee on Ethics and Privileges which was mandated by the House to look into the alleged utterances by the Appellant. The letter was signed by the 3rd Respondent. The questions that the Appellant wanted the Court to determine were:

(i) Whether having regard to the provisions of section 4 (2), (3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 which confer legislative powers on the 1st, 2nd and 3rd defendants, it is part of their constitutional duty and powers to investigate as contained in their letter reference No. NASS/CHR/116/11 dated 20th March, 2002 to the plaintiff and signed by the 3rd defendant issues of alleged defamatory statements by the plaintiff;

(ii) Whether having regard to the contents of the defendants' letter reference No. NASS/CHR/116/11 dated 20th March, 2002, addressed to the plaintiff and signed by the 3rd defendant, the defendants have not already determined the rights and obligations of the plaintiff without having been heard in that regard;

(iii) Whether having regard to the defendants' letter reference No. NASS/CHR/116/11 dated 20th March, 2002, addressed to the plaintiff and signed by the 3rd defendant, the defendants are not serving as complainant and Judge in their own course".

On whether the reason for investigation of a public department by the Ethics and Privileges Committee of the House of Representatives complied with the situations under which it is empowered, the Court observed that the crucial question was whether when the 1st defendant sent the letter of 20th March, 2002, to the plaintiff to appear before its Ethics and Privileges Committee, was it engaged in the making of a law within its legislative competence or to expose

corruption and inefficiency in a public department? The Court resolved that the answer was in the negative because it was apparent that the 1st defendant was displeased with the conduct or utterances credited to the plaintiff. That this was the intention of the 1st defendant which was made clear in the invitation letter which stated that the plaintiff had published defamatory matters concerning the defendants. The Court further held that 1st defendant had also determined that plaintiff's conduct and utterances were contemptuous and a breach of its privilege and having made that determination, the referral of the matter to its Committee on Ethics and Privileges for investigation could only be in the further pursuit of the decision earlier reached.

On what the House of Representatives should do if it is of the view that the plaintiff had committed an offence under section 24 of the Legislative Houses (Powers and Privileges) Act**[44],** the Court held that *Under section 32* of the Act if the 1st defendant was of the view that the plaintiff had committed an offence under section 24, all it could do was to give information in writing through its Speaker to the Attorney-General of the Federation so that the plaintiff could be prosecuted but having determined that the plaintiff had committed an offence against it, the duty which the law imposes on the 1st defendant was clear. There was nothing left to it or its committee to further investigate, once a determination was made that an offence had been committed. The forgoing clearly illustrates the impact of judicial decisions on the Legislature in strengthening and developing its rules of practice and procedure.

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44 Cap. 208, Laws of the Federation, 1990. See section 32.

Other sources of parliamentary practice and procedure are Sessional Orders. While the Standing Orders are permanent Rules, Sessional Orders are Orders and Resolutions of the House the duration of which is expressly limited to the Session in which they are made. Further, motions are other sources of practice and procedure. A motion is any proposal made for the purpose of eliciting a decision of the House. It must be phrased in such a way that, if agreed to, will express the decision of the House. There are four issues here in the light of practice and procedure.

First, the motion must be well researched to ensure that issues therein are not matters for legislative action within the jurisdiction of any of the Standing Committees of the House and should be so treated. Furthermore, sponsors of motions that call for development of infrastructure of any kind whatsoever must ensure that there is financial provision in the Appropriation Act to deal with such matters. Parliament should never act in vain. The second issue is the manner of seconding motions and amendments. When a Motion is moved as proposed in the Order Paper, it is enough for a seconder to arise in his place and say "Mr. Speaker, Sir, I beg to second". It is unwieldy and untidy for a seconder to repeat the words of the motion as proposed. This will go a long way to save legislative time. The third issue is the need to avail Members every Friday of the week of copies of the Notice Paper which spells out the weekly business of the House. The advantages are obvious. Members are acquainted of forthcoming legislative business and work towards it. The quality of debate will be enhanced and informed decisions are made.

The fourth issue is that no Motion must be sprung on the House without notice and as prescribed in the Standing Orders on the procedure governing motions.

Instances abound of abuse of certain provisions of the Standing Orders contrary to their meaning and intent. Abuse of the provisions of the Standing Orders after they have been adopted and are binding as earlier stated, is tantamount to abuse of the legislative process. Such abuses not only erode the authority of that Legislative House, they cast enormous doubt on its integrity and credibility. Abuse of provisions of the Standing Orders often stem from inability to interpret and apply its provisions in the course of proceedings and this can do incalculable damage to the quality of legislative decisions and legitimacy of the entries in the Votes and Proceedings. It can also lead to disorder and waste of precious legislative time. What is more, it can expose a legislative House to ridicule. Personal explanation is another common feature in our legislative practice. Personal Explanations arise mainly from what is reported about a Member in the Media, through what is said in debate but no controversial matter may be brought forward nor may debate arise. The Rule provides that the proposed statement shall be submitted in extensor to the Speaker when leave to make it is sought. The Standing Orders of the House of Representatives, provides that no Rule shall be suspended except by a vote of two-thirds of the Members voting, a quorum being formed. Frequent suspension of provisions of the Standing Orders may affect the ordinary routine of Legislative business. A motion for the suspension of relevant provisions of the

Standing Orders may only be moved if the substance of the motion is relevant to an item of business on the Order Paper. However, because the procedure for suspension of rules in the Standing Orders is tedious and because our practice is still evolving and unsophisticated, every effort should be made to restrict its use to:

(i) facilitating the progress of business through the House;

(ii) extending time limits for speeches;

(iii) enabling a particular item of business to be called on forthwith.

Because no legislative measure can be sprung on a House of Assembly without adequate notice, the Committee on Rules and Business must advertise every substantive motion on Notice to acquaint Members of such Motions before scheduling them for debate. Abuse of this procedure stems from attempts to smuggle Motions for debate. Privileges are the rights enjoyed by a Legislative House collectively and by the Members of that House individually conferred by the Legislative Houses (Powers and Privileges) Act, 2004 and other statutes, practices, precedents, usages and customs. These privileges are contained in the Legislative Houses (Powers and Privilege) Act. This means that no Member can be sued or prosecuted for anything he or she says as part of the proceedings of the House or any of its Committees. However, according to Erskine May**,** it becomes the duty of each Member to refrain from any course of action prejudicial to the privilege which he enjoys, as absolute privilege does not attach to words spoken by Members other than when participating in "proceedings in Parliament".

In the course of legislative practice, it is not uncommon to see Members on the Floor claiming that their privileges have been breached outside the precincts of the Assembly and in places unconnected with the performance of their legislative duties. Individual Members can only claim privilege in so far as any denial of their rights, or threats made to them, would impede the performance of their functions or the functioning of the House. It is important to note the distinction between breach of legislative privileges and abuse of fundamental rights. In the latter case, recourse should be made to the Courts and not to the House. The Rules of practice in parliament can be altered once they are adopted. The Standing Orders of House of Representatives provides for the mode of amending any or part of its procedures as any Member of the House desiring to do so shall give notice of such amendments in writing to the Speaker giving details of the proposed amendments. The rule of procedure is desirable to promote orderly and businesslike consideration of questions that come before it for determination. The Rules of practice and procedure once adopted must apply to all persons. They should be certain and consistent. The consequences of abuse of the provisions of the Rules of practice and procedures includes chaos in the conduct of legislative proceedings, image problem, erosion of the integrity of the House, poor public perception of the Legislative House, lack of respect for the legislature as an institution and mediocre performance and unethical behaviours.

4.3.7 Committee System

In parliamentary democracy, the Committee System assumes great importance since parliament by its very nature cannot have complete oversight over government and all its activities. Modern legislatures have therefore created among other devices, Committees through which they strive to achieve effective surveillance over the executive arm of government. Committees enable members of the public to participate in the legislative and governance processes by either appearing before the Committees or sending memoranda to air their views on the government and give suggestions on how operation of government could be improved. The principal purpose of Parliamentary Committees is to perform such functions which the parliament in its corporate form is not well fitted. The Committee system is particularly useful in dealing with matters which on account of their special or technical nature are better considered in detail by a small number of Members rather than by the House itself. The system also saves the time of the House for discussion of important matters. Committees take the Legislature to the people and allow direct contact with members of the public when engaged on hearings, visits or inspections. In addition, Committees oversee and scrutinize the activities of the Executive branch of government and thus contribute to effective governance.

In respect of their formal proceedings, Committees are extensions of the House emitted in their inquiry by the extent of the authority delegated to them but governed to a large extent in their proceedings by the procedures and practices as those that prevail in the House that appointed them. Consequently,

Committees have the legal empowerment to order the attendance of witnesses, the production of records and papers. The authority for the appointment of Committees of the National Assembly of Nigeria is derived from section 62(1) and (2) of the1999 Constitution which provide that:

(i) the Senate or the House of Representatives may appoint a Committee of its Members for such special or general purpose as in its opinion would be better regulated and managed by means of such a Committee, and may by resolution, regulation or otherwise, as it thinks fit, delegate any functions exercisable by it to any such Committee.

(ii) The number of members of a Committee appointed under this section, their terms of Office and quorum shall be fixed by the House appointing it.

Section 62(4) of the 1999 Constitution also provides that:

(i) nothing in this section shall be construed as authorizing such House to delegate to a Committee the power to decide whether a Bill shall be passed into law or to determine any matter which it is empowered to determine by resolution under the provisions of this Constitution, but the Committee may be authorized to make recommendations to the House on any such matter.

Legislative Committees may be classified as Special Committee, Standing Committee, Committee of the Whole, Ad-hoc Committee and Joint Finance Committee.

(i) Special Committees. These Committees may be referred to as Machinery Committees as their work largely relates to the operations of the Senate or the House or a State House of Assembly. In the House of Representatives, they are: the Selection Committee, Rules and Business Committee, House Services Committee, Public Petitions Committee, Public Accounts Committee

established in the 1999 Constitution, and Committee on Media and Public Affairs.

(ii) Standing Committees. They may be referred to as Portfolio Committees and oversight the activities of Ministries, Agencies and Parastatals of the Executive branch of government.

(iii) Committee of Whole. The House of Representatives resolves itself into a Committee of the Whole to consider a Bill in detail. A Committee of the Whole may also be used to consider Reports of its Committees and recommendation arising from such Reports.

(iv) Ad-Hoc Committees. These are Committees appointed by the House to perform such duties as the need may arise and they stand dissolved at the end of their assignments.

(v) Joint Finance Committee. This is a Committee of both the Senate and the House of Representatives appointed pursuant to section 59 (2) of the 1999 Constitution to examine all money Bills with a view to resolving the differences between the two Houses. Where in any case it fails to resolve such differences such a Bill shall be presented to the National Assembly seating at a joint meeting and if passed at such joint meeting shall be presented to the President for assent.

Legislative Committees of both the National Assembly and State Houses of Assembly perform the following functions:

(i) conduct oversight on executive agencies under their jurisdictions ;

(ii) scrutinize measures and bills (draft laws or legislative proposals) assigned to them;

(iii) conduct hearings on bills, and other measures assigned to them, and thereby provide mechanism for expression of viewpoints by groups and individuals on matters of public interest;

(iv) perform adjudicative functions by settling disputes and investigating measures referred to them pursuant to section 88 of the 1999 Constitution; and

(v) consider annual budget estimates of executive agencies under their jurisdictions.

The Committee system enables parliaments to operate in a less formal and less partisan atmosphere, thus making it possible for Members to consider measures or legislative proposals with less control from political party leaders and the executive branch of government. It facilitates specialisation and division of labour reducing to some extent the high demands on the time of lawmakers. It simplifies the complexity and technical details of legislative proposals and thus makes the work of the House in Plenary easier during the final stage of decision-making on legislative proposals.

4.4 LEGISLATURE AND GOVERNANCE

With globalization, there is a growing revolution in governance. All over the world, governments, leaders and people are grappling with issues of authority, legitimacy and power of which the most significant aspect of this governance revolution are growing demand for democracy, human rights and

public participation; global pressure to enhance state effectiveness; and worldwide debate about the appropriate balance between the state, civil society orgranisation and the market place. As a result, state institutions have to redefine their roles to improve performance. The parliament is a vital democratic institution serving as a bridge between the state and society by carrying out legislative, oversight and representative functions in way that strengthens the good governance values of accountability, transparency and participation. Constitutional governments all over the world recognize basically three arms of government, the Legislature, the Executive, and the Judiciary. In the spirit of constitutionalism each arms functions within the limit of its powers as prescribe by the constitution without interference from the others.[45] However, contemporary practice has shown that interrelationship and interdependence of the three arms is imperative.[46]

In countries adopting the British Westminister, there is a fusion of legislative and executive powers, while the countries adopting the American tradition do experience well defined separation of powers.[47] Thus, regardless of the system of government adopted, governance is a partnership among the various arms.

The reality of this can be seen through the making of Bye-Laws, Regulations, Rules of Procedures and subsidiary legislations. The 1999

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45 ECS Wade and A.W. Bradley, Constitution and Administrative Law, 10th Ed. Longman New York, 1986, pp. 47-60.

46 Chief Bola Ige SAN, "Legislative Process and Lawyers" being a paper delivered at the Seminar of Continuing Legal Education, Gateway International Hotel Otta, December 1992.

47 Vicki C. Jackson "Federalism and the Limits of Law: Printz and Principle?" Harvard Law Review, vol. III No. 8, June 1998 (1998) pp. 2180-2198

Constitution of the Federal Republic of Nigeria creates the Legislature, the Executive, and the Judiciary[48]. The Constitution made considerable effort to recognize the principle of separation of power by dividing the powers of the Federal Republic of Nigeria, among the three arms of government[49]. However, the concept does not mean complete isolated existence of the three arms of government.

4.4.1 The Powers of the Legislature

One basic feature of federalism is the division of power between the various tiers of government. Power is divided between the federal, state and local governments. Usually, this division of power is made not only among the tiers of government but also between the various arms of government at the various levels.[50] The legislature has its power segmented between the Federal and State Legislatures on the one hand and between the state and the local government on the other hand. And unlike the British parliamentary system, under the Nigerian system, the constitution and not the legislature is supreme. The implication of this is that legislative powers conferred on legislative Houses must be exercised in strict compliance with the provisions of the constitution.[51] Any legislation that contravenes the provisions of the constitution is liable to be

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48 See sections 4, 5, and 6 of the 1999 Constitution of the Federal Republic of Nigeria.

49 B.O. Nwabueze, "Nigerian Presidential Constitution. Longman, 1979-83 pp. 23-25. The legislative power of the Federation is vested in the National Assembly under section 4, Executive power of the Federation is vested in the Executive President under section 5 while the judicial powers are vested in the courts established under the constitution by virtue of section 6.

50 Peter C. Ordeshook and Olga Shretsora "Federalism and Constitutional Design" Journal of Democracy, January 1997 pp. 27-43. See also the case of Dr. Basil Ukaegbe v AG Imo State (1983) All NLR 179.

51 Professor Jadesola Akande "Legislature and the Democratic Process" paper delivered at Continuing Legal Education Association seminar at Gateway International Hotel Ota, Ogun State Nigeria, December 1992, pp. 25-27. See also section 1(1) of the 1999 Constitution, and see AG Lagos State v L.J. Dosunmu (1989) All NLR 504.

declared null and void. This was clearly demonstrated in the case of Attorney **General of Bendel State v Attorney General of the Federation and 22 Ors**[52] where the Supreme Court declared an Act of the National Assembly *ultra vires* and unconstitutional.

Section 4(1) of the 1999 Constitution states that the legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives. In the exercise of its powers, the National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive legislative list set out in part 1 of the second schedule to this Constitution.

However, the power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive legislative list shall be to the exclusion of the State Houses of Assembly. Apart from the powers vested in the National Assembly under the Exclusive legislative list, the National Assembly can make laws under the concurrent list contained in part II of the second schedule in the constitution. Thus, by virtue of section 4 (5) of the 1999 constitution, where there is a conflict between a law made by the National Assembly and a law made by a State House of Assembly, the law made by the National Assembly shall prevail.

The section provides:

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52 (1982)3 N.C.L.R.I See also (1983) All NLR 208.

> If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall to the extent of the inconsistency be void.

This is a common principle in the practice of Federalism. In addition and without prejudice to the powers conferred by subsection (2) of section 4, the National Assembly has power to make laws with respect to any matter which it is empowered to make laws in accordance with the provisions of the Constitution.

4.4.2 Functions of the Legislature

The principal function of the National Assembly and one from which it takes its distinctive character and place in the governmental structure, is that of law-making.

Section 4(2) of the Constitution provides:

> The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof….[53]

The appellation, 'Legislature' creates the impression that lawmaking is the only function of the legislature.[54] The impression is misleading. The functions of the National Assembly are thus of three types:[55]

(a) Those involving the exercise by resolution or by simple approval of constitutional power;

(b) Legislation;

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53 See S 4 (6) and (7) for similar provisions in respect of State Legislatures.

54 See B.O. Nwabueze, The Presidential Constitution of Nigeria, C. Hurst and Co. Ltd (London) 1982 p. 232.

55 Ibid.

(c) The general function of criticism and scrutiny of the administration of government.

4.4.3 Resolution or Simple Approval

The distinction between resolution and legislation is vital. Resolutions are the methods by which the legislature exercises its constitutional powers. As a method for exercising constitutional power, it is simply a decision on an individual case. It lacks a generality of application to persons and things, which is the hallmark of a law.[56] Usually a resolution does not involve elaborate process,[57] since all that is required is a substantive motion by a member, seconded by another. The following are the matters that may be determined by resolution:

- Presidential declaration of war with another country (approving resolution at a joint session required;[58]
- Proposal for the creation of a new state;[59]
- Declaration of economic activities to be managed and operated exclusively by the Federal government;[60]
- Removal of the President of Senate or Speaker of the House of Representatives;[61]

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56 Ibid.

57 Resolutions do not have the characteristics of legislation which involves careful study of the issue(s) based on facts, consultation with various interests groups on the matter, formal presentation in the form of a Bill, followed by debates drawing out the merits and demerits of the matter and clause-by-clause examination in committee and if passed will need the President's assent.

58 S. 5 (4) (a) of the constitution.

59 S. 8 (1) (d) ibid.

60 S. 16 (4) (a) ibid.

61 S. 50 (2)(c); ibid.

- Extension of the life of the National Assembly or of the President's tenure of office beyond four years because of a war involving the territory of Nigeria and which in the President's opinion makes it impossible to hold elections;[62] and
- Directing investigation in aid of legislation or for the purpose of exposing corruption, inefficiency or waste in the execution or administration of its laws or in the disbursement or administration of funds appropriated by the Assembly;[63]
- Ordering investigation into allegation of gross misconduct by the President or Vice-President (two-thirds of all members;[64]
- Acceptance or rejection of a report by an investigating committee finding the President or Vice-President guilty of gross misconduct (two-thirds of all members;[65]
- Prescribing the number of special advisers and their remuneration and allowances[66];
- Approval of a proclamation of a state of emergency made by the President (two-thirds of all member and extension of such a proclamation beyond six months[67].

Where in the legislative lists, the National Assembly is required to designate any matter or thing or to make any declaration, it may do so either by an Act of the National Assembly or by a resolution passed by both Houses of the National

62 S. 64(2) and S. 128 (1) ibid.
63 S. 88 ibid.
64 Ss. 143 (3) and (4) ibid.
65 S.143 (a) ibid.
66 S. 151 (2) ibid.
67 S. 305 (2) ibid.

Assembly'. The Assembly's power in this respect relates to the declaration of any road as Federal trunk roads, designation of any internal waterway as an international or inter-states waterway, declaration of port as Federal ports, designation of occupations as professional occupations and of parks as national parks, declaration of ancient and historical monuments and records and archeological sites and remains as of national significance or importance; designation of any agricultural produce as an export commodity, designation of goods or commodities as essential goods or commodities for purposes of price control; declaration of sources of water as sources affecting more than one state; designation of antiquities or monuments; and designation of any professional education as within Federal legislative competence. The matters that require the approval of the Senate without the formality of a resolution are the deployment of any member of the armed forces on combat duty outside Nigeria[68]; proposal for the boundary adjustment[69], alteration of Senatorial districts or federal constituencies by the electoral commission following upon a change in the number of states in the federation or upon a census pursuant to an act of the National Assembly;[70] appointment of a Vice-President in the event of a vacancy[71] and revocation of a proclamation of emergency[72].

The functions enable the National Assembly to ensure that the appointment and removal of important public functionaries are not abused for purely personal, sectional or partisan motives. Furthermore, the functions are

68 S 5 (4) (b) ibid.
69 S 8 (2) (b) ibid.
70 S. 71 ibid.
71 S. 146 (3) ibid.
72 S. 305 (6) (d) ibid.

meant to ensure that the country is not dragged to war needlessly on the whims of a reckless president and that the deprivations and repressions of a state of emergency are not inflicted on the people by the president unless justified by the exigencies actually existing in the country. They also ensure that the country's affairs and its resources are not mismanaged through corruption, inefficiency or waste, and that in the last resort the nation is rid of a president who flagrantly violates the constitution or grossly misconducts himself in other ways.[73]

4.4.4 Legislation

"Legislation" has been described as among all inventions of man the one fraught with the gravest consequences, more far-reaching in its effect even than fire and gunpowder.[74] The National Assembly is the repository of the entire legislative power of the federal government. Legislation has severally described as an instrument of control and coercion of the individual and society and the most far-reaching and crucial power in the government. It is the expression of the supreme power in the state, the distinctive mark of a country's sovereignty, and the index of its status as an independent state. Sir Henry Maine rightly observed that:

> It is largely by means of legislation that administrations …react to the need for basic changes in the economic, social and political structure of the country …. The energy of legislatures, is the prove characteristic of modern societies[75].

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73 B.O. Nwabueze, op. cit. p. 234.

74 F.A. Hayek, Law, Legislation and Liberty (1982), p. 72 in Constitutional Democracy in Africa, Vol. II, Spectrum Books Ltd Ibadan, 2003 chap. 7. p. 181.

75 Sir Henry, S. M: Popular Government (London, Liberty Fund Ing. 1977) p.23.

It has been stated also that the necessity for legislation as the basis for governmental action stems partly from the principle that under the modern constitutional practice there are limits to the exercise of governmental powers.[76]

Legislation is thus a crucial factor that distinguishes government in Africa before and since the inception of colonialism. It is one of colonialism's greatest legacies to Africa. Government in pre-colonial African society was essentially the rule of custom and the force behind the government was largely in the nature of brute, unregulated force.

The role and importance that legislation plays in a democracy requires special mention as it liberalizes government, ensures regularity in its administration, and checks arbitrariness. The requirement that laws are made in accordance with pre-determined rules of procedure is perhaps the best guarantee of regularity. Regularity in the administration of government enables the individual to know in advance how he stands with the government, and when the latter is planning to interfere with the course of his life and activities. The process of legislation commences with legislative proposals in the form of a bill, with the wording of the provisions fully set out for a ponderous process of long-drawn debates in the Assembly and its committee during which the

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76 See B.O. Nwabueze (op. cit) where he cites examples of the intimidating volume of legislation poured out each year by the state shows the extent the population is subjected, in its affairs and activities, to regulation of various kinds by the state under sanctions of one form or another: from 1960-1979 the Federal Government of Nigeria enacted 627 laws, excluding the even more formidable volume of subsidiary legislation (rules and regulations) issued under them. Laws enacted by the state during same period accounted also for quite a considerable number. The Nigerian Criminal Code, in some 521 sections, punishes as criminal offenses a wide variety of acts or omissions by the ordinary citizens in the course of the lives.

substance of the proposed law and the meaning and implication of its wording are examined in detail.

It may well seem that the machinery of committees, hearing and long debates which characterizes the legislative process of a democratic government may be time-consuming but it has an important virtue of minimizing the incidence of arbitrary and ill-thought-out legislation. Dicey in his book, The Law of the Constitution,[77] states that it serves to "prevent those inroads upon the law of the land which a despot … might effect by ordinances and decrees …or by sudden resolutions". Legislation also helps to enhance the authority and fixity of law enacted through that process. The process of consultation with interested groups such as trade unions, trade and professional associations and other interested sections of the community which precede the introduction of a bill in the legislative assembly, is designed to serve the same purpose. In an ideal setting, even the seemingly simple function of drafting involves interviews and consultation with various stakeholders. As stated earlier, legislation is the most fundamental, the most far-reaching and the most prone to autocratic use. In this connection, the admonition of Lord Bryce is well worth nothing. He states that in the field of legislation:

> The danger of doing too much is a serious danger not only because the chances of error are manifold, but because the law ought to undergo as few bold and sudden changes are possible …. Even the certainty of law is out to suffer if legislation becomes too easy, for the impatient autocrat may well be tempted, when some defect has been discovered, to change it forthwith, and then to

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[77] A.U. Dicey, The Law of the Constitution, 10th Edition (1960) p. 407 cited in Ben Nwabueze op. cit. p. 191.

> find that the change has been too sweeping, so that steps must be taken backward, with the result of rendering doubtful or invalid transactions which have occurred in the meantime …. In reforming the law of a country the risk of going slow is less serious than that of going too fast.[78]

This is not a justification for inaction or for unwarranted delay, especially where bills of urgent national importance, like an annual appropriation bill are concerned

4.4.5 Limits of Legislative Power

The legislative power of the National Assembly relate to the power to make laws for the 'peace, order and good government of the federation and any part thereof' with respect to the matters within its assigned sphere of competence.[79] The phrase 'peace order and good government' is not a delimitation of the purpose for which the power is given, in the sense that a law must be for peace, order or good government in order to be valid. The phrase is simply a legal formula for expressing the widest amplitude of legislative power exercisable by a sovereign legislature. A law cannot therefore be challenged on the ground that it is not for peace, order and good government. In Obayuwana, V The Governor of Bendel State and Others,[80] Mr. Justice Uwaifor stated 'that the motives of any legislative act do not affect its validity.' In addition, T.M. Coolery, in his book 'principles of constitutional law,'[81] stated that:

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78 James Bryce, Studies in History and Jurisprudence, Vol. 2 (1901) pp. 317-318.

79 S 4 of the Constitution of the FRN 1999.

80 Suit MO. B/25/80 of 24^{ib}/80. See also Radio Corp. Property Ltd v Commonwealth (1937) 59 C.L.R 170 at 185; Huddart Parker Ltd v Commonwealth (1931) 44 C.L.R. 492 at 515, 516.

81 T.M. Coolery, Principles of Constitutional Law (2nd edn., 1891), 160-1. The rule was applied by Chief Justice in Marshall in 1810. Dissenting in United States v Constantine, 296 U.S. 287, 298-9 (1935), Justice Cardozo spoke of 'a wise and ancient doctrine that a court will not inquire into the motives of a legislative body'.

> The validating of legislation can never be made to depend on the motives which have secured its adoption, whether there be public or personal, honest or corrupt …. To make legislation depend upon motives would render all statute law uncertain, and the rule which should allow it could not logically stop short of permitting a similar inquiry into the motives of those who passed judgment. Therefore the courts do not permit a question of improper legislative motives to be raised, but they will in every instance assume that the motives were public and benefiting the station.

The reasoning behind this is that when legislating on any given subject-matter for example, provision of water or drainage facilities, its sponsors whether the government, a legislative committee or a single individual, are likely to be motivated by a variety of reasons for sponsoring it, which may be public or private or a mixture of both and the legislators who voted for it might also be expected to be motivated by a similar mixture of reasons that induced the sponsor. The purpose is determined largely by its subject matter. Accordingly, if the purpose is proper, i.e. within the constitution, the motives or the reasons which induced the introduction and passage of the legislation are irrelevant. Motive in relation to legislation is often difficult to prove by evidence.[82]

However, while the legislative power cannot be impeached on the ground that an item of legislation is not for peace order or good government or that it is ill-motivated, it is limited by the following factors:

- Formal requirements for lawmaking,
- The division of legislative power between the federal and state legislatures,

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[82] B.O. Nwabueze, The Presidential Constitution of Nigeria (1981) op. cit. p. 248.

- The separation of powers principle and independence of judicial power,
- The prohibition of retrospective criminal legislation, and
- The prohibition of ouster of the court's jurisdiction.

The above mechanisms serve as checks and limitation on the powers of the legislature. This in addition as stated earlier to the exercise of those powers as equally limited to the extent allowed by the Constitution.

4.4.6 The Law Making Process

The law making process is perhaps the most captivating of all the roles and duties performed by the legislature under a constitutional framework. Traditionally, law making remains the exclusive preserve of the legislature. However, the practice has shown the lawmaking process is equally shared with other departments of government, institutions and persons other than the members of the legislature. The resultant effect is that a lot of factors come to play and a lot of influence outside the legislature penetrates their way to determine by one means or the other what invariably is enacted as an ACT of the legislature or parliament.[83]

The Rules practice and procedure in the British House of Commons greatly influenced the development of the Rules of practice and procedure in the Legislative Houses in Nigeria. For example, the Standing Orders of 1962 was a replica of the Standing Orders and Practice of the House of Commons of the

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[83] Professor Jack Davies, Legislative, Law and Practice, West Publishing Co. 1975. Chapter 10. pp. 220-213.

British Parliament. The penultimate paragraph of the Standing Orders of the House of Representatives of the First Parliament provided that:

> 73(1) in cases of doubt the Standing Orders of this House shall be interpreted in the light of the relevant practices of the Commons Houses of Parliament of Great Britain and Northern Ireland.
>
> (2) in any matter for which this Standing Orders do not provide, the same practice shall be followed, but no restrictions which the House of Commons has introduced by Standing Order shall be deemed to extend to the House or its members until the House has provided by Standing Order for such restrictions.

Similar Standing Orders were also applicable in the Senate. As an interim measure section 311 of the 1999 Constitution provides as follows:

> 311(1) The provisions of this section shall have effect until the National Assembly or a House of Assembly exercises the powers conferred upon it by section 60 or 101 of this Constitution as appropriate.
>
> (2) The Standing Orders of the Senate established under the former Constitution shall apply in relation to the proceedings in the Senate established under this Constitution.
>
> (3) The Standing Orders of the House of Representatives established under the former Constitution shall apply in relation to the proceedings in the House of Representatives established under this Constitution.
>
> (4) The Standing Orders of a House of Assembly established under the former Constitution shall apply in relation to a House of Assembly of a state established under this Constitution.
>
> (5) The Standing Orders of the former legislative houses referred to in subsections (2)(3) and (4) of this section, shall apply in relation to a legislative house with such modifications as may be necessary to bring them into conformity with the provisions of this Constitution.

(6) In this section, the "former Constitution" refers to the Constitution of the Federal Republic of Nigeria 1979.[84]

[84] Standing Orders are Rules and norms regulating the procedure of each Houses of Assembly. Standing Rules should contain only such minor details as may be adopted without previous notice by a majority vote at any business meeting. They may be adopted from time to time to meet the needs of an organization. They may be amended or rescinded by a two-thirds vote at any meeting without previous notice. They may be rescinded by a majority vote if notice of the proposed action has been given at a previous regular meeting, or included in the call for the meeting. A Standing Rule continues in force until it is rescinded. Standing Rules may be suspended during any one meeting by a majority vote, provided it pertains to the business of the meeting, but its suspension must not apply to the future action. Standing Rules should be adhered to down through the years for the motions entered in the minutes are Standing Rules until they are rescinded. Within its first four-year term, each House of the National Assembly had produced its own Standing Orders called "Rules of the House of Representatives 1982" in the case of the House of Representatives and the 'Standing Rules of the Senate1980' in the case of the Senate. Although the rules were essentially tailored to provide for the working of the legislature under the presidential system of government, in their analysis, they were a hybrid of the Standing Orders of the parliament (Senate and House of Representatives) of the first Republic (akin to the British system) and the Rules of the House of Representatives and the Senate of the Congress of the USA.

CHAPTER FIVE

IPU INTERVENTIONS IN STRENGTHENING PARLIAMENTS IN NIGERIA AND CHALLENGES

5.1 BASIS OF IPU ASSISTANCE

The termination of colonial rule in many African States led to the advent of one-party system, one-man rule, military rule and authoritarian rule. The colonial rule itself, contrary to its divergent nature, traditions and common myth of export of metropolitan democratic institutions to the African colonies, was characteristically and inherently undemocratic[1]. According to Olagunju, this form of narrow base participation in Africa was part of colonial inheritance, that, the inheritance elite or successor political class has generally failed to build on the promise of independence and everything which independence held for democratisation and for economic, political and socio-cultural development. Arbitrary rule, economic mismanagement and the decline and stagnation of productive capacities of African political economies are major features of what is now generally referred to as the African crisis[2]. In view of the foregoing, forced either by proper demonstrations, intra-elite accommodation, externally induced pressures, or a combination of these and other social forces to open up to liberalized and to make important concessions to competitive politics, the African neo-colonialists[3] were forced to open up and to adopt multi-party systems of democracy. Schumpeter describes the multi-party system of democracy as:

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1 See Olagunju, et. al., Transition to Democracy in Nigeria, 1985 – 1993 (Ibadan, Safari Books Export Limited, 1993) p. 1.

2 Ibid.

3 That is, the post colonial African Leaders.

> that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote[4].

The institutional arrangement described by Schumpeter consists of interrelated components such as competitive multi-party politics pursued in the context of periodic elections which are free and fair and are conducted under universal adult suffrage.

With the transition to multi-party democratic systems in Africa, there also emerged parliamentary systems as key institutions of democracy and good governance. Indeed, a review of the development of African parliaments in this period shows that many of them "sought to assert themselves as effective oversight bodies"[5]. For instance, the parliaments of Uganda, Benin Republic, Kenya and Mozambique were, in the early 1990s, at the forefront of the campaign against corruption in their countries[6]. Similarly, in Burundi and Rwanda, the parliaments made important contributions to the peace process in those countries by fostering dialogue among the warring parties and by establishing legislative framework for the restoration of the rule of law in societies scarred by civil war in recent years[7].

Despite the foregoing, it became evident in the early 1990's that generally parliaments in Africa lacked the requisite capacity in terms of technical, human, financial and material resources, to cope and respond to the new

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4 Schumpeter, J. A., Capitalism, Socialism and Democracy (New York: Harper and Row, 1942) p. 5.

5 See the Report of the IPU/UNDP joint survey on the "Ten Years of Strengthening Parliaments in Africa 1991 – 2000" published by IPU in 2003 at p. 4.

6 Ibid.

7 Ibid.

challenges and expectations brought about by democratisation and the increased yearnings of their people for good and effective governance. In addition, the march towards globalization brought about new and additional challenges to the African Parliaments. Unable to cope with these challenges and expectations, many of the parliamentary institutions in Africa have had to depend on the international community for support and assistance.

The international community responded positively at both the bilateral and multilateral levels. Various programmes of interventions have been put in place by the international community to support parliamentary institutions in the emerging democracies as part of effort to enhance and strengthen good governance. In the case of IPU, strengthening parliamentary institutions, has become a standard feature of its programmes.

The object of this section therefore, is to examine the effort made by IPU in strengthening the parliamentary institutions in Africa and the challenges facing it with a view to suggesting possible solutions to the problems.

5.2 NATURE AND SCOPE OF ASSISTANCE PROVIDED BY THE IPU

The nature and scope of assistance and support provided by IPU are wide. These include capacity building, technical assistance, funding, financial support, as well as promotion of peace, security, and sustainable development, Human Rights, Gender partnership between men and women, increased participation of women in politics in African countries, democracy and international cooperation, etc. In this presentation, a few of these forms of assistance will be discussed.

5.2.1 Technical Assistance to Parliaments

From a conceptual point of view, technical assistance provided by IPU in strengthening African parliaments entails the carrying out of the following activities.

i. Infrastructure development:

This relates to support activities aimed at strengthening basic infrastructure in a parliament, installation of requisite equipment and provision of technical services.

ii. Institutional development:

Activities carried out under this sub-category are aimed at improving the functioning of the institution of parliament. They involve the drafting of standing orders/rules, creating or upgrading/modernization of parliamentary services and processes.

iii. Capacity building:

Technical assistance relates to the training of Members of parliament or parliamentary staff in all aspects of legislative practice, and procedure as well as simulation activities.

iv. Legislative content development:

This programme includes the facilitation of exchange of experience and recipient-driven advisory services particularly with regard to the content of new or important legislation.

v. Knowledge sharing:

This is achieved by bringing parliamentarians together to share ideas and exchange parliamentary experiences. In that regard, awareness building is achieved through seminars/workshops, periodic meetings, visits, study tours and attachment programmes.

5.2.2 Funding and Financial Assistance to Parliaments

Most parliaments in Africa have benefited from financial support and assistance from the IPU. Financial support in this regard takes the form of either cash or project funding. Many African countries[8] received financial assistance from the IPU through projects[9]. Indeed, it is estimated that within the period of ten years, about 54.2 million US dollars was expended on 30 projects in Africa[10]. The largest recipient is Egypt with about 12 million dollars, followed by Namibia and Zimbabwe with 9 million and over 7 million dollars respectively[11].

It must be pointed out that most parliaments at the initial point of receiving financial assistance preferred the provision of equipment in order to strengthen their infrastructure. Logically, this form of assistance yield visible benefit and particularly, for those parliaments which are reluctant to commit themselves to a genuine democratisation process, has the apparent advantage of not having direct political implications and is therefore more palatable. Nevertheless, parliaments that had already received substantial assistance in

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8 For example, Zimbabwe.
9 IPU/UNDP Report op. cit, p. 8.
10 Ibid.
11 Ibid.

terms of equipment prefer other types of aid[12] on the grounds that they do not see the point of continuing such assistance when such parliaments have developed to the point that they can meet their own material needs. It is pertinent to mention that parliaments in countries where the regimes were hesitant to embrace democracy and good governance nevertheless received substantial support from the international community[13]. Ironically, countries that made considerable progress towards democracy, the parliaments received little or no assistance[14]. In this regard, there appeared to have been an element of subjectivity in the selection of parliaments for financial assistance. This could well be that the parliaments in countries with limited democracy were considered "pockets of democracy" worth strengthening with the hope that such action would have long-term multiplier effects given a favourable environment.

5.2.3 Promotion of Democratic Principles

The promotion of the principles of democracy by the IPU is premised upon its developed international standards and norms which were evolved as part of its action to promote democratic and pluralist systems of representative government. In 1994 the IPU adopted a "Declaration on criteria for Free and Fair Elections" which was followed in 1997 by the Universal Declaration on Democracy (UDD) which stated as follows:

> democracy is based on the existence of well-structured and well-functioning institutions, as well as a body of standards and rules and on the will of society as a whole, fully conversant with its rights

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12 Logically maintaining that such assistance has not achieved concrete results in the absence of political will to move towards reforms.

13 For example, Zimbabwe.

14 For instance, the parliament of Benin Republic, a country widely acknowledged as having achieved major success in its democratization effort since the early 1990s.

> and responsibilities. Democracy is founded on the right of everyone to take part in the management of pubic affairs; it therefore requires the existence of representative institutions at all levels and, in particular, a parliament in which all components of society are represented and which has the requisite of the people by legislating and overseeing government action[15].

The IPU believes that democracy is a universally recognised ideal, based on values common to people everywhere regardless of cultural, political, social or economic differences. As an ideal, democracy aims to protect and promote the dignity and fundamental rights of the individual, instill social justice and foster economic and social development. Premised on the foregoing belief, the IPU's programme for "The Study and Promotion of Representative Institutions" enables it to achieve its objective of enhancing democratic and pluralistic systems of government with a specific focus on parliaments. In this respect, parliament as a state institution representative of the population as a whole and empowered to participate in the decision-making process must be provided with the requisite resources so that decisions taken are commensurate with the interest of the people and thus promote their welfare[16]. In order to accomplish this objective, the IPU undertakes activities in two directions, that is, the promotion of a better understanding of how parliaments are formed and function and the strengthening of their means of action so that they can execute their mandate more effectively. Accordingly, the IPU collects and disseminates information on parliaments, undertakes studies on various aspects of

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15 See Para. 11 of the Universal Declaration on Democracy by IPU on 16th September, 1997. In 1995 the IPU assembled experts from various regions and disciplines to develop an international standard on democracy. It was the work of this assembly that led to the IPU Declaration on Democracy.

16 See IPU Annual Reports of Activities of 2000, IPU publications, Geneva, 2000.

parliamentary work and on elections, providing advisory services and technical assistance to parliaments, particularly those in emerging democracies and developing countries[17]. With regards to the improvement of understanding and knowledge of parliaments, the IPU collects information on the powers, structure and working methods of parliaments, and disseminates same through its publications and Website. It provides latest information on parliamentary elections throughout the world[18]. For each year, it publishes[19] "the Chronicle of Parliamentary Elections" which reports on the national legislative elections held throughout the world the previous year.

5.2.4 Promotion of Gender Equality

The promotion of parity and partnership between men and women in politics has served as the backbone of the IPU's effort to improve the status of women. This concept finds expression under paragraph 4 of IPU's 'Declaration on Democracy' which states:

> the achievement of democracy presupposes a genuine partnership between men and women in the conduct of the affairs of society in which they work in equality and complementarily, drawing mutual enrichment of their differences[20].

In line with the foregoing, the IPU undertakes activities that cover many areas of women's participation in politics. For over ten years, the IPU has encouraged Member-Parliaments to include women in delegation to conferences and sanction those that fail to do so. Most importantly, the meeting of women

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17 IPU works closely in collaboration with the Association of Secretaries General of Parliaments (ASGP).

18 See IPU, Inter-Parliamentary Union information brochure, Geneva, 2003, p. 6.

19 Both in English and in French.

20 Para. 4 of IPU Declaration on Democracy of 1997.

parliamentarians provides an opportunity for women members to meet during the IPU statutory conferences[21]. To achieve parity and partnership, the IPU in 1997, established a Gender Partnership Group, composed of two women and two men members of parliaments, to ensure that the interest and views of both gender are reflected in the Union's activities[22].

In furtherance of the foregoing, the IPU encouraged Members of Parliament to participate in the preparation and holding of the Fourth World Conference on Women and was actively involved in the preparatory process over a period of three years in the contest of its permanent programme concerning women. Against this background, the IPU organised a "Parliamentarian Day" during the Fourth World Conference on Women at the invitation of the Chinese National People's Congress[23]. It is interesting to note here that 500 members of parliaments from 102 countries took part in the "Day" which ended with the adoption by consensus of the Beijing Parliamentary Declaration[24]. Paragraph 1 of the Declaration states as follows:

> at the dawn of the 21st century, the principle of equality between men and women having been established in nearly all our constitutions and fundamental laws, few indeed are the countries where the right of women to vote and be elected has not yet been recognized and exercised.

As a follow up to the foregoing, the IPU considers that the commitments made at the Fourth World Conference on Women are commitments of the state. In

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21 To this end, IPU has awarded its Statues and Rules to ensure that women are represented in national delegations to Inter-Parliamentary meetings, in the IPU executive committee and in all drafting committees.

22 See "IPU, Women: What the IPU is doing", IPU publications, series No. 26, Geneva, 1977, p. 13.

23 Held on 7th September, 1995 in Beijing, China.

24 See particularly the preamble to the Declaration.

view of this, the IPU believes that the parliament, as a branch of the State, is an indispensable actor in enacting the enabling legislation as well as appropriating funds needed to carry out the programmes envisaged by the Beijing Conference and has since then been following up with the national parliaments. Besides taking stand on themes covered by recommendations of the Beijing Platform for Action, the IPU is more attentive to the need to take account of the "gender factor" in all its resolutions.

5.2.5 Promotion of the rights of Parliamentarians

The desire of the IPU to promote and protect the human rights of parliamentarians is made manifest through the establishment of the Committee on Human Rights of Parliamentarians[25]. This Committee is charged with the responsibility of investigating complaints relating to the violation of human rights of parliamentarians. In this connection, once a case has been declared admissible, the Committee does everything possible to nurture dialogue with the authorities concerned in its pursuit of a satisfactory settlement that meets human rights standards. It is worth noting here that the Committee has contributed to the settling of 1,538 cases in 104 countries[26]. For instance, the committee was instrumental to the release of a Czech member of parliament detained in Cuba in 2001. It also secured the release from prison of Mr. Alpha Conde, a former presidential candidate in Guinea[27]. In the same vein, the

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25 This Committee was established in 1976 and made up of 5 members representing the major regions.

26 See IPU Information Brochure, op. cit. p. 8.

27 See IPU Information brochure, op. cit. p. 8.

Committee stood up for the many imprisoned Members of Parliament-elect in Burma[28].

The promotion and protection of human rights of parliamentarians by IPU is aimed at strengthening and enhancing parliamentary functions. The justification for this was echoed by Mr. Juan Pablo Lete Lier a member of Parliament of Chile in the following words:

> governments are all too often tempted to silence MPs who criticize their policies or denounce malpractices or abuses… when democracy breaks down in a country, parliament is almost invariable among the first victims… the IPU Committee on the Human Rights of parliamentarians considers it a responsibility for all MPs around the world to show solidarity for their colleagues under threat and to take action in their favour. Those of us who take democracy to heart must work together to help to restore due process and remedy human rights abuses. Everyone can make a difference in the settlement of these cases[29].

5.3 IPU ASSISTANCE IN NIGERIA IN SPECIFIC CONTEXT

The national parliament is called the National Assembly. It is a bicameral parliament comprising of 109 Members in the Senate and 360 in the House of Representatives. The Members of the National Assembly are elected for a four-year tenure. A report of the needs assessment mission[30] undertaken by the European Union to Nigeria in 2000, observed that the Legislative arm was the least developed when compared with the Executive and Judicial Arms of Government. Accordingly, it lacked experience, trained manpower and facilities to perform its constitutionally ascribed roles. Also, due to long years of military

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28 The Committee also worked hard for the release MPs kidnapped by the guerrilla movement in Colombia and the release of four former Turkish MPs including Mrs. Leyla Zana, who were still detained despite the ruling of the European Court of Human Rights in July, 2001.

29 Being a speech of Than Pabo Letertier at a hearing before the US Congressional Human Rights caucus held at Washington DC on February 11th, 2004.

30 Bureau for Institutional Reform and Democracy (BIRD), EU Publication, 2000.

rule, both legislators and staff do not have the requisite expertise and tools with which to perform their functions efficiently. The report further observed, that the capacity of the Nigerian Parliaments both at national and state levels needed to be enhanced in order to achieve sustainable democracy and development[31]. The Federal Government under its Democracy Programme signed an Agreement with the European Union (EU)) to design programmes of interventions to enhance the capacity of the National Assembly and six focal State Legislatures namely: Abia, Cross River, Gombe, Kebbi, Plateau and Osun in the areas of lawmaking, oversight and representation. Other activities to be undertaken under the programme include: attachment programmes to foreign parliaments, study tours, workshops, interactive sessions with civil society rganizations, development of constituency handbook, provision of equipment to legislative libraries, establishment of printing press, information technology centres and internet connectivity, etc.

The IPU which had hitherto not provided technical assistance to any Legislative House in Nigeria was contracted by the European Commission to implement the various activities.

It is pertinent to mention that the EU procedure for accessing funds from the European Development Fund (EDF) slowed down and hampered the implementation of approved programmes.

In 1999 following 16 years of military rule, the European Union decided to support economic and political reform in Nigeria and to sustain the trend of

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31 Ibid.

democratisation from 1998. Among the assistance to be provided was a Democracy Programme Supporting Parliament and State Assemblies. In February 2000 a feasibility study was carried out by the Bureau for Institutional Reform and Democracy (BIRD) to provide the Federal Government of Nigeria (FGN) and the European Commission (EC) with a recent description of the institutional organisation of the legislatures in the country and an analysis of its key problems. Based on this mission a programme of assistance was developed and a financing agreement between the FGN and the EC was signed in October 2001[32].

The overall objective was to contribute to the development and reinforcement of the democratic system in Nigeria through a programme of assistance to help the National and State Assemblies to perform their functions efficiently and effectively. It was also meant to strengthen the capacities of the National Assembly and 6 focal State Assemblies (out of 36), in order to establish effective two-way communication channels between the legislatures and the electorate, to enable legislators to make informed decisions on the public's needs, and to improve the technical functioning of the legislatures.

The project was intended to result in:

- The establishment of effective communication policies, constituency relations and more democratic patterns of interaction between the legislators and the electorate.

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[32] See the final report of the Programme Estimate No. 1 signed between the IPU and the National Authorising Officer of the European Development Fund, Federal Republic of Nigeria on 27 April 2005 for the implementation of project No: 7 ACP UNI 58 - Democracy Programme Supporting the National and State Assemblies. It covers the period from 28 April to 30 November 2005.

- Strengthening the support structure to carry out information, research and documentation tasks in a focused, timely and targeted manner and enable legislators to make informed decision and to effectively carry out their oversight functions.
- The optimisation of the legislatures' organisation.

The Military Regime that handed power to the civilian on the 29th May, 2009 did not put in place infrastructure and facilities for the Nigerian Legislatures preparatory to handing over. The IPU which contributes to the strengthening of means of action of parliaments world-wide through its Technical Co-operation Programme, signed a Service Contract in July, 2004, with the European Commission (EC) and the National Planning Commission (NPC) to implement a Democracy Programme Supporting the National Assembly and six focal State Houses of Assembly namely: Abia, Cross River, Gombe, Kebbi, Plateau and Osun. The Project was funded by the Federal Government of Nigeria and the European Commission. The objective of the Democracy Programme was to assist the National Assembly and the six focal State Houses of Assembly perform their constitutionally assigned roles of lawmaking, oversight, efficiently and effectively representation through the establishment of effective communication policies, constituency relations and more democratic patterns of interaction between legislators and electorate, strengthen the supporting structure to carry out information, research and documentation tasks in a focused timely and targeted manner and enable legislators to make informed decisions and to carryout

oversight duties, the programme also will result in the optimisation of the organisation[33] of the legislatures

Thus, the following activities were identified for implementation with a view to attending the set goals of the democracy programme:

[33] IPU Final Report: Democracy Programme Supporting the National and State Assemblies, 2006, P.15

ACTIVITIES	OBJECTIVE(S)	EXPECTED RESULTS
Communication **Provide:** • micro recorder, video cassettes, TV, tape recorders, video camera, digital camera, still camera and photocopier • desktop systems & accessories • darkroom facilities • cable network • workstations • Web Design and Management • LAN Equipment • VSAT to enhance Communication between MP and Electorates **Develop:** • a Standardised System for Public Consultation • a policy and strategy note on constituency outreach	To ensure that the National Assembly and the 6 focal Sate Houses of Assembly are equipped with the necessary modern communication equipment and tools that both parliamentarians and staff as well as the press and media officials can utilise to reach the public audiences in a timely efficient and effective way, thus shortening existing communication gap, and provide documents that will serve as guidelines for parliamentarians to improve the links with their constituencies.	Effective communication policies, public relations, relations with the media, constituency relations and more democratic patterns of interaction between legislators and the electorate, including civil society organisations, have been established and enhanced.

ACTIVITIES	OBJECTIVE(S)	EXPECTED RESULTS
Information, Research and Documentation Workshop: • Library and Research Staff, Editors and Officials Reporters • **Delivery of:** Standardised Library Package (books) Photocopier/Fax machine, Projectors, Computer Accessories, Software, Shelves and Chairs for the Libraries • **Training for:** Information Officers and Committee Secretaries	• facilitate capacity building of librarians, researchers, editors, officials reporters, information officers and committee secretaries to improve the quality of their work. • equip the libraries with modern tools and books that will support the parliamentarians and researchers to perform their work more efficiently and effectively	Capacity of the staff to provide technical and other support to legislators, in the area of information, research and documentation, in a focused, timely and targeted manner, allowing legislators to make informed decisions and to effectively perform their functions.

ACTIVITIES	OBJECTIVE(S)	EXPECTED RESULTS
Capacity Building of Parliamentarians' Seminar on the Budget Process for State Houses of Assembly Civil Society Organisation Budget Training Orientation Workshop for State Houses of Assembly	Facilitate capacity building delivery seminar for Budget Officers and Legislators Facilitate capacity building through orientation workshop, for parliamentarians.	Enhance capacity in Lawmaking and Oversight.
Institutionalise and Defend Democracy National Conference on Human Rights	facilitate a capacity building of parliamentarians, politicians, members of the Governments, representatives of civil society organisations to create awareness of human rights in Nigeria and of worldwide accepted principles.	Generally, the democratic system in Nigeria, by enabling the National and State Houses Assembly to perform their functions lawmaking, oversight and representation efficiently and effectively.

ACTIVITIES	OBJECTIVE/S	EXPECTED RESULTS
Organisational structure Clerks at the Table : preparation of parliamentary papers and simulation exercise Workshop for Clerks at the table: New intakes Standby Generators	Facilitate a capacity building workshops, for specific professional staff (Clerks-at-the Table - both those in function and those newcomers)of the beneficiary Assemblies may learn the main aspects and techniques of the state-of-the art and/or improve the quality of their work. Equip the beneficiary State Houses of Assembly with the necessary standby generators that will enable staff, legislators, visitors, media and member of the public to continue their work in case of power shortages and breakdowns	The organisation of the legislatures, through streamlined administrative and legislative structures and procedures, including committees have been enhanced.

5.3.1 Implementation Challenges Encountered by the IPU

The following challenges were faced by the Project Monitoring Unit (PMU) of the IPU during implementation:

(i) The single rider to the Financing Agreement between the European Commission and the Federal Government of Nigeria only altered the time period of the Programme and of the closure of its activities, without amending other provisions of the Financing Agreement which in the meantime had occurred (e.g. the reduction of the number of State Assemblies involved, from twelve to six).

(ii) Long periods of time had elapsed from the date of signing the Financing Agreement until the signature of the Service Contract with the IPU and again of the Programme Estimate No. 1, consequently leaving just seven months for the launching of tender dossiers and implementation of activities.

(iii) The Programme Estimate, signed in April 2005 ending the operational phase on 30 November 2005, had listed 68 activities all of which, apart from the attachments to foreign parliaments required tendering of services and supplies. The time factor for the whole tendering cycle period i.e. from drafting of tender dossiers to signature of contracts was underestimated. The process was also aggravated by contradictory requirements from the EC as to which EDF procedures to apply for 7^{th} or 9^{th} EDF procedures) along with a high turnover of focal point staff for the programme at the EC Delegation in Abuja.

(iv) There was no indication of the order of precedence of documents to be utilised from the Financing Agreement to the IPU service contract and to the Programme Estimate (e.g. which General Regulations, Procurement thresholds etc,).

(v) There was lack of clear definition of the roles and responsibilities of the stakeholders involved in the governance of the Programme, especially with regard to the involvement of the National Assembly in the overall management of the programme and on its relationship with the PMU.

(vi) There was lack of clear documented guidance and understanding from all stakeholders on which procurement procedures were required to be utilised in the Programme, both for the EDF and for the FGN funded activities.

(vii) The extent of the devolution of powers by the NAO/NPC to the Project Manager which had been indicated in the Programme Estimate, did not specify whether these applied to the funds of both EDF and the Federal Government of Nigeria. The issue of the Project Manager (a person from an external organisation) being allowed to manage Nigerian funds especially the ones usually managed by National Assembly procedure was not clarified.

(viii) The composition of the PMU did not include any permanent representative(s) from the beneficiaries particularly the National who could be directly involved in the daily implementation of the Programme.

(ix) Many indecisions and delayed or no responses to various queries by the PMU occurred throughout the implementation process including issues regarding the approvals of tender dossiers, thus causing delays to the launching of tenders and aggravating the slow implementation of the programme.

(x) The sustainability aspect of the Programme could not be prepared primarily due to the very short duration for the implementation of the activities.

(xi) The needs assessment missions were postponed on several occasions in the start-up months of the project due to continued delays in completing administrative procedures to ensure disbursement of advance funding under the service contract.

(xii) Much of the financing which had been envisaged by IPU was tied up in the guarantee provided in order to receive the advance funding under the service contract as well as delays in reimbursement of invoices submitted (the entry point was NPC and only after their approval would the invoices be processed by the EC Delegation).

(xiii) The origin of the funds from the Federal Government of Nigeria and the respective accessing rules had not been clearly spelt out, neither in the Financing Agreement nor in the Programme Estimate. During the operational period it was acknowledged that the national funds were coming from the budget of National Assembly and that consequently Management wanted to have a direct say in its use. Access by the

programme to these funds proved to be a cumbersome and time-consuming process.

(xiv) Delayed funding to the programme resulted in very little equipment being supplied to the beneficiary State Houses of Assembly and some 'priority' activities remained unimplemented, although the respective contracts had been awarded. The equipment finally provided to the National and State Houses of Assembly was those used by the PMU throughout the implementation phase of the project and not as indicated in the programme estimate.

5.3.2 Impact of the Activities on Beneficiaries

Capacity Building in the Legislatures requires long term commitment and support. The actual implementation period of the programme was reduced from seventeen months to seven months due to the factors already outline. Despite this, the positive feedback received from State Houses of Assembly showed immediate impact the activities had by widening their horizon on their roles under the democratic dispensation. Indeed, the Workshop for Editors and Librarians led to the creation of network where they meet from time to time to exchange ideas and share experiences. Lessons learned during the launching of the implementation activities will improving similar programmes in the future. In that regard, it is pertinent to highlight some of the issues that could be closing examined in future programmes.

(i) that any backlogs preventing the implementation of Financing Agreements be detected early and that practical feasible solutions discussed early enough by the main parties,

(ii) that drafting, approving and signing Programme Estimates may be completed within reasonable timeframes allowing implementation of the activities in the context of the respective Financing Agreements,

(iii) that a PMU may include in its ranks representatives from local beneficiaries who can be directly involved in the daily implementation of activities,

(iv) in order to avoid delays experienced in obtaining advance funding under the service contract the IPU offered to 'pre-finance', to a certain funding ceiling, activities under the programmes estimate. Such an arrangement should only be accepted in exceptional circumstances, and then after making sure that that all parties comply to contractual reimbursement,

(v) that all planning for the activities needed to take cognisance of the required periods within the procurement cycle, including the minimum delays concerning approvals by the NAO/NPC and by the EC Delegation,

(vi) When assistance to implementing agencies by the Contracting Authority (NAO), as outlined in the service contract, is not forthcoming the EC Delegation, as the principal donor for the programme, should provide the required assistance to avoid unnecessary delays in the implementation of the programme,

(vii) that the roles and responsibilities of all stakeholders and parties involved may be fully identified and recognised by the stakeholders and by the governance structures, especially with regard to the management and supervisory arrangements within the programme.

5.4 IPU ASSISTANCE TO SOME AFRICAN PARLIAMENTS

Most projects funded by the IPU to African parliaments were carried out under multilateral arrangements with the IPU being the initiator, a donor and implementing agency on behalf of other donors. It is necessary to give a brief analysis of the assistance provided to the following African Parliaments: Benin Republic, Burkina Faso, Ethiopia, Kenya, Zimbabwe, and Nigeria.

5.4.1 Benin Republic

In general terms, Benin Republic operates a unicameral parliament, called the National Assembly comprising of 83 directly elected members for a four-year term[34]. The post-independent Benin Republic, formally known as Dahomey, was characterised by political instability following series of coups d'etat, a marxist regime became established with a single-party parliament. It was not until 1990 that a National Conference drafted a new constitution, which ushered in a multi-party system. In strengthening the capacity of this new parliament, the IPU carried out the following activities:

- establishment of a parliamentary centre.
- provision of equipment (Computer/Printer, Modern, Photocopier, binder, fax machine, cataloguing software, library stock, office supplies.
- seminars, study tours and staff training in Paris.
- establishment of Database network[35].

Also, IPU provided assistance in preparing and disseminating a parliamentary handbook, introduction of MPs to new information technology and other capacity building activities. The parliament of Benin Republic, a country which has been a leading light of democracy on the African continent did not receive much assistance or support for democratization as expected.

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[34] Sixteen parties one represented at the Assembly with women occupying about 6% of the seats.

[35] See IPU, Ten Years of Strengthening Parliaments in Africa, 1991 – 2000, IPU, 2003 pp. 16 – 17.

5.4.2 Burkina Faso

This country has a unicameral parliament comprising of 111 elected members for a five-year tenure[36]. In order to strengthen the parliamentary institution, the IPU carried out the following activities:

- training seminars and study tours for staff to Cameroon, Cote' d'Voire, Senegal, France and Switzerland relating to transcription and reporting of parliamentary proceedings, information services; administrative and legislative procedures.
- provision of equipment for parliamentary services.
- establishment of parliamentary documentation centre.
- expert Advice
- establishment of Database Network
- financial support.[37]

It is worth noting that the support given to the parliament of Burkina Faso is limited to the period covered by the IPU report[38].

5.4.3 Ethiopia

Ethiopia operates a bicameral parliament comprising of a total of 670 members for the two Houses. The National Assembly has obtained much assistance from the IPU and other international bodies anchored by IPU in the following areas:

- capacity building

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36 11 parties are represented with women having about 11.7% of the seats.
37 IPU Op. cit. p. 20.
38 Ibid.

- institutional development
- provision of equipment
- financial assistance
- modern information technology development.

Also, international support was instrumental to the establishment of a Human Rights Commission and an Ombudsman[39].

5.4.4 Zimbabwe

Zimbabwe has a unicameral parliament, which comprises of 150 members with a five-year term[40]. The parliament has been one of the highest beneficiaries of IPU support activities to African parliaments. Between 1998 and 2001, the parliament benefited from the following activities:

- basic equipment
- workshops, seminars, and conferences on budget-related matters
- staff Training
- expert Advice
- production, translation, printing or dissemination of documents and publications (key policy documents in Zimbabwean Languages, parliamentary Bulletin etc.
- financial support[41].

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39 Ibid for more details.

40 Out of which 120 members are directly elected by a special Electoral College.

41 Op. cit. pp. 30 – 33.

5.4.5 Kenya

The country operates a unicameral parliament comprising of 224 members with a five-year term. The parliament has benefited from IPU in the following activities:

- equipment such as printing press, sound recording equipment for committees and plenary rooms'
- study tour for members of Standing Committees to United Kingdom, Canada, New Zealand and Austria,
- attachment of Staff to Parliaments of Ghana, Canada, Australia, Zimbabwe, and United Kingdom,
- training Seminars and Workshop, and
- financial assistance.[42]

It is worth mentioning that inspite of the constraints faced in providing support to the parliament, the donor assistance has appreciable and tangible impact.

5.5 IMPEDIMENTS TO OPERATIONS OF IPU ACTIVITIES

Although, the various effort made by the IPU towards strengthening parliamentary institutions in Africa have been pointed out and some specific details given to show that these programmes are laudable in the sense that they are aimed at capacity building in African Parliaments, the success and sustenance of these interventions have been plagued by several factors. Parliaments in Africa have now emerged as arena for political struggle and nurturing of democracy. However, these Parliaments tend to suffer from

[42] Op. cit. p. 27.

institutional weaknesses, thus inhibiting the success of the programmes. Several factors account for this weaknesses among which are:

i. political instability/Military Dictatorship

ii. tenure Insecurity in African Parliaments

iii. implementation/Intervention Management Factors.

5.5.1 Political Instability/Military Dictatorship

Often described as the pivot of democracy, the legislature is the first among the constitutional political trinity. Regrettably, it is the least developed governmental arm or institution in Africa. As noted by Oyovbaire[43] the mould, character and process of lawmaking or of public policy making through the legislative process is not a subject matter over which many political scientists and constitutional law lecturers in Nigerian Universities and research institutes or centres can claim intellectual knowledge or authority. Oyovbaire also observed that it is a paradox of grave intellectual significance that the critical role of the Nigerian legislature and of democratic legislation for good governance has not been matched or even promoted by relevant historical experience. Despite the fact that the legislature as a representative, deliberative, lawmaking, advisory and nominally public policy making body evolved in most countries in Africa before the Judiciary and the Executive as the first representative institution prior to and after independence. However, the development of the legislature has been greatly hampered or retarded by the advent of military dictatorship and political instability which resulted in most cases in the abolition of representative

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[43] Oyovbaire S. E. "Legislating for Good Governance: Ethical and Political Consideration" in Political Reform and Economic Recovery in Nigeria Lagos NIALS 2001 p. 17.

institutions in Africa. The political and democratic history of Africa has shown that at various times, the incursion of the military in governance has often resulted in the disbandment of representative institutions and the fusion of legislative powers with executive powers. As further noted by Oyovbaire[44] against the above background:

> the phenomena of democratisation, democracy, good governance and legislating for good governance, among other similar political phenomena… are stocked or trapped in a praetorian order". This is as a result of the social structure and political economy of both colonialism and post colonial state as well as prolonged military rule.[45]

The incessant interference in the functioning of legislative institutions by Military incursion in governance have negated the process of adding value and strengthening the legislature as a vital institution of governance in Africa. Therefore, the intervention programmes of the Inter-Parliamentary Union (IPU) which are most importantly targeted at capacity building of parliamentary institutions in Africa have met certain drawbacks because of the socio-economic, cultural and political environment within which the legislature is expected to function. The long period of military siege on governance in Africa with the prominent feature of legislative extinction has resulted in what could be described as a period of constitutional and legislative gestation. This has not only hampered the political process but also inhibited the efficacy of the various intervention programmes aimed at building capacity in emerging democracies.

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44 Oyovbaire S. E. op. cit p. 16.

45 See also Oyovbaire S. E. "Democracy as a Model of Economic Development and National Integration" Better Society lecture Series, Maiden Guest Lecture of the Champion Newspaper, 17th July, 1997. Published by the Daily Champion of July, 21st, 22nd, 23rd, 24th, 25th, and 28th July, 1997.

Militarism or non democratic practices normally recedes from the ethos of governance in a very slow pace. Thus, the rising expectations of the electorate tend to bring intimidating pressure upon the legislature resulting in low performance and disapproval of the electorate.

The practice whereby government decisions are ordered to be implemented "with immediate effect" which is a feature of militarism is antithetical to lawmaking and good governance, which paradoxically forms the subconscious attitude of African governments. These have had to contend with ethics of good governance which among others include policy articulation and aggregation, dialogue, reconciliation of interests in debates and the legislative process. These have been slow in African democratic experience. This re-orientation has no doubt also slowed down the success of the IPU intervention programmes in Africa.

The socio-economic recess in African countries which several factors like corruption, poor economic policies and lack of proper economic planning are the features of emerging democracies, in other words the economy of these democracies suffer from persistent decline and are characterized by unemployment, low productivity, high cost and poor standard of living. This has put pressure on the legislature thereby culminating in disaffection from the electorate. This, in most African countries has generated agitation and civil unrest. Therefore, IPU interventions which are mounted on these socio political and unfriendly structures are likely to record dismal success. Except governments take steps to arrest these potential massive social dislocation, IPU

intervention would not record appreciable success in emerging African democracies.

5.5.2 Tenure Insecurity

The political and governance history of post independent African States has revealed a continuous struggle by the components of the States to gain control of government. The ethnic complexities of the constituent population of these states and the fear of domination of one ethnic nationality by another have greatly influenced political arrangement for attainment of political power and political office. This has resulted in the introduction into the political lexicon of terms such as 'zoning', 'rotation', 'federal character', 'power sharing agreement' 'power shift' 'affirmative action', and so forth to determine the manner of political representation in African States. Distrust and fear of domination provide ready justification for this arrangement. The need to have all components and sections, "taste power" and represent their ethnic nationalities and political expressions has led to high turnover of legislators in African Parliaments. The tenure insecurity occasioned by power sharing arrangement in African States is likely to affect the intervention programmes of the IPU. A typical illustration of this problem has readily revealed itself in the Nigerian political environment. The political current prior to the general elections, centered on an attempt to amend the 1999 Constitution of the Federal Republic of Nigeria with a view to extending the tenure of the Executive beyond the two terms of four years each as stipulated in the constitution. This exercise was spearheaded by the then Executive. This pitched the Executive against the

people and vast majority of Legislators in the National Assembly. The chances of serving legislators seeking party nomination for re-election to the National Assembly were dependent on their support for the proposed constitutional amendment. With the Party machinery deep in the pocket of the Executive, it was easy to deny party nomination for re-election to serving legislators who stood against amending the constitution in order to extend the tenure of the Executive. Most of the Legislators who became victims of this political power play were among the most experienced in legislative practice. The value which these legislators would have added to the development of the legislative institution had they been re-elected to the National Assembly of Nigeria had been lost. This example typifies the problem of high turnover of legislators in most African democracies.

One of the areas of intervention of the IPU as a capacity building measure in African Parliaments is in the area of training of legislators for effective performance of their constitutionally assigned responsibilities. As noted by Anders[46] the nature and goals of technical assistance offered to Parliaments in Africa have undergone striking change. Projects are no longer limited to strengthening the infrastructure and technical capacities of Parliaments but are also aimed at improving their political functioning. This is achieved through a range of activities covering both the institution and activities of members of parliaments, including their relations with their constituents. The interventions also provide the line between the smooth functioning in the broad sense of the

[46] Anders B. J. "Ten Years of Strengthening Parliaments in Africa 1999 – 2000: Lesson Learnt and the Way Forward". (Report of a Joint IPU/UNDP Survey 2003 p. 2 to 3).

term, of the parliamentary institutions, on the one hand and democracy, good governance and human development on the other hand. However, human capacity building in the legislature through training for effective political functioning of the Legislature has recorded minimal success in terms of its usefulness by reason of the high turnover of legislators in African Parliaments. In order words the experience gained in this training is lost to the institution of parliament as soon as a legislator is unable to return to parliament after his or her tenure as a result of the peculiar political arrangement in place in African states. Also, the fact that parliamentary elections are conducted at regular intervals means that the political component of a parliament is being constantly renewed. The renewal which often takes on considerable proportions, particularly in emerging democracies, does not facilitate the development of a trained body of parliamentarians[47]. Recognising the pitfalls of the intervention, the Secretary-General of IPU advocates the adoption of an intervention design that would fit the peculiarities of the African environment when he states:

> experience shows that, given the necessary complex and sensitive environment within which assistance to Parliaments takes place, it is not possible to develop a set of universal guidelines that are directly applicable to all. It will always be necessary to give due consideration to the more volatile factors influencing the workings of Parliaments, factors that derive as much from the current political context as from historical and cultural influences[48].

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47 Anders B.J. op. cit. p. 36.
48 Anders B.J. op. cit p. 3.

5.5.3 Implementation Management

Several factors associated with the implementation of IPU intervention programmes also weaken the success of the programme. The report of the Joint IPU/UNDP Survey[49], identified the following as constituting weakness to the successful implementation of IPU intervention programmes in Africa:

i. Some Parliaments in Africa tend to seek the same kind of assistance from several donors at the same time. There is reluctance on the part of these Parliaments and some donors to provide reliable information on what they have received or are receiving in terms of donor assistance. This leads to duplication and overlapping activities. For instance, in the area of provision of equipment, lack of co-ordination often leads to incompatibility of such equipment and maintenance may become problematic. This problem is particularly acute in the area of Information Technology assistance.

ii. IPU intervention or donor support for Africa Parliaments often result in the over-dependence on the support. Thus, some national Parliaments are starved of funds in the hope that donor intervention would fill the gap. This weakens the purpose of the intervention which is to assist in building capacity in the Parliament and at the termination of the intervention, the Parliaments are expected to build on the assistance which sometimes suffer from lack of maintenance of project funded equipment, consolidation and ownership of the IPU intervention.

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[49] See Report of a Joint IPU/UNDP Survey "Ten Years of Strengthening Parliaments in Africa 1991 to 2000" p. 38.

iii. Recipient Parliaments of IPU intervention programmes sometimes do not have a full understanding of technical assistance, its scope, the opportunities it offers as well as its limitations. Also, non involvement of the recipient Parliament in project planning weakens the recipient commitment to IPU intervention. Furthermore, inadequate preparation or lack of capacity of the benefiting Parliament to take ownership of the intervention at its termination, impedes continuity and sustainability. In addition, lack of capacity to meet counterpart obligations such as funds, reporting and follow-up measures further threaten the long term gains of the implementation of IPU intervention activities in African Parliaments.

iv. Intellectual capacity of some parliamentarians that constitute most of African Parliaments is suspect. Most of IPU intervention programmes in the area of professional development and training of Parliamentarians in some aspects of Parliamentary work is technical. Therefore, project management mechanisms are sometimes too complicated and capacity of recipient Parliaments to manage these intervention programmes afterwards in adequate. Furthermore, most of the training programmes that have to do with overseas attachment and tours do not always take account of the recipient Parliaments level of development. For instance many study tours take place in the Parliaments of developed countries, where the facilities available are beyond the recipient's reach. This most times lead to confusion and frustration on the part of participants. It also, calls to question the caliber of representation and choice of candidates for

the study tours which in most instances are not based on objective but political consideration.

v. Poor attitude of legislators to capacity building initiatives manifested by poor attendance at progrmmes designed to enhance their capacity.

vi. Stringent and cumbersome procedures for accessing donor funds tend to have the negative impact of delay and in some instances lead to outright cancellation of planned programmes due to time lapse.

vii. Choice of Project Managers of intervention programmes who though competent and knowledgeable in legislative processes at times lack knowledge of financial procedures of donor agencies, which has the effect of hampering access to funds for implementation of projects.

viii. Most of the funding of IPU activities are from donor agencies. This is so because membership fee and voluntary donations are not sufficient to fund programmes aimed at strengthening representative institutions. Therefore, IPU largely depend on funding from donor countries and agencies who subscribe to the objectives of the Union. However, the conditionalities tied to assessing some of the donor funds constitute serious impediments to the achievement of the objectives of applying the funds in the first instance. For instance, equipment and consultancy related capacity building intervention are tied to acquiring and engaging such services from the donor countries which sometimes is counter-productive as it seeks to make impositions on recipient parliaments against other flexible alternatives.

The introduction of information technology in some African Parliaments has been found very useful in many situations, particularly where it is preceded by an in-depth analysis of the purposes and parliamentary processes for which the technology is required. Training in parliamentary setting provides an excellent opportunity for acquiring practical experience, which may not be available in most academic institutions. Donor funded projects which are targeted at the components of a parliament have positive impact in terms of greater involvement of the opposition in parliamentary processes.

Mainstreaming gender, human rights and budget issues into projects has been effective in creating greater awareness among legislators of the importance of ensuring that parliamentary processes serve the needs of all components of the society. Training in parliamentary procedure and mechanisms has been useful. Most importantly, working visits and study tours to parliaments of older democracies expose parliamentarians and staff to best practices in jurisdictions with similar constitutional framework and this has brought about tremendous impact in the capacity building of African parliaments.

With regard to the problems and impediments facing IPU in accomplishing this task, it is pertinent to mention that:

(a) the mistrust that exists between donors and recipients particularly where projects are implemented in the context of broader programmes addressing governance without a consideration to ensuring parliamentary autonomy;

(b) lack of political will on the part of recipients;

(c) inadequate involvement of the recipient parliaments in project planning and delivery weakens their commitment;

(d) lack of clear understanding of the nature of technical assistance also limits the impact of the technical assistance;

(e) lack of coordination often leads to incompatibility of some equipment and as such maintenance becomes problematic;

(f) ideological standpoints often constitute barriers to the full realisation of support assistance;

(g) stringent financial procedures for accessing donor funds delay implementation of planned activities; and

(h) the choice of candidates for study tours often defeat the realisation of desired impact.

The IPU has tried to impact positively in strengthening parliamentary institutions in Africa. Although substantial effort may be made by IPU in meeting the needs of democratisation among African States, much is still dependent on the individual parliaments. Parliament it is pertinent to note, is an arena of constant confrontation between the executive and the legislature, the majority and the opposition, the politicians and the civil servants with different interests and approaches. Thus, the institution is in a state of positive tension. Moreover, technical assistance to a parliament in the context of a democratisation process implies a change in the distribution of power. Broadly speaking, assistance provided by an institution like the IPU, with limited political and economic interest seems to be easier to accept than assistance from institutions in

developed countries which are often suspected of having hidden agenda. More so, parliamentarians, who quite naturally strive, above all, to be in a position to apply the policies they champion, tend to assess everything in terms of political advantage.

The fact that parliamentarians have to contest elections at regular intervals means that the political component of a parliament is being constantly renewed. This renewal does not support the development of a trained body of parliamentarians. For this reason, the permanent staff of parliaments represents continuity and memory of the institution. In this regard, the support of the IPU in strengthening the parliamentary institutions in Africa through capacity building may not be very beneficial to parliaments because of the high turnover of legislators or tenure insecurity. The end result is lack of continuity of tenure in parliament.