

O P I N I O N

The Inter-Parliamentary Union (IPU)

The international legal personality of the Inter-Parliamentary Union (IPU), its status as an international organization in international law, and the legal implications of such status for the IPU's relations with governments and other international organizations

Joint Opinion

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Statement

1. The IPU possesses international legal personality and is an international organization *sui generis*, that is, it is an international parliamentary, political and representative organization.
2. The IPU is a *universal* organization, 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 requirements of article 4 of the UN Charter.
3. The IPU is, like other international organizations, representative in character and organization, subject to the rule of law, and governed by its constitution.
4. Membership of the IPU is reserved to *parliaments*, that is, to the representative organs of sovereign States.
5. The IPU has been expressly recognized by the two States in which it is physically located, Switzerland and the USA, as an international organization entitled to the appropriate privileges and immunities.
6. The IPU is recognized as having the capacity to act on the international plane in representing the interests of parliaments and parliamentarians.
7. States and international organizations dealing with the IPU have recognized its standing, authority and capacity to act on the international plane, within the area of its functional responsibilities, as the international organization of parliaments.
8. The IPU is a *public*, not a private organization, with strict membership conditions. It is not open to membership by individuals *qua* individuals, but only to parliaments.
9. In its decision in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, the International Court of Justice, when referring to treaties creating ‘new subjects of law’, captured the essence of international personality, namely, entities ‘with a certain autonomy, to which the parties entrust the task of realising certain common goals’ (ICJ *Rep.*, (1996), §19). The ‘primary test’ is functional, and approaches in terms of autonomy and function are reflected in the IPU today: It is an entity, universal in character, having the task of realising common goals, where participation and functional activities have the implicit consent of States and which are recognized by other international organizations.
10. The work of the IPU is clearly subject to the rule of law, as is evident, among others, from the regularity, neutrality and objectivity of its affiliation and suspensions procedures, the rules

applicable to its organs and committees, and its acceptance of the jurisdiction of the ILO Administrative Tribunal. The administration and activities of the Union are thus fully accountable to the governing bodies.

11. The IPU is unique in its combination of aims and purposes with a representative character. It is distinguishable from non-governmental organizations and private voluntary organizations in its membership of parliaments, the public, legislative organs of States, rather than of private or personal interests.

12. The IPU is empowered to deal on a world-wide basis with matters having a parliamentary dimension and to co-operate with other competent organizations, particularly those of the United Nations system. The General Assembly has recognized the IPU's unique status and its complementary role in providing the parliamentary dimension in international affairs.

13. The significance of government support for IPU activities, whether in regard to funding or to its functions, lies in its implied recognition of the IPU as an organization which is (1) active on the international plane, that is, among others, in the affairs of States; (2) representative of parliaments and of parliaments as representative of peoples; and (3) an interlocutor on matters of international concern as identified in the Statutes, including general matters affecting relations between States and matters of specific concern to parliaments, such as the human rights of parliamentarians.

14. The evidence shows that States, when dealing directly with the IPU, do so in recognition of its entitlement to act and do so through official channels generally used for diplomatic communication.

15. Support by international organizations for 'official' dealings with the IPU is found in the parity of treatment now accorded to the IPU by reference to other international organizations, in the various agreements on co-operation concluded between the IPU and, for example, the United Nations, FAO, UNESCO, and particularly the ILO, and especially in the extension to the IPU of the right *to participate* in meetings and conferences on a basis of reciprocity, and in the mutual undertakings in regard to joint programmes.

16. The IPU enjoys a significant measure of international personality. While status as an international organization may generally imply, among others, 'a permanent association of States, with lawful objects, and equipped with organs', as well as a distinction, in terms of legal power and purposes, between the organization and its membership, in the case of the IPU, State participation is indirect, if clear, and State consent is implicit.

17. Without seeking to anticipate all the consequences of the IPU's international legal personality

and international organization status, it can be concluded nevertheless that it enjoys powers commensurate with its functions and representative character described above. This includes the capacity to make agreements with Parliaments as representative organs of States, to make agreements with the United Nations, specialized agencies and other international organizations, and to intervene with States on matters relating to the human rights of parliamentarians and otherwise within the terms of its Statutes.

OPINION

The Inter-Parliamentary Union (IPU)

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

International organizations and 'definitions'

1. Most descriptions of international organizations, particularly those from a legal perspective, adopt a more or less formal approach. Commentators begin with the premise that an international organization connotes an association of States. Thereafter, they may acknowledge, first, that certain exceptional measures also exist, such as non-State originating agreements or collaboration followed by treaty or practice sufficient to constitute 'recognition', as in the case of the World Tourist Organization, Interpol, and Nordic Council; secondly, that there are a number of examples of 'near-international organizations', or at least entities having a measure of international personality, such as the Commonwealth and the International Committee of the Red Cross; and thirdly, that there are also exceptions to the premise of States only as members, for example, where international organizations are themselves members of international organizations.

2. A typical example of the formal approach is given by Bindschedler in the *Encyclopedia of Public International Law*:

The term international organization denotes an association of States established by and based upon a treaty, which pursues common aims and which has its own special organs to fulfil particular functions within the organization... Since international organizations are necessarily based upon multilateral treaties..., the law of treaties forms part of the law of international organization.¹

3. Bettati adopts a similar approach, adding a number of criteria :

Une organisation internationale est une association d'Etats créée par

¹ Bindschedler, R.L., 'International Organizations, General Aspects', in Bernhardt, R., ed., *Encyclopedia of Public International Law*, vol. 5 ('International Organizations in General. Universal International Organizations and Cooperation'), 1983, 119-40, 120.

traité, dotée d'une constitution et d'organes communs et possédant une personnalité juridique distincte de celle des Etats membres.²

4. Bindschedler also recognizes the first exception mentioned above:

The formation of an international organization 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 organization in the sense of international law unless its status as a... subject of international law can be based upon customary international law.³

5. Bettati, too, notes alternative methods of creation:

... la nature conventionnelle de l'acte créateur est commune à toutes les organisations... Mais la forme de l'accord entre Etats qui génère l'organisation internationale demeure extrêmement souple. Il peut s'agir d'un accord en forme simplifiée, d'une résolution de conférence internationale dans la mesure où elle implique un accord entre Etats à cette fin...⁴

6. Schermers, writing on membership, also recognizes exceptions to the criterion of independent statehood, and mentions those organizations composed of specialised government departments which he places 'on the dividing line between governmental and non-governmental organizations'.⁵ Even more to the point is Seidl-Hohenveldern's following observation:

Es gibt eine ganze Reihe *formell nichtstaatlicher* internationaler Organisationen, die in der Rechtswirklichkeit eine merkwürdige *Zwitterstellung* einnehmen. Aus mancherlei Gründen ziehen es manche *Staaten* vor, unter einer solchen *nichtstaatlichen Flagge* zusammenzuarbeiten. Die *Vertreter* aus den verschiedenen Staaten,

² Bettati, Mario, 'Création et personnalité juridique des organisations internationales', in Dupuy, René-Jean, *Manuel sur les organisations internationales* / *A Handbook on International Organizations*, Hague Academy of International Law, Martinus Nijhoff, 2nd ed., 1998, 33, 33.

³ Bindschedler, above note 1; Berg, A., 'Nordic Council and Nordic Council of Ministers', in Bernhardt, R., ed., *Encyclopedia of Public International Law*, vol. 6, 261-3, notes that the Nordic Council was established at the 1951 Session of the Nordic Inter-Parliamentary Union, a regional grouping of the IPU, and that each participating parliament adopted the Statute. A revised statute later became part of an international treaty by the 1971 revision of the 1962 Helsinki Treaty on Cooperation between Denmark, Finland, Iceland, Norway and Sweden. See also Seidl-Hohenveldern, Ignaz and Loibl, Gerhard, *Das Recht der Internationalen Organisationen einschließlich der Supranationalen Gemeinschaften*, Carl Heymans Verlag, 6., Aufl. 1996, §0103b: 'Eine solche formell *nichtstaatliche* internationale Organisation kann sich jedoch in eine zwischenstaatliche Internationale Organisation *umwandeln*. So hat die Praxis die Zweifel an der Völkerrechtspersönlichkeit der *Interpol* zerstreut, die darauf beruht hatten, daß diese nicht von den Staaten, sondern von den nationalen Polizeibehörden begründet worden war...'

⁴ Bettati, above note 2, 34.

⁵ Schermers, H.G., 'International Organizations, Membership', in Bernhardt, *Encyclopedia*, above note 1, 147-51, 148.

die sich in einer solchen Organisation zusammenfinden, werden von *staatlichen Stellen* der betreffenden Staaten *ernannt*, die auch ihr Verhalten in der Organisation bestimmen... Hierzu gehört... die *Interparlamentarische Union*...⁶

7. Very similar views on the general criteria of international organizations and on the ‘exceptions’ in practice are also expressed by other commentators, such as Brownlie and White.⁷ Clearly, while formally treaty-based organizations may be the norm, other possibilities exist, and the related question of international personality remains separate and distinct.⁸

The Facts: Organization and Structure of the IPU

8. The IPU was founded in 1889, originally as part of the movement for peace. Historically, it has actively promoted, among others, the establishment of a permanent mechanism for the settlement of disputes between States, disarmament, the formation of a ‘universal organization of nations’, and it has sought to study and seek solutions for a wide range of international issues suitable for parliamentary action.⁹

9. From being initially an organization of individual parliamentarians, it has evolved over the last one hundred and ten years into an organization of parliaments. Indeed, it is the Parliament itself which takes a formal decision to adhere to the IPU and the norm is for the parliament as an institution to seek affiliation.¹⁰ To give effect to this decision, each parliament constitutes itself as a ‘National Group’. This process began at least as early as 1931, with the decisions of the parliaments of Japan and Egypt to constitute themselves as a whole as national groups for the purposes of membership.

⁶ Seidl-Hohenveldern, Ignaz and Loibl, Gerhard, *Das Recht der Internationalen Organisationen einschließlich der Supranationalen Gemeinschaften*, Carl Heymans Verlag, 6., Aufl. 1996, §0103a.

⁷ Brownlie, I., *Principles of Public International Law*, Clarendon Press, Oxford, 5th ed., 1998, 678, 679-80; White, N.D., *The Law of International Organisations*, Manchester University Press, Manchester, 1996, 4-5, 29.

⁸ See also Morgenstern, Felice, *Legal Problems of International Organizations*, Grotius, Cambridge, 1986, 19, 21-2; besides examples of international organizations created by conferences, Morgenstern also mentions a (controversial) 1971 UN legal opinion, which argues that ‘it may well be that a new customary rule of international law is emerging under which... a legal person could 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...’ (*UNJYB* 1971, 215, 218).

⁹ On the early history, see Sterzel, Fredrik, *The Inter-Parliamentary Union*, P.A Norstedt & Söner, Stockholm, 1968 (hereafter, Sterzel, *The Inter-Parliamentary Union*).

¹⁰ See, for example, the requests for affiliation submitted recently by the Majlisi Oli (Parliament) of Tajikistan, the Parliament of Georgia, the National Assembly of the Kingdom of Cambodia, and the National Assembly of Niger: IPU docs. EX/224/5-P.1-5 (1997).

The debates of the period show that this was seen as an important step towards the goal of the IPU Conference itself to be representative of all parliaments, in effect, ‘an international parliament’.¹¹

10. At 16 April 1999, the IPU comprised 138 Members or ‘National Groups’, and five associate members.¹²

11. While there is no treaty foundation as such to the IPU,¹³ the IPU Statutes, as adopted and amended from time to time by the membership, play an equivalent constitutional role.¹⁴ That is to say, the Statutes (1) describe the character of the organization and its object and purpose; (2) provide for membership and lay down the procedure for affiliation and suspension;¹⁵ (3) establish and determine the structure and functions of the organs of the IPU, namely, the Inter-Parliamentary Conference, the Inter-Parliamentary Council, the Executive Committee, and the Secretariat; (4) regulate issues of representation and voting in the relevant organs; (5) prescribe authority in budgetary matters; and (6) establish the IPU’s internal legal order.

12. A summary reading of the Statutes reveals close similarities with a broad range of treaty-based organizations, and likewise significant points of distinction from other international entities having varying degrees of international personality.

¹¹ Union interparlementaire, Procès-verbaux du Conseil interparlementaire, XXX, Séances du lundi 13 avril 1931; 42-3; Union interparlementaire, Compte rendu de la XXVIIème Conférence, Budapest, 1-7 octobre 1931, Payot & Cie., Genève, 1932, 192, 501-2.

¹² IPU, ‘Results: 101st Conference and Related Meetings’, Brussels, Belgium, 10-16 April 1999, Annex 1. At the Brussels Conference, the IPU Council decided to reaffiliate the Parliaments of Burundi and Liberia as full Members and the European Parliament as an Associate Member.

¹³ Note that a treaty base is not a *sine qua non* to international legal personality, in regard to which the primary test is *functional*: Brownlie, I., *Principles of Public International Law*, 5th ed., 1998, 678 (hereafter Brownlie, *Principles*).

¹⁴ Statutes of the Inter-Parliamentary Union, adopted in 1976, as revised and amended to 1999, IPU, Geneva, 1999 (hereafter ‘IPU Statutes’).

¹⁵ Consistently with its character as a universal organization, *expulsion* is not involved; cf. Jenks, C.W., *Universality and Ideology in the I.L.O.*, (1969), 7: ‘The universality and permanence of the world community preclude recourse to expulsion as an effective sanction for violation of its standards; such problems must be solved within its membership by insistence on the obligations of membership, not by measures of expulsion or exclusion the practical effect of which is to release the offender from these obligations. The world community is not a club of the mutually congenial but an experiment in the organized government of all mankind.’

1. Character and purpose of the IPU

13. Article 1.1 of the IPU Statutes declares that it is ‘the international organization which brings together the representatives of the Parliaments of sovereign States’, placing itself at once *within* the international legal system at large. Article 1.2 identifies its historic and universal character (‘the focal point for world-wide parliamentary dialogue since 1889’), and the objects of its work: ‘peace and co-operation among peoples and... the firm establishment of representative institutions’. In pursuit of these goals, the IPU shall,

- (a) Foster contacts, co-ordination 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 of their means of action.

14. Article 1.3 provides further that the IPU, ‘shares the objectives of the United Nations, supports its efforts and works in close co-operation with it. It also co-operates with the regional inter-parliamentary organizations, as well as with international, intergovernmental and non-governmental organizations which are motivated by the same ideals.’¹⁶

2. Membership criteria and affiliation

15. Membership of the IPU is reserved to *parliaments*, that is, to the representative organs of sovereign States.¹⁷

16. According to Article 3.1 of the Statutes, the IPU ‘shall be composed of National Groups representing their respective Parliaments’.¹⁸ The *representative* character of the Union is emphasized by Article 3.2, which stresses 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’. Only one National Group may be formed in each

¹⁶ On co-operation and relations with the United Nations, see further below, §§42-56.

¹⁷ IPU Statutes, art. 1.1, art. 3.2.

¹⁸ Cf. Art. 4.1, UN Charter: ‘Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.’

Parliament, and in a federal State, only in the federal Parliament.¹⁹ Associate membership is open to ‘international parliamentary assemblies established under international law by States which are represented in the Union by a National Group’.²⁰

17. In relation to the representative character of the IPU and international law, several points here may be emphasized. Thus, representation is contingent on a Parliament that is legally constituted, which represents the population of the State in question, and which is functioning in the territory of that State. This means that ‘parliaments in exile’ do not qualify.

18. Moreover, the suspension of affiliation may result where a Parliament has ceased to function, for example, by reason of coup d’état or other unconstitutional means of dissolution.²¹

19. Decisions on affiliation, re-affiliation and suspension are taken by the Inter-Parliamentary Council on the advice of the Executive Committee.²²

3. Structure and functions

20. The IPU seeks to fulfil its objectives through, among others, the activities of its principal organs and its membership of parliaments, represented by national groups.

21. The principal forum for the IPU is the Conference, which meets twice a year.²³ According to article 13, the Conference debates issues falling within the scope of the Union and makes recommendations thereon. Every national group, in turn, is under a duty to submit ‘the resolutions of Union to its respective Parliament... to communicate them to the Government; to stimulate their implementation and to inform the Secretariat... as to the steps taken and the results obtained.’²⁴

22. The IPU Council also normally holds two sessions a year.²⁵ Among other functions, it ‘determines and guides the activities of the Union and controls their implementation in conformity with the purposes defined in the Statutes’, decides on the admission and re-admission to membership

¹⁹ IPU Statutes, art. 3.3.

²⁰ Ibid., art. 3.5. For example, the Central American Parliament was established pursuant to the 1987 Tratado Constitutivo del Parlamento Centroamericano y otras Instancias Políticas, signed in Guatemala in follow-up to the Esquipulas II peace process. The membership of such international parliamentary assemblies (established under international law by States) would seem to imply a measure of consent or recognition by those States to the international character of the IPU.

²¹ IPU Statutes, art. 4.2.

²² IPU Statutes, arts. 4, 22(a), 25.2(a).

²³ See IPU Statutes, arts. 10-17.

²⁴ IPU Statutes, art. 8; see also Conference Rule 39.2.

²⁵ IPU Statutes, arts. 18-22.

and on suspension of affiliation, and adopts the work programme and budget of the Union.²⁶

23. The Executive Committee, although qualified in the Statutes as the IPU's administrative organ,²⁷ is in fact more than that. Not only is it the 'think tank' of the IPU, but it also prepares all the work of the Council, which takes most of its decisions on the basis of proposals by the Executive Committee. It examines applications for affiliation or reaffiliation, and whether the conditions for membership have been satisfied, and informs the Council of its conclusions. It may summon the Council in case of emergency, and 'controls the administration of the Secretariat as well as its activities in the execution of decisions taken by the Conference or by the Council...'²⁸

24. Finally, it is among the functions of the Secretariat 'to support and stimulate the activities of National Groups and to contribute, on the technical level, towards harmonization of these activities... to provide for the execution of the decisions of the Council and of the Conference... (and) to maintain the liaison between the Union and other international organizations...'²⁹

25. The Union's standard-setting role is supported by the four Study Committees of the IPU Conference,³⁰ the Meeting of Women Parliamentarians (which, since the 101st Conference in Brussels in April 1999, is an official IPU meeting),³¹ and six subsidiary bodies of the IPU Council: the Committee on the Human Rights of Parliamentarians,³² the Group of Facilitators for Cyprus, the Committee for Sustainable Development, the Committee on Middle East Questions, the Committee to Promote Respect for International Humanitarian Law, and the Gender Participation Group.

4. Representation and voting

26. The IPU's representative character is carried through to Conference and Council levels. The Conference, for example, is composed of 'members of Parliament designated as delegates by their

²⁶ Ibid., arts. 21, 22. Cf. Sterzel, *The Inter-Parliamentary Union*, 138, who notes that the allocation of budget responsibility to the Council 'emphasizes its character of a representative assembly, just like the Conference, even if constituted in accordance with other rules.'

²⁷ IPU Statutes, arts. 24-25.

²⁸ Ibid., art. 25.

²⁹ Ibid., art. 26.

³⁰ Ibid., Statutes, art. 14. The Study Committees are I Political Questions, International Security and Disarmament; II Parliamentary, Juridical and Human Rights Questions; III Economic and Social Questions; IV Education, Science, Culture and the Environment; they normally prepare reports and draft resolutions for the Conference.

³¹ Ibid., art. 23.

³² On which see further below, §§37-41.

National Groups'.³³ Each National Group has a minimum of ten votes, with up to a maximum of thirteen additional votes depending on population.³⁴

27. The IPU Council is composed of two members delegated by each National Group, all of whom must be 'sitting members of Parliament'.³⁵ The Executive Committee is made up of the President of the Council (who presides *ex officio*), twelve members belonging to different Parliaments,³⁶ (who are elected by the Council which is called on to give consideration to the candidate's contribution to the work of the Union and his or her National Group, and to endeavour to ensure an equitable geographical distribution),³⁷ and, *ex officio*, the President of the Co-ordinating Committee of the Meeting of Women Parliamentarians (who is elected by this Meeting from among the members of its Co-ordinating Committee).³⁸

5. Budgetary matters

28. The Executive Committee proposes the budget, which is adopted by the Council.³⁹ Each Member and each Associate Member is required to make an annual contribution to the expenses of the Union, in accordance with a scale approved by the Council.⁴⁰ Failure to pay its contributions may result in the suspension of a National Group after three years, and to the loss of voting rights after two years, unless the Council is satisfied that the failure to pay is due to conditions beyond the control of the Group in question.

6. Internal legal order

³³ IPU Statutes, art. 11.1. A limit of eight members per National Group of countries with less than 100 million inhabitants applies, and of ten members in regard to National Groups within populations of 100 million or more: art. 11.2. Six hundred and ninety-three parliamentarians, for example, attended the 100th Conference in Moscow in September 1998, together with 67 delegates as observers: IPU, 'Results: 100th Conference and Related Meetings', Moscow, Russian Federation, 6-12 September 1998, 2.

³⁴ IPU Statutes, art. 16. A delegation may split its votes to express the different views existing within its Parliament: art. 16.3. This system was intended to enhance the representative character of the process by allowing all shades of opinion: Sterzel, *The Inter-Parliamentary Union*, 36f.

³⁵ IPU Statutes, art. 19.

³⁶ *Ibid.*, art. 24.1.

³⁷ *Ibid.*, art. 24.2, 24.3.

³⁸ *Ibid.*, art. 24 (as amended in April 1999 in Brussels).

³⁹ *Ibid.*, arts. 25.2(e), 22(i).

⁴⁰ *Ibid.*, art. 5.1; also Financial Regulations, Rule 5.

29. The Statutes of the IPU, considered in the context of relations with the host State, among others, shows that the IPU is governed internally by a legal and administrative system distinct and separate from that of any State.⁴¹ Without going into further detail, it may be mentioned that IPU staff members are considered as ‘international officials’ by the host State; in addition, and in particular, internal matters are subject, in the event of a dispute between a staff member and the organization, to the jurisdiction of the Administrative Tribunal of the International Labour Organization. As the International Court of Justice observed in 1956, this administrative tribunal is itself an international tribunal.⁴²

The Facts: Activities and International Relations of the IPU

1. Headquarters and Host State relations

30. In those countries where it is physically located, the IPU is recognized and treated as an international organization. In the 1971 Agreement between the Swiss Federal Council and the IPU on the latter’s juridical status, the former expressly ‘recognizes the personality and legal capacity’ of the IPU, ‘due to it by virtue of its status’, and ‘guarantees... the independence and freedom of action belonging to it as an international institution’.⁴³ The status, privileges and immunities extended to the IPU and its staff parallel those due to other international organizations and, indeed, those generally accorded in the context of diplomatic relations.⁴⁴

31. For example, the premises and archives of the Union are declared to be inviolable, and it is to be exempt from all direct and indirect taxation.⁴⁵ Of particular importance is article 6 on freedom of access and residence, under which Switzerland agrees to facilitate the entry of all persons,

⁴¹ See generally Cahier, Philippe, ‘L’ordre juridique interne des organisations internationales’, in Dupuy, René-Jean, *Manuel sur les organisations internationales/A Handbook on International Organizations*, Hague Academy of International Law, Martinus Nijhoff, 2nd ed., 1998, 377-91.

⁴² *Judgments of the Administrative Tribunal of the ILO*, Advisory Opinion, ICJ Reports, 1956, 77, 97.

⁴³ ‘Agreement between the Swiss Federal Council and the Inter-Parliamentary Union to settle the Juridical Status of the Organization in Switzerland’, 28 September 1971, retroactive to 1 January 1971, arts. 1, 2. In common with a number of other international organizations, the IPU is also party to the jurisdiction of the ILO Administrative Tribunal.

⁴⁴ Cf. 1961 Vienna Convention on Diplomatic Relations: 500 UNTS 95, arts. 21 and following.

⁴⁵ Arts. 3 (Inviolability), 4 (Fiscal Status). In the matter of customs clearance, art. 5 expressly declares that the IPU shall be subject to the same regulations as are applicable to international organizations.

irrespective of nationality, called on official business.⁴⁶ Immunity from legal process is accorded as if for diplomatic personnel.

32. The Swiss Federation and the State of Geneva have recently offered financial support and land for the construction of a new headquarters for the Union on the same basis as they do for international organisations of the United Nations system. The funds will be made available as an interest-free loan granted by the Foundation for Buildings for International Organizations (FIPOI) with the approval of the Swiss Federal Council, the land being provided by the State of Geneva.⁴⁷

33. The Government of the United States of America, on the territory of which the IPU established a liaison office in 1998, has likewise designated the Union as a ‘public international organization entitled... to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act’.⁴⁸ The Act itself provides for legal capacity in regard to ‘a public international organization in which the US participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive Order’.⁴⁹

2. Relations with Conference States

34. 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 the President or Speaker of the Parliament, but evidently as representative of both Parliament and State. For such agreements contain binding obligations, financial and other, that can only be carried out with State consent. Such standard form agreements⁵⁰ include not only a financial undertaking (a commitment of public funds), but also significant undertakings with regard to sovereign powers over the admission of individuals to State territory. Article 5 common to the agreements which the IPU has signed for decades with every host Parliament of the IPU Conference provides:

⁴⁶ Art. 6.1. Note also the similar undertakings accepted by States in regard to meetings on their territory of the Inter-Parliamentary Conference.

⁴⁷ IPU, ‘Results: 100th Conference and Related Meetings’, Moscow, Russian Federation, 6-12 September 1998, 8, Annex XI.

⁴⁸ United States Department of State, Letter of 28 August 1998 from Molly K. Williamson, Acting Assistant Secretary of State for International Organization Affairs to Anders B. Johnsson, Secretary General, IPU; Executive Order, 7 August 1998, Inter-Parliamentary Union.

⁴⁹ United States International Organizations Immunities Act, 59 Stat. 669 (1945), 22 U.S.C., sec. 288 (1952).

⁵⁰ See, for example, the agreements by the IPU with the Parliament of the Russian Federation (1998) and the Parliament of Belgium (1999).

In conformity with the Union's principles, an 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 visas for participation.

35. The additional protocol makes further provision in this regard, under which the host Group is to make arrangements for the issue of visas free of charge to those attending as delegates of affiliated and applicant National Groups, advisers, experts and secretarial staff, observers, special guests, members of the IPU Secretariat, and those accompanying any of the listed categories.

36. Moreover, Inter-Parliamentary Conferences are invariably opened by the Head of State, usually in the presence of the Prime Minister and other senior representatives of the Government.⁵¹

3. Human Rights and other Interventions

37. The attention paid to the statutory goals and the international and representative character of the organization are evident in the positions taken over the years on various human rights issues. At the Council meeting in 1933, reference was made to a letter from the Chair of the Swiss Group to the Bureau, stating that the new German regime had imprisoned a number of members of the Reichstag without legal authority, and requesting investigation and necessary démarches. There was considerable concern at the time with the question of the IPU and the principle of non-intervention. A general resolution adopted, recalling 'the necessity of respecting the immunity, which should be guaranteed to every member of Parliament, and the rights of the parliamentary opposition', and proclaiming the Council's 'adherence to the fundamental principles, which are the basis of democratic rights, namely freedom of assembly and freedom of opinion'. Following the coup d'état in Greece in 1967, however, more vigorous action was taken and continues to this day.⁵²

38. While the IPU adopts resolutions of a general nature (focusing, for example, on the role of parliaments as guardians of human rights, on international human rights norms and standards, on democracy,⁵³ or on particularly relevant issues, such as the criteria for free and fair elections⁵⁴), others are addressed directly to named States and specifically concern the human rights of

⁵¹ For example, the 100th Conference in Moscow in 1998 was opened by President Boris Yeltsin, and the 101st Conference in Brussels was opened by the King of the Belgians.

⁵² On the earlier history, see Sterzel, *The Inter-Parliamentary Union*, 43-4, 77-8.

⁵³ The Universal Declaration on Democracy was adopted by the IPU Council in September 1997, and taken note of by the UN General Assembly later the same year: UNGA res. 52/18, 21 November 1997.

⁵⁴ The Declaration on Criteria for Free and Fair Elections was adopted by the Inter-Parliamentary Council in March 1994, and taken note of by the UN General Assembly later the same year: UNGA res. 49/190, 23 December 1994.

parliamentarians.⁵⁵ Since 1977, such resolutions have been based on the recommendations of the Committee on the Human Rights of Parliamentarians.⁵⁶

39. At the 1999 Brussels Conference, for example, nineteen resolutions were adopted regarding the cases of parliamentarians in Burundi, Cambodia, Chad, Colombia, Djibouti, Gambia, Guinea, Honduras, Democratic Republic of the Congo, Malaysia, Myanmar, Nigeria, Togo and Turkey. Especially significant about the work of the IPU in this field is the fact that official communications and responses to interventions regularly take place at the ministerial level, and frequently also at the level of Head of State or Government. Over the years, the IPU Committee has carried out several on-site missions which are conducted according to the same standards as those of intergovernmental organizations, that is, not only can no mission be sent to a country without the prior consent of the authorities of the State concerned, but the programme is set up in consultation with them and includes meetings with the highest authorities in the Executive, in the Parliament and, when appropriate, the Judiciary. In addition, visits to detained or imprisoned members of parliament are organized in keeping with the corresponding standards of international organizations.

40. In addition, States have also agreed to 'good offices' missions organized by the IPU, for example, in regard to the situation in some of the former Yugoslav republics and in Cyprus. An IPU mission visited Bosnia and Herzegovina, Croatia and the Republic of Yugoslavia in 1994, while another IPU mission visited both north and south of the island of Cyprus in 1995. At that time the mission met with the two Cypriot leaders and with leaders of all political parties. It also organized a first meeting of representatives of all the political parties at the Ledra Palace in the buffer zone under UN control.

41. In no case has any State objected to the competence of the IPU to intervene on behalf of the world parliamentary community further to Article 1.2 of its Statutes.

4. Co-operation with the United Nations and Specialized Agencies

42. Article 1.3 of the IPU Statutes provides:

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

⁵⁵ The detention of members of parliament first came up at the Council meeting in 1933, resulting in a unanimously adopted resolution: see Sterzel, *The Inter-Parliamentary Union*, 43-4.

⁵⁶ See Despouy, Leandro, *Functioning and 'Jurisprudence' of the IPU Committee on the Human Rights of Parliamentarians, 1 January 1977-4 February 1993*, IPU, Geneva, 1993; IPU, *Positions regarding Human Rights Issues taken by the Inter-Parliamentary Union in recent years*, Geneva, 1998.

43. The IPU enjoyed close *de facto* relations with the League of Nations throughout its life. IPU resolutions were published in the League's Official Journal, through the intermediary of one or other delegation, and the Secretariat of the League was represented by an observer at Inter-Parliamentary Conferences.

44. Following the establishment of the United Nations, the IPU took up the question of future collaboration, and in a confidential letter dated 27 June 1946, IPU Secretary General Léopold Boissier sought the advice of the then Deputy Secretary-General of the United Nations, M. Adrianus Pelt. Referring to article 71 of the United Nations Charter,⁵⁷ which provides for 'consultative arrangements' between the Economic and Social Council and non-governmental organizations concerned with issues in its field of competence, M. Boissier noted that,

L'Union, bien que vouant une partie de son activité aux questions économiques et sociales, est, avant tout, une institution d'ordre politique, réunissant des hommes investis d'un mandat politique. Dans ces conditions, je ne sais si une démarche auprès du Conseil économique et social pour être au bénéfice de l'Article 71 pourrait suffire à établir entre les deux institutions... des rapports assez larges, permettant à l'Union de bénéficier des travaux qui seront accomplis à New York et ailleurs.

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.

45. Although it is clear that the IPU, even in 1946, saw itself as needing a different type of relationship with the UN, the correspondence was overtaken by events. By the time that M. Pelt replied (on 22 August 1946), ECOSOC's Committee on Arrangements for Consultation with Non-Governmental Organizations had already reported. In the absence of any Charter or other definition of the term 'non-governmental organization', the Committee adopted an extensive and non-differentiating definition of its own: 'any international organization which is not established by inter-governmental agreement'.⁵⁸ In addition, the Committee's interpretation of article 71 and particularly its view of the 'Principles governing the nature of consultative arrangements', maintained a hard distinction between articles 69 and 70 of the UN Charter (allowing participation without vote in the deliberations of the Council), on the one hand, and article 71 (the arrangements for consultation), on

⁵⁷ Art. 71 provides: 'The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements shall be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.' The competence of the Council extends to 'international economic, social, cultural, educational, health, and related matters' and 'human rights and fundamental freedoms for all': art. 62, UN Charter.

⁵⁸ See ECOSOC res. 72/3, 21 June 1946: ESCOR (II) 14, pp. 360-5; M. Pelt enclosed copies of the report with his reply to M. Boissier.

the other. This 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 M. Boissier, and which has since emerged in practice.

46. In the absence of other, more appropriate alternatives, in 1947 the IPU Executive Committee therefore applied for consultative status with the United Nations under article 71 of the UN Charter.⁵⁹ As the IPU developed over the next forty-five years, however, consultative status became yet more inappropriate for other practical reasons, namely, that it excluded the Union from working with the main *political* organs of the United Nations, particularly the General Assembly.

47. The value of co-operation in this field was recognized by the General Assembly itself in 1995. Resolution 50/15 of 15 November 1995 requested the Secretary-General to take the necessary steps to conclude an agreement on co-operation with the IPU. This agreement was signed the following year, on 24 July 1996, by the UN Secretary-General, Boutros Boutros-Ghali, the President of the Inter-Parliamentary Council, Ahmed Fathy Sorour, and the IPU Secretary General, Pierre Comillon.

48. Article I acknowledges respective responsibilities, and the United Nations recognizes the IPU as the ‘world organization of parliaments’; article II provides for co-operation and consultation, and article III for ‘appropriate representation’. Specifically, this involves reciprocal invitations to attend IPU meetings and conferences and plenary meetings of the General Assembly, and for the IPU also *to participate* in the meetings of the Main Committees of the General Assembly and of subsidiary organs, subject to the applicable rules of procedure and decisions and practices.⁶⁰

49. The significance of the invitation *to participate* should not be underestimated, for this is precisely the line that divides the right of members under article 69 or specialized agencies under article 70 from the ‘consultative relationship’ of non-governmental organizations under article 71.⁶¹

50. The agreement was welcomed by the General Assembly the same year, which also requested the Secretary-General to report thereon at the next session.⁶²

⁵⁹ At the time, this was sharply criticised by some delegates at the first post-war IPU Conference in Cairo, who feared that the Union might thereafter become a ‘subordinate organization’: Sterzel, *The Inter-Parliamentary Union*, 51-2, 81-2.

⁶⁰ Entitlement to participate depends on there being a subject falling within the purview of the IPU’s competence, activities and expertise. The agreement also deals with joint action and technical co-operation and co-operation between the Secretariats. The text was transmitted to the General Assembly under cover of UN doc. A/51/402.

⁶¹ Art. 69: ‘The Economic and Social Council shall invite any Member of the United Nations *to participate, without vote*, in its deliberations on any matter of particular concern to that Member.’ Art. 70: ‘The Economic and Social Council may make arrangements for representatives of the specialized agencies *to participate, without vote*, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies.’ (Emphasis supplied). Simma, B., ed., *The Charter of the United Nations. A Commentary*, Oxford University Press, 1995, 903.

⁶² UNGA res. 51/7, 25 October 1996.

51. In his 1997 report, the Secretary-General described the range of co-operative activities, for example, over Cyprus, anti-personnel mines, and the promotion of representative democracy, including the participation of women in political life, and technical assistance and advisory services to parliaments. Again, the General Assembly ‘noted with appreciation’ these developments and recommended that co-operation be further strengthened.⁶³ The Secretary-General’s 1998 report highlighted increasing co-operation, outlined specific activities, and noted that relations had been facilitated by the opening of the IPU Liaison Office in New York. It also referred to the fact that the IPU had signed formal co-operation agreements with the Food and Agriculture Organization (FAO) and the United Nations Education, Scientific and Cultural Organization (UNESCO).⁶⁴

52. The co-operation agreements with the FAO and UNESCO largely follow the model of that with the UN. For example, the IPU is recognized as the ‘world organization of national parliaments’ and is to be ‘invited to participate as an observer at meetings of UNESCO and have the right to take part without vote in debates on matters within its competence’.⁶⁵

53. In April 1999, the UN High Commissioner for Human Rights and the IPU Council agreed on the text of a Memorandum of Understanding which will be signed by representatives of the two organisations later this year. This Memorandum builds on the UN-IPU Co-operation Agreement and provides a framework for concrete activities that will be carried out jointly in the coming years between the IPU and the High Commissioner’s Office.⁶⁶

54. Also in April 1999, the IPU Council authorised its President and the IPU Secretary General to sign on behalf of the IPU an Agreement of Co-operation with the International Labour Organisation (ILO) 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 co-operation, including through the organisation of joint activities. It provides that the IPU can henceforth participate in the International Labour Conference with the status of an ‘official international organisation’.⁶⁷ In presenting this agreement for prior consideration and approval by the

⁶³ UNGA res. 52/7, 28 October 1997.

⁶⁴ UN doc. A/52/456.

⁶⁵ Art. IV.2, Agreement of Co-operation between UNESCO and IPU, Paris, 26 June 1997, signed by Federico Mayor, Director-General, UNESCO, Ahmed Fathy Sorour, President, IPU Council, and Pierre Cornillon, IPU Secretary General. On earlier relations with UNESCO, see Sterzel, *The Inter-Parliamentary Union*, 81. The wording of the agreement with the FAO is slightly different: ‘IPU shall be invited to observe meetings of FAO, and to participate without a vote in debates on subjects which fall within IPU’s field of interest in accordance with the applicable rules and the decision and practices of the competent FAO bodies’: Art. IV.2, Co-operation Agreement between FAO and IPU, Rome, 12 August 1997, signed by Jacques Diouf, FAO Director-General and Pierre Cornillon, IPU Secretary General.

⁶⁶ For text see IPU doc. CL/164/9(c)-P.1.

⁶⁷ ILO doc. GB.274/10/1, 274th session, March 1999, Appendix, art. III.3.2.

ILO Committee on Legal Issues and International Labour Standards, the ILO administration stated that,

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 intergovernmental organisation for the purposes of the Statute of the Tribunal since, under the Statute, the Tribunal was at the time open only to international intergovernmental organisations.⁶⁸

55. In its 1998 resolution, the United Nations General Assembly looked forward to continued close co-operation, and also welcomed the IPU initiative to hold a conference of presiding officers of national parliaments at UN Headquarters, in conjunction with the Millennium Assembly in the year 2000.⁶⁹

56. An indication of growing *governmental* support for these developments is clear from the increasing numbers of sponsors of the relevant General Assembly resolutions over the years. In 1995 the draft resolution was sponsored by 61 States, the 1996 by 82 States, in 1997 by 108 States, and in 1998 by 124 States. In the general debate in 1998, many countries emphasised the importance of the role of the IPU. The delegate for Austria, for example, said that the IPU's task of 'facilitator' could not be underestimated; it was 'the link between national parliaments and the United Nations General Assembly'. The delegate for India attached particular importance to the fact that the IPU included representatives from both government and opposition parties; Norway referred to the IPU as 'adding a parliamentary dimension to the planning of the future work' of the UN, and Mexico added that 'the contribution of parliamentarians was unquestionably valuable, since they were the voices of the aspirations of the people'. Among the strongest supporters of closer collaboration was the delegate of Chile, Ambassador Juan Somavia. He urged that the IPU 'should be accorded a special status in line with its position as the only world organization of parliaments', noting that it was 'the first permanent forum for multilateral political negotiation' and that the UN could not treat it as it were just another non-governmental organization'.⁷⁰

The Law and its Application to the Facts

1. 'International personality' and 'International organization'

⁶⁸ ILO doc. GB.274/LILS/1, March 1999.

⁶⁹ UNGA res. 53/13, 28 October 1998.

⁷⁰ United Nations, Press Release: GA/9489, 28 October 1998.

57. The International Court of Justice has remarked that,
 ‘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.’ International Court of Justice, *Reparation for Injuries Case*, ICJ Rep., (1949), 174, 178
58. The phrases ‘international organization’ and ‘inter-governmental organization’ are not always employed consistently, and practice also indicates that neither one nor the other (or both) is necessarily coterminous with the concept of ‘international personality’.
29. Article 34 of the Statute of the International Court of Justice and article 12 of the Constitution of the International Labour Organization both refer to ‘public international organization’. Article 1 of the Statute of the Council of Europe uses the phrase ‘international organization’, while the 1951 ‘statutory’ resolution adopted by Committee of Ministers in May 1951 uses both ‘inter-governmental organization’ and ‘international organization’. Article 130 of the Constitution of the Organization of American States opts for the phrase ‘inter-governmental organization’, and in the International Law Commission’s 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, ‘international organization’ is declared to mean ‘inter-governmental organization’.⁷¹
60. However, not all ‘international organizations’, that is, entities having the capacity to bear rights and duties and to act on the international plane, are necessarily ‘inter-governmental’ in the strict sense. What counts is the degree of recognition and acceptance of such entities manifested by States in their dealings with them, which also goes to the *measure* of personality, the amount of which in turn depends upon a *functional* analysis of aims and purposes. Likewise, not every occurrence of international personality necessarily entails the presence of an international organization in the fullest sense of the word; thus, the International Committee of the Red Cross, a private institution founded in Geneva in 1863, is nonetheless considered to possess international personality.⁷²
61. In the *Reparation for Injuries Case*, the International Court of Justice considered that the rights and duties of an entity such as the United Nations ‘must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice’,⁷³ and that

⁷¹ Art. 1(i); the ILC was not inclined to elaborate a more precise definition: ILC, *Yearbook 1985*, Vol. II, Pt. 1, 105-7.

⁷² This is related in particular to its functions under the 1949 Geneva Conventions and related activities: Schermers & Blokker, §47; Seidl-Hohenveldern, Ignaz and Loibl, Gerhard, *Das Recht der Internationalen Organisationen einschließlich der Supranationalen Gemeinschaften*, Carl Heymans Verlag, 6., Aufl. 1996, §0104. The ICRC was admitted to observer status at the General Assembly in 1990: UNGA res. 45/6, 16 Oct. 1990; UN doc. A/45/191.

⁷³ Advisory Opinion, ICJ Rep. 1949, 180.

‘international personality’ means *‘to be capable of bearing rights and duties’*.⁷⁴ Whether an entity does bear rights and duties in the particular case will be relative to functions, purposes and practice.⁷⁵

International agreements and consent of States

62. Schermers and Blokker, describing an international organization as a form of co-operation, identify foundation on an *international agreement* as an essential element.⁷⁶ However, ‘international agreement’ in this context requires careful interpretation and cannot exclude the attribution of international personality and the characteristics of international organization by way of evolution. Brownlie has also noted that while a treaty is the normal foundation for an international organization, its ‘source could equally be the resolution of a conference *or a uniform practice*.’⁷⁷

63. The Conference on Security and Co-operation in Europe was established under the 1975 Helsinki Accords. Originally, it was not an international organization, but over the years it acquired the structure and organs of such an entity: a Council of Ministers for Foreign Affairs, a Committee of Senior Officials and a Secretariat as a result of the Paris Meeting in 1990. A Parliamentary Assembly was established following a parliamentary meeting in Madrid in 1991, and has since been seeking to formalize its relationship with the inter-governmental organization. In December 1994, the CSCE changed its name to the *Organization* for Security and Co-operation in Europe.

64. Likewise, the Commonwealth Secretariat did not start as an international organization, but may have evolved into one after adoption of the Declaration of Commonwealth Principles at the 1971 Singapore Meeting. The Commonwealth Secretariat was accorded observer status in the General Assembly and subsidiary organs in 1976;⁷⁸ the explanatory memorandum in support of this resolution did not characterise the Commonwealth or its Secretariat as an ‘international organization’; rather the latter was described as ‘the central co-ordinating body... a major agency for multilateral

⁷⁴ Ibid., 179.

⁷⁵ Brownlie, *Principles*, 678.

⁷⁶ Schermers, Henry, G. & Blokker, Niels M., *International Institutional Law*, Martinus Nijhoff, The Hague, 3rd rev. ed., 1997, §33 (hereafter Schermers & Blokker).

⁷⁷ Brownlie, *Principles*, 680-1; Schermers and Blokker argue that ‘Organizations which are not created by treaty will have to prove the existence of an inter-state agreement when they claim a public, inter-governmental status’: §37, but State consent can be manifested in a variety of ways. Interestingly, they also identify a fourth, ‘democratic’ reason why an international agreement is necessary, namely, that ‘for democratic reasons, it would be objectionable if states could establish a new organization and attribute powers to it without involving their national parliament...’ (§43).

⁷⁸ UNGA res. 31/3, 18 Oct. 1976.

communication'.⁷⁹

65. Membership in the Inter-Parliamentary Union flows from the decisions of national Parliaments. It is open to any parliament in any sovereign State which satisfies the conditions laid down in article 3 of the Statutes; while the delegates of member parliaments participate in the work of the IPU on behalf of their respective parliament and obviously cannot be 'instructed' by the Executive Branch,⁸⁰ (this not being compatible with the parliamentary function), nevertheless no parliament would be able to participate in the IPU without the explicit or implicit consent of the Executive. In this respect, the membership of national parliaments in the IPU can be considered equivalent to participation by States in the work of the organization.⁸¹

66. Moreover, Parliament is a supreme organ of the State as much as the Government or the Executive. In many countries it is Parliament that embodies the sovereignty of the nation and nowhere is parliament subordinated to the Executive. Indeed, the Parliament, composed of men and women who have been elected by the citizens to represent their interests at the national level, may express the will of the State with as much legitimacy as the Government or Executive. While traditionally international representation of the State is vested in the Head of State and carried out by his or agents (diplomats), the world has evolved and international relations are no longer merely diplomatic. It may therefore be argued that if there is a need for and a will by Parliaments to enter into international co-operation they can do it with that part of the State's authority they embody and do not need the explicit or implicit consent of the Executive. This would seem to be the case in the US where Congress decided on its own that the United States will participate in the IPU.⁸²

67. Secondly, requests for membership are submitted by the national parliament itself; and thirdly, financial contributions likewise and necessarily come from national budgets. In many instances, financial contributions must be, and are authorised by national legislation.⁸³ Moreover, as described above, the IPU is governed by a sophisticated internal legal order, and in this regard is not subject to the legal order of those States in which it has its headquarters and subsidiary office, or to

⁷⁹ UNGAOR, 31st Sess., Annexes, 119: UN doc. A/31/191. Cf. the Nordic Council, which was set up by parallel decisions of the parliaments of Denmark, Iceland, Norway and Sweden.

⁸⁰ Schermers & Blokker, §36, on the status of Interpol.

⁸¹ Cf. Bettati, Mario, 'Création et personnalité juridique des organisations internationales', in Dupuy, René-Jean, *Manuel sur les organisations internationales/A Handbook on International Organizations*, Hague Academy of International Law, Martinus Nijhoff, 2nd ed., 1998, 33, 34, noting that while an organization such as the IPU, ('pas une organisation internationale dans la mesure où elle est créée par des parlements nationaux'), can yet become an international organization, 'dès lors que les gouvernements y participent et confèrent à l'acte constitutif un caractère d'accord par une pratique concordante à son égard...'

⁸² See para. 30 and note 44 above, as well as US Congress Public Law 74-170 entitled 'An act to authorise participation by the United States in the Inter-Parliamentary Union'.

⁸³ See, for example, US Public Law 22 U.S.C. 276-276a-4 (1935).

that of any other State.⁸⁴ Finally, it is clear that the IPU is not a ‘non-governmental organization’ (NGO) in the sense in which that phrase is normally used.⁸⁵

68. In regard to ‘external relations’, the IPU in practice enjoys certain key competences, such as the capacity to enter into conference agreements,⁸⁶ to enter into Headquarters agreements, and into agreements with other international organizations; as well as the capacity to engage in ‘active legation’,⁸⁷ to send special missions to members and to send delegations to international conferences.⁸⁸

69. Clearly, then, the IPU enjoys a significant measure of international personality. While status as an international organization may generally imply, among others, ‘a permanent association of States, with lawful objects, and equipped with organs’, as well as a distinction, in terms of legal power and purposes, between the organization and its membership,⁸⁹ in the case of the IPU, State participation is indirect, if clear, and State consent is implicit. Thus, membership of the IPU ‘shall be composed of National Groups representing their respective parliaments’; and ‘parliaments’ shall be ‘parliaments of sovereign States’, ‘constituted in conformity with the laws of a sovereign State whose population it represents and on whose territory it functions’.⁹⁰ Moreover, a distinction between organs and members can be found in the structure of the IPU described above. Thus, the Executive Committee is composed of the President of the Inter-Parliamentary Council, twelve members belonging to different Parliaments, elected by the Council,⁹¹ and the President of the Co-ordinating Committee of the Meeting of Women Parliamentarians as an *ex officio* member. It is the ‘administrative organ’ of the Union and, among its functions, considers whether the conditions for membership have been fulfilled in any particular case,⁹² whereupon the Council decides on

⁸⁴ Cf. Schermers and Blokker, (§1196): ‘Unlike private international organizations, public international organizations are not subject to any national law. Thus, they must create their own international order, which is dependent on the organization’s own constitution, but independent of any other legal order.’

⁸⁵ Bettati, ‘Création et personnalité juridique’ (above note 81), at 35, quoting the view of the Institut de droit international to the effect that NGOs are ‘librement créées par l’initiative privée’.

⁸⁶ Schermers & Blokker, §§1748-70.

⁸⁷ Schermers & Blokker, §1816; also Brownlie, *Principles*, 687, on the ‘right’ of mission.

⁸⁸ Schermers & Blokker, §§1832, 1841.

⁸⁹ Brownlie, *Principles*, 678-80.

⁹⁰ See IPU Statutes, arts. 3.1, 1.1, 3.2, respectively.

⁹¹ IPU Statutes, arts. 24.1 and 22(l); cf. Seidl-Hohenveldern, Ignaz and Loibl, Gerhard, *Das Recht der Internationalen Organisationen einschließlich der Supranationalen Gemeinschaften*, Carl Heymans Verlag, 6., Aufl. 1996, §§0111-0112

⁹² *Ibid.*, arts. 25.1, 4, and 25.2(a), respectively.

admission, re-admission or suspension; summons the Council in case of emergency; determines the date and place of Council sessions and establishes the provisional agenda.⁹³ The Executive Committee itself may also meet in emergency session if the President deems it necessary.⁹⁴

Conclusions

70. In its decision in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, the International Court of Justice, when referring to treaties creating ‘new subjects of law’, captured the essence of international personality, namely, entities ‘with a certain autonomy, to which the parties entrust the task of realising certain common goals’.⁹⁵ The ‘primary test’ is functional,⁹⁶ and approaches in terms of autonomy and function are reflected in the IPU today: It is an entity, universal in character, having the task of realising common goals, where participation and functional activities have the implicit consent of States and which are recognized by other international organizations.

71. The work of the IPU is clearly subject to the rule of law,⁹⁷ as is evident from the regularity, neutrality and objectivity of its affiliation and suspensions procedures,⁹⁸ and the rules applicable to its organs and committees. The administration and activities of the Union are thus fully accountable to the governing bodies.

72. The IPU is unique in its combination of aims and purposes with a representative character. It is distinguishable from non-governmental organizations and private voluntary organizations in its membership of parliaments, the public, legislative organs of States, rather than of private or personal interests.

73. The IPU is empowered to deal on a world-wide basis with matters having a parliamentary dimension and to co-operate with other competent organizations, particularly those of the United Nations system. The General Assembly has recognized the IPU’s unique status and its complementary role in providing the parliamentary dimension in international affairs.

⁹³ Ibid., arts. 22(a), 25.2(b), 18.2, and 25.2(c), respectively.

⁹⁴ Executive Committee Rules, Rule 3. Cf. Schermers and Blokker, (§44).

⁹⁵ ICJ *Rep.*, (1996), §19.

⁹⁶ Brownlie, *Principles*, 678. See also Lauterpacht, H., *International Law and Human Rights*, (1950), 12: ‘... in each particular case, the question... whether a body is a subject of international law must be answered in a pragmatic manner by reference to actual experience and to the reason of the law as distinguished from a preconceived notion as to who can be subjects of international law.’

⁹⁷ Note also in this regard the IPU’s acceptance of the jurisdiction of the ILO Administrative Tribunal.

⁹⁸ Cf. Sterzel, *The Inter-Parliamentary Union*, 31f, 54, 57-66 for history and practice of membership criteria and practice.

74. The significance of government support for IPU activities, whether in regard to funding or to its functions, lies in its implied recognition of the IPU as an organization which is (1) active on the international plane, that is, among others, in the affairs of States; (2) representative of parliaments and of parliaments as representative of peoples; and (3) an interlocutor on matters of international concern as identified in the Statutes, including general matters affecting relations between States and matters of specific concern to parliaments, such as the human rights of parliamentarians.

75. The evidence shows that States, when dealing directly with the IPU, do so in recognition of its entitlement to act and do so through official channels generally used for diplomatic communication.

76. Support by international organizations for 'official' dealings with the IPU is found in the parity of treatment now accorded to the IPU by reference to other international organizations, in the various agreements on co-operation concluded between the IPU and, for example, the United Nations, FAO, UNESCO, and particularly the ILO, in the right to participate in meetings and conferences on a basis of reciprocity, and in the mutual undertakings in regard to joint programmes.

77. Without seeking to anticipate all the consequences of the IPU's international legal personality and international organization status, it can be concluded nevertheless that it enjoys powers commensurate with its functions and representative character described above. This includes the capacity to make agreements with Parliaments as representative organs of States, to make agreements with the United Nations, specialized agencies and other international organizations, and to intervene with States on matters relating to the human rights of parliamentarians and otherwise within the terms of its Statutes.