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INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES.**

**“ Role of Parliament in Foreign Policy Formulation:
A Case Study of Kenya, 1999-2009. ”**

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DECLARATION.

I, Caroline Wangu Gichohi hereby declare that this research project is my original work and has not been submitted for a degree in any other university.

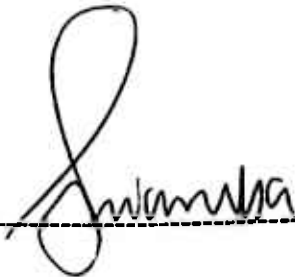




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DEDICATION.

This study is dedicated to my dear parents Mr. and Mrs. Francis Gichohi who tirelessly and selflessly have worked so hard to my being where I am today.

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ABSTRACT.

A brief definition of foreign policy can be given as “the sum of official external relations conducted by an independent actor, usually a state in international relations”. The ideal world as a homogenized entity is much divided into real but separate and characteristic countries with their own revered communities. The term foreign policy is a nineteenth-century expansion of the idea of policy, which had been in use since Chaucer to denote a government’s conduct of affairs. Foreign policy is also seen as attempts by governments to influence or manage events outside the state’s boundaries. Foreign policy is constituted by two fundamental elements: the objectives of a state and the means required for their accomplishment.

This study has analyzed how Legislature as the elected arm of government has performed in the process of foreign policy formulation. The study has examined the various systems legislatures have in place to influence foreign policy in their respective governments. Although the study is on the Kenyan parliament, it has also analyzed other parliaments or their equivalent across the world so as to give a comparative understanding. Throughout the world citizens tend to identify with parliamentarians in more personal ways than they do with other public officials. Constituents talk of “my MP”, “my congressperson”, “my senator”, “my deputy”, or “my representative.” One does not often hear people speak of “my president”, “my judge”, or “my bureaucrat.” Unlike chief executives, who represent entire nations, or bureaucrats and judges, whose responsibility it is to carry out and interpret the law impartially toward all citizens, legislators are responsible for representing the differences in society, and for bringing these differences into the policy making arena.

The study has also examined the role of the legislature in general as is outlined in the constitution of any state. It has emerged that the legislature plays three main roles which are, representative, lawmaking and oversight. It has also emerged that Foreign policy formulation is built around power-centers or policy making bodies/ units. These units include the various ministries, various departments in those ministries, the presidency, judiciary, legislature and other stakeholders/ actors that might get involved in the process. The units are organizational systems, which mean “the system of activities and the structure of relationships”. Each unit has its own organization. Thus a unit with its own organization means that it has its own establishment, its own members, and, hence, its own stakes in the policy making of the country.

Chapter 1

Introduction.

1.1 Background.

As one of the three arms of government, parliament performs very critical functions in governance. It acts as an avenue for the citizens to have their voice heard in the decisions of national affairs through their elected representatives. It also acts as a check on the executive through its oversight role which overlaps with the discharge of the legislative functions of law-making, watchdog of public finance, investigative functions and even constituency responsibilities. In order to perform its functions effectively, parliament should have democratic, open and efficient structures and working arrangement. The legislature must perform very basic and interrelated roles of Representation, Lawmaking, and Oversight. The specific functions of the legislatures in countries around the world are laid down in the constitution of each country. The legislatures' working structures in place have evolved in response to the various socio-cultural and political exigencies that have prevailed in each of country.

The emergence of the Kenyan legislature and the other East African Countries can be traced to the Westminster system — which was inherited from Britain, and remains one of the most visible legacies of British colonialism in East Africa.¹ When it attained its independence in 1963, Kenya adopted a federal system of government with each region having a regional assembly. The national Parliament was bicameral that is, the Senate and the House of Representatives. Later on a unitary system was adopted following a series of constitutional amendments, which also affected the nature, composition, and structure of Parliament.

¹ Friedrich Ebert Foundation and Legis Consult, *Working structures in East Africa*, 2003, 45-56

Legislation by Parliament in Kenya began about a century ago. Previously, it had wholly been done in the United Kingdom because it had colonized Kenya. Legislation was conveyed in form of royal instructions, commonly termed Orders-in-Council. The 1906 Order-in-Council established an Executive Council to be chaired by the Governor to assist the latter in the administration of Kenya.² Provision was also made for the setting up of a Legislative Council. The composition to the Legislature and the framework of the Government at Independence remained in place until the first anniversary. On December 12, 1964, Kenya declared herself a Sovereign Republic within the Commonwealth. The Upper House (the Senate) and the Lower House (House of Representatives) were merged resulting into a single Chamber - the National Assembly in 1966. Kenya changed from a de jure multi party state to a de facto single party status then to a de jure one party state before it reverted to a de jure multi-party state in late 1991 after sustained pressure in and outside of the government. As a result of the changes introduced with the reintroduction of multi-party politics, the Seventh Parliament (following the December 29, 1992 General election) became the second multi-party Parliament since Independence on December 12, 1963.

In the ancient times before the formation of nation states and before the rise of representative democracy, foreign policy used to be in the exclusive domain of the diplomats. It used to be conducted in complete secrecy and without taking the rest of the public into consideration. The evolution of the democratic system has changed this trend and brought democratic institutions such as the parliament, the media, various interest groups, and the public

² Ibid.

opinion into picture.³ The Executive branch of government is no longer completely independent both in the formulation and implementation of the foreign policies. The very existence of these institutions serves as a major deterrent for the rulers who have to be careful in the making of the policy, because foreign policies affect the all stakeholders in any given country. They have to be accountable to their respective publics which exercise their control through these democratic institutions. This however is not always the case because in most cases the executive look at foreign policy as only in their domain.

The Kenyan Parliament's voice has become more and more vocal over the years. Although the one party rule was abolished in 1992, the parliamentarians in Kenya were still very dependent on the then ruling President, Daniel Moi, this is because the majority of the parliamentarians were in the ruling party and the fact that Moi did not take criticism lying down. However during the 1997 general elections there was an increased anti Moi campaigns and the members who were elected to parliament were not all pro-Moi thus the start of increased participation by the members of parliament to various issues affecting the country may they be domestic or external without much fear of victimization. By 1999 it had clearly downed on the members of parliaments and Kenyans in general that Moi would retire come the next general elections in 2001, this therefore paved way for more democratic views by the members. This study will therefore look at the period starting 1999 because it was the start of a relatively democratic parliament.

³ Charles Carstairs and Richard Ware, *Parliament and International Relations* (Milton Keynes: Open University Press, 35-50, 1991).

1.2 Problem Statement.

The Foreign policy of any country is formulated on the basis of several considerations emanating from internal and external strengths, opportunities, threats and challenges. The centre piece of all these considerations is the national interests of that state. In a democratic set-up, foreign policy is formulated while taking into account several factors like parliament or assemblies, political parties, interest groups, lobby groups, media, research and policy oriented think tanks. Whereas, in an authoritarian set-up powerful individuals or groups matter in the formulation of foreign policy who are neither accountable to public bodies nor involve public opinion in the foreign policy-making process. In this growingly interdependent world, the process of foreign policy formulation is becoming more and more complex in which, besides national actors, regional and international forces play an increasingly important role.⁴

The Kenyan political system has evolved through the period of one-party rule under Presidents Kenyatta and Moi, through a period of formal multi-party where democracy was heavily manipulated to ensure the survival of the Moi government, but where younger politicians within the ruling Kenya African National Union (KANU) laid the foundations of democratization, to the 2002 electoral victory of NARC. Following this, there have been questions on whether parliament and parliamentary procedures have began to matter more in the formulation and oversight of policy, and whether parliamentarians are able to form their own relations with a rejuvenated civil society and media. Although a new constitution was promulgated on August 27, 2010 which is yet to fully come to force and which will change the composition of the national assembly, the current National Assembly, pursuant to section 31 of the old Constitution, consists of Elected and Nominated Members; who are currently 210 and 12

⁴ Friedrich Ebert Foundation and Legis Consult, *Working structures in East Africa*, 45-55, 2003.

respectively. Pursuant to Section 30 of the Constitution, the Parliament of Kenya consists of the President and the National Assembly. In the exercise of the legislative power of the Republic of Kenya, bills are passed by the National Assembly and become law on the President giving his assent, Acts of Parliament. Similarly in its deliberative role and oversight of the Executive, resolutions adopted by the National Assembly are implemented by the Executive, headed by the President. Thus, use of the term Parliament refers to an institution larger than the National Assembly and the President in their separate entities.

This study seeks to examine the role of parliaments and in particular Kenyan parliament in the formulation of foreign policy.

1.3 Research questions.

- 1.3.1 What role is parliament expected to play in the formulation of Kenya's foreign policy?
- 1.3.2 Is the Kenyan executive undermining parliament's role in foreign policy formulation?
- 1.3.3 Does the Kenyan parliament know its role in foreign policy formulation?

1.4 Objectives.

- 1.4.1 To understand the role of a country's parliament in foreign policy formulation.
- 1.4.2 To examine if parliament has fully utilized this role.
- 1.4.3 To find out if the Kenyan parliament should play a bigger role than it has in foreign policy formulation.

1.5 Literature Review.

This section will look at the works of different scholars on foreign policy. It will start by defining the term foreign policy; this is because the study cannot be undertaken without first understanding what foreign policy as a concept entails. This study is seeking to understand what role parliament plays in foreign policy formulation, this means that parliament is an actor in

foreign policy formulation and there it is only fair to define foreign policy analysis as a concept. As clearly seen in the previous sections and as it will clearly come out in the definition of foreign policy, national interests are at the core of all foreign policies of countries in the world. This section will therefore look at what are national interests and what different scholars relate national interests and foreign policy. The literature will also look at what scholars have written on foreign policy decision making process, formulation of foreign policy objectives and an overview of Kenya's foreign policy since independence.

1.5.1 What is foreign policy and foreign policy analysis?

Foreign policy according to Korwa and Ajulu refers to actions taken by a state towards the external environment as viewed from the perspective of the state in the pursuit of its national interests.⁵ It is a combination of aims and interests pursued and defined by a given state in its relations with other states and non state actors and the methods and means used by the state for the achievement and defense of such purposes and interests. It involves goals, objectives, agreements by which national governments conduct international relations with other sovereign governments and other international actors. Foreign policy of any states is about the relations of that state with other international actors. It focuses on the strategies employed by states to cope with the intrinsic instability of the international system in which they must operate. To navigate this turbulent system, states must constantly seek to increase both power and wealth. According to Buzan, failure to do so can lead to loss of independence and existence. A state is that which has sovereignty, defined territory, population, diplomatic recognition, internal organization and

⁵ Korwa G.A and Rok Ajulu, *Globalization and emerging trends in African States' foreign policy- making process: a comparative perspective of Southern Africa*, 77-8, 2002 Ashgate, University of Michigan.

internal loyalty⁶. Foreign policy- making process according to Korwa and Ajulu is the formulation and implementation of policies by various actors. It is centered upon how policy is made by the employment of foreign policy instruments and institutions at the disposal of the nation-state. ⁷The level of involvement of foreign policy-making players/actors vary in every country and according to the regime in power and the issue at stake.

Broadly, foreign policy is a combination of diverse means and activities, which are dedicated to understanding and explaining foreign policy processes and the behavior of significant actors in the international system⁸. Foreign policy analysis is an investigative process, which primarily aims to examine the behavior of international units, usually states, towards their external environment, that is, beyond their material borders. According to Gerner, “the central focus of foreign policy analysis is on the intentions, statements and actions of actors - often, but not always, a state - directed towards the external world and the response of other actors to these intentions, statements and actions”⁹

For Gerner, a defining factor of the study of foreign policy is its focus on both the international and domestic spheres and the consequent need to move between individual, state and systemic levels of analysis.¹⁰ Foreign policy is therefore studied from a variety of perspectives. It may entail the analysis of various actors such as the state, non-state entities and

⁶ Buzan B. and Ole W., *Regions and Powers: the structure of international security*, 45-78, 2003, Cambridge University Press.

⁷ Korwa G.A and Rok Ajulu, *Globalization and emerging trends in African States' foreign policy- making process: a comparative perspective of Southern Africa*, 77-88, 2002 Ashgate, University of Michigan.

⁸ Neack L, Hey JAK, and Haney PJ, *Foreign policy analysis: continuity and change in its second generation*, Eaglewood Cliffs, 108-119, 1995, New Jersey: Prentice Hall.

⁹ Gerner D.J., “The evolution of the study of foreign policy” in *foreign policy analysis: continuity and change in its second generation*, Eaglewood Cliffs, 90-99, 1995, New Jersey: Prentice Hall.

¹⁰ Ibid.

sub-state entities; a range of levels, including the individual-level, state-level and the systemic-level; different milieus such as the internal and external and other variables, including discourse, strategies, policies and actions.

1.5.2 Literature review on National Interests.

At the centre of the foreign policy formulation is national interests which are somewhat ambiguous, but according to Shearman, it's the common good of a society within the bounds of a nation-state. That is to say, although between groups in domestic society there are conflicting interests, there exist general and common benefits to society that all members share irrespective of individual or group preferences on other issues.¹¹ The basic common interests of any state are survival for itself and its population, maintaining the territorial integrity of the state, and enhancing its status and position in relation with other states. Conceptions of the national interest provided a powerful dynamic for mobilizing domestic society around specific political projects and issues. National interests is a constant feature of domestic politics in all types of pluralist political systems with each political group wanting to be seen as the one that offers the best safeguard for maintaining national interests.

National interests are linked to perception of identity. Images of a nation and its place in the world can be drawn upon to mobilize what Bloom refers to as a 'national identity dynamic' with government and opposition groups drawing upon, creating, and manipulating these images for their own ends in a struggle for political power. Political elites are seen as manipulating a social-psychological dynamic relating to a conception of national identity which is itself

¹¹ Peter Shearman, defining the National Interest: *Russia foreign policy and domestic politics*, 70-85, 1997 Macmillan UK Press Ltd.

determined by the external environment. ¹²In other words conception of the national self are linked to perceptions of the external other. Foreign policy can be viewed as the means to ensure the objective of defending national interest and, hence, simultaneously the strengthening of national identity. According to Cerny Foreign policy also provides the specific instrument par excellence at the disposal of elites hoping to mobilize the population of a legally-recognized nation state towards legitimation and political integration'. There are four important reasons why foreign policy and competing conceptions of national interests should be so powerful in the mobilization of domestic society.¹³

First, national interests are ideally universal interest shared by all members of the society, regardless of ethnicity, religion, culture, or class. Hence political groups are provided with the most potent force for mobilizing the widest possible sections of the society. Second, foreign policy provides a perfect discourse of politics that allows for escape from objective verification. Unlike specific economic or social policies, the feature of foreign policy, is designed to defend the national interest and are removed from the same standards of immediate or short-term goals that can easily lead to failure of the long term objectives. Third, foreign policy is often more emotional as an issue affecting society, but it is often far more remote in terms of its impact on the individual. As an emotive issue the national public will always react favorably to policies which seem to enhance the national interest, and negatively to policies which seen as undermining it. Fourth, foreign policy facilitates, much more readily than domestic policies, opportunities for the emergence of strong and charismatic leaders, who, wrapping themselves in

¹² William Bloom, *Personal identity, National identity and International Relations*, 105-120, 1990, Cambridge University Press.

¹³ Philip .G. Cerny, *Foreign Policy leadership and National Integration*, 92-98, 1979, British journal of international studies, Vol.5

the national flag and the rhetoric of national identity, portray themselves as the only effective defenders of the national idea.

1.5.3 Literature review on Foreign Policy Decision Making Process.

According to Frankel, most human needs and desires cannot be satisfied without some form of action and this is generally preceded by a decision, meaning an act of will determining in one's mind, the course of action to be taken. Decisions and their actions are the product of a confrontation in the minds of the decision-makers between their wants and desires and what they know about the environment.¹⁴ It is this psychological environment, the perception of the reality people hold, which plays a part in their decisions, however much such an image may deviate from the environment as it really is. Fundamentals in decision making are identical but decisions taken on ¹⁵foreign policy differ from those of other fields in that they are subject to unique interplay between domestic and foreign environments. The persons involved usually occupy certain official positions of trust and importance empowering them to act on behalf of the society in its external relations.

Ideally foreign policy making should consist of a rational assessment of the best means to attain certain established goals and objectives overcoming the obstacles and using the opportunities in the external environment. This however has not been the case especially when there is a crisis situation in a country. The rational actor model is sometimes substituted with the organizational process model which centers upon the interaction between loosely co-ordinated

¹⁴ Joseph Frankel, *The making of foreign policy: an analysis of decision making*, 79-98, 1963, Oxford University Press.

¹⁵ Joseph Frankel, *International relation in a changing world*, 56-72. 1988, Oxford University Press.

semi-independent groups within the government. ¹⁶The other model is the bureaucratic politics model which centers upon the political maneuvering of individuals. These somewhat overlapping models for studying foreign policy decision making process have proved popular and extremely useful complement although by no means a substitute for the traditional rational model.

According to Frankel political life does not invariably conform to legal rule determining competence, but in the making of foreign policy the formal decision makers are particularly important. The foreign policy decision making process is mostly in the control of the government. This is partly due to the historic traditions dating back to the absolutist period and to the present situation where as a rule, governments alone deal with other governments, command the best source of information, and have the monopoly of legitimacy and a near monopoly of physical force. ¹⁷Any influence on foreign policy coming from other sources must be exercised through governments.

Although domestic political systems vary greatly from country to country and from one period to another, certain uniformities exist. One of the biggest similarities is that the head of government usually plays a decisive role in appointing the foreign affairs minister. The minister and his/her team advise the head of government on all foreign affairs. The minister is subordinate, but when the head of government lacks any special interests in foreign policy and fully trusts the minister then his may be a decisive role. Although the head of government has the loyalty of the cabinet and the party members in parliament and his power is secure this is sometimes not the case if it is a coalition government. Even the appointment of the foreign

¹⁶ Joseph Frankel, *The making of foreign policy: an analysis of decision making*, 79-98, 1963, Oxford University Press.

¹⁷ *Ibid.*

affairs minister as to be agreed upon by the two sides of the coalition partners. Whether it's a coalition government or otherwise, when views of the head of government and his cabinet especially the minister of foreign affairs are closely related no serious problems of co-ordination can arise.¹⁸ When there is a divergence of views the head of government tends to bypass the minister of foreign affairs by using other ministers or personal agents.

In developing states like Kenya governments fall under a wide spectrum, on one extreme end are completely autocratic governments where the head of government has the ultimate say in all state matters foreign policy being one of them. On the other hand is a democratic government where governments are removed from power through the electoral process. In the two cases however, there is a tendency for concentration of power in the hands of the top leader and for a much less articulated political system below them than we find in developed states.

As indicated earlier foreign policy is formulated through a decision making process that includes other actors other than the executive.¹⁹ These actors may not have major influence in foreign policy formulation but they still matter, they include the legislature, public opinion, interest groups and civil society. The legislature generally has smaller powers in foreign affairs than in domestic affairs. These powers however vary from country to country and are determined by the interplay between fairly stable constitutional arrangements and such more transient elements as the party strengths, political climate and the character of the leading personalities.²⁰

¹⁸ Richard Carlton Snyder, *Foreign policy decision-making: an approach to the study of international politics*, 55-66, 1962, Free Press of Glencoe.

¹⁹ James N. Rosenau, *International politics and foreign policy: a reader in research and theory*, 110-118, 1964, Free Press of Glencoe.

²⁰ Joseph Frankel, *The making of foreign policy: an analysis of decision making*, 68-92, 1963, Oxford University Press.

Parliaments are generally large bodies and cannot initiate foreign policy and are therefore limited to the exercise of power of veto over policies proposed by the governments. Their main legal power usually lies in the ratification of treaties. Like in the American constitution the concurrence of a two third majority of senate is required and this led to the notable rejection of the Versailles Peace Treaty. To counter such moves, there have been improved methods of consultations, bipartisanship and executive agreements which do not require ratification thus making the senate's powers less formidable. Parliaments are required to pass any laws necessary to implement international treaties. They can also go beyond that and constantly control foreign policy through their standing committees.²¹

Public opinion comes to bear as an unorganized whole in the form of mood which prescribes the limits within which policy can be shaped and also through organized sectional interests and their leaders and intermediaries. The idea of democracy does not imply that leaders should rigidly follow public opinion but they should direct it. Interest groups in the other hand are collections of people who have similar policy views and who try to persuade the government to adopt those views as policy. They were considered to be less active and influential on foreign policy than domestic policy. This is because foreign policy often had a unifying effect on a country's sub-national actors and because foreign policy only had limited effects on the groups' domestic- oriented concerns.²² However due to the globalization effect on many issues, interest

²¹ James N. Rosenau, *International politics and foreign policy: a reader in research and theory*, 110-118. 1964, Free Press of Glencoe.

²² Korwa G.A and Rok Ajulu, *Globalization and emerging trends in African States' foreign policy- making process: a comparative perspective of Southern Africa*, 77-88, 2002 Ashgate, University of Michigan.

groups and civil societies are becoming more and more important in foreign policy-making process.

1.5.4 Literature Review on the Formulation of Foreign Policy Objectives.

According to Hill,²³ foreign policy should be seen as a purposeful activity which involves the formulation of a set of objectives to be achieved and the employment of the necessary means for achieving them from the part of an independent international actor (most notably governments representing a state), which is directed towards the external environment in which this actor operate.²⁴ From this perspective according to Holsti foreign policy change involves a redefinition of objectives and means and it can be represented as a continuum at the one end of which we have limited adjustment in means and at the other a reorientation in the international role and activities of the state. It follows that the role of the foreign policy analyst is to discover the reasons that prompt states to redirect their foreign policies.²⁵ These might include material factors that lie in the states' external and internal environment, such as the distribution of capabilities or the collection of interests of domestic constituencies or alternatively change might be related with factors which are found within the decision making-process, with particular emphasis being given to the perceptions of individual policy-makers and the bureaucratic processes of decision making.

According to the contrary opinion to the above the world does not exist independently of the meaning we make of it and that this meaning is constituted through discourse. According to Howarth, discourse is understood as inherently "ambiguous, incomplete and contingent systems

²³ Hill C, *The changing politics of foreign policy*, 87-98, 2003, Basingstoke, Palgrave.

²⁴ Ibid.

²⁵ Holsti O, *Why nations realign: foreign policy restructuring in the post-war world*; 48-57, 1982, London

of meaning”, which produce identities, in the sense that “they operationalize a regime of truth while excluding other possible modes of identity”²⁶. From this perspective according to Campbell the analysis of foreign policy should be concerned not with the way policy-makers decide on a mixture of objectives and means but with the way national identities are constituted through and represented in foreign policies.²⁷

In an international environment, every nation has its state-centric foreign policy values which usually confront with the supra-national values. The supra-national values include peace, freedom, democracy, humanity, etc. Nations join international forums and get into relationship with other nations to abide by such values. However, every nation gives more weight to its national state-centric values and interests than the supra-national values. The latter must be in conformity with the former and when a major clash occurs between the two, the former dominate.²⁸

Foreign policy formulation of a country is an inter-play of various stake-holders in both various departments in the government and departments in non-governmental institutions in which parliament is a part. Decisions take place in the decision-makers’ mind whereas actions take place in the environment.²⁹ The policy makers generally have the ability to understand and decide in a rational and objective manner. However, their personal beliefs, the national objectives, their own feelings about their country’s history, character, and international position, impose limits on the rationality with which they can interpret the existing environment. So,

²⁶ Howarth D, *Discourse*;75-88, 2000, Buckingham Open University Press.

²⁷ Campbell D, *Writing security: United States foreign policy and the politics of identity*; 120-135, 1992, Minneapolis, University of Minnesota Press.

²⁸ Joseph Frankel, *the making of foreign policy; an analysis of decision making*, 77-98, 1963, Oxford University Press.

²⁹ *Ibid.*

during the policy-making, it is their image about the prevailing environment that really matters.³⁰ While the decision-makers' state is a part of an already existing international environment and has some of its main lines of foreign policy imposed on it, they can find some margin for independent decision. Such decision will be determined by their interpretation of the political environment and their conception of alternatives.³¹ A decision taken for action is driven from which lies in the decision maker's image.³²

Besides the units that are involved in decision making, it is necessary to mention the objectives of these decisions. "The objective is taken as being a particular desired future state of affairs having a specific referent".³³ It is of great importance that the objective be viewed as being specific because it is only possible to speak of the organization or decision-making system with respect to a specified objective. This means that, with respect to any foreign policy objective, there is an organizational unit so constituted as to be able to select a course of action to achieve that objective. The objective is a concrete envisaged state of affairs.³⁴ It is immediately apparent that there are numerous foreign policy objectives of different kinds – political, economic, and military or a combination of all. The degree of urgency attached to them must be considered. Furthermore, it would be of considerable importance to take into account whether the objective is considered to be long-term or short term. This is not to indicate that many

³⁰ Karan Harold Jacobson and William Zimmerman, *the shaping of foreign policy*, 72-84, 1969, New York: Atherton Press.

³¹ Ibid.

³² Kenneth Boulding, *National image and international system*, William Zimmerman and (eds), *the shaping of foreign policy*, 58-76, 1969, Atherton Press.

³³ Richard C Snyder, H.W. Bruck and Burton Sapin, *foreign policy decision making*, New York: Free Press of Glencoe, 87-98, 1962.

³⁴ Ibid

treatments of foreign policymaking do not speak of, for example, “short-term military objectives” or “long-term political objectives”. What is needed, however, is a systematic classification with clearly stated and easily applicable criteria. It is important to know the decision-maker, the unit, and the objective of the decision-maker. Objectives define, for the decision-maker, the kinds of systems involved in the decision making³⁵.

1.5.5 An overview of Kenya’s Foreign Policy since Independence.

To clearly understand the trend of foreign policy of any State, history offers some lessons. Policy-making is not limited to public servants, bureaucrats, diplomats and politicians, academia may serve as a think tank to advise the government or concerned departments of policy making in the light of history and its lessons. “Social scientists in particular spend their lives analyzing history and seeking to discern patterns in it”.³⁶ In the absence of such an advisory class, policies become person-oriented, which proves Hegel’s statement that “we learn from history that we do not learn from history”.³⁷ This is true with respect to the US-Pakistan collaboration against the former Soviet Union during the 1950s and 60s which benefited the US at the cost of Pakistan’s interests. In the later part of Pakistan’s history, no lessons were learnt from such individualistic policies and the mistakes were repeated again during the 1980s’ “Afghan Crisis”, as well as in the post-9/11 scenario during the “War against Terror” in its relations with the US. Repetition of mistakes can force a country to face the worst security, regional and political crisis of its history.

³⁵ Ibid.

³⁶ Christopher Hill, *The Changing Politics of Foreign Policy* (London: Palgrave Macmillan, 78-98, 2003).

³⁷ Ernest R. May, *Lessons of the Past: the Use and Misuse of History in American Foreign Policy* (Oxford: Oxford University Press, 88-102, 1973).

Decision-makers' simple historical comparisons and analogies end up in difficulty.

³⁸Every historical study varies from issue to issue and, hence, must be analyzed individually to learn for the future. But if history is ignored, it punishes a nation by repeating itself. In the absence of lessons from history, refuge is usually taken behind the term "national interest" to pursue violent, peaceful and abrupt policies. From granting a job to a clerk or the construction of a motorway to the declaration of war against an enemy country, everything falls within the definition of "national interest". But can there be any *interest* that is not *national* for a country? Hence, declaring any policy as a "national interest" in the foreign policy of a country is overemphasis. If for a policy-maker something is national interest, then what is not "national interest"? One might not be against the use of the phrase "national interest" but against confused use of the term. Interestingly, there is no straightforward antonym to the term "national interest" which further favours the limiting of its use in the foreign policy formulation process.

The Ministry of Foreign Affairs was established immediately Kenya attained independence in 1963, for the purpose of formulating and managing Kenya's foreign policy. Initially, the Ministry remained a "Ministry of State for Foreign Affairs" under the Office of the President until 1969 when it became a full-fledged Ministry headed by a Minister for Foreign Affairs. Since its establishment in 1963, ³⁹the Ministry has continued to pursue a foreign policy that is based on fundamental principles, particularly, promotion of peaceful coexistence, respect for sovereignty and territorial integrity and adherence to the Charters of the United Nations and the African Union.

³⁸ Ibid

³⁹ Ministry of Foreign Affairs website, www.mfa.go.ke, Tuesday 19, July 2011.

The conduct of foreign policy in Kenya is a prerogative of the Head of State. These powers are rested in the Presidency by section 16 of the Constitution of Kenya, Amendment Act No. 28 and in Section 23 of the Constitution. Consequently, the president is the initiator, articulator and director of foreign policy⁴⁰. The Foreign Ministry's responsibility is that of advice and execution in consultation with the President. Factors Influencing Kenya's Foreign Policy include: Security/Political, Economic Advancement or Development, Geo-Political Factors, Kenya and Regional Integration, Common Market for Eastern and Southern Africa, East African Community and Inter-Governmental Authority on Development (IGAD), New Partnership for Africa's Development, Kenya-ACP/EU Relations, Kenya and Multilateralism, Kenya and Commonwealth, Kenya and OAU/AU.⁴¹

However it is clear that Kenya has a democratically elected parliament which by all means should represent the people in all aspects of Kenya's decision may it domestic affairs or foreign affairs. The executive ideally should therefore give parliament room to actively participate in the formulation of any policy Kenya undertakes. Kenya has also for a long time enjoyed relatively good relations with the international community. This therefore means that whatever foreign policies it has established seem to be very favorable. It upon this that cases study on Kenya's parliament role in the formulation of foreign policy is very ideal as Kenya represents the developing world which is increasingly enjoying good relations with the rest of the international community.

⁴⁰ Ibid.

⁴¹ Olajide Aluko (ed.) *the Foreign Policies of African States* (London: Hodder and Stoughton, 88-98, 1977).

After independence, the first president Mzee Jommo Kenyatta pursued a foreign policy that emphasized on cooperation with neighboring countries, support of the continental liberation movements and an economy that encouraged foreign investments and hence close ties with the western countries. According to Jackson and Rosberg, Africa lacked institutions and hence the emergence of self rule. According to the two, the most important institution in Foreign policy formulation is the presidency often supported by the respective ministry of foreign affairs and the entire cabinet. The first Kenyan president was clear in his mind as to how he wished the path on Kenya's foreign policy to take as the Kenya African National Union (KANU) Manifesto and the Sessional Paper No. 10 of 1965 clearly spelled out. According to the two documents, Kenya would be built along the lines of free enterprise with strong ties with the west and that accumulation of foreign capital would be necessary for economic growth. This led to the launching of Foreign Investment Protection Act of 1964.⁴²

Kenyatta was consulted by other leaders in other African countries on various issues. He chaired the OAU Congo Conciliation Committee during the Congo crisis in 1964 and was consulted by the warring Angolan factions in 1975 holding consultative meetings in Nakuru and Mombasa. This being a clear indication he wished to see a united peaceful continent. Although he wanted peace he protected the Kenyan territory with no negotiations⁴³. In 1963 he cautioned the British government against negotiating away the Northern Frontier District which the Somali

⁴² Robert Jackson and Carl G. Rosberg, *Personal rule in Africa: Prince, Autocrat, Prophet, Tyrant* (Berkeley and Los Angeles: University of California Press, 56-66, 1982.

⁴³ Jomo Kenyatta, *Suffering without Bitterness, 66-78, 1968*, East African Publishing House.

Government was claiming and when the problem was not solved, he engaged the armed forces against bandits in 1967.⁴⁴

Some scholars like Oluko termed Kenyatta's approach to foreign policy as a wait and see policy because he was cautious and a conservative. He is said to have hated travelling and often sent his Vice president Moi or foreign minister to represent him. According to Oluko on foreign policy under President Kenyatta, Kenya effectively maintained a low profile on many of the burning issues in Africa and elsewhere, a style of diplomacy described as quiet diplomacy. A style that avoids radical aggressiveness which Kenya could not defend or promote. It is a diplomatic posture which recognizes that the uses and functions of foreign policy of a poor nation are to promote economic and social modernization, tasks which require the services of development diplomats.⁴⁵

After the death of the first president, his vice president Moi assumed office with what was known as the "Nyayo" philosophy meaning in the footsteps of the late president. Moi was however seen as a more aggressive and controversial leader whose leadership was more of his prerogative. He travelled to many countries with nonalignment being the main official aphorism of Kenya's foreign policy.

A brief definition of foreign policy can be given as "the sum of official external relations conducted by an independent actor, usually a state in international relations".⁴⁶ The ideal world as a homogenized entity is much divided into real but separate and characteristic countries with

⁴⁴ Robert Jackson and Carl G. Rosberg, *Personal rule in Africa: Prince, Autocrat, Prophet, Tyrant* (Berkeley and Los Angeles: University of California Press, 1966-1978, 1982).

⁴⁵ Olajide Aluko (ed.) *the Foreign Policies of African States* (London: Hodder and Stoughton, 1977, 199-119, 1977).

⁴⁶ Christopher Hill, *The Changing Politics of Foreign Policy* (London: Palgrave Macmillan, 1978-98, 2003).

their own sacrosanct communities. The term foreign policy is a nineteenth-century expansion of the idea of policy, which had been in use since Chaucer to denote a government's conduct of affairs.⁴⁷ Foreign policy is also seen as "attempts by governments to influence or manage events outside the state's boundaries".⁴⁸ Mostly, the relations formed with external countries are formulated in the Foreign Office of the country with the final verdict of diplomatic staff. However, in a world where important international disputes occur over various issues⁴⁹, it would be absurd to concentrate foreign policy on relations between national diplomatic services.

Foreign policy is, therefore, both more and less than the "external relations" which states generate continuously on all fronts. In simple terms, foreign policy is constituted by two fundamental elements: the objectives of a state and the means required for their accomplishment.⁵⁰ Hence it aims at the benefits of the state which conducts it. However, this is not a complete explanation of the term because it does not refer to the many different national objectives that a state may set itself and the variety of means which can be employed. For example, a state may pursue its regional objectives by achieving international support over its regional neighbors, and it may want to secure greater foreign military and economic assistance. So in order to achieve these objectives, a state can use traditional diplomacy through bilateral meetings and agreements, or join regional security blocs sponsored by a greater power. In serious cases, a national military can also influence the foreign policy of a country for its institutional benefits and may cause a military coup to control the government and have military agreements.

⁴⁷ Joel Krieger (ed.), Christopher Hill's chapter titled "Foreign Policy," in *Oxford Companion to Politics of the World* (New York: Oxford University Press, 118-125, 1993).

⁴⁸ Ian Manners and Richard G. Whitman (eds.), *The Foreign Policies of European Member States* (Manchester: Manchester University Press, 98-119, 2000).

⁴⁹ Brian Hocking and Michael Smith, *Beyond Foreign Economic Policy: the United States, the Single Market and the Changing World Economy* (London: Printer, 66-79, 1997)

⁵⁰ Cecil Crabb, *American Foreign Policy in The Nuclear Age* (New York: Harper & Row, 78-98, 1972),

It is also clear that different states have different foreign policy objectives but the goal is clear, every state wants to advance its national interests.

1.6. Justification of the study.

Foreign policy is defined as a framework outlining how the country will interact, relate and do business with other countries and with non-state actors in mutually beneficial ways and within the context of a country's national interest and economic prosperity. Parliament is defined as a group of individuals operating on the behalf of others in a binding and legitimate manner and making decision collectively but with formal equality. This definition of the parliament implies a set of key functions which include and not limited to legitimating, linkage, and decision making, governmental oversight, advice and consent, recruitment, liberating release, ground for debate, patronage, lobby, socialization and constituency services,.

As Mathisen & Tjonneland noted, there has been a significant institutionalization of legislatures in new democracies in the 1990s'. Atila has also noted that scholarly interest has also expanded⁵¹. These studies have concluded that legislatures have been important in the democratization process with profound consequences for the political systems⁵². However, as noted by Essaiasson and Heidar most studies of parliaments are still focused on the Western experience, and more particularly the experiences of just two institutions: The British House of Commons and the United States Congress. Studies on Parliament's role in foreign policy in Africa can simply be described as very few and the ones that have been conducted are focused

⁵¹ Agh Atila, *the experience of the first democratic parliament in East Central Europe' communist and post communist studies* Vol 28, no 2, pg 203-214 (1995).

⁵² Mathisen, H W and Tjonneland, *does parliament matter in new democracies? The case of South Africa*, 55-66, 1994- 2000, (2001), Bergen CMI

on Southern Africa, South Africa to be specific⁵³. There also have been many studies conducted to examine the role of various actors in foreign policy formulation both in the developed and developing countries. Very limited studies have been done to critically examine the role of parliament particularly because foreign affair has been seen as being more in the executive domain. This study differ from the rest because it closely examines the role played by parliament as one of the actors in foreign policy formulation at the same time finding out if this role is sufficient enough taking into consideration parliament is the elected arm of government. This study hopes to make contributions in the already existing literature on actors in foreign policy formulation and enrich literature on democratic foreign policy formulation in developing democracies like Kenya.

This study is looking at the period between 1999-2009 because this is the period that saw a lot of transformation in the country's leadership. To start with, the Moi's regime was increasingly becoming unpopular and in December 2002 that regime came to an end with President Kibaki coming to power amid lots of support and expectations. It is also during this period that saw an increased awareness by voters on various debates affecting the country and this saw majority of members of parliament losing their seats in the 2007 general election. This same election that was disputed saw the formation of a grand coalition government and the position of the prime minister created. The formation of a grand coalition government meant that decisions either on domestic or foreign matters had to be agreed upon by more stake holders.

⁵³ Essaiasson P and K. Heidar (Eds), *Beyond Westminster and congress*. The Nordic experience Columbus: 88-102, 2000, Ohio State University press.

1.7. Theoretical framework.

Realism is “state-centric” but with rational motives and ideologies. Realism can be justified if all those who believe that states are of continued significance in international relations are deemed realists.⁵⁴ Realists were advanced by Waltz’s formation of neo-realism in the late 1970s.

Neo-realism is a systemic approach in which the international structure acts as a constraint on state behavior so that only states whose outcomes fall within an expected range survive.⁵⁵ However, the neo-realist theory could not deal with a foreign policy that could also influence domestic policy. Realists were not sure of the origin of power from the level of analysis – human, state, or the world. Hence, Waltz came with compartmentalization of the “levels of analysis”⁵⁶, along with the logic of Balance of Power to curb “the logic of anarchy”⁵⁷. Though levels of analysis deal with the foreign as well as domestic policy of a country like Kenya, the neo-realist theory is limited only to the levels of analysis without any direct impact on the decision-maker and domestic politics of a country.

For any country, foreign policy needs to demonstrate political will economic and military power to have friendly relations in order to keep a check, on hostile neighbors and present day terrorist threats. It also needs to perfect democratic practice. This can be synchronized by a foreign policy with a prudent realism. It is the traditional way in which practitioners have

⁵⁴ John Vasquez, *the power of power politics: A critique*, London: printer, 67-77, 1983.

⁵⁵ Kenneth N. Waltz, “*Realist thought and neorealist theory*,” *Journal of International affairs*, vol.44, no 1, 98-118, 1990.

⁵⁶ Kenneth. N. Waltz, *Man, the State, and War: A Theoretical Analysis*, New York: Columbia University Press, 100-120, 1959.

⁵⁷ Barry Buzan and Richard Little, *The Logic of Anarchy in International Relations: Neo-realism to Structural Realism*, New York: Columbia University Press, 87-99, 1993

thought about international relations,⁵⁸ emphasizing the importance of power in the region.

The debate of a country's foreign policy as seen earlier revolves around the national interests of that country and this is where realism as a theory comes in. Every country advances or protects its various interests in all its relations with other international actors. Realism was applicable during the East-West tension, when the Cold War imposed security needs upon the leadership of the third world countries. This imposition was especially for those situated on the periphery of the Communist world. These third world leaders maximized their power by aligning themselves with either of the poles – the United States or the former Soviet Union – to maintain their own independence. Lake however considers this view an oversimplification. He says: “there is no necessary reason why the interests of self-seeking politicians should coincide with the national interest”⁵⁹. However, contrary to what Lake said, the Cold War history is full of the combination of personal and national interests.

Realists maintain that definitions of morality must change too. As Kennan writes in “Morality and Foreign Affairs”, the “primary obligation of a government is to the interests of the national society it represents, not to the moral impulses that individual elements of that society may experience”.⁶⁰ In the Cold War, it seemed self-evident that states and military force were the main features of the international system. Much realist thought was more subtle, as any encounter with the work of Carr, Morgenthau, Reinhold, Wight and Arnold reveals. Hill says: “What realism did not do was probe into decision-making or other domestic sources of

⁵⁸ Henry Kissinger, *Does America need a foreign policy?* New York: Simon & Schuster, 2001, 4. Pakistan's foreign policy interaction with US 21.

⁵⁹ David A. Lake, “Realism,” in Joel Krieger (ed.), *Oxford Companion to Politics Of World*, 773,(Oxford University Press, 1993)

⁶⁰ George F. Kennan, “*Morality and Foreign Affairs*,” *Foreign Affairs*, vol. 64, no.2 (Winter 1985-86):206.

international behavior in general”⁶¹ and in the mirror of history in particular. However, the entire course of the history of relations between states was a manifestation of the application of realism, both at a regional as well as at a global level.

1.8. Hypotheses.

- 1.8.1. Parliament being the elected representative body has an important role to play in foreign policy formulation.
- 1.8.2. Parliament has not fully utilized its role due to excess power enjoyed by the executive.
- 1.8.3. Kenyan parliament should play a bigger role than it has in foreign policy formulation.

1.9 Methodology.

This is a descriptive research design which involves describing the role of parliament in formulation of foreign policy. Data are special type of information, generally obtained through observation, surveys and enquiries. Data can be collected mainly through two ways: Primary Data collection which is collection of data afresh and for the first time, especially for the designated study. Secondary Data collection is getting information from data that has already been collected and compiled by someone else. This study will combine both the primary and secondary methods of data collection. Questionnaires will handed to staff of the Kenya National Assembly both at the lower and upper cadre, namely the clerk of the National Assembly and assistant clerks especially those serving in the departmental committees, members of parliament namely the speaker and members serving in the departmental committee on foreign relations. This will help give a point of view of each.

⁶¹ Christopher Hill, *The changing politics of foreign policy*, Basingstoke, Palgrave, 78-98, 2003.

For the purposes of primary data collection, this study will interview the clerk assistants in the various departmental committees in the Kenyan Parliament, key among them the committee on defense and foreign relations.. The study will also interview the members of parliament. This is to allow a wide range of view which will be representative. Random sampling will be used to select the interviewees. This study will also incorporate secondary data from already existing materials from the Kenya National Assembly Website, journals, the Kenyan constitution, News paper articles and magazines as a source of data.

Chapter Outline.

Chapter 1

Chapter 1 the Introduction, Problem statement, Research Questions, Study objectives, justification of the study, Literature review, Theoretical framework Hypothesis and the study Methodology.

Chapter 2

Chapter 2 will briefly study the impact of history on a state's foreign policy; it will also look at the determinants of foreign policy. It will look at the foreign policy decision making process. Finally it will look at the various levels of analysis in foreign policy formulation.

Chapter 3

Chapter 3 will examine the role of parliament or its equivalent in general. It will also look at the role of judiciary and the executive in foreign policy formulation. The chapter will also look at the role of parliament specifically in foreign policy formulation in different countries. These countries will vary from the developed to the developing and from those with a unicarmel system to those with a bicarmel system.

Chapter 4

Chapter 4 will examine the Kenya parliament and the role it has played in the formulation of foreign policy. The chapter is confined to the period between 1999-2009. It will look at the various roles it has been executing its mandate through.

Chapter 5

Chapter 5 will have the conclusion of the study and the various recommendations in regard to the role of parliament in foreign policy formulation in general and specifically in Kenya.

Chapter 2

Foreign Policy and the Decision Making Process.

2.1. Introduction.

This chapter will explain the decision making process, the influences and determinants of foreign policy. Finally it will look at the various levels of analysis in foreign policy formulation.

Decision-making in foreign policy involves the analysis and evaluation of past and current issues, in the light of our past experience and that of others, who had dealt with similar situations, in order to identify the need and available options for action in the future and the likely implications of each of those options for the protection and promotion of our national interests. Foreign policy can be driven by political, internal and external security-related aspects, economic including commercial, and societal, which has a bearing on our society as well as those of others.¹ A successful conduct of foreign policy protects and advances the national interests and contributes to the preservation and enhancement of the status and power of the state concerned, and without being unduly detrimental to the national interests, power and status of others. It seeks to avoid conflicts and, where this is not possible, to minimize the likely damage to our national interests, power and status.

The process of decision-making in foreign policy has become more complex than in the past due to the following reasons: The emergence of ethical issues such as human rights, democracy, disarmament etc as important components of the political aspect of foreign policy. The greater focus on non-political aspects such as economic, environmental among others, the

¹ Richard C Snyder, H.W. Bruck and Burton Sapin, *foreign policy decision making*, New York: Free Press of Glencoe, 87-98, 1962.

new complexities of the security aspect due to the proliferation of weapons of mass destruction and the never-diminishing threats from trans-national religious and other terrorist groups and narcotics smuggling gangs to national and regional security, the trend towards greater trans-nationalization of the decision-making process due to the impact on the process of a country's membership of international and regional organizations, the networking of such non-State actors, at the national and trans-national levels, in order to strengthen their ability to influence policy making and implementation, the increasingly assertive role of national and trans-national non-State actors such as the non-governmental organizations and think tanks in seeking to influence the process, the insatiable demand from the non-State actors and other sections of the public for transparency and accountability, the role of the printed and electronic media and the Internet in spreading greater awareness of the database of the process and in providing yardsticks by which the success of the policy-formulation and implementation could be judged and the availability of knowledge at the mouse-tip has contributed to a greater non-State participation in policy-making and implementation and to an instant and ever-continuing scrutiny of policy-making².

Provided there is a clear idea of one's national interests, meaningful decision-making depends on the following factors: Effective storage of past facts, experience and assessments and the capability for their rapid retrieval in order to use them for current decision-making. Capability for the collection of current data, open as well as secret, the availability of knowledge of how other countries handled similar or comparable situations and with what results and the quality of the in-house expertise and the availability of external (non-State) expertise to analyse

² Ibid.

and assess the relevant data and experience ³and to identify the available options for the future and the willingness of the in-house experts to continually seek and use such external expertise.

2.2. Influences of Foreign policy.

The foreign policy of a given state depends on its power, its objectives, and its leadership. Power is an elusive concept but widely used in political science. Power may be defined as the ability to persuade others to do things that they would not do ordinarily unless pressured to do so. Within domestic politics, power is usually based on numbers, wealth, and organizational skills. A small group that is well organized may exercise considerable influence even without large sums of money. In international politics, power depends on both geopolitical factors and idiosyncratic factors.

The objectives of states' foreign policy vary greatly but all states seek to preserve themselves, maintain their independence and security and pursue their national interests. Leaders and the elites who support them help to shape the foreign policy of countries. In making decisions, leaders must take account of two categories of determinants that impact on their foreign policies. ⁴

2.3. Determinants of Foreign policy.

There are those determinants that are external and those that are domestic or internal. The geopolitical location of a state is one of the external determinants on its foreign policy. It matters where on the globe a country is located. It matters whether the country has natural frontiers: that is whether it is protected by oceans, high mountains, or deserts. It matters who one's

³ Javid Husain, *the process of foreign policy formulation in Pakistan*, 9-15, April 2004

⁴ Richard C. Snyder, H. W. Bruck, Burton Sapin, *Foreign Policy Decision Making* (New York: Free Press of Glencoe, 55-66, 1962).

neighbors are and whether a given country is territorially large, populous, affluent, and well-governed.⁵ For example Kenya bordering the war-torn Somalia has impacted negatively on Kenya's security due to constant attacks and influx of refugees.

The internal or domestic determinants include, focus attention "on variations, such as military capabilities, level of economic development, and types of government. Military Capabilities include the size of military, equipment, training, leadership and nuclear or non-nuclear capabilities. Economic Capabilities includes Traditional, Transitional, and Modern Societies. In terms of Industrialization the major factor is the Stages of Industrialization: Wood, Coal, Oil, Nuclear, and Renewable Resources. Gross national product, Per Capita GNP, GINI Index, Lorenz Curve of Inequality are also major contributing influences.⁶ The Type of Economy is also very important, whether it is a Free Market Economy, Centrally Planned Economy, and Socially Steered Market Economy. The Type of Government is also a major influence. Governments can be Constitutional democracies (presidential systems and parliamentary systems), Autocratic Systems (authoritarian and totalitarian), Military Dictatorships. There is also the issue of Political Party Systems which can either be Traditional monarchies like Saudi Arabia or Modern theocracies like Iran.

State Power is the power that the government machineries have and it influences the state's foreign policy while National Power is the power the other actors in a State have which also influences Foreign Policy. Bases of National –State Power depend on many variables, such as: location of the state, that is coastal or landlocked, size of the territory, population, natural resources. Technology, type of government, type of economy, size and equipment of military,

⁵ Christopher Hill, *The Changing Politics of Foreign Policy* (London: Palgrave Macmillan, 78-98, 2003).

⁶ Ibid.

belief system of the country, leadership, idiosyncratic factors, degree of popular support, nature of friends and enemies and perception are also some variables that national-state power depend on.

2.4 . Foreign policy formulation process.

Foreign policy formulation is built around power-centers or policy making bodies/ units. These units include the various ministries, various departments in those ministries, the presidency, judiciary, parliament and other stakeholders/ actors that might get involved in the process like the civil society, workers union or private sector unions. The units are organizational systems, which mean “the system of activities and the structure of relationships”⁷. Each unit has its own organization, meaning that it has its own establishment, its own members, and, hence, its own stakes in the policy making of the country. It is reasonable and logical to consider these units as the power centers in the foreign policy formulation process of a country. However, it is important to first note that not all individuals working in these agencies or units are involved in decision-making under all circumstances. For example a clerk in the ministry of foreign affairs cannot be considered as a policy maker because he is a junior officer who in most cases has limited knowledge on the sensitive and important information of the ministry which is important in foreign policy formulation. Second, not all these agencies are involved on the same level in all decisions. Each may have different kinds and levels of potential roles it can play in various international and national issues or states of affairs. Third, not all these agencies are equally important.

⁷ Richard C. Snyder, H. W. Bruck, Burton Sapin, *Foreign Policy Decision Making* (New York: Free Press of Glencoe, 44-56, 1962).

The Ministry of Foreign Affairs has, obviously, a larger overall role than, say, than the Ministry of Finance which will be responsible for allocating funds to the ministry of foreign affairs but how the funds are used is entirely on the ministry of foreign affair'. Fourth, when these actors/ agencies participate in policy making process, they are not necessarily related to each other on an similar objectives. Sometimes they are equals, other times some of them are completely ignored in the policy making process. Fifth, in terms of power and organizational coherence, one agency is much stronger and integrated than another. Such strength and integrity gives the stronger agency the liberty to dictate to other agencies of the country. Hence, for these reasons it is difficult to correlate these units with each other in the decision making process.

Due to such diverse background of the units involved in the foreign policy decision making process,⁸ the levels of analysis by Waltz and Singer have been applied on many institutional interactions.⁹ Besides the units that are involved in decision making, it is necessary to mention the objectives of these decisions. "The objective is taken as being a particular desired future state of affairs having a specific referent".¹⁰ It is of great importance that the objective be viewed as being specific because it is only possible to speak of the organization or decision-making system with respect to a specified objective. This means that, with respect to any foreign policy objective, there is an organizational unit so constituted as to be able to select a course of action to achieve that objective. The objective is a concrete envisaged state of affairs.¹¹ It is

⁸ Kenneth Waltz, *Theory of International Politics*, London: McGraw-Hill; Reading MA: Addison-Wesley, 88-102, 1979.

⁹ David Singer, "International Conflict: Three Levels of Analysis," review of *Man, the State, and War: A Theoretical Analysis* by Kenneth N. Waltz, *World Politics*, vol. 12, no. 3, 453-461 April, 1960 .

¹⁰ Richard C. Snyder, H. W. Bruck, Burton Sapin, *Foreign Policy Decision Making* (New York: Free Press of Glencoe, 44-56, 1962).

¹¹ *Ibid.*

immediately apparent that there are numerous foreign policy objectives of different kinds – political, economic, and military – or some other combination. The degree of urgency attached to them must be considered. Furthermore, it would be of considerable importance to take into account whether the objective is considered to be long-term or short term. This is not to indicate that many treatments of foreign policymaking do not speak of, for example, “short-term military objectives” or “long-term political objectives”. What is needed, however, is a systematic classification with clearly stated and easily applicable criteria. It is important to know the decision-maker, the unit, and the objective of the decision-maker. Objectives define, for the decision-maker, the kinds of systems involved in the decision making.

Decisions take place in the decision-makers’ mind whereas actions take place in the environment.¹² The policy makers generally have the ability to understand and decide in a rational and objective manner. However, their personal beliefs, the national objectives, their own feelings about their country’s history, character, and international position, impose limits on the rationality with which they can interpret the existing environment. So, during the policy-making, it is their image about the prevailing environment that really matters.¹³ While the decision-makers’ state is a part of an already existing international environment and has some of its main lines of foreign policy imposed on it, they can find some margin for independent decision. Such decision will be determined by their interpretation of the political environment and their

¹² Joseph Frankel, *International relation in a changing world*, 120-132, 1989, Oxford University Press.

¹³ Karan Harold Jacobson and William Zimmerman, *The Shaping of Foreign Policy* (New York: Atherton Press, 56-88, 1969)

conception of alternatives. ¹⁴A decision taken for action is driven from a field of choice which lies in the decision maker's image. ¹⁵

Foreign policy formulation is a decision making process. Decisions are made by individuals who do not operate in a vacuum but in a complex political environment. Whatever the decision-making structure of a given state, some institutions or individuals must resolve conflict with the state, make collective decisions about the general needs and goals of the state and work out strategies for attaining them, including a determination of which goals can be attained only through interaction with other states and actors in the international system. It is important to note that there are always internal conflicts among various actors in a state of what its foreign policy should be and the costs and benefits of any foreign policy decisions in a country are unevenly distributed among its various actors. For example manufacturers who sell to domestic market and must compete with foreign imports are likely to be more favorable toward a protective tariff than those whose living depends on exports and who suffer from retaliation. ¹⁶

The process of formulating foreign policy objectives is not also an easy one. This is because of the many stakeholders involved in the process. The top decision making authorities in a state must make some order out of the conflicting demands presented and integrate them with their own beliefs on the interest of the state collectively. Foreign policy goals in practice are seldom explicit, well defined, internally consistent, and stable or even ranked in order of priority,

¹⁴ Henry Kissinger, "Domestic Structure and Foreign Policy," in *The Shaping of Foreign Policy*, Karan Harold Jacobson and William Zimmerman ed., 140-1.

¹⁵ Ibid.

¹⁶ Karan Harold Jacobson and William Zimmerman, *The Shaping of Foreign Policy* (New York: Atherton Press, 56-88, 1969)

however the objectives should be well defined and well ordered and so should the strategies of attaining them. Some objectives are an end to themselves while others are a means to some other ends. For example the objective of the united states to win war in Korea is a means to contain communism, in turn a means to protect the stability of the International system and to preserve a balance of power in the world favorable to the united states and this is a means to protect American security.

Foreign policy objectives have their sources from among others the desire to insure the survival and integrity of the community and state, military security against invasion, preservation of the state's economy. These sources are either internal or external. The importance of the objectives depends on individual states. Rational formulation of foreign policy objectives has its limitations like the inability to mobilize adequate popular support, cultural limits, capabilities of other states, limits created by international organizations and norms among others. Every state's capabilities are limited and one of the basic problems of rational foreign policy formulation is to keep the objectives of the state within the limits of the capabilities to achieve them.¹⁷

2.5. Levels of analysis in foreign policy formulation.

This is one of the ways of examining state behavior. It can also be said to be a perspective on international relations based on a similar state of actors and processes that suggests possible explanations to why a state acts in a particular way .Scholars see several levels of analysis through which state behavior can be examined.

According to Waltz there are three levels of analysis: the individual, the state, and the state system. Foreign policy of any state can be analyzed at the level of analysis approach in the

¹⁷ Henry Kissinger, "Domestic Structure and Foreign Policy," in *The Shaping of Foreign Policy*, Karan Harold Jacobson and William Zimmerman ed., 140-1.

study of international relations.¹⁸ Individual-level analysis is based on the view that it is people who make policy. It analyzes the policy-making process by examining how people (as a species, in groups, and individually) make decisions.

2.5.1. Individual level of analysis.

Individual decision maker-level analysis can be approached from three different perspectives. One is to examine fundamental human nature. The second is to study how people act in organizations. The third is to examine the motivations and actions of specific persons. The human nature approach examines basic human characteristics, including the cognitive, belief systems, ego/ambitions, history/personal experiences, psychological, emotional, and biological factors that influence decision making.

The organizational behavior approach studies such factors as role (how people act in their professional position) and group decision-making behavior, including groupthink. The idiosyncratic behavior approach explores the factors that determine the perceptions, decisions, and actions of specific leaders. A leader's personality, physical and mental health, ego and ambitions, understanding of history, personal experiences, and perceptions are all factors. The application of perceptions to policy can be explained by exploring operational reality and operational codes.¹⁹ At the individual level, foreign policy is explained in the light of people and their nature involved in the making and accomplishment of taking decisions. The individual leaders play an important role in the formation of foreign policy, as well as the officials at the various bureaucratic levels.

People make decisions within nation states and therefore people make foreign policy.

¹⁸ Kenneth N. Waltz, *Man, the State, and War: A Theoretical Analysis* New York: Columbia University Press, 120-125, 1959.

¹⁹ Ibid.

This level of analysis can be used to explain World War II by examining the role of Hitler. It might look at the end of the cold war by studying Gorbachev. It might suggest that the economic reforms in China are a result of the transition from Mao Zedong's leadership to Deng Xiaoping's rule. Individual level analysis might ask questions such as: Are there aspects of George W. Bush's character and belief systems that have defined the US response to the 9/11 attacks? Would Al Gore or John Kerry have behaved any differently in a similar situation? ²⁰How did Bush and his senior decision makers perceive the world and their role in it?

According to Waltz, as long as man is as he is, war may be anticipated as a natural, recurrent inevitability²¹. But this also raises the question whether man will remain the sinful entity of the past and present and will not change. Waltz divides the human nature theorists into two camps: the pessimists and the optimists explaining why two similar States with different people often pursue diametrically opposite foreign policies. ²²Therefore, it is necessary to look at the people and institutions involved in foreign policy making and the processes of decision making to understand why specific states act the way they act. In third world countries, the role of leaders is particularly important because they make policies in accordance with their perceptions or misperceptions of the situations, whereas in developed societies there are many people who influence the leaders directly or through institutional provisions due to their high level of democracy.²³

²⁰ Campbell D, *Writing security: United States foreign policy and the politics of identity*, 88-97, 1992, Minneapolis, University of Minnesota Press.

²¹ Ibid.

²² John Spanier, *Games Nations Play: Analyzing International Politics*, New York: Rinehart and Winston, 19-44, 1984,

²³ Kenneth N. Waltz, *Man, the State, and War: A Theoretical Analysis* New York: Columbia University Press, 120-125, 1959.

2.5.2. Nation-State level of analysis.

Nation-State level analysis is the second level which assumes that since states are the most important international actors, world politics can be best understood by focusing on how foreign policy is influenced by the political structure of states, the policy-making actors within them, and the interactions among the policy actors.

Foreign policy is not formulated by a single decision-making process. Instead, the exact nature of that process changes according to a number of variables, including the type of political system, the type of situation, the type of issue, and the internal factors involved. States are complex organizations, and their internal, or domestic, dynamics influence their international actions. One set of internal factors centers on political culture: the fundamental, long-held beliefs of a nation²⁴.

Another set of internal factors centers on the policy-making impact of various foreign policies– making actors. These include political leaders, Bureaucratic organizations, legislatures, political parties and opposition, interest groups, and the public. Each of these influences foreign policy, but their influence varies according to the type of government, the situation, and the policy issue.

Usually, heads of government are the most powerful foreign policy–making actors. Bureaucratic organizations are normally the second most powerful actors.²⁵ This second level of analysis explains state-behavior not as a result of the international environment but its nature which can be civilian or military, or military-dictated civilian; developed or developing; and capitalist or socialist. This nature is what which gives rise to policy. At this level of analysis,

²⁴ David Singer, "International Conflict: Three Levels of Analysis," review of *Man, the State, and War: A Theoretical Analysis* by Kenneth N. Waltz, *World Politics*, vol. 12, no. 3, April, 1960 : 453-461

²⁵ Kenneth N. Waltz, *Man, the State, and War: A Theoretical Analysis* New York: Columbia University Press, 135-145, 1959.

Waltz proceeds from the assumption that the nature of a state's political institutions, its modes of production and distribution, the quality and origins of its elites, and sometimes the characteristics of its people determine whether that state will be peaceful or aggressive. Thus there are "good" states and "bad" states, and bad states can become good and peace-loving only by turning to liberal democracy, or socialism, or free enterprise,²⁶ therefore, the cause of the war lies not in the mere existence of states but in the state-behavior.

A national state is the primary actor in international relations. The point here is the economic, political and class structure of the system and society. It also looks at the structure of society, its elite class, its national character and the level of tolerance of the masses for the governmental system. The basis of the state level of analysis is that it is the domestic system and nature of a state that determines its policy. Adopting the nation as the level of analysis also therefore raises the entire question of goals, motivation, and purpose in national policy.²⁷

Goals and motivations are both dependent and independent variables to explain a nation's foreign policy.²⁸ The expansion of international relations has further broadened the scope of a nation. A nation can no longer be seen in terms of political science and law alone. In 1934, Edith noted that "the study of international relations is no longer entirely a subject for political science or law, but that economics, history, sociology, geography – all the social sciences – are called upon to contribute towards the understanding of the international system".²⁹ It is pertinent to

²⁶ David Singer, "International Conflict: Three Levels of Analysis," review of *Man, the State, and War: A Theoretical Analysis* by Kenneth N. Waltz, *World Politics*, vol. 12, no. 3, April, 1960 : 453-461

²⁷ Richard C. Snyder, H. W. Bruck, and Burton Sapin, *Decision Making as an Approach to the Study of International Politics*, New Jersey: Princeton, 1954, 92-117.

²⁸ David Singer, "International Conflict: Three Levels of Analysis," review of *Man, the State, and War: A Theoretical Analysis* by Kenneth N. Waltz, *World Politics*, vol. 12, no. 3, April, 1960 : 453-461

²⁹ Edith E. Ware, *The Study of International Relations in the United States*, survey for 1934, New York, 1934, 172.

mention here that the nation-as-actor model questions the behavior of the state in terms of “objective factors”. They ask, do we examine our actor’s behavior in terms of the objective factors which allegedly influence that behavior, or do we do so in terms of the actor’s perception of these “objective factors”? Both approaches give divergent models of national behavior.³⁰

The first approach was adopted by the Pakistan Army in its relations with United States policy-making institutions during 1950s, 60s and 80s. The Army wanted to check the regional hegemony of India – the objective which influenced its behavior to move towards the United States for support. The second approach was taken up by the United States to contain Communism, and, therefore, sought Pakistan Army’s help. The same phenomenon was repeated in the post 9/11 Pakistan-US relationship during President Musharraf’s regime. According to Kenneth Waltz, “survival depends on a state’s material capabilities and its alliances with other states”.³¹ Hence, the resultant phenomenon was an alliance between the United States policy making bodies (State Department, The White House, and the Pentagon) and the General Headquarters of the Pakistan Army – known as the institutional interaction.

2.5.3. System level of analysis.

To be successful, countries usually must make policy choices within the context of the realities of the international system. Therefore, system-level analysis examines how the realities of the international system influence foreign policy. Many factors determine the nature of any given system. Systemic factors include its structural characteristics, power relationships, economic realities, and norms of behavior. One structural characteristic is how authority is

³⁰ Edmund Husserl, *Ideas: General Introduction to Pure Phenomenology* New York: Humanities Press Inc., 98-109, 1931,

³¹ Kenneth Waltz, *Theory of International Politics*, London: McGraw-Hill; Reading MA: Addison-Wesley, 110-125, 1979.

organized. The international system is horizontal, based on state sovereignty, and therefore it is anarchical.³² There are, however, relatively new centralizing forces that are changing the system toward a more vertical structure.

Another structural characteristic is a system's frequency, scope, and level of interaction. The current system is becoming increasingly interdependent, with a rising number of interactions across an expanding range of issues. Economic interdependence is especially significant. When analyzing power relationships, an important factor is the number of poles in a system and how the pattern of international relations varies depending on how many power centers, or poles, a system has³³.

The current system most closely resembles either a unipolar system, which is one state seemingly having more power than other states or limited unipolar system dominated by the United States. The context of power is another system characteristic. One contextual factor is the applicability of power in a given situation.

Another aspect of the context is the intricate interrelationships among almost 200 countries and the need of even powerful countries for diplomatic reciprocity, the cooperation of others on a range of issues. It is therefore wise, before using power, to calculate the long-term impact of the attitudes of other countries.

At the system level of analysis the behavior of the state is shaped by the international system along with respect to international law for its survival and security. Waltz concludes, with Rousseau, that "in anarchy there is no automatic harmony", and that "among autonomous states,

³² David Singer, "International Conflict: Three Levels of Analysis," review of *Man, the State, and War: A Theoretical Analysis* by Kenneth N. Waltz, *World Politics*, vol. 12, no. 3, April, 1960 : 453-461

³³ Kenneth N. Waltz, *Man, the State, and War: A Theoretical Analysis* New York: Columbia University Press, 88-118, 1959.

war is inevitable".³⁴ He suggests that the ancestry of international conflict lie in both the clash of interests among states and the absence of effective supranational agencies for the regulation of the clash of interests. At this level, the basic proposition is clear: "states's strategy depends on every other state's strategy,"³⁵ and any belief in the autonomy of national foreign policy can only lead to disaster. The balance of power doctrine is seen not only as a powerful descriptive device but as a normative and prescriptive requirement of national survival.³⁶ To Waltz "if some states act on this rule that is do whatever you must in order to win, or are expected to act on it, other states must adjust their strategies accordingly". It is the most comprehensive of the levels available, encompassing the totality of interactions which take place within the system and its environment. In this level of analysis, the international system is the cause and state behavior is the effect. Characteristics of the international system cause states to behave the way they do. Change in the international system will cause change in state behavior. The key variable in the international system is the power of a state within the system. Some states are powerful; others are weak. So for example, the cold war had two powerful states. Therefore the central cause of all state behavior in the cold war was the fact that the US and USSR were the two powerful states in a bipolar system. So this level of analysis might explain the US intervention in Iraq as a matter of the US, which is largely seen as the most powerful state, flexing its muscles to police the world against states that threaten it. The US wants to preserve its dominance and therefore crushes all challengers.

Waltz supports the balance of power in his statement "the obvious conclusion of a third-

³⁴ Kenneth N. Waltz, *Man, the State, and War: A Theoretical Analysis* New York: Columbia University Press, 88-118, 1959.

³⁵ John McDonald, *Strategy in Poker, Business and War*, New York, W.W. Norton & Company, 98-110, 1950.

³⁶ David Singer, "International Conflict: Three Levels of Analysis," review of *Man, the State, and War: A Theoretical Analysis* by Kenneth N. Waltz, *World Politics*, vol. 12, no. 3, April, 1960 : 453-461

image analysis is that world government is the remedy for world war. The remedy, though it may be unassailable in logic, is unattainable in practice".³⁷ Morgenthau also speaks on this subject from the same side by saying that "there can be no permanent international peace without a state coextensive with the confines of the political world... But a world community must antedate a world state".³⁸ For keeping world peace, the world's leaders and countries form supranational institutions and organizations like the United Nations. This is done in order to either keep peace or to contain the antagonists from disturbing the international system. The focal point of the third level is the regional and international environment in which a state exists. The system imposes its own Foreign Policy Interaction and understanding and logic on the whole world. It is the most comprehensive of the levels available, encompassing the totality of interactions which take place within the system and its environment.³⁹ This level of analysis requires that we postulate a high degree of uniformity in the foreign policy operational code of our national actors. Morgenthau supports this argument by saying that the international system should "assume that all statesmen think and act in terms of interest defined as power", nations may differ widely in what they consider to be the national interest

Some scholars say that all democracies behave in a certain way; they don't fight with other democracies. Some scholars might look at the different behaviors of weak or strong states; states that live in rough neighborhoods (Germany or France) vs. states that live in more benign surroundings (the US). Some scholars might say that the foreign policy behavior of every state

³⁷ Kenneth N. Waltz, *Man, the State, and War: A Theoretical Analysis* New York: Columbia University Press, 88-118, 1959.

³⁸ Hans J. Morgenthau, *Politics among Nations: the Struggle for Power and Peace*, 3rd edition, New York: Knopf, 1960, 477 - 485.

³⁹ David Singer, 'The Level-of-Analysis Problem in International Relations,' *World Politics*, vol. 14, no. 1, The International System: Theoretical Essays, October 1961: 77-92.

is a cultural characteristic, defined by the historical legacy of the state, the religious or social traditions, or the economic and geographic nature of the state itself. State level of analysis might explain the US intervention in Iraq as a function of the missionary quality of US foreign policy. The US has always had an idealist streak in its foreign policy (some disagree with this) and sees “bad guys” out there in the international system. The US is compelled by the nature of its political system and its belief that someday all states will be like the US. It has a drive to remake the world in its own image. The job of US foreign policy is not done until all states are democratic and all nations have free market economies.

Norms are the values that help determine patterns of behavior and create some degree of predictability in the system. The norms of the system are changing. Many newer countries, for instance, are challenging some of the current norms of the system, most of which are rooted in Western culture.

2.6. Conclusion.

The three levels cannot be taken as an alternative to each other; as no one level can explain adequately the behavior of a state. Application of the entire set of levels determines who takes a decision and how a policy decision is taken. This also tells, amongst various alternatives, the policy choices available in international and regional environment – nonalignment, peaceful coexistence, isolation or alignment. Waltz in his book, *Theory of International Politics* says: Countries that are highly dependent, countries that get much of what they badly need from a few possibly unreliable suppliers must do all they can to increase the chances that they will keep getting it. The weak, lacking leverage, can plead their cause or panic.⁴⁰ Therefore, in a country like Pakistan, the Army opted for alignment with the US for containment of Communism and

⁴⁰ Kenneth Waltz, *Theory of International Politics*, London: McGraw-Hill; Reading MA: Addison-Wesley, 78-88, 1979.

India, as well as for its own institutional betterment through military aid. The alignment option was opted for in the name of threat perception.

Application of the “Levels of Analysis” approach according to Singer, “threat perception arises out of a situation of armed hostility, in which each body of policy-makers assumes that the other entertains aggressive designs; further, ⁴¹ each assumes that such designs will be pursued by physical and direct means if estimated gains seem to outweigh estimated Capability.

⁴¹ David Singer, '*The Level-of-Analysis Problem in International Relations*,' *World Politics*, vol. 14, no. 1, *The International System: Theoretical Essays*, 87-98, October 1961

Chapter 3

The Role of Parliament in Foreign Policy Formulation. A Comparative Study.

3.1. Introduction.

This chapter will examine the role of parliament which is the legislative body in a parliamentary system and or the congress which is the legislative body in a presidential system in general. The chapter will also examine the role of the other two arms of government which are the executive and the judiciary in foreign policy. It will also examine the role of parliament specifically in foreign policy formulation in different countries. These countries will vary from the developed to the developing and from those with a unicameral system which is a legislature system made up of two separate chambers with each serving as a check on the other to those with a bicameral system which is a form of legislature with only one chamber.¹ These parliaments will be in and outside the African continent.

3.2 The Role of Parliament.

The legislative power of parliament and the congress consists of the power to make laws for the peace, order and good government of the State and with respect to any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.² The Legislature is the paramount law maker. It is the function of the legislature to decide on national objectives, strategies, functions and services and convert them into legislation for execution by the executive authority. The legislature also has a number of other functions to perform, which include and not limited to amending the Constitution. The control of national

¹ Bradshaw, Kenneth and David Pring, *Parliament and congress*: London, Quarlet books, 66-78, 1972

² D.A. Guobadia, "The Legislature and Good Governance Under the 1999 Constitution" in *Nigeria: Issues in the 1999 Constitution (NIALS Publication)* 43 at 45-7

finances through taxation, borrowing and appropriations. Supervision of the executive authority and shares the power of appointments with the Executive as they are involved in the vetting processing especially in States where democracy is advanced. They also bring impeachment actions against public officials in case of corruption allegations or and misconduct.

Parliaments vary in size, in how members are elected, how long they hold office, in their ways of relating to political parties and to constituents, in their relations with executive powers, in their responsibilities in lawmaking and budgeting, in how they oversee executive spending and activities, and in a dozen other ways. Scholars like Polsby however tend to agree that there are three functions common to parliaments in democracies; representation, lawmaking, and oversight. Parliaments represent the diversity of individuals and groups in society; as the supreme lawmaking institution in a nation they make the rules by which society is governed; and they are designed to oversee executive spending and performance. Just how, and how successfully, they carry out these functions varies dramatically, and for a several of reasons.³

Under the cabinet system-supervision and control of cabinet, Legislative control is exercised through: questions addressed to ministers, amendments or rejection of government bills including the budget, Votes of no confidence that compel ministers to resign. All regulations promulgated by the executive authority are tabled for information before the legislature. The legislature can disapprove of delegated legislation if it is not satisfied with it. In the discharge of these functions the legislature is bound to interact with the other arms of government, especially the executive.⁴ Moreover, the exercise of the primary function of law-making and policy formulation often overlaps into the oversight function of the Legislature. The

³ Nelson W. Polsby, "Legislatures," in *Handbook of Political Science: Government Institutions and Processes*, eds., Fred Greenstein and Nelson Polsby (Reading, MA: Addison Wesley, 38-68, 1975).

⁴ Bradshaw, Kenneth and David Pring, *Parliament and congress*: London, Quarlet books, 66-78, 1972

experience of the parliament in law-making touches upon its independence of the legislature from the executive in the performance of its oversight functions under the Constitution.⁵

Consequently, it can be observed that the legislative oversight functions for a sustainable and virile democracy is inherently also subsumed in the discharge of its law-making and policy formulation functions, especially where such legislations are initiated as executive bills. Parliament must not allow itself to be manipulated and used as a mere rubber stamp for the government's executive agenda. Democracy as a form of governance emphasizes the logic and rationality of dialogue, debate, choice and consensus over public policies in the pursuit of the fulfillment of the needs of the citizenry and the primary functions of meeting the needs of public interest.

3.2.1. Oversight Role.

Legislative oversight is considered an important duty in the promotion and protection of public interest. The term oversight functions, is a concept or principle that is sufficiently employed by the Constitution and is an essential element of the practice of constitutionalism within the state. ⁶Oversight means the exercise of constitutional powers by the legislature to check or control the exercise of constitutional powers of the other arms of government, and more specifically to check or control the exercise of executive powers or to make the executive accountable and responsible to the electorate through their representatives in the legislature, in between elections. Oversight or surveillance of the executive and the administration is premised

⁵ W J. Keefe, *State Legislatures in American Politics* (Prentice-Hall) 66-88, 1966.

⁶ Ornstein, Norman J, *the role of legislature in western democracies*, Washington D.C, American Enterprises Institute of Public Policy Research, 38-69, 1981.

on the grounds that the legislature enact the laws that can create administrative agencies, and these in turn are assigned functions and responsibilities by such enabling laws.⁷

The legislature may decide to change statutory or administrative policy because, among other things, legislators may have learnt of hardships that have been imposed on the public. And if for no other reason, the legislature's self interest demands that it oversees administration to learn whether the executive and its agencies are complying with the legislative intent, or the constitutional objectives and principles. In general the oversight functions serve a variety of purpose: to keep the executive establishment responsible and accountable, to promote rationality and efficiency in the formulation and administration of public policy, to reap party advantage, and to advance the causes of individual legislators interest groups, and other stakeholders in the polity.⁸

3.2.2. Representation Role.

Throughout the world citizens tend to identify with parliamentarians in more personal ways than they do with other public officials. Constituents talk of "my Member of Parliament", "my congressperson", "my senator", "my deputy", or "my representative." One does not often hear people speak of "my president", "my judge", or "my bureaucrat." Unlike head of states, who represent entire nations, or judges, whose responsibility it is to carry out and interpret the law impartially toward all citizens, legislators are responsible for representing the differences in society, and for bringing these differences into the policy making arena.⁹ These differences may

⁷ Ibid

⁸ Pita Ogaba Agbese, "Power and Leadership in Contemporary Nigeria", *The Constitution Vol. 2, No.3, 2003*, 1

⁹ Ornstein, Norman J, *the role of legislature in western democracies*, Washington D.C, American Enterprises Institute of Public Policy Research, 38-69, 1981.

be rooted in geography, ethnicity, religion, political identification, gender, or other characteristics, but legislatures are expected to represent them at the national level.

Representation involves more than simply living in a specific area in the country, or having characteristics in common with those one represents. It involves listening to those one represents and making decisions and exercising influence on their behalf. Political

Nelson calls parliaments the “nerve endings” of the polity.¹⁰ Parliaments are the arm of government closest to people, and parliamentarians, more than any other officials at the national level, need to be aware of the needs of constituents, and are expected to respond to those needs. Democratic parliaments are the most transparent and accessible of the three branches of government. Most democratic parliaments open their plenary sessions to the public and to the press, and a growing number allow citizens to attend committee meetings. Kenya like South Africa’s parliament publishes committee schedules on the Internet, as do several others. Daily news reports cover events in parliament, and an increasing number of parliaments televise their plenary sessions, giving citizens the opportunity to view their parliament in action. Parliaments are more open and accessible than other government branches,

Members of Parliament in order to discharge their responsibilities effectively have to meet with the electorates regularly. This makes them more accessible to the electorates¹¹. In many systems, the legislature’s representation function involves constituent services, like, helping citizens cut through government bureaucracies to receive their benefits, assisting with

¹⁰ Nelson W. Polsby, “Legislatures,” in *Handbook of Political Science: Government Institutions and Processes*, eds., Fred Greenstein and Nelson Polsby (Reading, MA: Addison Wesley, 38-68, 1975).

¹¹ Schwarz, John E., and L. Earl Shaw. *The United States Congress in Comparative Perspective*. Hinsdale, Illinois: The Dryden Press, 55-90, 1976.

special problems, and accessing government funds for projects to benefit the constituency, such as bridges, clinics, water systems, schools, or any other public facilities. Parliamentarians become well known, and help ensure their re-election, through providing such services.

3.2.3. Lawmaking Role.

The third major function of legislatures is to make laws, the rules that govern society. Effective legislatures not only represent the differences in society, they must also reach agreements on policy, taxing and spending with which groups and individuals generally agree. This is difficult under the best of circumstances, but it becomes more so in deeply divided societies and in poor nations with few resources to distribute. Depending on the political system and several other factors, the way a legislature carries out its lawmaking function, and its independence and strength in lawmaking varies widely.¹²

3.3. Factors influencing the functions of parliament.

These are factors that in one way or the other affect how parliament or the congress functions. These factors include:-

3.3.1. Political systems.

The degree of separation or unity between the legislative and executive branches is perhaps the major factor in determining legislative strength and independence. Specifically, the cleaner separation between executive and legislative powers in presidential systems encourages presidential legislatures to play more independent lawmaking and oversight roles than their parliamentary counterparts.¹³

¹² Ibid.

¹³ Nelson W. Polsby, "Legislatures," in *Handbook of Political Science: Government Institutions and Processes*, eds., Fred Greenstein and Nelson Polsby (Reading, MA: Addison Wesley, 38-68, 1975)

In parliamentary systems, the parliamentary majority party or coalition selects the chief executive from among its members. Cabinet members are also named from the parliamentary majority. This unity between the legislature and executive is a disincentive for the legislature to develop a strong committee system or deep policy expertise, which could be used to challenge the executive. A loss of support or vote of no confidence in the government results in both the government and parliament leaving office. Not surprisingly, committees in parliamentary systems tend not to have large professional staffs, and policy-decisions will generally be made within the ruling party or coalition and through government ministries. Overt executive – legislative conflict is not common in parliamentary systems, nor is the parliament likely to exercise aggressive oversight. Divisions within the governing coalition however, will reduce this executive – parliamentary unity.¹⁴

In presidential systems, the president and legislature are elected separately, from constituencies and for equal or different terms. The president selects the cabinet from outside parliament. Term lengths for presidents and parliaments are fixed and the fates of the legislature and president are not intertwined as they are in parliamentary systems. With the government thus divided, parliament has incentives to develop strong, effective committees and to play a competitive lawmaking role.¹⁵

These incentives, however, do not mean that the legislature will necessarily become a powerful, independent institution. Lack of political will to develop a strong legislature, poor infrastructure, strong political party control from outside the legislature, a tradition of

¹⁴ Bradshaw, Kenneth and David Pring, *Parliament and congress*: London, Quarlet books, 68-78, 1972

¹⁵ Nelson W. Polsby, "Legislatures," in *Handbook of Political Science: Government Institutions and Processes*, eds., Fred Greenstein and Nelson Polsby (Reading, MA: Addison Wesley, 38-68, 1975)

acquiescence to a strong executive – these all reduce the likelihood that the legislature will become a strong and independent institution.¹⁶

Many legislatures are actually a hybrid, with characteristics from both presidential and parliamentary systems. Some African nations elect the president through direct nationwide elections as in presidential systems, but the president appoints ministers from the parliament, as in parliamentary systems, for example Zambia, Uganda, Kenya also has been in this category until the new constitution was promulgated in August 2011. Another combination of parliamentary and presidential characteristics is presidents elected directly through nationwide elections who have the authority to dissolve the legislature. The hope of being named a cabinet minister, and the concern that the president can dissolve parliament can discourage parliamentarians from acting independently or contrary to the executive's will.

While the strongest legislatures in presidential systems will be stronger and more independent than the strongest parliaments in parliamentary systems, there are considerable variations. Legislatures in presidential systems with very strong political parties or weak internal capacity (Mexico prior to the end of Institutional Revolutionary Party (PRI) dominance in the late 1990s) may be little more than rubber stamps, and some parliaments exercise more authority than others.¹⁷

3.3.2. Electoral systems.

Parliamentarians in every nation must win elections to get into, and to stay, in office. But the system through which they compete will affect the way they relate to constituents, and their independence once in office. Parliamentarians elected in single-member districts (also called

¹⁶ Richard C. Snyder, H. W. Bruck, and Burton Sapin, *Decision Making as an Approach to the Study of International Politics*, New Jersey: Princeton, 44-67, 1954

¹⁷ Bradshaw, Kenneth and David Pring, *Parliament and congress*: London, Quarlet books, 68-75, 1972

plurality-majority, or constituency-based), where constituents in a geographic area vote directly for a candidate and the candidate receiving the most votes wins, will likely be more independent and responsive to constituents than parliamentarians elected through proportional representation systems. Especially if electoral districts are fairly small and elections are frequent, Members of Parliament are likely to be more beholden and responsive to constituents than to their political parties. Several factors can reduce Members of Parliament's independence, however, even in single member districts.¹⁸

If political parties are very strong, if candidates need a party's endorsement to run for office, if they rely on party patronage for positions in parliament, if they are Members of Parliament in a parliamentary system, or if they depend on the party for funds to run for office, Members of Parliament or the congressmen's independence will be checked .by Parties with several "carrots and sticks" at their disposal are better able to enforce party discipline, even in single member districts. The United States and United Kingdom elect legislative members through this system.¹⁹

In proportional representation systems, in contrast, candidates are placed on a list, and citizens vote for parties rather than for candidates directly. The percentage of votes the party not the candidate wins, determines whether or not the candidates gets into office. If, for example, a party wins 40% of votes cast in an election, the top 40% of candidates on its list are elected. Members of Parliament in proportional representation systems will tend to be most responsive to their parties' leaders who determine whether and where a candidate will be placed on the party

¹⁸ Nelson W. Polsby, "Legislatures," in *Handbook of Political Science: Government Institutions and Processes*, eds., Fred Greenstein and Nelson Polsby (Reading, MA: Addison Wesley, 38-68, 1975).

¹⁹ Bradshaw, Kenneth and David Pring, *Parliament and congress*: London, Quarlet books, 68-78, 1972

list in the next election. Semi-proportional electoral systems, like hybrid political systems, combine aspects of both single member and proportional representation systems.²⁰

In a nation with a bi-cameral legislature, members from one house may be chosen according to a proportional representation system, and in the other through a single-member district system. Alternatively, some percentage of members in a house would be selected through a single-member district system and others in the same house through proportional representation. Russia, Germany, Bolivia and Mexico all use semi proportional systems. Nations will often mix the two systems in an attempt to ensure that the parliament is connected to and responsive to citizens (through the single-member district legislators), as well as to broader party and national concerns, through the proportional representation systems.

3.3.3. Formal parliamentary powers.

A legislature's formal powers, usually defined in its constitution and standing orders (or rules of procedure), are another factor help determine its independence and power. Some parliaments enjoy broad formal powers, allowing members and committees to introduce legislation (even legislation with significant financial impact), to dramatically rework executive taxing and spending plans, and requiring the executive to obtain legislative approval to borrow money. Formal powers in other legislatures are more circumscribed.²¹

Legislatures in presidential systems tend to possess greater formal powers than do legislatures in parliamentary systems. But parliamentary systems have oversight mechanisms not common to presidential systems, specifically, question periods for ministers and public accounts

²⁰ Ibid.

²¹ Ornstein, Norman J. *The Role of the Legislature in Western Democracies*. Washington, D.C.: American Enterprise Institute for Public Policy Research, 69-87, 1981.

committees which routinely examine how governments use their funds. Many parliaments use those powers to conduct oversight more thoroughly than their presidential counterparts.²²

Some parliamentary powers include, Power of members and/or committees to introduce legislation, Power of members to introduce legislation with fiscal costs, Power to override executive vetoes, Power to approve cabinet officials, Power to approve treaties, Power to approve Government borrowing money, or granting loans, Power to approve or disapprove overseas travel of the chief executive, Power to compel the executive and others to provide information, Power to censure government ministers and other officials,²³ Power to approve/disapprove the budget, Power to reduce, increase, shift spending in the budget, Power to remove the chief executive and Parliamentary authority to set the parliament's budget, and power over staff.

3.3.4. Political will and political space

Possessing formal powers does not mean that legislatures will use them. In fact, constitutions and standing orders generally grant parliaments more power than they ever use effectively. Two factors which impact on how legislatures use their powers are political will and political space. Political will is the strength of the desire of parliamentary leaders and influential members to exercise or expand the powers of parliament. Power gained in one place is generally lost in another, and because of this, Members of Parliament leading efforts to expand the role of parliament may pay political costs inflicted by those who fear losing their power.

²² W J. Keefe, *State Legislatures in American Politics* (Prentice-Hall) 66-88, 1966.

²³ Ornstein, Norman J. *The Role of the Legislature in Western Democracies*. Washington, D.C.: American Enterprise Institute for Public Policy Research, 69-87, 1981.

Political space refers to the willingness of others in the political environment to cede or to share political power with parliaments. Authoritarian political systems grant legislatures little political space, while more pluralistic, competitive systems permit more. In parliaments where the party discipline is strong, much of the use of the available political space, and any ²⁴attempts to expand the political space, is largely determined by the political party's disposition.

3.3.5. Parliamentary technical capacity

Parliament's ability to exercise its representation, lawmaking and oversight functions effectively rests to some degree on its managerial and technical capacity. This include the ability to Listening to citizens and processing their views, seeking and considering expert advice on budgets and policies, drafting technically sound amendments and legislation that accomplishes the desires of their sponsors, requires effective systems and experts to staff and manage those systems. Most parliamentary strengthening efforts being made today focus on building parliamentary capacity – strengthening management, infrastructure, and staffing. ²⁵Those involved in strengthening their parliaments know that the process puts their institution under tremendous stress.

More assertive parliaments need more expert staff to meet their greater information needs, and faster, more effective, and better-coordinated administrative systems. The need for rapid reform is especially challenging for traditional, hierarchal legislatures that rely on long-established traditions and procedures to guide them in what was formerly a methodical and moderate workflow. Legislatures expanding their roles struggle with increased workloads, growing demands by parliamentarians, and new kinds of requests, even as they are attempting to

²⁴ W J. Keefe, *State Legislatures in American Politics* (Prentice-Hall) 66-88, 1966

²⁵ *Ibid.*

restructure the institution. Change is not easy, and reforming complex institutions like parliaments is especially challenging.²⁶

3.4. Legislature and Foreign Policy: A Comparative Study of Various Legislative bodies across the world.

To help fully understand the role of Kenyan Parliament in foreign policy which is the core focus of this study, it is important to examine how different parliaments in different countries with different systems and at different levels of development are involved in foreign policy formulation. This comparison is extremely important as it will help gauge the performance of Kenya Parliament as compared to other legislative bodies in other States.

3.4.1. Pakistan's Parliament.

As in any other Parliamentary form of government, the Parliament in Pakistan, besides acting as the legislature, elects the Prime Minister through a majority vote in the National Assembly. The executive, that is, the Cabinet headed by the Prime Minister, is responsible to the National Assembly which can remove the former through a vote of no confidence. Thus, the executive and its internal and external policies must enjoy the confidence and support of the National Assembly to remain in power. As for the Senate, which represents the federating units, its support is also vital for the smooth functioning of the legislative process. Further, the views of the Senators, as representatives of the federating units, on external relations deserve due attention of the executive.²⁷

²⁶ Nelson W. Polsby, "Legislatures," in *Handbook of Political Science: Government Institutions and Processes*, eds., Fred Greenstein and Nelson Polsby (Reading, MA: Addison Wesley, 38,68, 1975).

²⁷ Javid Husain, *the process of foreign policy formulation in Pakistan*, 9-15, April 2004

Parliament can pass a bill in respect of any aspect of Pakistan's external relations as provided for by the Constitution in the Federal Legislative List, thus, giving it the force of law. In practice, however, in a parliamentary form of government that exists in Pakistan, the initiative for such a bill would normally come from the executive which, because of the support of the majority in the National Assembly and possibly in the Senate, would normally succeed in getting it adopted by the Parliament. Certainly, a private bill relating to Pakistan's external relations can also be moved by any member of either House. But the possibility of its adoption by the Parliament without the executive's support is almost nil because of party discipline. The Parliament can influence the foreign policy formulation and implementation process by adopting non-binding resolutions on foreign policy issues; by holding hearings on crucial issues in the Standing Committees on Foreign Affairs and by asking questions on foreign affairs in the House. These powers provide a substantial role to the Parliament in Pakistan, even though an indirect one, in the formulation and implementation of the country's foreign policy. It must, however, be underscored that the formulation and implementation of the foreign policy is generally considered to be the prerogative of the executive all over the world.

The Parliaments, at best, can influence this process by making known their views on important foreign policy issues. This is particularly true in a parliamentary form of government as in Pakistan where the executive automatically commands the support of the majority at least in the National Assembly and possibly in the Senate because of party discipline. Historically, the Parliament in Pakistan has failed to play its due role in the foreign policy formulation primarily because of the frequent military coups. As a result of these takeovers, the Parliament ceased to exist for long intervals and its authority and position was undermined even when it was functioning. The weakness of the political institutions and the predominant influence of the

military generally, even when the civilian rule was restored, also had a negative impact on the ability of the Parliament to play its due role in the formulation of foreign policy.²⁸

Finally, it needs to be acknowledged that the inexperience of the parliamentarians for which military invasion was partly responsible also had its share in weakening the Parliament's role in the foreign policy formulation.

3.4.2. Bulgarian National Assembly.

According to Christova As a supreme body of state power the Bulgarian National Assembly has the exclusive competencies: to declare a war and make peace, to decide on sending of Bulgarian troops outside the territory of the country, as well as on the access of foreign troops on the territory of the country or their transit through Bulgaria and to declare martial law or any other state of emergency on a part of the country or on its whole territory on a motion from the President or the Council of Ministers.²⁹The National Assembly however has no rights for any autonomous decision, but only on the motion from the Head of State or the Cabinet. It is not a subject in international relations and international treaties, but it has the competencies to ratify international treaties which: are of political or military nature, refer to Bulgarian membership in international organization , refer to the changes in Bulgarian boundaries, have obligations for the treasury, envisage the participation of the country in international arbitration or legal Proceedings, refer to fundamental human rights and affect the action of law or require legislation in order to be enforced. Treaties ratified by the National Assembly might be amended or denounced only by their build in procedure or in accordance with the universally acknowledged norms of international law.

²⁸ Ibid.

²⁹ Antoaneta Christova, *the role of National Parliaments in the Decision making mechanism of the North Atlantic Treaty Organization* n8-14 June 1999.

The National Assembly has the power to promulgate international treaties which was interpreted in resolution No 7 of the Constitutional Court from 2 July 1992. International treaties become a part of the national legislation of the country only after the completion of the three legislative procedures: ratification, promulgation and coming into force. According to the Constitution international treaties which have been ratified by the constitutionally established procedure, promulgated and come into force with respect to the Republic of Bulgaria shall be considered a part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise. According to the principle of division of powers the acts of the Parliament have no power to repeal foreign policy decisions of the Council of Ministers or the Minister of Foreign Affairs. But if they are not in conformity to the acts of the National Assembly, the only means for reaction is parliamentary control, which might bring to a vote of no confidence to the Government which is succeeded by resignation.

The activities of the National Assembly in foreign policy are supported by the Committee on Foreign and Integration policy which is considered a key committee by public and policymakers. The Committee has no rights to propose amendments to the international treaties submitted for ratification. It could only propose the adoption or the rejection of the ratification draft law. It played very important role during the last years with respect to the country's foreign priorities concerning NATO membership as well as the crisis on the Balkans.³⁰ Parliamentary control is considered one of the most important instruments for the influence of the parliamentarians on the foreign policy decision-making.

³⁰ Ibid.

3.4.3. United States' Congress.

The United States constitution divides the powers to conduct foreign policy among the three branches of the government: executive, legislative, and judicial. The executive formulates the policy, the legislature oversees the policy and also has significant authority in certain areas and judiciary interprets the constitution if a difference arises between the executive and the legislature.³¹ The framers of the U.S. constitution deliberately placed a system of checks and balance, where no branch could act independently. The Congress has the power to examine and approve financial appropriations which include those of the for the secretary of state.³² The Congress also enjoys the power to declare war under the War Powers' Act though the President can send the troops into combat for thirty days even without the approval of the Congress. It also has exclusive powers to oversee the external trade. It also handles the matters with regard to the armed forces, their creation, regulation and management. The Senate ratifies the treaties with two-third majority and confirms the appointments of all key foreign policy officials including the Secretary of the State and the ambassadors.

The Parliamentary control on foreign policy is exercised through two committees: Senate Foreign Relations Committee and the House International Relations Committee.³³ These two panels oversee the nations' foreign policy and authorize the international affairs' budget. In recent years, the Appropriation Committees of the House and Senate have become quite influential in foreign policy because of the frequent failure of the Congress to pass the authorizing legislation for foreign aid. Other committees, which also share jurisdiction on foreign policy, are the Select

³¹ Christianson, Stephen G. *Facts About the Congress*. New York: Wilson, 33-45, 1996.

³² Chamberlain, Lawrence H. *The President, Congress and Legislation*. New York: Columbia University Press, 28-35, 1946.

³³ Ibid.

Intelligence Committees of both the Houses which monitor the activities of the CIA and other Intelligence agencies; the House National Security Committee and the Senate Armed Services Committees which deal with the defense matters; the House Ways and Means Committee and the Senate Finance Committee which deals with the trade and bills.³⁴

3.4.4. India's Parliament.

In India Making foreign policy decisions is the function of the cabinet, which, in turn, is responsive as well as responsible to the opinions expressed in the Lok Sabha, Lower House of the Parliament in India. Since the cabinet can continue in office as long as it enjoys the confidence of the Lower House, the decisions it takes and their execution must be such as are acceptable to the majority of members of the Lok Sabha.³⁵ In India, the ratification of treaties is done by the President however before the government concludes a treaty or an international agreement, it invariably consults the members of the Parliament. Parliament has various devices to control the foreign policy; it may legislate on any matters pertaining to the foreign affairs, though in practice the Indian Parliament has engaged itself in very little legislation, it can exercise financial control through controlling the budgetary allocations, can engage in deliberations by raising questions, passing resolutions, moving adjournment motions and debates on the foreign policy matters.

The Indian Parliament exercises its control over foreign affairs through three committees: Consultative Committee of Parliament for the Ministry of External Affairs, the Estimate Committee and the Public Accounts Committee. The Consultative Committee provides a forum for informal discussion between the members of the Parliament and the Ministry of External

³⁴ Fisher, Louis. *President and Congress; Power and Policy*. New York: Free Press, 20-35, 1972.

³⁵ A. Appadorai, *The Domestic Roots of India's Foreign Policy* 15-30, 1947-1972

Affair. The membership of this committee is drawn both from the Lok Sabha and Rajiya Sabha, Upper House of the Parliament. Apart from the Consultative Committee, the Estimate Committee and the Public Accounts Committee indirectly influence the conduct of foreign relations as they make judgments and comments on the economy and the efficiency of the proposals sent by the Ministry of External Affairs. ³⁶The Indian Parliament has, in general, supported its governments' positions on the foreign policy issues. However, sometimes it has shown strong disagreement on some position as well. For example, there has been a strong criticism of the government's policies during the Sino- Indian War of 1962. The Indian Parliament has in general shown a lot of activism on the foreign policy issues relating to Pakistan and China. At times, the Parliament members have also resigned from their membership in protest against the government's policy which was considered as too soft by them.

3.4.5. United Kingdom's Parliament.

The Parliament in the United Kingdom does not have specific powers to restrain the executive. The control of foreign affairs rests in the hands of the Crown and is shared with the Legislature only to the extent that the Crown deems this desirable. The British government retains the power to carry on diplomatic negotiations without reference to Parliament, to make and ratify treaties without obtaining Parliamentary approval and even to refuse information to Parliament on the ground that it would be detrimental to the public interests. ³⁷Judiciary sides with the government in the foreign policy matters because of the distinction that the Parliament should primarily remain confined to the domestic matters, leaving the executive independent in the foreign policy matters. However, Parliament has been able to assert a recognized right to be

³⁶ Ibid.

³⁷ Donald G. Bishop, *The Administration of British Foreign Relations Connecticut*: Greenwood Press, 33-43, 1961

consulted in the case of Declaration of war, which carries more of a moral sanction than a legal one.

There is no constitutional law in Britain which requires all treaties to be approved by Parliament prior to ratification as is the case with the Senate of the United States. Role of Parliament is that of a supervisor and a critic. The basic function of the Parliament is to examine the policies which cabinet has decided. However, Parliament can normally be consulted only after decisions have been made. Its control over foreign affairs results from its place in the government and the general legislative functions. There are several devices which enable the Parliament to exercise its control over the foreign policy. Parliament can legislate with effect to foreign policy matters. It also exercises the control of defense forces, regulates foreign commerce and has the power of the purse. As the House of Commons controls the public funds, therefore, the fate of foreign office and the defense forces rests on the consent of the Parliament. The Members of the Parliament also have right to information. The government has to keep the members informed through speeches, periodic reports and answering the questions about the state of foreign relations.

The Parliament has three committees dealing with issues of foreign affairs: Foreign Affairs Committee, Committee on European Legislation and the Committee of Public Accounts which exercise considerable check on foreign affairs.³⁸ The role of the Parliament in the UK appears to be very submissive to the executive but, in reality, the parliament plays considerable influence in the conduct of foreign policy. Normally the government has a smooth sailing but at the time of the crisis, the Parliament assumes great significance. For example, the government did not have any problems in making a war declaration on the occasion of the first World War

³⁸ Ibid.

(1914) and the second World War (1939) where the Parliament supported the government but the government faced a great difficulty during the Suez crisis of 1956 when Britain and France had declared war against Egypt over the issue of the nationalization of the Suez canal. The government not only faced tough criticism from the Parliament over this issue but the Prime Minister Anthony Eden even had to resign as a fall out of this crisis. If there is a division in the Cabinet over some foreign policy decision, role of the Parliament assumes an even greater significance.

There are several advantage and disadvantages of this system. ³⁹The principal advantage of this system is that the government is not paralyzed in conducting its foreign policy vis-à-vis other nations. It has the necessary flexibility and freedom to pursue the national interest the way it deems fit. Another advantage is that it can maintain secrecy in pursuing the foreign policy. Disclosure of information can cripple the diplomacy therefore the government can even completely disregard the Parliament withholding the necessary information for the fear of possible leak which may be prejudicial to the national interests. Since the government has the advantage of having a specialized knowledge of the foreign policy, which is ordinarily not available to the members of the Parliament, therefore the governments quite often feels that the Parliament creates nuisance by interfering in this highly specialized activity of the government.

The disadvantages of this system are that the governments may abuse the trust reposed in them or may make erroneous judgments which may harm the national interests. For example, the current Blair government is facing a lot of criticism over its Iraq policy. ⁴⁰The opposition is blaming that the government had lied to the public that Iraq had the Weapons of Mass

³⁹ Antoaneta Christova, *the role of National Parliaments in the Decision making mechanism of the North Atlantic Treaty Organization* 8-14, June 1999.

⁴⁰ Ibid.

Destruction (WMD) in order to justify the war against Iraq but in actuality, the Weapons of Mass Destruction were never found. They also question the authenticity of the various dossiers sent by the government to the members of the Parliament to establish the case of the presence of WMDs in Iraq.

3.4.6. Parliament in South Africa.

Given the history of long struggle for liberation in South Africa it is not surprising to discover that the country's foreign policy objectives reflects the desire to advance the cause of peace, freedom in Africa and by extension the international community. South Africa the Foreign Policy in the Discussion paper [1996] which is retrievable from the government website outlines principles which serve as guidelines in the conduct of South Africa's foreign relations. These include: a commitment to the promotion of human rights; commitment to the promotion of democracy; commitment to justice and international law in the conduct of relations between nations; commitment to international peace and to internationally agreed-upon mechanisms for the resolution of conflicts; commitment to the interests of Africa in World Affairs; and commitment to economic development through regional and international cooperation in an interdependent world."⁴¹

Hence such critical concern such as the State's external relations is of paramount interest to all parliaments. Even then, this engagement of the legislature with foreign affairs and the whole range of activities of the legislature that criss-cross the terrain of external relations and engagement with diplomatic community, suitably described here as "parliamentary diplomacy" is also not the job of the whole house in any representative democracy. Representation is one of the hallmarks of modern democracy and the arm/organ of the state that most illustrate this

⁴¹ South African Foreign Policy/Discussion Paper, Retrieved from <http://www.info.gov.za/greenpapers/1996/foraf1.htm#B/> on 5/9/2011].

assertion is the Parliaments/legislature. South Africa adopted a bicameral legislature after independence. It has a total of 490 Parliamentarians, with National Assembly consisting of 400 members, while the National Council of Provinces [NCOP] has 90 members.⁴²

A division of responsibilities and competencies, with checks and balances built into the political system to prevent the abuse of executive powers, is a feature of all liberal democracies, whether parliamentary, presidential or some sort combination of the two. Thus one key role of the legislature is to check, challenge, monitor and legitimize policies undertaken in the name of the state by the executive branch of government. Indeed, it could be argued that, if there is no tension between a parliament and the executive, the former is not performing its proper role. Specifically there are

Parliamentary Committees on Foreign Affairs are often created to deal with issue of foreign relations and international/diplomatic affairs. South Africa has a Parliamentary Committee on Foreign Affairs which though vary in numerical strength and issues and concerns covered, take cognisance of the multi-party nature of South Africa. The Parliamentary Committees on Foreign Affairs reflect the political parties in Parliament, but in proportion to their percentage in the whole house. This practice also applies within the context of gender-mainstreaming. In South Africa, Thirty three percent [33%] of the Joint Parliamentary Committee on Foreign Affairs are women, In South Africa, Hughes has argued that the Parliamentary Committee on Foreign Affairs is fundamentally created and tasked with maintaining oversight of: the exercise of national executive authority within the sphere of foreign affairs, the implementation of legislation pertaining to the spheres of foreign affairs, any

⁴² Raymond Suttner. (1996). *Parliament and foreign policy South African yearbook of international affairs*, 1996, p136-143.

executive organ of the State within the sphere of foreign affairs; and any other body or institution in respect of which oversight was assigned to it.⁴³

The Parliamentary Committee on Foreign Affairs also enjoys considerable specific powers which are monitor, investigate and make any recommendations concerning any constitutional organ of state within its purview. The committee is granted such powers with regard to the legislative programme, the budget, rationalization, restructuring, functioning, structure or staff and policies of any organ of state or institution. Additionally, the committee is to consider all bills and amendments to bills referred to it. A further role unique to the Parliamentary Committee on Foreign Affairs is the consideration and approval of all international conventions and treaties prior to their ratification by Parliament. In the new millennium, the means of engagement and involvement remain largely the same as before and these include the following: Briefing, it is an age old mechanism for parliamentary involvement in foreign affairs. It also includes parliamentary sessions on debates, briefings, question time and press releases. In South Africa the first Parliamentary Committee on Foreign Affairs briefing session in the new millennium was held on the 3rd of February 2000.⁴⁴

Between 3rd February 2000 and 1st June 2008, there were about one hundred and ninety entries with reference to documented activities or meetings of the Joint Parliamentary Committee on Foreign Affairs. However almost one hundred and fifteen or about 57 percent of these were briefings and reporting/question time sessions. In terms of regularity the Parliamentary Committee on Foreign Affairs in South Africa is relatively active with about four meetings/ press releases per month. The subject matter seems also to weigh heavily in favour of African issues,

⁴³ Tim Hughes. (2002). *The parliamentary portfolio committee on foreign affairs*, in South African yearbook of international affairs / SAIIA, 2001-2002, p 97-104.

⁴⁴ Ibid.

which claims almost forty [40%] percent. This is not unconnected with South Africa's new role in Africa as political gladiators as well as a major player in Africa's new and emerging market for foreign direct investment. More so that the executive sector of government seem to be leading the African renaissance project in the wake of the transformation of OAU to AU in Durban in 2002.⁴⁵

The other one is Visitation/Representation/Fact-finding Missions. In South Africa Parliamentary Committee on Foreign Affairs is regarded as a 'mobile committee', because the members of committee travel often on missions, going by the nature of its mandate. As a result there are numerous reports of visitation to other countries and fact-finding missions. However to what extent these reports are fed into executive decisions on those issues are still very hard to ascertain.⁴⁶

3.5. The Role of Judiciary in Foreign Policy Formulation.

The separation of the powers in governments is one of the best wisdom there is to offer in the international democratic revolution of the late twentieth century. Ironically, as to the domestic judicial arena closest to international legal development, international civil litigation, separation of powers fails fundamentally as a description of the relationship of the judicial and the political branches. A simulation of separation of powers does serve, however, to mask the reality. There is a remarkable, and intriguing, refusal of government jurisprudence to acknowledge the courts involvement in foreign policy-making. The denial is a backhanded recognition that the idealized separation of powers is skewed. The denial is so profound as to be

⁴⁵ William J Foltz. *The foreign policy of the new South Africa* in Conference Report on prospects of political and economic development... -- Monograph, 88-97, 1996.

⁴⁶ Tim Hughes. (2002). *The parliamentary portfolio committee on foreign affairs, in South African yearbook of international affairs / SAIIA, 2001-2002, p 97-104.*

institutionalized. It appears in a body of case law and statutory authority that purports to keep the courts out of foreign policy, while making that role possible through a refined set of intellectual manipulations.⁴⁷

Separation of the judicial and executive branches in relation to foreign policy never was a very precise description of system of governments. In contemporary international litigation, however, there is critical foreign policy-making by the courts that cannot be justified, historically or functionally, as within the capacities of the judicial branch. The relevant considerations are those underlying the political question doctrine and its related formulation in the international context. The courts lack the necessary informational resources, the ability to adjust to diplomatic nuance and timing, and the appropriate remedial resources to respond to the international political dynamic. Their public nature inherently conflicts with the requirements of international political dispute resolution. Their process, the methodology of the common law, is fundamentally at odds with the dynamic process of power adjustment that is the stuff of international diplomacy. Notwithstanding the perceived acceptance and legitimacy of these propositions, the evaluation of foreign policy considerations by the courts has dramatically increased in recent times.

The phenomenon here described is a by-product of an historic watershed--now popularly called the "globalization" of economy and communications. In response to this epic development, legal doctrines that distinguish international civil litigation have been interpreted to

⁴⁷ Journal article by Jack I. Garvey; *Law and Policy in International Business*, Vol. 24, 22-26, 1993

allow for foreign policy evaluation and implementation on a grand scale. Accommodation occurs through a specious acceptance of the legitimacy of legal labels.⁴⁸

The paramount areas of the law involved are sovereign immunity, the act of state doctrine, and, to a lesser extent (though more openly), the "interest balancing" areas of forum and extraterritorial jurisdiction. These are all areas where courts are deciding whether to abstain from adjudication or otherwise limit its scope. Whether deciding to adjudicate or to abstain, courts are divining foreign policy. The phenomenon is little understood. But the need to understand it is great. Judicial foreign policy-making through the very doctrines thought to be the tools of judicial restraint is a fundamental abdication of any constitutional legacy. And it is by understanding how the separation of powers has been lost that there may be found the outlines of a paradigm for international civil litigation true to the constitutional wisdom.

3.6. The role of the executive in foreign policy formulation.

Kenya like most other states the constitution divides the powers to conduct foreign policy among the three branches of the government: executive, legislative, and judicial. The executive formulates the policy, the legislature oversees the policy and also has significant authority in certain areas and judiciary interprets the constitution if a difference arises between the executive and the legislature. In democratic states the constitution deliberately places a system of checks and balance, where no branch could act independently. The President is the head of the executive and is the chief architect of the policy and enjoys overwhelming power. The presidency formulates the policy through the minister of foreign affairs, the secretary to the cabinet and with the assistance of the cabinet and any other actors that may be seen as relevant. The President is

⁴⁸ Ibid

also the Commander-in-Chief of the armed forces and can order the troops to go to combat if there is external aggression on its territory from another state.

In Kenya before the 2007 general elections, the Executive consisted of the President, the vice-President, Ministers and the Assistant Ministers, who are all members of the National assembly (Parliament). However after the disputed elections, a grand coalition government was formed and the post of the prime-minister and his two deputy prime ministers created. The executive implements all the laws made by parliament. The Executive authority is vested in the President. Kenya has a Parliamentary president, where the president is both the Head of State and Government, and also a member of parliament. At the same time, the whole government can, by law, be dismissed from office by an adverse vote in parliament.⁴⁹ The Cabinet consists of the president, prime-minister, vice-president and ministers. Its function is to aid and advise the president. The Ministers are appointed by the President in consultation with the prime-minister and are charged with responsibility over a ministry, over which they are to exercise general direction and control. The President has power to dissolve and prorogue parliament, but he has to summon it into session not later than 12 months from the end of the preceding session, if parliament has been prorogued, or three months from the end of that session if parliament is dissolved.

⁴⁹ Office of the president website, www.cabinetoffice.go.ke, 2011.

3.7. Conclusion.

In comparative government and politics, assemblies have authority to make law but in practice, prime responsibility for policy-making rests with the executive. The assemblies influence only comes in during formal debates on government bills and proposals, committee scrutiny of legislation, investigatory committees; questioning of ministers; and motions of no confidence and censure. Assemblies mainly decide matters by voting and the vote only confirms the policy but doesn't shape it. While in authoritarian regimes voting is nearly always unanimous, in liberal democracies the assembly is also often under one party's control and the outcome of votes is predictable. Oral and written questioning of ministers is a more important form of parliamentary scrutiny in many countries than votes and debates on the floor. Professionalism helps the assembly to influence policy and scrutinize implementation, however sessions of the assembly are short and its members are amateurs in most cases thus effective policy-making and supervision of government is unlikely.⁵⁰

Third world countries' assemblies are seen as minimal meaning, they are a mere rubber stamp under executive domination and are largely irrelevant to policy-making. Elections of representatives in assemblies are not taken serious then so is the institution they produce. In the post independence era leaders in third world countries saw assemblies purely as helping in nation-building and not policy-making. Assemblies are seen as more keen to press the constituency claims as opposed to broader issues even when given a chance.

According to Mwangi African States which fall under the third world should adopt a foreign policy of the first call for Africa.⁵¹ This is where States put their interests first in terms of

⁵⁰ Don L. Mansfield, Gary J. Buckley, *conflict in American foreign policy: the issues debated*, 45-49, 1985.

⁵¹ Makumi Mwangi, *Reclaiming the future, Pan-Africanism, the OAU and Foreign Policy in Africa*, U.S.I.U .Occasional Papers on International Relations No.1, 1999.

their resources thus putting the interests of Africa first. This can only be achieved by incorporating all decision makers including parliament in order to have an all inclusive policy.

Chapter 4

The Role of Kenyan parliament in foreign policy formulation (1999-2009).

4.1. Introduction.

This chapter will examine the various ways the Kenyan parliament has been using in order to influence the process of foreign policy formulation since the year 1999. Like many of its neighbors, Kenya existed under British rule for more than 40 years, had a British model of government imposed upon it at independence, and soon became a one-party presidential state headed by a strong popular leader. In other ways, however, Kenya is unique. For instance, its parliament has taken on a much more active and vibrant role in the political system than has been the case in some other African countries. Thus, the Kenyan Assembly provides a valuable illustration of how a legislature can be effective and influential.

The Kenyan Parliament has only one chamber which will be in existence until the next general election after which the bicameral system which is entrenched in the new constitution that was promulgated on 27th August 2010 will be put in place. As indicated in the previous chapter, the main function of the legislature is to make laws. The Kenyan legislature consists of the president and the National Assembly. The National Assembly is currently composed of two hundred and twenty four (224) members, two hundred and twenty two (222) being Members of Parliament and two (2) *ex-officio* members, the Attorney General, and the Speaker of the National Assembly. Of the two hundred and twenty two (222) members two hundred and ten (210) are elected by the people while the remaining twelve (12) are nominated by the various

political parties. The Speaker presides over the meetings of the National Assembly. ¹Most of the laws in Kenya emanate from an act of Parliament. These are introduced into Parliament as Bills.

The Bill has to be published, in the Kenya Gazette, fourteen days before its introduction. ² It then has its First Reading, which is a formal reading of the title of the Bill. This is followed by a Second Reading, which is an occasion for debate on the general principles of the Bill, after which it is referred to a Committee of the National Assembly for debate and discussion on the detailed provisions. If the Committee reports favorably to the Assembly, then the Bill has its Third and final reading, where the debate, if any, is restricted to a general statement or reiteration of objections. If approved, the Bill is ready for the Presidential assent, after which it becomes an Act of Parliament. The date of commencement of the Act is either the date it received the Presidential Assent, or a date shortly afterwards, or it can be brought into operation by order made by the appropriate Minister.

According to some scholars like Bradshaw, the National Assembly is the most important participatory institution created in Kenya at the time of independence. ³The Kenyan Assembly performs a wide range of functions within the political system, both formal and informal. During the era of the former president Daniel Moi, the lawmaking function of the Assembly was weak and exerted very little influence. The cabinet had the primary responsibility for policymaking and lawmaking, and the president and his key officials had little trouble pushing their legislative

¹ Kenya National Assembly website, www.parliament.go.ke, Monday 4, July, 2011

² Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee on defense and foreign affairs, Nairobi, September, 2011.

³ Bradshaw, Kenneth, and David Pring. *Parliament and Congress*. London: Quartet Books, 66-78, 1972.

agenda through the Assembly. Legislation was often presented to the Assembly as a fait accompli, allowing little if any opportunity for legislative review or analysis. In some cases where the Assembly tried to assert its independence on legislative matters, usually through the mechanism of a select committee, members disloyal to the government were punished, pressured, or even removed from their seats as was the case in Kenya especially during the former retired president Daniel Toroitich Arap Moi. Moreover, the legislature had no authority over budgetary or spending policy, which reduced its overall influence even further.

This however changed after the current president Mwai Kibaki took power in 2002. Legislators steadily assumed the role in defining and clarifying policy goals and in promoting policy alternatives. And the legislature remains a forum for criticism of government's policies and for populist, even radical, expression. The real power and influence of the Assembly comes through the exercise of its informal powers. The most important informal function the legislature performs is to provide legitimacy to government actions. This in turn promotes support among the populace for the regime. The legitimizing function is vital in light of the revolts and bouts of instability that have plagued other nations in the region. By accommodating cultural and historical realities, the Kenyan Assembly allows for opposition and dissent within the system, yet also provides stability. As a result, the populace feels at ease about the strength and legitimacy of the system; at the same time, it feels it has some say in the governance and political process.

While providing legitimacy may be the legislature's more important function in terms of the stability of the governmental system, it is not its only function, and that is how it differs from rubber-stamp legislatures such as that of the former Soviet Union.⁴ Members of the Kenyan

⁴ Ibid.

legislature play an important representative role by serving as a liaison between the government and the populace, the government and other governments providing important constituent services and articulating the demands of special interests. Because they have performed this role so effectively, many representatives have become virtual patrons, servicing the needs of constituents who have become their clients.

Another important function of the legislature is recruitment. The Assembly is a breeding ground for future national leaders. In fact, the party has ceased to be an agent for recruitment; the Assembly has assumed this role. The legislature also serves as the primary outlet for political participation and expression and as a symbol of equitable representation. Even though the representatives are often unable to influence the policy outcomes of the government, they do provide their constituents with access to the system and a voice in the process, whether it is in support or dissent.⁵

At first glance, the role of the Kenyan Assembly may seem meager compared with the powers and prerogatives of the U.S. Congress or the British Parliament. Nonetheless, the Assembly has survived the difficult transition to democracy, while the legislative bodies of some neighboring African countries (such as Uganda) have not fared as well. The Assembly's greatest strength lies in its ability to build unity in the nation and provide legitimacy for the regime, while at the same time steering government policy and acting as a check and balance on executive power.

⁵ Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee on defense and foreign affairs, Nairobi, September, 2011.

4.2. Structure of the Kenyan Parliament.

The Kenyan Parliament is presided over by the Speaker or the Chairman of Committees who is the Deputy Speaker of Parliament. The Vice President is the Leader of Government Business. Parliament prepares its own calendar through the office of the Speaker. The Speaker, in consultation with the Clerk, prepares the daily order of business for Parliament, through the House Business Committee. Whereas the President may prorogue Parliament at the end of a Session, the House can only be dissolved at the end of its five-year life or if the government is defeated in a motion of confidence against it.

The Parliamentary Service Commission which consists of commissioners appointed from the elected members of parliament, who have no ministerial positions, regulates the salaries and allowances of Members of Parliament. Members of Parliament have access to the library and research services and staff to serve them collectively and individually as the case may be. For individual purposes, Members of Parliament have access to computers, the Internet and international databanks. Parliament votes on the national budget. A simple majority vote is required to alter the national budget, though the power is extremely limited. It does not however participate in foreign policy formulation since this is an exclusive function of the Executive. However, to a limited extent, it provides oversight of the policies formulated by the government.⁶

There exists a written Code of Conduct for MPs. This is in the form of National Assembly (Powers and Privileges) Act (Cap. 6 of the Laws of Kenya) and the Standing Orders. Based on these laws, Members of Parliament may be suspended for misconduct and abuse of privilege. For instance, the Speaker can suspend a member of parliament for the remainder of the

⁶ Friedrich Ebert Foundation and Legis Consult, *Working structures in East Africa*, 12-18, 2003.

House Business. ⁷The effect of such suspension is that the member is precluded from participating in debates, making any appearance within the precincts of Parliament and loses sitting allowances for all the days on suspension.⁸

In the general elections held on 27 December 2002, as a result of which KANU, which had been in power for over 40 years, lost to the National Rainbow Coalition (NARC) Kenyans elected parliamentarians amid lots of hope of participation in national matters. 210 elected members of Parliament and 12 nominated by political parties formed Parliament.

4.3. The Legislative Process.

Most foreign policy legislation originates in Bills introduced by the Government through the minister in charge of the ministry concerned with the bill in question, for example during the introduction of the free primary education the ministry of education together with the other ministries like ministry of finance, ministry of planning, national development and vision 2030 were involved with the policy formulation which included sourcing for funding from foreign sources and governments, this automatically became a foreign affairs issue because the policy was part of Kenyan's effort to comply with the millennium development goals . Consultation takes place while legislation is being formulated, and both ministers and civil servants consult a variety of experts, interest groups, trade associations and others likely to be affected by the legislation. When the Bill has been drafted and agreed by ministers, it is introduced into Parliament. Upon the disposal of a report of a Departmental Committee on a Bill, and/or the Second Reading, the Bill stands committed to the Committee of the Whole House on the

⁷ National Assembly, powers and privileges act, 1926.

⁸ Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee on defense and foreign affairs, Nairobi, September, 2011.

Committee Stage of a Bill. Member participation here varies with the interest elicited by the Bills before the House.

The four main types of legislation considered by the Parliament of Kenya are: Government Bills; Private Members' Bills; Private Bills and Statutory Instruments. Government Bills embody Government policy and take up the largest proportion of parliamentary time. It is worth noting that these bills have all policies be it those affecting domestic issues or those affecting foreign issues. Due to globalization domestic policies and foreign policies have become dependent on each other. Domestic policies affect foreign policies and vice versa. Private Members' Bills are introduced by an individual Member of Parliament of any political party. Because relatively little parliamentary time is available for discussing these Bills their chances of being enacted and becoming law are much smaller. Private Bills are promoted by organizations seeking specific, usually local, powers. They apply only to a particular organization or area. In order to relieve pressure on parliamentary time, many Acts of Parliament give ministers and other authorities powers to make Statutory Instruments or subsidiary legislation to apply the law in greater detail and adapt it to fit changing circumstances. They are passed by a simple resolution of the House.⁹

4.4. The Committee System of the Kenyan Parliament.

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 the government. Committees enable members of the public to participate in the legislative, policy making and

⁹ Ibid.

governance processes by either appearing before the Committees or sending memoranda to air their views on the government and give suggestions on how operations of government could be improved.¹⁰

In most legislative bodies, committees are the workhorses of the legislative process. Referral to committee is usually a formal step in the process of adopting a bill. The possible roles of the committees, though, vary from country to country, depending upon the governing system, strength and organization of political parties, available resources and other political factors. In some legislatures, committees have the power to prevent unwanted legislation from being further considered, in others; the committee stage may be merely a formality. Committees usually reach decisions by a vote of the majority. The “majority” may not mean a majority of committee members, but a majority of a certain minimal number of members present (a quorum). Following the committee review proposed bills are then tabled to the floor for further debate and voting. Bills may also be discharged from the committees and be submitted to the floor. However this usually entails a special procedure that requires the approval of all the legislative parties’ leaders in conjunction with the Speaker.

The Kenya National Assembly recognizes the important contribution that Committees make to the role and functions of Parliament in the scrutiny of Foreign policy, Public Policy and activities. The principal purpose of Parliamentary Committees is to perform functions for which Parliament in its corporate form is not well fitted; that is. finding out facts of the case, examining witnesses, sifting information and drawing up reasonable conclusions.¹¹ Committees in a way

¹⁰ Antoaneta Christova, *the role of National Parliaments in the Decision making mechanism of the North Atlantic Treaty Organization* 8-14, June 1999.

¹¹ Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee on defense and foreign affairs, Nairobi, September, 2011.

take Parliament to the people and allow direct contact with members of the public by a section of the House when engaged on study visits or inspection tours. In respect of their formal proceedings, Committees are an extension 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 same procedures and practices as those that prevail in the House, by which they are appointed. The Committees are not at liberty to entertain any proposition or go into any inquiry which does not come within the direct mandate for which they were appointed.¹²

Since the commencement of the Eighth Parliament that came to power in December 1997, Departmental Committees have been very active in Kenya. When a Bill has been read a First Time, it is referred to the relevant Departmental Committee for thorough scrutiny after which the Committee makes a report to the House. The mandates of Departmental Committees are wide and cover virtually every aspect of the work and activities of each Ministry and government Departments. The National Assembly (Powers and privileges) Act. Cap 6, Laws of Kenya, confers similar and adequate powers, privileges and immunities as those that prevail for the House. Such powers and privileges are also conferred by the Standing Orders of the House.¹³

Consequently, committees have the legal empowerment to order the attendance of witnesses, the production of papers and records. Where any person is ordered to attend or to give evidence declines to answer any question put to him on the pretext that it is of a private nature and not affecting the subject of inquiry, the Chairman of such Committee reports such refusal to the Speaker who would decide on the action to be taken.

¹² Interview with Hon. Musikari Kombo, Nominated Member of Parliament in Kenya, Nairobi, July, 2011.

¹³ Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee on defense and foreign affairs, Nairobi, September, 2011.

Departmental Committees in the Kenyan parliament were an extension of the previous General Purposes Committees which were first established in 1979. The mandate of the Committees is to consider and scrutinize bills referred to them after the First Reading in the House, and to a report back to the House. In addition the Committees are also charged with the responsibility of examining virtually every aspect of the work and activities of each Government Ministry and Department.

According to Hon. Musikari Kombo, Parliaments throughout the democratic world are engaged in making laws and policies, providing funds to carry them out and overseeing how well these are implemented.¹⁴ In Kenya, parliamentary democracy has been in place since independence in 1963. But for long periods, the executive has always had excessive powers over the Legislature and the Judiciary. He notes that Parliament plays its accountability and oversight roles through a number of ways, which include motions, questions and its various Committees. He points out that the implementation of the recommendations of Committees has always been the weakest link in the chain. It is like the executive just uses these Committees to relieve public pressure on it and then ignores their reports. It is like Parliament has its say but at the end of it all, the executive has its way.

On Departmental Committees, he says that there has been a dramatic change in the role of Parliament in public affairs since 1999 when eight Departmental Committees became active.¹⁵ This followed a tour of Canada by Members of Parliament to observe how similar teams there work.

These Committees were:-

¹⁴ Interview with Hon. Musikari Kombo, Nominated Member of Parliament in Kenya, Nairobi, July, 2011.

¹⁵ Ibid.

1. Agriculture, Lands and Natural Resources
2. Energy, Communications and Public Works
3. Education, Research and Technology
4. Health, Housing, Labour and Social Welfare
5. Administration, National Security and Local Authorities
6. Finance, Planning and Trade
7. Administration of Justice and Legal Affairs
8. Defense and Foreign Relations

Unlike the watchdog Committees which examine overall government expenditure and investment, the Departmental Committees deal with specific government departments and ministries. Whatever bills that specific ministries bring to the floor of the house somehow affect the foreign policy of Kenya because of the intertwined nature of foreign and domestic policies. These departmental committees also scrutinize and review all legislation after First Reading, of course with the exemption under Standing Order 101A(4), which states that “the standing order shall not apply in case of a Consolidated Fund Bill, an Appropriation, a Supplementary Appropriation Bill or a Constitution of Kenya (Amendment) Bill”. The standing order being referred to is 101 which states, “Every Bill shall be read a First Time without Motion made or question put”.¹⁶

After much consultations with the various clerk assistants in parliament it emerged that this study would benefit most from consulting with the clerk assistant the Departmental Committee on Defense and Foreign Relations. It is established pursuant to provisions of Standing Order 198 (1). Under the provisions of Standing Order 198 (3) the Committee is

¹⁶ Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee on defense and foreign affairs, Nairobi, September, 2011.

mandated to: investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments; study the Programme and policy objectives of the Ministries and departments and the effectiveness of the implementation; study and review all legislation referred to it; study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives; investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.¹⁷

The Committee is also mandated to scrutinize the budget of line Ministries as provided for under Standing Order No. 152:- Upon being laid before the National Assembly, the annual estimates shall stand committed to the respective departmental Committees according to their mandates. Each departmental Committee shall consider, discuss and review the estimates committed to it under this standing order and submit its report thereon to the House within twenty one days after they were first laid before the House.

The Committee oversees the performance of the following Ministries and Government department: - Defense; Foreign Affairs; East African Community; and National Security Intelligence Service. Under the above Ministries, the Committee covers the following subjects; Defense matters; Foreign policy; Treaties , Conventions and Agreements; International and Regional Organizations; Bilateral and Multilateral Relations; Regional Cooperation policy; East African Community Affairs; National Security Intelligence.

¹⁷ Kenya National Assembly, Standing Orders, adopted by the National Assembly on the 10th December 2009 during the Second Session of the Tenth Parliament.

According to the clerk assistant on defense and foreign affairs, the procedures of the National Assembly of Kenya provide for the formation of four kinds of committees; Committees of the Whole House; Standing or Select Committees; Ad hoc Select Committees; and Departmental Committees. Committees of the Whole House comprise all Members of Parliament. They are chaired by the Chairman of Committees who is also the Deputy Speaker and assemble in the Chamber. There are 4 types of Committees of the Whole House: Committee on the Whole House on Committee Stage of a Bill; Committee of the Whole House on the Budget; Committee of Ways and Means; and Committee of Supply.¹⁸

The Committee of Supply is established to monitor expenditure while that of Ways and Means monitors taxation. The accounting system is also improved by the institution of the Public Accounts Committee (PAC) and the existence of the Exchequer and Audit Act. The Committee of Ways and Means and the Committee of Supply deliberate on the annual and supplementary estimates. The life span of these Committees ends with the Session in which they were established. Standing Committees include the Public Accounts Committee (PAC), the Public Investments Committee (PIC) and the Departmental Committees such as the House Business Committee, the Speaker's Committee, the Standing Orders Committee, the Liaison Committee and the Powers and Privileges Committee. The Departmental Committees investigate or inquire into the activities and administration of Ministries or Departments as assigned; out of such investigation, these Committees could make proposals for legislation. Ad hoc Select Committees are appointed by the House as and when the need arises to investigate study and make recommendations on certain specific matters and issues for consideration by the House. Committees of the Whole House are constituted on a resolution of the House.

¹⁸ Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee on defense and foreign affairs, Nairobi, September, 2011.

Select Committees have the power to send for persons, papers or any document that may be useful to their work. Should a witness refuse an invitation to appear, the Committee may then decide to summon the witness. The Committees have powers to examine witnesses on matters relating to the subject of inquiry. While witnesses are at the mercy of the Committee and its collective wisdom, it is important to note that they (witnesses) are only compelled to answer questions that the Committee agrees to put to them. Public servants may decline to disclose certain matters unless consent from the President has been obtained.¹⁹ Nevertheless they can, like any other witness, still be cited for contempt, for not appearing when summoned or refusing to be sworn in. These committees are also very important as they monitor government spending to make sure the economy of the country is not drained. The committee on defense and foreign relations will look at which missions make economic, diplomatic and cultural sense. They might recommend the downgrading or total removal of missions or upgrading of others depending on the state in question and its economic, diplomatic or cultural relevance to Kenya.

The proceedings of Committees have for a long time been held in camera until in the current parliament where the media can be invited to these sittings and the information relating thereto may not be divulged till the Committee has reported to the House. Committees may visit selected areas to make spot checks of certain government operations. The operations of certain Select Committees require constant contact between the Office of the Clerk of the National Assembly and the officers in the Ministries directly involved. Examples here include the Public Accounts Committee, the Public Investment Committee and the Departmental Committees.

According to Nicholas, although the departmental committee on defense and foreign affairs is the one directly involved in the various issues the foreign affairs ministry handles, all

¹⁹ Ibid.

the other committees involved in various other ministries have the role to oversee the various policies those ministries formulate. This is because domestic policies in Kenya and in the rest of the world directly or indirectly influence the foreign policies.²⁰

4.5. Public involvement and Outreach.

The current 10th parliament that was elected in December 2007 has seen the introduction of live coverage of Parliamentary proceedings, after recommendations envisaged by the Kipruto Kirwa Select Committee on Broadcasting Report was adopted by the House. This gives the citizenry a chance to evaluate the role of their members of parliament in governance at the same time tasking the Members of Parliament to take their roles seriously. Parliament also has an active website that provides the Hansard reports on every session. It also supports visits by various groups to witness and appreciate the legislative process as well as the role of Parliament. Parliament, in collaboration with the State University of New York, recently embarked on publishing some work for school children and adults. There is also a legislative internship project, which commenced in the year 2002, which helps improve the services to the members of parliament so that they can carry out their duties diligently. Through this elaborate public involvement and outreach system the Members of Parliament have no other choice but to debate all bills carefully and with the national interests of Kenya being the major drive. It also gives the citizenry to condemn bad policies before they are passed to law²¹.

²⁰ Ibid.

²¹ Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee on defense and foreign affairs, Nairobi, September, 2011.

4.6. Conclusion.

The Kenyan parliament like any other in developing countries is steadily gaining influence over governance. It has increasingly assumed its role in checks and balances of the executive. The world today is moving towards economic advancement and most foreign policies are geared towards this and parliament should make sure that the policies formulated are in line with this at the same time protecting the interests of the Kenyan people. The citizenry should therefore elect to parliament individuals with their interests at heart and who have the knowledge to actively participate in the roles parliament is supposed to play.

Chapter 5

Conclusions and Recommendations.

5.1. Introduction.

This chapter will look at the conflict the executive and parliament have over foreign affairs. This is because for a long time the domain of foreign affairs has largely been under the executive but due to democratization parliament has been getting involved in the same. This chapter will also look at the conclusion the study has arrived to and the various recommendations. The study had its challenges as I was not able to issue questionnaires to the individuals I had intended to because they directed me to the clerk assistant departmental committee on defense and foreign affairs. I there resulted to a one on one interview with him and one nominated Member of Parliament. It was however obvious that the answers I would have gotten from all the others would have been more or less the same.

5.2. Explaining Executive-Legislative Friction over Foreign Affairs.

Although the term national interest is somewhat ambiguous, some scholars like Shearman, have usefully defined it in terms of the common good of a society within the bounds of a nation-state. This means that, although between groups in domestic society there are conflicting interests, there exist general and common benefits to society that all members share irrespective of individual or group preferences on other issues. The basic common interests of any state are survival for itself and its population, maintaining the territorial integrity of the state, and enhancing its status and position in relation with other states. ¹Conceptions of the national

¹ William Bloom. *Personal Identity, National Identity and International Relations* Cambridge: Cambridge University Press. 87-97, 1990).

interest provided a powerful dynamic for mobilizing domestic society around specific political issues. A constant feature of domestic politics in all types of pluralist political systems is competition between political groups to be seen as the one group that offers the best safeguard for maintaining national interests.²

National interests are linked to perception of identity. Images of a nation and its place in the world can be drawn upon to mobilize what Bloom refers to as a 'national identity dynamic' with government and opposition groups drawing upon, creating, and manipulating these images for their own ends in a struggle for political power. The assumption here is that political elites manipulate a social-psychological dynamic relating to a conception of national identity which is itself determined by the external environment. In other words conception of the national self are linked to perceptions of the external other.³

Foreign policy and diplomacy can be viewed as the means to ensure the objective of defending national interest and, hence, simultaneously the strengthening of national identity. Foreign policy also provides, as Cerny has put it: "the specific instrument par excellence at the disposal of elites hoping to mobilize the population of a legally-recognized nation state towards legitimating and political integration". There are four important reasons why foreign policy and competing conceptions of national interests should be so powerful in the mobilization of domestic society.⁴ First, national interests are universal interest shared by all members of the society, transcending other cleavages based upon ethnicity, religion, culture, or class. Hence

² Peter Shearman. 'Defining the National Interest: Russian Foreign Policy and Domestic Politics', in Roger E. Kanet & Alexander V. Kozhemiakin [eds], *The Foreign Policy of the Russia Federation*, Macmillan UK Press Ltd. 70-85, 1997.

³ William Bloom. *Personal Identity, National Identity and International Relations* Cambridge: Cambridge University Press. 87-97, 1990).

⁴ Philip G. Cerny. 'Foreign Policy Leadership and National Integration' *British Journal of International Studies*, vol 5, p.71, 1979.

political groups are provided with the most potent force for mobilizing the widest possible sections of the society. Second, foreign policy provides a perfect discourse of politics that allows for escape from objective verification. Unlike specific economic or social policies, the feature of foreign policy, designed to defend the national interest, are removed from the same standards of immediate or short-term tests that can easily lead to failure. Third, foreign policy is often more emotional as an issue affecting society, but it is often far more remote in terms of its impact on the individual. As an emotive issue the mass of national public will always react favorably to policies which seem to enhance the national interest, and negatively to policies which seem as undermining it. Fourth, foreign policy facilitates, much more readily than domestic policies, opportunities for the emergence of strong and charismatic leaders, who, wrapping themselves in the national flag and the rhetoric of national identity, portray themselves as the only effective defenders of the national idea.⁵

In terms of living up to their triple mandate as avenues for representation, lawmaking and oversight over government activities, the Parliaments all over the world have registered mixed performance. It is the strong points in each legislature that could provide a pointer to what aspects ought to be entrenched or the direction in which future reforms of the legislature should move. Because they have powers to summon Ministers and chief executives of government corporations before them, these Committees are playing an increasingly important role in instilling discipline in the management of public affairs. In fact they have the capacity to prevent misguided policies on public affairs before they happen.⁶

⁵ Ibid.

⁶ William Bloom. *Personal Identity, National Identity and International Relations* Cambridge: Cambridge University Press. 87-97, 1990).

On the whole, therefore, they have made Parliament's supervisory role more powerful and defined. Through hearings, field trips and investigations, members of parliament in various committees inquire into how effectively the executive branch is implementing policies which Parliament has passed and provided funding for. There is a revolution in governance and that all over the world governments, leaders and people are grappling with issues of authority, legitimacy and power of which the most significant aspects of this governance revolution are: Growing demands for democracy, human rights and public participation in decision making, Global pressures to enhance state effectiveness to while downsizing the state, Loss of governing capacity in many countries, Diminished national policy-making emerges in the face of globalization and Worldwide debate about the appropriate balance between the state, civil society and the people.

As a result state institutions have to redefine their roles and improve performance. Parliament is a vital democratic institution serving as a bridge between state and society by carrying out its legislative, oversight and representative functions in a way that strengthens the good governance values of accountability, transparency and participation. Balance ecology of governance demands that there should be accountability, transparency and participation, which are vital criterion for citizenship and another precondition for effective accountability in all decisions taken.⁷ Unbalanced ecology is characterized by the executive dominating the legislature and judiciary, closed and exclusive governance and marginalized parliamentarians.

The inability of the parliaments to influence the executive often on strategic diplomatic matters and the seeming second place on foreign affairs may be of course due to two other

⁷ Peter Shearman. 'Defining the National Interest: Russian Foreign Policy and Domestic Politics', in Roger E.Kanet & Alexander V.Kozhemiakin[eds], *The Foreign Policy of the Russia Federation*, Macmillan UK Press Ltd. 70-85, 1997.

reasons. In addition to constitutional limitations, another reality is the multiple actors and forces exacting influence of the executives in this age of globalization. The role of other actors, such as foreign powers, opposition political parties, the civil society/third sector and the media, are as crucial as that of national parliaments if not more. These other actors do influence the State behavior more often than imagined and they can be extremely strong in pushing agenda through the executive arm of government. Sometimes this is being done by literally arm-twisting the executive in technical negotiations. The second reason is that the executive being the policy formulating arm of government sees itself in a better position to formulate policies that will safeguard the national interests. The executive therefore is seen as being more superior to the other two arms of government.⁸

In summary the study has established the fact that the post-Moi regime is broad-based and all inclusive democratic governance which incorporates a great deal of parliamentary activism. We have been able to establish that foreign policy is always a contested ground between executive and legislature, with the latter always even in developed democracies coming through as playing second place in foreign affairs. The study located the attractiveness of foreign affairs both to the parliament and executive within the orbit of national interest, as defined by policy elite.

The study further describes the parliamentary approach to participating in foreign affairs through the Parliamentary Committee on Foreign Affairs. It argues that though the Parliamentary Committee on Foreign Affairs is tasked with specific oversight responsibilities relating to foreign affairs, it however often find it difficult to do enough or do more and this is the case in the Kenyan parliamentary committee on defense and foreign affairs. The study utilizes several indicators to illustrate the Parliamentary Committee on Foreign Affairs /Parliament's frustration

⁸ Ibid.

with the executive over foreign affairs administration. In conclusion, the article noted the factor of multiple actors as one reason the executive has the biggest role in foreign policy than parliament in order to keep the policies on track.⁹

5.4. Recommendations.

Parliamentary Committees should be endowed with adequate resources to be able to address their mandate adequately. On the other hand, most of the scrutiny of government policies by the Committees is always done on past events rather than current issues. This does not help much in the prevention of possible misguided policies that would inadequately advance the national interests of Kenya may it be economically, politically, diplomatically or culturally. The Executive also does sometimes take too long to respond to recommendations of Parliamentary Committees.

According to the clerk assistant Committee on defense and foreign relations, the Committees have identified several weaknesses in their operations which include scarcity of human and financial resources; inadequate time for deliberation of the Committee reports and recommendations by the House; post-mortem scrutiny of past issues rather than current issues; the exceedingly long time taken by the executive to implement or even respond to the Committees recommendations; and finally the apathy exhibited by the Members in the Committees technical aspects. This is largely because the members in these committees lack the technical knowhow. There is need for innovative ways of making the Committees more effective, efficient and relevant. There is also need for the public to be sensitized on the need to elect in parliament individuals who have basic knowledge on the issues affecting the country.

⁹ Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee and foreign affairs, Nairobi, September, 2011.

This is necessary so that they can be able to actively and positively participate in any of the committees in parliament.

Hon Musikari Kombo states that the obligation of making the committees function is the primary responsibility of all Members because they are representatives of the people. He points out that one of the biggest problems of Committees is lack of adequate information to perform their roles. This problem is made worse by the fact that the executive branch normally enjoys superior access to information and often has incentives not to share that knowledge, especially if it reflects poorly on the executive.¹⁰

The Oversight Committees have no doubt helped to make Parliament more powerful and responsive to the needs of the nation and the people. But they can still be made better. He stated that the law be changed so that Committees not only comment on appointments but have the power to vet and approve appointments in their specific areas. Parliaments should assert their power by playing a crucial role in good governance by ensuring that state institutions are accountable, transparent and participatory in their decision making process.

In terms of enacting policy, a proactive legislature is one in which the policy formulation and law making processes are the product of informed decision-making, and legislation is well-thought out and drafted. In terms of policy implementation, an accountable legislature ensures that laws and government policies are being implemented fairly and effectively; the national budget is scrutinized and agreed upon; public revenues and expenditures are monitored; and issues of public corruption, national interests and mismanagement are addressed.

¹⁰ Interview with Hon. Musikari Kombo, Nominated Member of Parliament in Kenya, Nairobi, July, 2011.

The representative and lawmaking functions co-exist in an uneasy but necessary relationship. Lawmaking requires reconciling of differences once articulated, as well as pressing the legislature's claim to power against the executive and other power-holders, such as political parties. This requires legislative processes capable of reconciling conflicts and bringing to bear enough expertise to be taken seriously by the executive branch and other actors in the system. To Nicholas the executive still has the biggest role to play in formulating foreign policies but parliament should be vigilant to ensure that all the necessary actors are involved and that the policies have the best interest on Kenya and its people. He also says that in the future parliamentarians will be able to even vet the diplomats serving in the Kenyan Missions abroad to ensure that only capable envoys represent Kenya. This will happen if a proposed diplomatic act becomes law.¹¹ All in all he says there is need for all relevant actors to be involved in foreign policy formulation so as to have policies that will economically, diplomatically and culturally place Kenya in a strategic position in the international system.

¹¹Interview with Mr. Nicholas Matiko, Kenya National Assembly Clerk assistant departmental committee on defense and foreign affairs, Nairobi, September, 2011.

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