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# The role of parliament in foreign-policy making process in Kenya, 1963-1993

Adams G. R. Oloo

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**The Role of Parliament in Foreign  
Policy Making Process in Kenya  
1963-1993**

THE ROLE OF PARLIAMENT IN FOREIGN-  
POLICY MAKING PROCESS IN KENYA  
1963-1993

BY

OLOO ADAMS G.R.

IFRA



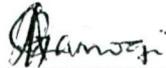
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A THESIS SUBMITTED IN PARTIAL FULFILLMENT  
OF THE DEGREE OF MASTER OF ARTS AT THE  
UNIVERSITY OF NAIROBI.

1995

## DECLARATION

This thesis is my original work and has not been submitted for a degree in any other University.



---

ADAMS G.R. OLOO  
(CANDIDATE)



This thesis has been submitted for examination with my approval as University Supervisor.



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DR. ODHIAMBO-MBAI  
(SUPERVISOR)

## DEDICATION

This thesis is dedicated to my dad, the late Aggrey Oloo Okinda whose love and respect for education inspired me to understand the value of education.

## ACKNOWLEDGEMENTS

Now that the writing of this thesis is complete, I am obliged to acknowledge my indebtedness to several personalities and institutions for the production of this work. Thanks go to the Chairman of the Department of Government Dr. Nick Wanjohi who kept a keen interest in the progress of my work. I am also grateful to Mr. Oscar Mwangi of the Department of Government who kindly allowed me to work on my thesis from his office, and constantly encouraged me to complete my work.

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## ABSTRACT

This study is an attempt to inquire into the role of parliament in foreign-policy making process in Kenya since independence upto 1993.

The study proceeds from the premise that Kenya's independence constitution vested parliament with the authority to play a leading role in the formulation of the country's foreign-policy. This authority was vested in parliament in line with the concept of separation of powers, whereby the three arms of the government namely the executive, legislature and the judiciary acts to "check and balance" each other.

It is argued in this thesis that while the constitution assigns specific roles to be played by both the parliament and executive in the formulation and implementation of the country's foreign policy respectively; the evidence adduced shows that the executive (presidency) has in most cases bypassed the National Assembly in the conduct of the entire foreign policy process.

The decision-making theory approach in foreign-policy constitutes the conceptual framework for this study. The argument here is that few important issues fall exclusively within the domain of a single organization. Thus government behaviour relevant to any important problem reflects the independent output of several organizations partially coordinated by government leaders.

Chapter 1 also serves as an introduction to the rest of the work. In this chapter, we state the problem, objectives and hypotheses of the study, we review various literature on the subject; and we adopt an appropriate theoretical framework for the study. In Chapter 2, we provide the historical background of the Kenyan Parliament showing the emergence and development of the Kenyan Parliament during the colonial period. We also look at parliament's development during the post-colonial period, emphasizing o how the institution's powers were whittled away. In chapter 3 we look at the role of the Kenyan Parliament in foreign-policy making during the Kenyatta era, from 1963-1978. We demonstrate in the chapter how Kenyatta sought to influence decision-making within the Kenya National Assembly as the independence euphoria died down. Chapter 4 examine the Moi era covering the period, 1978 -1993. We demonstrate how Moi, upon succeeding Kenyatta sought to make parliament a permanent "rubber stamp" of the executive's actions.

In Chapter 5 we look at the factors responsible for parliament's weakness in foreign-policy formation. Finally in Chapter 6 we arrive at the conclusion that the executive arm of the government has eroded the powers of parliament since Independence to the extent that the National Assembly has ended up playing no meaningful role in the formulation of the country's foreign-policy. We therefore recommend that the executive should desist from interfering with the functions of

the National Assembly and the deliberations enacted in parliament should be implemented.

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## ABBREVIATIONS

A.G.	-	Attorney General
E.A.A.	-	East African Association
E.A.C.	-	East African Community
E.A.F.	-	East African Federation
HRP	-	House of Representatives
K.A.D.U.	-	Kenya African Democratic Union
K.A.N.U.	-	Kenya African National Union
K.A.U.	-	Kenya African Union
K.P.U.	-	Kenya People's Union
M.P.	-	Members of Parliament
N.C.C.K.	-	National Council of Churches of Kenya
O.A.U.	-	Organization of African Unity
U.D.I.	-	Unilateral Declaration of Independence
U.N.	-	United Nations
U.S.A.	-	United States of America

## CHAPTER ONE

### 1.1 INTRODUCTION:

Kenya attained its independence from the British in 1963. The first independence Constitution was structured along the lines of the West-Minister model. According to this model the Kenyan State was supposed to comprise the following key institutions; an executive headed by a Prime-Minister, a bi-cameral Parliament and the Judiciary. The Queen of England remained the Head of State. However in 1964, the Constitution was amended to make Kenya a republic. The amendment radically altered the position of the executive thus providing for a President who is both the Head of State and Government. Executive authority in the Republic of Kenya was now vested in the President.

The bi-cameral legislature was, however, retained without any change. Furthermore, the Constitution retained many of the checks upon the executive by the legislature which are characteristic of a Parliamentary system of government and which link the executive and legislature closely together. In this arrangement, the Parliament was expected to play a significant role in the formulation of the Country's public policy, including foreign-policy.

According to Gerhard Loewenberg (1971), parliament is a paradoxical institution. Medieval in origin, it exists in nearly all contemporary political systems. Although

associated with democracy, it has also had its place in aristocracies and dictatorships.

John Wahlke (1970) observes that the prevailing conception of the modern representative body and its place in the governmental system envisions the legislature as essentially a "dominant - input processor". Legislators are seen as so many targets (and receivers) of communications from constituents, lobbyists, governors, administrators and many other demand-inputters or demand - "within-putters". What these communications put into the legislative body are demands for or against specific policy decisions. Thus the cardinal function of the legislature as a body is to "make policy-decisions".

In this study our central purpose is to evaluate what role Kenya's parliament has played in foreign policy formulation. According to a number of scholars, for example, John Howell (1968), John Okumu (1974) and Samuel Makinda (1983), foreign policy formulation in Kenya has been the domain of the executive. The above mentioned scholars who have analysed both the Kenyatta and Moi regimes have concentrated mainly on continuity or change in Kenya's foreign policy towards other states.

While the role of the executive on foreign policy formulation has received considerable academic attention, the role of parliament in the same process of foreign policy formulation has almost been ignored. It is this omission

which drives us to conduct this study.

Central to our study will be the concept, separation of powers as opposed to concentration of powers or personal rule. Concentration of powers means that different categories of public power are entrusted to one individual or to one entity.

John Locke (1924), Aristotle (1955) and Charles Montesquieu (1962) have all argued that the powers of a government should be balanced by placing several of its parts in different hands. They cautioned against a whole power of government being concentrated in one hand or organ. If this happened, the above scholars observed, the organ in which more power is concentrated would have absolute control of every aspect of governmental functions. The result would be a despotic rule.

Separation of powers on the other hand means that the three organs of the state, namely the executive, the legislative and the judiciary are separated from one another in a balanced manner. None of the three organs is superior to the other. Instead each organ acts to check and balance one another.

As has already been stated above, this study intends to evaluate the role Kenyas parliament has played in this arrangement of checks and balance, in so far as the formulation of foreign policy is concerned. The period to be covered by the study will be from 1963 to 1993.

## 1.2 STATEMENT OF THE PROBLEM:

This study deals with the role of parliament in the formulation of foreign policy in Kenya. It seeks to establish whether parliament, which is one of the three arms of government has any significant input in the foreign policy making process in Kenya. The central question which this study attempts to answer is as follows: [To what extent is the parliamentary system in Kenya is achieving its purpose?]

According to some scholars, parliament in its broadest sense may be regarded as a collective part of a government of a country. It consists as a rule of a large number of elected members and represents the interests of an entire population, both in the legislation of all laws and formulation of policies which govern a country (Inter-parliamentary Union 1962, 3).

In a liberal democracy, the control exercised over the executive by parliament emanates from the fact that, parliament is the incarnation of the will of the people. As such parliament must be in a position to supervise the way in which the policy of the state is carried out. This is to ensure that the executive does not stray from the path which most closely represents the aspirations of the nation as a whole.

The strength of a parliament lies in the extent to which it can exercise political control, over the executive (inter-Parliamentary Union, 237). The main point in regard to

parliamentary control is not only to supervise the activities of the executive, or even where necessary to issue directives, but also to provide means of bringing the undesired activity to a halt once it ceases to be in keeping with the wishes of the representatives of the people. This political control and the powers that go with it, constitute the essential criterion of parliamentary sovereignty. In order for parliament to be in a position to keep an eye on the government and to place and maintain its confidence in the same government, it is essential that parliament should be kept fully supplied with information.

In a liberal democracy, parliament has a variety of means of investigation at its disposal. This includes the use of some of the apparatus of the executive. Constitutional law provides parliament with a vast selection of ways and means of accomplishing its task. The task of parliament can be categorised into the control of overall policy, supervision of the administration, protection of the individual or bringing to light and eliminating abuses and injustice.

According to some scholars, democratic politics in essence is how to secure responsive yet authoritative government (Lawrence Dodd, 1976, 3). In order to produce the desired balance, some form of parliamentary government has to be instituted. In the Westminster model, executive powers reside in the Prime-Minister and his Cabinet. The cabinet government is selected by a popularly elected representative

legislature. The selection process entails negotiation and bargaining among various factions or parties so that the act of cabinet installation ideally serves to authorise and legitimize the direction of public policy. The cabinet is held accountable to and can be dissolved by the parliament. On the other hand, in the American system, the chief executive is independent of congress, under the doctrine of the separation of powers.

Kenya which is our case study initially in 1963, adopted the West-Minister model, with the Prime-Minister deriving his legitimacy from parliament. However a year later it went "presidential" although not in the direction of the American pattern. During the one year period under the West-Minister model the government was highly decentralized; the three arms of government, namely the executive, the legislature and the judiciary were complementing each other in the state functions.

A departure from this model was hastened by the dissolution of KADU in November 1964. This paved the way for the promulgation of the 'republican government' in December 1964. The republic government altered the position of the executive, thus providing for a president who was both Head of State and Head of Government. However the constitution retained many of the checks upon the executive by the legislature which are characteristic of a parliamentary system of government and which link the executive and the legislature

closely together.

The second phase in the Kenyan parliamentary system was the de-facto one party period experienced between 1964-1966. This period witnessed various constitutional amendments. Most of the amendments brought about changes in the nature and composition of the National Assembly. The constitutional amendments also demonstrated a determined effort by the Presidency to centralize state authority in the executive branch and to weaken the influence of the legislature.

The third phase of the Kenyan parliaments life falls between 1966-1969. During this period another political party, Kenya People's Union (KPU) was formed thus paving way for the second multi-party system. During this period parliament made further amendments to the constitution which strengthened the executive. [For example, the method of presidential election was altered to the effect that the president would in future be elected through universal suffrage.] Furthermore, the composition of the National Assembly was also altered by replacing the 12 specially elected members, who were previously elected the parliamentarians, with 12 nominated members appointed by the president.

The fourth phase in Kenya's parliamentary system was experienced between 1969-1978. During this period the country reverted to a de-facto one party system following the banning, in 1969, of the opposition party KPU. Subsequently the 1969,

1974 and 1979 elections were held under a one-party state. This was the scenario which President Moi inherited when he succeeded Kenyatta in 1978.

The fifth phase in parliament's life was experienced between 1982-1991. During this period, the country for the first time adopted a de-jure one party system. This was achieved through an amendment to the constitution which provided for KANU to be the sole political party in the country. This period also witnessed attempts by the executive to make the party more supreme than the legislature.

The final phase of the Kenyan parliamentary life covered in our study begins from 1991. In this year the country reverted to a multi-party system after an amendment to the section of the constitution which prohibited the formation of more political parties in the country.

The main purpose of this study is to examine, parliament within a liberal democracy, and to evaluate the role Kenya's parliament has played in the formulation of the country's foreign policy since 1963 to 1993.

### 1.3 OBJECTIVES OF THE STUDY:

This study focuses on the formulation of foreign policy in Kenya. It will concentrate on the institution of parliament, and assesses how effective parliament has been in the formulation of foreign policy in the country.

The key objectives of this study are as follows:

- (a) To explore the role of parliament in the formulation of foreign policy in Kenya.
- (b) To investigate if the concept of the separation of powers has been adhered to and if not why?
- (c) To assess whether parliament has failed or succeeded in having a significant input in foreign-policy making.
- (d) To establish the factors which explain the success or failure of the Kenyan Parliament in foreign-policy making.

#### 1.4 LITERATURE REVIEW:

A number of scholars have done studies on legislatures. Among them are Alfred J. Junz (1960), the inter-parliamentary union chaired by G. Coddacci-Pissaneli (1962), Anirudha Gupta (1966), Newel M. Stultz (1970), Ocaya Lakidi and Ali Mazrui (1973), Jay Hakes and John Helgerson (1973), Ngunjiri (1974) and Robert Jackson and Carl Roseberg (1982). These scholars both in individual and collective efforts have studied different form of parliament in various political systems. As a result an abundance of literature exists on legislatures from various multi-dimensional perspectives.

However, there is scarcity of literature which directly examines the role of parliament in foreign policy formulation in Kenya. This section will therefore be only a preliminary

review of some of the available literature pertinent to legislatures in policy formulation in general.

To begin with, the inter-parliamentary union chaired by G. Coddaci-Pissaneli did a study of parliamentary institutions in forty-one different states. The unions first major concern was the structure of parliament. The central question addressed by the study was as follows: which of the parliamentary systems is more effective, the one chamber or two chambers, a unicameral or bi-cameral. The union classified the structure of parliament into three. The first is the bi-cameral system in federal states. Federal states are by definition two-tier in structure. On the one hand there is the nation as a complete entity; on the other, the member states of the federation, with whatever degree of autonomy they possess. In the federations parliament, this two-tier structure inevitably implies separation into two chambers, the one emanating from the people as a whole, the other made up of delegates representing each of the member states.

The second category of parliamentary system, the inter-parliamentary union classified as the bi-cameral system in non-federal states. Here the nature of the second chamber in some cases reflects the desire - conscious or unconscious - of those who framed the constitution to curb the democratic aggressiveness of the first chamber by including in it more conservative elements so as to keep it under control.

The third category of parliamentary system, according to the inter-parliamentary union, is the unicameral system in non-federal states. The union observed that according to contemporary constitutional theory, the unicameral system is more appropriate to democracy. The single chamber should ideally be elected by direct universal suffrage, and that is in fact the commonest practise. The union, however observed that, as a criterion, it does not fully account for the nature of the unicameral system, since here, more than anywhere else, allowance has to be made for the spirit, the traditional and the economic and social evolution of the particular nation concerned.

The choice between the bi-cameral and uni-cameral systems of parliament frequently has its roots deep in the country's history, its peculiar characteristics and national spirit. But the union also noted that a bi-cameral parliament is better suited to the following situations: first, bi-cameral system is suited to federal states, by the very fact of their two tier structure and irrespective of whether their political system is liberal or authoritarian.

Second, the system is more suited to some non-federal states because of varying circumstances, such as the existence of a long parliamentary tradition. A unicameral parliament on the other hand was better suited to the requirements of young states, whose political evolution were taking place under conditions which were fundamentally different from those which

obtained at the birth of parliamentary government in western Europe.

In its analysis of the control of the executive by parliament, the inter-parliamentary union observed that the strength of a parliament lies in the extent to which it can exercise political control. Thus the main point in regard to parliamentary control is not only to supervise or even where necessary to issue directives, but to provide a means of bringing this activity to a halt once it ceases to be in keeping with the wishes of the representatives of the people.

The inter-parliamentary union asserted that constitutional law provides parliament with a vast selection of ways and means of accomplishing its task. The first way is through the general debate and 'interpretation'. In some countries the provision of the constitution require the executive to render to parliament periodically an account of its stewardship, thus providing an opportunity to exercise effective control. This system is primarily characteristic of constitutions based on separation of powers. It helps to make upto some extent for the fact that the executive is not accountable for its actions.

Second, there is the mode of questions to ministers. The practise of putting questions to ministers is a type of control used in parliaments in all countries where the government is politically accountable. The popularity of the question procedure is largely due to the fact that in making

use of his right to ask questions, a member of parliament is a complete free-agent. The only limits on his freedom of action are those which his conscience dictates since any rules which may govern all admissibility of questions are purely formal in character.

The third method of parliamentary operation which the union propounded was parliamentary inquiries. Whereas the powers of legislative committee to carry out inquiries are frequently challenged, or at any rate made subject to the formal authorization of the house itself, there is a provision for committees of inquiry to study specific issues in most parliaments. The committee of inquiry system means that a parliament instructs a number of its members to collect such information as it needs to enable it to exercise proper control, and to submit a report of which if he sees fit, the house will take a decision. The right to institute an inquiry is a natural corollary of the principle that parliament must have the right to obtain clarification in regard to any questions on which it is called upon to take a decision. By combining the use of these three modes of operation, a parliament should ideally be very effective.

Another scholar who wrote on the functions of parliament in a liberal democracy was Alfred Junz (1960). He was writing on behalf of the Hansard Society for parliamentary government. Junz examined the role of the majority in parliament and noted that the primary function of the majority is the maintenance

of a government. In European usage the term 'government' is reserved to what Americans would call the 'administration' or the executive branch of the government. It doesn't include the legislature and the judiciary.

Government in this sense observed Junz cannot be conducted by some six hundred persons in open debate. It requires a separate apparatus of study, deliberation, discussion and execution. Parliament cannot govern. But it must maintain and control a government. In order that this function can be fulfilled, there must be a coherent majority in agreement with the policy and leadership of the cabinet. A member of the majority supporting the government does not want to defeat the government; he is as a rule loyal to the leaders of the government. His constituents expect him to be so, since they as a rule elected him not because of his opinions or ability but because of his party label and supposed allegiance. the only way to vote against the government is to vote with the opposition. For this reason sometimes out of conscience, the member of the majority party may not be able to vote in either lobby. But he rarely votes against the government.

Junz also made observations on the role of the opposition in parliament. He noted, for example, that one of the functions of the opposition in parliament was to criticise the government. To that extent the opposition was the most important part of parliament. Having a majority the

government has the power to govern, but it must do so under constant fire of opposition criticism. Given that a cabinet or majority may disintegrate at any time, there must be a new body of members of the same house ready and able to take office. Central to Junz's argument is that in a liberal parliamentary system, there exist an organized opposition with certain constitutional rights. This was continual and irrefutable evidence that the policies of the government are not necessarily the only possible or the only correct policies and that an alternative is possible.

But this is not the way in which parliamentary systems in Africa have operated. Robert Jackson and Carl Roseberg (1982) for example have observed that the form of parliamentary systems predominant in the third world, including Africa, has been what may be referred to as 'presidential monarch'. According to Roseberg and Jackson, when it became obvious that colonial rule was rapidly coming to an end in the late 1950s and early 1960's, it was hoped that independent African countries would adopt some form of democracy, be it liberal, democratic or socialist, or some indigenous variant. It was also hoped that within those emerging democracies the role parliament played would also be appropriately recognised. Instead of democracy, however, various forms of autocracy appeared (Jackson 1982, 421-442).

Analyzing the phenomena of personal rule in Africa, Roseberg and Jackson argue that unlike institutional or

constitutional government, personal rule lacks legitimate and effective rules and authorities that can keep the game orderly. Personal regimes as such are far more dependent than institutional regimes on the co-operation, self-restraint and good will of politicians. Within such "personal rule" regimes the ideal role of parliaments are therefore significantly compromised.

Another scholar, Arirudha Gupta (1966) has also emphasized the problems of African countries in relation to their legislatures. In his study Gupta identifies three types of problems which African parliaments face in their operations. In the first place, African countries inherited a highly centralized system of government in which the executive as represented by the governor and his council had been all powerful. The legislature therefore whenever it developed remained strictly subordinate to the executive, or at any rate its role was not clearly defined.

Secondly, the national leadership in most African countries came into the hands of such men who had little administrative or parliamentary experience. In a number of cases these men were, mass party leaders, whose popularity depended on their ability to give call for such political actions as could easily catch the imagination of the people; as such they were more inclined to set down their own rules of post-independence politics than to accept suggestions from others.

Finally on the eve of independence, most national parties came to parliaments with such overwhelming numbers. They either did not face any opposition, or where an opposition existed it was numerically so weak as to be ignored brusquely. The evolution of party politics in Africa therefore showed a pattern in which the opposition had been dissolved either forcibly, or through a natural process of disintegration, giving way to the rise of one-party states.

In view of the centralized character of administration, political parties tended to become irresponsible. Moreover, political parties began to lose the support of the people, who had brought them to power. The result was that parliaments too began to lose their impact. Gupta's analysis closely ties up with the Kenyan situation. The executive in the colonial government was very powerful before Kenya gained independence. However, with independence definitely in the offing, the colonial government chose to leave behind a Westminster type of government which was moderately decentralized. As soon as independence was achieved the Kenyatta Government found it suitable to change this scenario which led to the attainment of a republican government with a strong executive in 1964, and hence a centralized system. However, Gupta's study was conducted three years after Kenya attained independence. Our study covers a period of three decades and hence our belief that there have been many developments which need analysis and documentation.

Dent Ocaya Lakidi and Ali Mazrui (1973) also did a study on parliament, parties and the presidency in East Africa. Lakidi and Mazrui observed that important changes had taken place in the functions of the national assembly within the first decade of independence in Uganda, Tanzania and Kenya. On attainment of independence the functions of parliament were still seen in their traditional West-Minister form. Parliament was in existence in order to firstly, make laws of the land; secondly, serve as a debating chamber of public issues; and thirdly serve as the central mechanism of political recruitment within the governmental system of the countries. The balance between these three functions shifted in each of the three countries of East Africa, and the precise nature of the shifts varied from country to country.

Both in Tanzania and in Uganda, the role of parliament as an arena of public debate declined sharply in the first ten years of independence. But in Kenya, parliament continued to be a chamber within which government policies were scrutinized and debated, and by which certain political initiatives were taken.

In Uganda, the function of parliament as a mechanism for political recruitment was also uncertain, principally because there were no elections in Uganda from 1962 to the military coup of January 1971. But in Kenya and less centrally in Tanzania, parliament did continue to be a chamber that was periodically used to attract new political talents, and whose

rewards provided a stimulus for political ambition.

Lakidi and Mazrui examined the factors which were at play in shifting the comparative efficacy of the different functions of parliament in each of the three countries. They argued that three causal factors were in turn relevant in this regard. The first factor was the growth of the executive power in each of the three countries; second, there was the fluctuation of the party system in each of the three countries; third, there was the rise of documentary radicalism in Tanzania, and in Uganda before the military coups.

Lakidi and Mazrui noted that the East African parliaments were originally derived from the British system. In this Westminster model, the head of government derived his legitimacy from parliament. Constitutionally therefore the Prime-Minister and his government have to resign if they lost a vote of confidence taken in the House of Commons. In the American system of government, the chief executive is independent of congress under the doctrine of separation of powers.

Lakidi and Mazrui argued that the East African parliamentary system provided a third parliamentary model besides the Westminster and American systems. At first it was based on the Westminster experience, with the Prime-Minister deriving his legitimacy from parliament. Then each of the three East African countries went, "Presidential" but in reality not in the direction of the American pattern of

relationship between the legislature and the chief executive. And so the relationship then became not one by which the chief executive derived his legitimacy from the legislature, as it is in Britain, nor one in which the chief executive was constitutionally separate from the legislature, as is the case in the United States, but one in which the legislature in reality derived its legitimacy from the president (Lakidi and Mazrui, 1973, 3). It is the contention of the two authors that the presidency in East Africa has become the primary source of legitimation for proposed political policies and social values.

Lakidi and Mazrui concluded that what emerges from the examination of the three countries is that the fortunes of parliament has fluctuated with the fortunes of parties in rather distinctive ways among the three nations. In Uganda parliament declined because political parties declined. In Tanzania parliament declined because the ruling party became more dominant. Whereas in Kenya a certain consistency in the vigour of the national assembly was maintained in spite of the fluctuations between single-party and two-party structures, within the political system. Vigorous debate on significant issues of policy has remained a feature of Kenya's parliamentary position; what has shifted from time to time has been the distinction between inter and intra-party debates.

But to what extent can Lakidi's and Mazrui's assessment be said to reflect appropriately the historical development of

Kenya's parliamentarism? It is important to note that our study covers upto the year 1993. Our study is therefore coming twenty years since Lakidi and Mazrui produced their article. During that period the mode of operation of Kenya's parliament has significantly changed; similarly, regimes have also changed.

Writing during the same time as Lakidi and Mazrui were two scholars namely Jay Hakes and John Helgerson. In a comparative study of the Zambian and Kenya's parliamentary operations, Hakes and Helgerson (1973) examined the nature of parliamentary behaviour and bargaining. Although the study uses its findings to explain the situation in Africa as a whole, our interest will focus on its analysis of the Kenyan situation.

According to Hakes and Helgerson, four characteristics greatly influenced the nature of the bargaining process in Kenya's national assembly. The first characteristic was the absence or the impotence of opposition parties. The second was the power of the president. The third characteristic was the deterioration of the institution of the ruling party, and the final characteristic was the outspokenness of the backbenchers in that party.

Hakes and Helgerson observed that at independence, Kenya had two opposition parties, but in November 1964 the opposition party - the Kenya African Democratic Union (K.A.D.U) dissolved itself and joined the ruling party Kenya

National African Union (K.A.N.U.). For the next year and a half, KANU was the assembly's only party, but in April 1966, the Kenya People's Union (K.P.U.) was formed. Although led by Kenya's former Vice-President, (Oginga Odinga), K.P.U. never had many members of parliament (M.Ps), and in October 1969 the government detained all the eight M.Ps. Because there were no opposition parties in Kenya at the time of their study, Hakes and Helgerson confined their study on exchanges among KANU members in the parliament.

According to Hakes and Helgerson, after the demise of the opposition, Kenya was characterized by a strong president - Jomo Kenyatta. Kenyatta served both as President of KANU and as the first president of Kenya. Kenyatta's strength meant that he participated, even if indirectly, in most of the bargaining which occurred in the national assembly.

Hakes and Helgerson also saw this Kenyan parliament as being characterised by the weakness of KANU. The non-parliamentary party was plagued by factionalism and its organs rarely met between elections. In the national assembly itself party whips did not co-ordinate party activity, and occasionally even opposed party leaders. Party caucusses met only irregularly which precluded the traditional trade-off in a parliamentary system. This is whereby backbenchers are consulted in relatively early, non-public stages of policy formation, but are expected to refrain from criticism at later public stages. In short, not much exchange took place within

explicitly party procedures, although M.Ps still identified with their party, and generally backed their party leaders. Hakes and Helgerson therefore saw the outspokenness of backbenchers in the ruling party to be associated with the weakness of the party institution.

Hakes and Helgerson noted that, "Kenyan M.Ps have never handed the government an outright defeat of its major legislation, but have forced it to compromise on some important issues, defeated it on minor issues or resolutions, and frequently voiced strong criticism in parliament of its policies. Although the government usually gets its way on major issues, it cannot consistently ignore backbenchers and they must be included in the bargaining process" (Hakes and Helgerson, 1973, 350).

This implied that the deterioration of party institutions, the need of the executive to control its restless M.Ps and the amount of patronage the executive had at its disposal made appointments crucial to the process of exchange in Kenya, in a way that may not be striking in other legislatures. The two scholars argued that appointments to ministerial posts, or parastatal bodies received by the M.Ps were decisive factors in determining both the structure and the content of bargain situations in Kenya. The basic problem of the exchange was that the government used appointments to induce party loyalty, or what the politicians themselves called, "responsible" behaviour. This meant that the

bargaining between the executive and M.Ps in Kenya didn't involve much negotiation and compromise over policy issues, nor did it involve frequent consultation at an early stage in the drafting of legislation in return for support at a later stage, although both of these types of bargaining do occur.

The most prominent aspect of bargaining involves backbenchers voting for and speaking in support of the government policy, and thus conforming legitimacy on that policy, in return for what Froman termed, 'side-payments'. The government usually has many jobs, ranging from cabinet positions, to posts on unimportant advisory boards, to which it can appoint M.Ps.

Hakes and Helgersen note that through the distribution of these jobs the executive establishes the structure of the bargaining process in parliament, including the role each M.P. plays. An M.P's bargaining position is usually determined by whether or not he is a minister or how many allies he had who are ministers. Jobs and offices in the party, by comparison, are of only secondary importance.

The two scholars then go on to analyze the term, "responsibility". They note that although the term is not always used with identical meanings, the term usually involves the loyalty that M.Ps in the ruling party owe to their government, by virtue of party membership. The etymology of responsibility demonstrates that it implies a reciprocal relationship and thus is the way the word is understood by

M.Ps. "Irresponsible" behaviour includes speaking and voting against the government. It is important to the government to limit this sort of behaviour, for criticism of the government by its M.Ps may stir up public opposition to its policies. Irresponsible behaviour constitutes a greater threat to the government, when it comes from a politician with considerable grassroot support, or one who is able to swing other votes in parliament. In any case the government must promote responsible behaviour if it wishes parliamentary approval for its policies.

Hakes and Helgerson assert that the obligations of responsibility are most extensive and binding for ministers. In practise the obligations seriously constrain the behaviour of ministers, and the doctrine of collective responsibility has been interpreted to mean that the ministers must resign if they want to criticize government policy. Because of collective responsibility, ministers cannot publicly express individual opinions that conflict with government policy, even when it may be advantageous to do so because of discontent among the voters.

Finally Hakes and Helgerson observe that appointments involve a higher degree of exchange and make a more significant contribution to co-ordinated decision-making. The exchange involved in co-optation was one of the more institutionalized forms of behaviour in the Kenyan parliament. M.Ps usually have a fairly stable set of expectations about

the benefits and costs of co-optation, especially as a minister. And this system of exchange is relatively predictable. For instance when a member of government is replaced, his successor would come from the same geographical area, so that the area wouldn't become under-represented.

But to what extent can the bargaining approach be a valuable conceptual approach in the study of a legislative institution operating in a competitive environment? Although Hakes and Helgersen give a good account of the bargaining process within KANU as well as the weaknesses of a one party parliament, their study falls short of explaining the parliamentary process in Kenya between 1963-1993. This is mainly because of the time span, which renders their study incapable of capturing the parliamentary process that Kenya has undergone from the first multi-party system in 1963 through to the third multi-party system in 1992.

Another scholar who assesses the National Assembly in the politics of Kenya is Newell Stultz (1970). Stultz observed that the National Assembly prior to 1970 had both parliamentary and presidential characteristics. For example the president although popularly elected, is dependent upon the support of a majority of the national assembly, a fact which makes it possible for M.Ps simultaneously to profess complete loyalty to him, or to oppose strenuously particular policies of his government. An interesting, albeit not unexpected consequence of the change from a two-party to a

one-party system was that it didn't eliminate opposition to the government; rather internalized it. The unification between KANU and KADU made the ruling party less cohesive than had been expected. Stultz attributes this lack of party cohesion largely to backbench frustration over their virtual exclusion from the policy-making process.

A second reason he attributes to the backbench dissatisfaction is the absence of rewards for faithfulness to the government, or more importantly, stringent penalties for opposition. Stultz admits that there have been certain exceptions to the above statement. Less conspicuous but nonetheless real patronage has been the appointment of government M.Ps to paid positions on various statutory boards.

A third reason which explains the independence of government backbenchers according to Stultz was that once the opposition dissolved, M.Ps who criticized policies of the cabinet were no longer open to the charge that they were aiding the opposition. Stultz notes that throughout the prolonged period of internal crisis in KANU, the effective organization of KANU backbenchers in parliament was impossible.

In the final analysis, Stultz agrees with the views of Cherry Gertzel that, "the absence of the president from the national assembly has had the result of establishing in the minds of many M.Ps a distinction between the government represented by ministers and the executive represented by the

president" (Gertzel, 1966, 488). This distinction which is unfounded in the constitution and unreal in the actual process of decision-making, helped M.Ps to profess complete loyalty to the president while objecting strenuously to particular policies of the government. The behaviour of the president in this respect de-emphasized the principle of collective responsibility of the cabinet and encouraged criticism of his ministers individually.

Stultz's work ably shows us how the absence of the opposition in parliament didn't dilute the debates on policy matters in the House. This he attributes to the backbenchers frustrations and hence their appetite to question cabinet members on government policies. However the study falls short of explaining to us whether this internalized opposition on policy matters obtained results or was simply ignored by the government.

Yash Ghai and McAuslan (1970) examine the institution of parliament in the light of executive dominance and parliamentary supremacy. The two scholars observed that parliament's ultimate power of control over the executive lay in the provision of a vote of no confidence. This was clear proof of the rule of the executive accountability. However Ghai and McAuslan contend that those provisions have seldom acted as a threat to the government in Kenya. This was so, because the power of removal of the executive was residual and an extreme sanction. It was likely to be employed very rarely

and only in the event of a fundamental alienation of the majority of the M.Ps from the politics of the government.

Ghai and McAuslan note that parliament discharges its responsibilities when it criticizes and proposes. However, it is their contention that in the kind of parliamentary system that Kenya has, the role that the national assembly plays depends largely on the executive. The official rhetoric is full of the supremacy of parliament and its control over the executive, but the reality of the situation is different.

Ghai and McAuslan in the final analysis assert that an active and vigorous legislature was one of the institutions which Kenya inherited at independence. The trend however had been one in which the governments constitutional changes and administrative and political practises has been to whittle down the controlling function of the legislature and curb its political effectiveness.

In an article written in 1992 Yash Ghai made further observations on "constitutionalism" with special reference to the 1963 Kenyan Constitution. According to Ghai (1992) the 1963 Constitution provided for the legislature to enjoy the greatest leeway in making policy. The legislature could propose and debate any policy initiative bound neither by precedent, nor by a pre-determined framework and if approved give effect to it in the form of law. Ghai further noted that the legislative policies were left largely to the political process. This was due to the fact that Kenya was a multi-

party democracy, so that in the electoral campaigns and other political activities there emerged a preference for policies. The party manifesto's were supposed to provide the framework for policies.

However the 1963 constitution was not adhered to. While on the one hand the constitution was so concerned to diffuse power, the establishment of the parliamentary structure not only pulled the system towards the centralization of power at the national level, but also provided for concentration of authority for its exercise (Ghai 1992, 11).

The two articles by Ghai, and McAuslan clearly indicate how the constitutional amendments enacted in the 1963 Constitution have rendered the National Assembly ineffective in as far as policy formulation is concerned. However the articles look at policy in general without drawing a line between domestic and foreign policy.

So far we have concentrated our literature review to parliaments, examining both the way legislators are expected to function and the actual practice that has taken place. Since our study intends to look at the role that the Kenya parliament plays in the foreign-policy making process, we now turn our attention to the making of foreign-policy. The scholars whom we shall review their work in relation to foreign-policy making are: David Vital (1968), Antonio Cassese (1980), P.A. Reynolds (1970) and Korani and Dessouki (1984).

David Vital (1968) observes that the body of men who are responsible for the formulation and implementation of foreign-policy are concerned in practise, with matters over which their control is severely restricted, of which their knowledge can never be better than imperfect and which they must generally approach without the tactical and intellectual advantages of unambiguous and whilly appropriate goals. According to Vital, in order to analyse the process of foreign-policy making it is essential to identify the group of individuals within the state who are involved in it and to define, if only within fairly loose limits, the locus of their activity within the state administration as a whole. This task, however, is one of extreme complexity. There is no universal solution generally applicable to all countries at all times. The office (e.g. foreign-minister and principal functionaries of the Ministry of External Affairs) is not always a reliable indicator of close involvement in the process, still less it is an unambiguous indicator of what might be termed central or decisive involvement (Vital 1968, 43).

In his case study of Britain, Vital observes that the conduct of Britain's foreign affairs is the peculiar concern and undivided responsibility of the Executive (crown). And while it is true that the power of modern cabinets to control parliament is very nearly untrammelled in all spheres, the obligation to seek parliaments formal consent or authority for

very many of the most important activities of government remains. However in a general sense, foreign-policy, like policy in any other sphere, may be said to be determined by the government, subject to parliamentary confidence in it. But in fact, although parliament exercises some influence on the making of foreign policy this influence is very slight. The organs of the executive power which participate in the making of foreign-policy do so as a constitutional and institutional right.

But this is not the case in Africa. One important feature of African politics is the low-level of institutionalization resulting in personalization of power. A typical African Head of State exerts a lot of influence on all decision-making processes in the country. In particular the management of the external affairs is in most cases a preserve of the head of state whose personality plays a leading role in foreign-policies (Claphan 1985, 125-126; Utete in Ojo, et al 1987, 45-46). Even the Ministry and Minister of Foreign Affairs are merely his agents and must reflect the leaders personal views. We intend in our study to examine if this has been the case in Kenya and to assess the factors which have been at play in bringing about the low level of institutionalization.

Another scholar, P.A. Reynolds (1970) observes that for one to understand how foreign-policy is made, it is necessary to look at the processes by which decisions are reached and

policy choices are made. Included in this variable "processes" are the constitutional arrangements, written or unwritten of the state in question, its institutional structure, the actual as opposed to the formal working of its political system, the procedures or lack of them by which decision-makers are selected or identified and the ways in which decisions are evolved or emerge and are put into effect.

According to Reynolds foreign-policy decisions are taken on behalf of the collectivity as a whole and all its members are affected (though evidently in varying degrees over different issues). The constitutional power to make foreign-policy decisions is therefore always vested in authorities representing the collectivity as a whole. Reynolds elaborated his point by giving examples from a few countries. For instance in Britain the crown is the authority. The conduct of foreign-policy is a crown prerogative and parliament has no legal right to be consulted in advance in the conduct of foreign-policy by the foreign and commonwealth secretary in exercising this prerogative. The formal location of authority is illustrated by the fact that many formal acts by which the state is legally committed are taken by the crown. The declaration of war is a crown prerogative, and the ratification of treaties is likewise an act of the crown. In neither case is the ascent to either of the Houses of Parliament legally required (though by convention and for political reasons it is now usually sought and obtained).

In the United States, the sovereignty of the people is represented by the constitution to which, with the flag, primary loyalty is given. The states comprising the union are prohibited from entering any agreement or compact with another state or with a foreign power or engaging in war unless actually invaded. Beyond these negative provisions, however, the power to make foreign-policy is undetermined except for certain specified acts (provide for the common defence, regulate commerce, control exchange rates, define and punish offences against the law of nations, declare war, raise and support armies and a navy - assigned to congress; act as commander in chief of the armed forces, make treaties by and with the advice and consent of the senate, recommend measures to congress by vested with the executive power - assigned to the president).

In Japan the sole source of all legitimacy was the emperor who had divine authority and as soon as a decision had been sanctioned by the emperor it could no longer be questioned. In all these cases with the partial exception of the United States, the actual processes through which decisions were made included their formal origins, but the formal position was not to be ignored.

But as Reynolds observes, the identification of the formal or constitutional authority for the making of foreign-policy decisions does not take us very far. Whoever makes decisions in foreign-policy is not so easy to determine. But

if the evolution of policy is to be understood, it is essential to know who are the people who participate in the taking of particular decisions, and this is a first step in the analysis of any foreign-policy. The institutional and individual components of the foreign-policy decision-making process will vary according to informal but politically accepted or conventionally recognized procedures, according to the nature of the political system, according to the nature and magnitude of the issue in question and according to the urgency or otherwise with which decisions have to be made (Reynolds 1970, 157).

In the final analysis Reynolds notes that a substantial number of decisions thought to be of low importance will therefore be taken by single individuals in any political system. But the extent to which this happens will be affected by the nature of the system. And the more decentralized the system is designed to be, the more institutionalized the procedures by policy formation and the less individuals fear personal consequences to themselves of decisions that they may take, the greater the number of decisions likely to be taken by individuals throughout the system.

Another scholar Christian Tomuschat (1980) on the other hand asserts that the real impact of parliamentary powers does not lend itself to an easy assessment. Constitutional texts alone provide not more than first glance information to be checked further by empirical methods. As in many other fields

of domestic policy, the effectiveness of parliamentary action suffers from the growing complexity of the subject matters to be dealt with. Normally the executive disposes of much better information than the parliamentary bodies by which it is supposed to be controlled. Not even the establishment of an extended parliamentary service staff for research and documentation has placed parliament on a footing of factual parity with the executive.

Moreover, whereas in matters of domestic policy many channels of information are open besides the official government sources, the knowledge of actual problems of foreign-policy is often restricted to the civil servants acting under the authority of the competent ministerial departments, thus leaving no or little room for alternative information which might be placed under the basically different orientation.

Tomuschat further notes that another key element is the fast increasing institutional network for international co-ordination and co-operation which greatly contributes to reducing room left to the political choices. Foreign-policy, Tomuschat observes tends to progressively become a process evolved in a multilateral framework and therefore subject to lengthy procedures of seeking consensus. Thus, many matters are definitely pre-judged before they come before parliament. This means that political control will not even be effective under such circumstances, as the government is always in a

position to decline its responsibility, alleging the necessity of agreeing to political compromise in order to find a common denominator along with other nations.

In the final analysis Tomuschat notes that it need not be stressed that still nowadays remnants exist of traditional conceptions which considered foreign-policy a matter to be dealt with by closed circles and not on the parliamentary "protest place". He asserts that nobody will deny that a balance has to be struck between the democratic principle of publicity and the diplomatic principle of secrecy. More often than not, however, confidential proceedings are preferred when considering foreign-policy matters.

Korany and Dessouki (1984) on the other hand looked at developing countries' foreign-policies. The two scholars noted that for a long time the analysis of developing countries foreign policies was dominated by three approaches: first, is the psychologist approach which views foreign-policy as a function of the impulses and idiosyncracies of a single leader. This view denotes that kings and presidents are the source of foreign-policy; war and peace become a matter of personal taste and individual choice. Foreign-policy is perceived not as an activity designed to achieve national or societal goals, but as a "policy of public relations" whose objectives are to improve the image of the state, enhance the popularity of the leader, and divert attention from domestic troubles to illusory external victories.

According to Korany and Dessouki there are at least three criticisms of this view. First, it makes foreign-policy appear to be an erratic, irrational activity not subject to systematic analysis. Second, it ignores the context (domestic, regional and global) within which foreign-policy is formulated and implemented. These are certain systemic constraints that most leaders will not or cannot usually challenge. Third, it ignores the fact that because of their interest in political survival, most leaders down play eccentricities that run counter to dominant attitudes, public mood and political realities. But all in all, we cannot rule out idiosyncrotic variables in many developing countries.

The second approach is the great powers approach. The approach is dominant among traditionalists such as Hans Morgenthau. The great powers approach views foreign-policy as a function of East-West conflict. Briefly stated, the foreign-policies of developing countries are seen as lacking autonomy; affected by external stimuli, they react to initiatives and situations created by external forces. The main weakness of this approach is its neglect of domestic sources of foreign-policy. Moreover it implies that developing countries lack purposeful foreign-policies of their own.

The third approach is, the reductionist or model-builders. The approach views the foreign-policies of developing countries as determined by the same processes and

decisional calculi that shape the foreign-policies of developed countries. The basic difference is quantitative; the former have fewer resources and capabilities and therefore conduct foreign-policy on a smaller scale. This view is predicated on the assumption that the behaviour of all states follow a rational actor model of decision-making; that all states seek to enhance their power, and that all are motivated by security factors. The conclusion is that the foreign-policies of developing countries are exactly like those of developed ones, but at a lower level of material resources. This approach doesn't account for specific features of the developing countries such as modernization, the low level of political institutionalization at home and dependency status in the global stratification system abroad.

Korany and Dessouki assert that a proper analysis of the foreign-policies of third world countries should accept that foreign-policy is part and parcel of the general situation of the third world and reflects the evolution of this situation. In this sense, the foreign-policy process cannot be separated from the domestic social structure or domestic political process.

So far we have looked at literature relating to the constitution of parliament and literature on the making of foreign-policy. However our study seeks to inter-relate the two aspects mentioned above.

Ngunjiri (1974) is the only scholar to my knowledge who has conducted a study on the role of Kenya's parliament in foreign policy making directly. But his work focused mainly on the input by the backbenchers in foreign policy formulation in parliament. In his analysis, Ngunjiri takes the same model as Stultz, that the emergence of a one-party system didn't eliminate opposition, but rather internalized it. Throughout his study Ngunjiri looks at the institution of parliament as divided into two groups. One group consists of the government functionaries namely ministers and assistant ministers, while the other group consists of the backbenchers.

According to Ngunjiri the ruling party as a national institution had been crippled. Finding themselves with no well organized party outside parliament, the KANU M.Ps resorted to parliament as the only forum left for them to debate policy issues of the country. Ngunjiri therefore asserts that the relationship to be defined therefore became the one between the government and the parliamentary KANU team.

Ngunjiri arrives at two major conclusions. The first is that the foreign interests act as watchdogs to the Kenya Government. They ensure that any policy pursued by the government does not militate against their interests. Ngunjiri's observation was that the foreign interests have forced the Kenya Government to pursue a conservative foreign policy. The second conclusion Ngunjiri arrived at was that

the backbenchers rarely acted as a group in relation to a particular foreign policy issue. A number of them at one time or another tried to force the government to be responsive to a particular issue, but they always ended up failing.

Throughout the study one finds that Ngunjiri didn't make any attempt to relate his study to the concept of separation of powers. As such, one is left wondering as to how the parliamentary "backbenchers" were supposed to influence the government. One also finds in Ngunjiri's work a conceptual misplacement, since the ruling party naturally form the government. But Ngunjiri goes on to divide the ruling party into two, one composed of the 'government' and the other of the backbenchers.

From the literature so far reviewed, one notices that most of the studies were conducted nearly two decades ago. Within that time frame, Kenya got a new president whose views may not be identical with those of his predecessor, concerning the role of parliament in foreign policy making. Parliament also has experienced a variety of changes in the composition of its members, during the period. Finally, the nation-state of Kenya also transformed from a de-facto one party-state to a de-jure one-party state and finally to a multi-party state. It is the obvious knowledge 'gaps' in the literature reviewed above that this study seeks to fill.

### 1.5 THEORETICAL FRAMEWORK:

According to Stuart Nagel (1991) public policy refers to governmental decisions designed to deal with various social problems such as those related to foreign policy, environmental protection, crime, unemployment and numerous other social problems. Public policy analysis generally refers to the determination of which of various alternative policies, decisions or means are best for achieving a given set of goals in light of the relations between the alternative policies and the goals. While domestic policy refers to governmental decisions designed to deal with problems experienced internally within a country, foreign-policy on the other hand refers to those decisions designed to deal with problems affecting the country externally.

Various scholars have adopted conflicting approaches in studying foreign-policy. This is due to the fact that foreign-policy studies continue to be of academic and national importance. In this study we shall adopt the decision-making theory approach to describe, analyze, explain and predict the role of the Kenyan Parliament in foreign-policy making process. It is however necessary to examine other approaches in the study of foreign-policy in order to justify why this particular approach has been adopted.

The first is the power they approach. This is based on realism. The realist school of thought sees the state as the main actor in the international system. It starts from the

premise that universal conformity is not possible, hence international conflicts will always arise and persist (Morgenthau, ). This arises from the fact that few nation - states are willing to surrender their sovereignty to international institutions which are bound to fail since they lack power to sustain nation - states. Furthermore, the realists contend that the responsibility of each state is to promote the interests of its people against the opposition of other groups in the international system. To the realists therefore the behaviour of states in the international system can best be understood in terms of international politics defined as a "struggle for power".

The realists are therefore convinced that the key to international relations lies in the history of power politics. Herein one finds the flaw of the power theory. Power theory with its faith in the balance of power system is one directional. Power is presented solely as an end in itself which states must pursue all the time. This theory therefore is static and doesn't take cognition of the changing environment in the international system. Moreover the power theory sees power as an independent variable, whereas power can also be a dependent variable. Likewise the theory contains a near dogmatic belief in its presentation of power as the vital national interest that states pursue and defend above all else. A further complication arises when one considers the problem of identifying the national interest.

Foreign-policy decision-making is not necessarily a clear cut and rational process. Policies are often generated through great internal political and bureaucratic debates. We therefore find that this approach wouldn't be appropriate in our study.

The second approach often used in the study of foreign-policy is the rational actor model approach. Scholars who use this model see governmental behaviour as more or less purposive acts of unified governments based on logical means of achieving given objectives (Allison, 1971). The model represents an effort to relate an action to a plausible coalition. This approach views decision-makers as solitary actors searching to maximize their goals in global politics. The rational actor model assumes that the statesman will make decisions which are in the best interest of the country. This is based on the assumption that he receives all the necessary information before making a decision. The advantage of this model is largely derived from the simplicity of the model itself. It becomes an inexpensive approximation of reality in which analysts can attempt to think about what they would do if they were the other state. This approach has been particularly useful when analyzing war periods since it allows one to understand the revolving issues with a maximum of complexity.

But the approach's drawbacks are enormous, since it is obvious that both domestic and international actors usually

have a considerable impact on foreign-policy which renders the rational actor model to have very minimum explanatory value. A more serious weakness to this approach is that it assumes rational calculation on the part of the decision-makers which is an ideal situation, but one that is seldom realized. Although the rational actor model has proved useful for many purposes, there is need for it to be supplemented or supplanted by models that focus on the governmental machine. The decision making theory approach which we have adopted in this study strives to capture the decisional setting upon which decisions are made.

According to Lloyd Jensen, decision-making is an act of choosing among available alternatives about which uncertainty exists. In foreign-policy, policy alternatives are seldom "given". The decision situation encompasses the total "external setting" and "internal setting" in which the choice must be made. The external setting includes the states geopolitical position within the global system and all relevant power relationships. Decision-makers of states that are not super-powers or great powers must usually consider their position within a subordinate regional system as well as dominant bilateral relations.

Two crucially important variables in the internal setting are of course the state's military and economic capabilities which set limits to what the government can do. The internal setting however extends to the whole structure of the political

system. Finally there is the question of the temporal psychological context in which the need for decision arises. Whether the requirement for reaching a decision comes as a complete surprise or as the result of prior planning; or whether the time available for deliberation and choice is adequate for the demands of the situation. These factors have much to do with the quality and intensity of the decisional process and they may be used to distinguish critical and non-critical decisions. Crisis decisions can be defined as those which "arise without prior planning, allow short time for response and have high value consequences". In order to meet the decisional setting components we have cited above, we shall adopt three decision making theory models. These are the organizational process model, the bureaucratic politics model as propounded by Graham Allison and the Group think model as propounded by Irving Janice.

The organizational process model envisages governmental behaviour less as a matter of deliberate choice and more as independent outputs of several large organizations only partly co-ordinated by government leaders. "Government leaders can substantially disturb but not substantially control the behaviour of these organizations", which is primarily determined by standard routine operating procedures. Organizations operate to solve problems of immediate urgency, rather than to develop strategies for coping with longer range issues.

On the other hand the bureaucratic politics model builds on the government process model but instead of assuming control by leaders at the top, the bureaucratic politics model hypothesizes intensive competition among the decision-making units. Thus foreign-policies are the result of bargaining among the components of a bureaucracy. Since there is considerable turnover in governments and political parties in many states, and since politicians often lack foreign-policy expertise. The latter must of necessity rely on the more permanent civil servants for information and advice. Bureaucrats as such, have considerable influence in the shaping of foreign-policy.

Finally, the Group think model is purposively meant to serve in times of crisis. The assumption of this model is that in times of crisis, the statesman usually calls upon a few trusted individuals mainly government officers and political advisors to help him arrive at a useful decision. It is assumed in this model that the individuals chosen by the statesman are like minded and would therefore arrive to a consensus as to what action should be taken. It is within the context of the three decision making theory models that we shall examine the institutional performance of parliament in the conduct of foreign-policy in Kenya.

#### 1.6 RESEARCH HYPOTHESES:

From our literature review and theoretical framework, it is evident that the institution of parliament in Kenya has not been accorded the attention it deserves in terms of research.

The core of this thesis is to assess the linkage between parliament and foreign policy making. In this study we shall try to answer the following specific questions:-

- (1) Is the institution of parliament in Kenya vested with real autonomy and therefore has the capability to act as a 'check and balance' of the executive?
- (2) To what extent is the institution of parliament free enough to allow its members to debate national issues without fear or favour?
- (3) What is the nature of the composition of parliament; and how suitable is it in promoting competitive politics to counter the phenomenon of personal rule?
- (4) Which factors limit the effectiveness of the Kenyan Parliament in foreign-policy making?

In order to answer the above questions adequately, we shall attempt to prove or disprove the following general hypotheses

- (i) The capacity of the Kenyan parliament to contribute meaningfully in foreign policy formulation is a function of the degree to which the constitutional

provision of separation of powers has been undermined over a period of time.

(ii) The undermining of the the constitutional provision of separation of powers over the same period has been dependent on the nature and status of the presidency.

iii) The more domineering the presidency, the more compromised the role of parliament has been in foreign-policy making.

#### 1.7 METHODOLOGY:

This study utilized mainly the qualitative method of data collection. This involved library research, use of archival material, official government documents such as the Hansards and key informant interviews.

We began our preparatory research on this work by consulting the available records on the Kenyan Parliament in public libraries. This was to enable us have a background on the history of parliament in Kenya.

Having laid down the background, we turned our attention to the parliament library. Here we were mostly interested in the National Assembly Official Reports (Hansards). This was so because the Hansards were very reliable as a source of information. The Hansards provided us with details on the activities in parliament during the period of study. Ours was simply to pick on what was relevant to our area of study.

The next phase in our study involved looking at the factors responsible for the weakness of the Kenyan Parliament in the conduct of foreign-affairs. In doing this we had to go to the National Archives to gather such information as the constitutional provisions as regards the Kenya National Assembly; the party system in Kenya since independence and the obstacles which make parliament ineffective in the said policy formulation. We complimented and updated the Archival Data by conducting key informant interviews. We interviewed the Deputy Clerk of the National Assembly and four other principal clerk assistants, who enlightened us on the functions and the realities of the day to day running of the Kenyan National Assembly. We also interviewed ten members of parliament drawn from the four major political parties namely: KANU, FORD-KENYA, Democratic Party and FORD-ASILI.

Originally it was our intention to also use the quantitative method of data collection. But our efforts were curtailed when the sampled members of parliament either failed to turn up for interviews or return the questionnaires we sent to them. However this omission didn't affect the outcome of our study, since the views expressed by the few M.Ps we interviewed tended to represent the general feelings about the factors which undermines the effectiveness of parliament in Kenya.

## CHAPTER TWO

### THE HISTORY OF PARLIAMENT IN KENYA

#### 2.1 INTRODUCTION

The first step towards understanding the role of the legislature in foreign policy formulation must begin by understanding the history of parliament in Kenya. The history of parliament in Kenya may be divided into three phases. The first phase was characterised by colonial autocracy, the second phase by liberal democracy and finally the third phase by executive dominance.

During colonial rule, politics in Kenya was a European affair with the Governor being vested with extensive powers. Due mainly to the unity exemplified by the European settlers, party politics only featured in colonial politics towards the end of the colonial rule. The African population didn't play a major role in colonial politics, and it wasn't until the 1940's and 1950's when they started to play any meaningful role. The early political struggles against the European settler community in Kenya by the Africans, especially the Kikuyu, did not fundamentally challenge their position. It was not until 1944 when the Africans won a minor concession by the nominations of Mr. Eliud Mathu, and later Walter Odede to the Legislative Council. Mathu and Odede represented the entire African populations.

The nominations of Mathu and Odede was followed closely with the formation of the Kenya African Union (KAU). KAU's formation was a landmark in the sense that it was the first formal attempt to reach out for territorial nationalism. KAU's tactics were cautious and aimed at dialogue between the African leaders and the colonial authorities. This cautious approach didn't go down well with the Africans especially the Kikuyu who were experiencing serious land problems. This culminated in the Africans resorting to defiance tendencies which finally boiled down to the Mau-Mau rebellion.

The Mau-Mau rebellion among other factors paved the way for Africans to slowly but steadily gain political power in the governance realm in Kenya. In a series of constitutional reforms British colonial secretaries created political openings through which the African elites found a footing in what was previously almost exclusively a European political arena. These developments took place despite the state of emergency declared on 2nd October 1952.

The state of emergency was lifted in 1959. This development was followed closely by the first Lancaster House conference which was to consider the next stage of constitutional progress. Further removal of restrictions on the colony resulted in Africans forming wide political organizations. These political organizations were to become the mouthpiece of Africans in the ensuing conferences in London. These developments were however taking place under

the constant guidance of the colonial powers.

Kenya achieved internal self-government on 1st June 1963, under a new constitution. The constitution provided for the creation of a National Assembly to replace the Legislative Council. Kenya became independent on 12th December 1963. The attainment of independence brought a shift in the political agenda to development and nation-building.

For one year until 12th December 1964, Kenya was independent under a "dominion" pattern of government. The one year period of dominion government was highly decentralized, and the three arms of government namely the Executive, legislature and judiciary were complementing each other in the state functions. This is a baseline from which the Kenyatta government made a departure. This is due to the fact that Kenyatta was disdainful of power-sharing with the legislature and judiciary and he abandoned the decentralized structure his regime had inherited at independence. This position didn't change when Moi succeeded Kenyatta; instead Moi sought to dilute the authority of parliament even more.

## **2.2 THE KENYA PARLIAMENT DURING THE COLONIAL PERIOD**

The legislative branch of government in Kenya may be traced to 1906, when the Governor of Kenya Protectorate convened a Legislative Council for the first time. The Council consisted of the Governor as the Chairman, and six other members. Four of the members were civil servants, while

the other two were non-officials nominated by the Governor. They were all European.

On July 1911 the question of the election of unofficial member was mooted. In reply to a petition sent to him by the Convention of Association<sup>1</sup> on the subject, the Secretary of State said that he was not prepared at that stage of the country's development to accede to the request. Two years later the question of the election of unofficial members was again raised owing to the delay in meeting the demand, the nominated members resigned their seats as part of their campaign to achieve elective representation. However, in February 1917, following a favourable reply from the colonial office, the members resumed their seats. The composition of the Legislative Council was altered to comprise of 17 official members. Out of the Seventeen members, one was Arab, two Indian non-official members nominated by the Governor and eleven European members elected by European residents.

The grant of franchise to Europeans generated a demand from the more numerous Indian community for equal privileges. The demand was vehemently opposed by the Europeans who even threatened armed resistance. However, despite threats by the Europeans, Indians' demands were positively addressed. In February 1922, the Indian representation in the Legislative

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<sup>1</sup> The Planters and Farmers Association formed in 1903 was renamed the Colonists' Association in 1904 and later the Convention of Association. It was an influential European political organization which won the nickname, "The Settlers' Parliament".

council was increased to four. This was done through a Royal instruction.<sup>2</sup>

The Africans on the other hand suffered a double tragedy during this period. First, were the difficulties which the colonial system placed on Africans such as higher taxes, cuts in wages, the registration system and denial of political rights like those enjoyed by settlers. Secondly, the early years of the 1920's were one's of severe economic hardships for Africans, brought about by the depression which affected Kenya from 1919 through 1922. Africans involved in the production of crops for sale were hard hit by the collapse of prices, which made production for external and internal markets unprofitable (Maxon 1989, 79). The grievances produced by the depression thus combined with others to foster new forms of political authority and protest in the early 1920's. One of the most important manifestations of such protest was the founding of the young Kikuyu Association in June of 1921. It was formed and led by 'young' men such as Harry Thuku, who emerged after the first world-war as part of a small educated elite produced by mission schools in Kenya. They would be part of a new generation who would seek to more effectively speak for Africans than the chiefs appointed and paid by the colonial state. Within a month the organization changed its name to the East African Association (E.A.A.) in

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<sup>2</sup> A Royal instruction was an instruction given by the Governor General on behalf of the Queen.

its quest to win a pan-ethnic following. Despite the change of name, it still remained a forum for the small educated elite to articulate the governance of the Kikuyu rural population (Atieno Odhiambo, 667). The colonial state didn't delay for long in suppressing the EAA. This was done on 15<sup>th</sup> March 1922, through the arrest of Thuku.

This, and other manifestations of protest in the early 1920's demonstrate African discontent with the colonial situation in general. The protests were a factor in causing the imperial government to intervene in Kenyan affairs. It would however be misleading to maintain that African protest was a major reason for this. Such protests in the early 1920's was diffuse since it was concentrated largely among a small number of Africans.

In 1924, the Legislative Council (amendment) Ordinance was passed. This Ordinance made provisions for elected representation of Indians and Arabs and for the nomination of African representatives for the first time. Hence one can see that the agitation by Africans as such wasn't in vain. The amendment gave provision for Indian residents to elect five members who now replaced the two Indian nominated members. Secondly the amendment added one Arab member elected by Arab residents and one European member nominated by the Governor to represent the African interests.

However, as part of a continuing campaign for a common electoral roll (as opposed to racial representation), no

Indian member actually took his seat in the Legislative Council. The colonial government then decided to nominate five Indian members until such a time that the electoral roll would be properly established. By 1927 three hundred and sixty names were on the Indian roll and one candidate was forthcoming. He was duly elected. In 1931 five Indian members were elected but they refused to take their seats. However by June 1933 four of them had taken their seats and the fifth resigned.

In the year 1934, a second nominated member of European origin was appointed to represent African interests. At the same time a nominated Arab member was added to the existing Arab elected member to represent the interests of the Arab community. It was around this time that the Government began to look to non-official members of the Legislative Council for a measure of assistance in the actual work of the Government. This was achieved in the same year. Two European elected members were appointed by the Governor to sit in his Executive Council, which otherwise had consisted entirely of civil servants (Royal Instructions of 29th March 1934).

Further developments were made in 1938 when one Indian elected member and one of the Europeans representing African interests joined the executive Council. This was done through Royal Instructions dated 26th May 1938.

The second world war (1939-45) that followed proved to be a fertile ground for the growth of nationalist political

organizations. There was certainly no shortage of popular grievances and people were not blind to the growing power of the settlers either. In the early years of the second world war the Dini ya Msambwa was formed in Western Province. The Movement combined religious and political protest with proto-trade-unionism (Were, 1972). At the Coast, the various Miji-Kenda groups began to flex their political consciousness and in 1945 merged into the Miji-Kenda Union (Mambo, 1980). Even the Indian Congress displayed uncharacteristic militancy by calling for the repeal of discriminatory legislation and more importantly by trying to forge links with the burgeoning African nationalist movement in resisting settler efforts to consolidate the colonial status-quo (Siedenberg, 1983).

However the most significant political organization to emerge during the second world war was the Kenya African Union (K.A.U) which was formed in 1944. KAU was a successor to the Kikuyu Central Association (KCA) which had been formed in 1924. According to Spencer ( ) KAU was specifically formed as a support group for Eliud Mathu, the first African to be nominated to the Legislative Council (Spencer 1985, 116). Mathu was nominated in October 1944. His nomination came in the wake of long standing agitation by Africans to be represented by one of their own, instead of by Europeans. This development is also attributed to the colonial office and governments concern about African representation in the Legislative Council in the face of growing settler power.

The formation of KAU in 1944 should rightly be seen as the first serious attempt to organize a party with territorial ambitions. This was the first formal attempt at territorial nationalism. As observed earlier, it was started in modest circumstances and with the immediate aim of giving African support to Eliud Mathu, newly nominated to the Legislative Council. Despite this fact, it is important to note that it also had as one of its aims the unity of Kenyan Africans and advocacy of their social and economic progress.

KAU's leadership was composed of educated Africans who strove to advance constitutional legal nationalism-centred in Nairobi. Both its membership and leadership were largely Kikuyu. Due to this fact, KAU, tended to be more concerned with the problems that were closest to the Kikuyu, especially land (Maloba 1989, 185). KAUs tactics were to advance its positions through written appeals and representations to the colonial authorities in both London and Nairobi. Secondly, KAU strived to organize the Africans into a mass political movement. Its greatest task was to raise the national political consciousness of the Kenyan people in general.

In 1946, the other European representative of African interests was replaced by Walter Odede, an African. Two years later, in 1948, the Legislative Council was re-organized to provide for the first time an unofficial majority. The African representation was also increased from two to four.

However, despite these developments, landlessness had become a crucial factor in Kikuyuland by 1946. This in itself created enormous rural strain, worsened by the fact that there was no more room for expansion. The landless Kikuyu, mainly young men poured into the urban areas, especially Nairobi with the hope of finding employment. Young, unskilled and not well educated, many of these young people came to constitute the vast pool of unemployed Africans in Nairobi at this time (Maloba 1989, 186).

It is these conditions of economic desperation in both urban and rural areas of Kikuyuland which in 1950 onwards led to doubts being expressed about the efficacy of cautious constitutional nationalism, as championed by KAU. As such the young Kikuyumen resorted to militant nationalism as an avenue of addressing the problems they were facing. The situation worsened when electors union which was a European semi-political party published a document titled "The Kenya Plan. In this Plan of 1949, Europeans re-stated their determination to continue to dominate Kenya. It was an authoritative re-statement of racial dominance which did a lot to inflame African anger and arouse an equally uncompromising position from Africans determined to gain power. It is in those uncompromising years from 1950 to 1952 that politics and strategies of defiance were embraced and adopted by African nationalists, finally leading to the Mau-Mau rebellion.

From 1952 onwards, European political power in Kenya was in fact in gradual decline, while that of the African population was on the ascent (Ogot 284-288). In a series of constitutional reforms, British colonial secretaries created political openings through which the African elites found a footing in what was previously almost exclusively a European political arena.

The first development during this period was due to the outcome of the visit by the Colonial Secretary in 1951. During the same year Royal Instructions were issued which led to provisions being made in 1952 for the election of fourteen Europeans and nomination by the Governor of one Arab and six African representative members. The increased African representation did not meet the demands of the freedom movement that was developing in the country (Gicheru 1976, 37). In an effort to suppress it, a state of emergency was proclaimed and remained in force for more than seven years.

In 1954 there was a major change with the Lyttleton Constitution coming into operation and providing for a "multi-racial" form of government. An all-party parliamentary delegation from Britain visited the country in January 1954 and its report recommended inter-alia, that representatives of all the main races should assume certain governmental responsibilities. Following the recommendation, a Council of Ministers was set-up to include not only six civil servants and two persons nominated by the Governor, but also six

elected or representative members of the Legislative Council, (three European, two Asians and one African). This gave the representatives of the people for the first time, a substantial share in the government of the country.

Further to this, a policy statement made in April 1954 by the Colonial Secretary declared that during the period upto 1956, the government would initiate a study to look into the best methods of choosing African members of the Legislative Council. The study was undertaken by W.F. Courts. Mr. Courts recommended that direct voting by secret ballot should be adopted for all African elections. He however opposed universal adult suffrage at that stage of African Development (Gicheru 1976, 38).

In June 1955, the colonial government allowed the formation of African political organizations, and this resulted in the emergence of a handful of district associations in almost all the provinces, except Central Province, where political activities were still officially discouraged due to the state of emergency which was still in force. A year later the Kenya Government accepted the recommendations of the Courts report in principle and embodied them in the Legislative Council Ordinance of 1956. The Ordinance<sup>3</sup> provided for six African members to be included in the Legislative Council. These were later increased to eight

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<sup>3</sup> Ordinance is an order, rule or law made by a government or an authority.

members. The eight members, however, refused to participate in the Lyttleton Constitution and demanded increased representation in the legislature. The formation of district political associations was the start of a policy that for the next years prohibited the formation of supra-tribal political leaders and fostered every kind of local separation. This policy of divide and rule by the colonial powers resulted in the profusion of parties and leaders based on district and not national loyalties.

Furthermore, when Lyttleton Constitution had been adopted, the Africans had not been consulted and as a result African elected members did not consider themselves a party to it. The Lyttleton Constitution had been intended to last until 1960, but it could not work as long as the African members consistently refused government office. It was out of the need to address that the African elected members sent a delegation to London to persuade the colonial secretary to intervene. In an attempt to resolve the issue the Colonial Secretary Mr. Lennox Boyd visited Kenya at the end of 1957, and held discussions with the representatives of the main racial groups in the colony. This led to further constitutional changes which were brought into effect the following year.

Under the Lennox Boyd Constitution of 1958, the Legislative Council was reconstituted to consist of thirty-six constituency elected members. This comprised of 14 Africans,

14 Europeans, 6 Asians and 2 Arabs. It also comprised of twelve specially elected members which included 4 Africans, 4 Europeans, 3 Asians and 1 Arab. The Boyd Constitution further provided for the nomination of such number of members as was necessary to maintain a government majority (Legislative Council Ordinance No. 1 of 1958). An important feature of the 1958 Constitution was the establishment of a Council of State. The role of a Council of State was to protect any community against discriminatory legislation harmful for its interests (Gicheru 1976, 39).

In 1959 the state of emergency was lifted. Thereafter the Secretary of State held a series of discussions with the African elected members and other groups in the Legislative Council. And at the end of 1959, the Secretary of State announced that a conference would be held in January 1960 to consider the next stage of constitutional progress. Subsequently the first Lancaster House Conference was held in the same year. During the conference, the Secretary of State, Mr. Ian Macleod, told the participants that Her Majesty's Government's aim was two fold: first, to build a nation based on parliamentary institutions on the West-Minister pattern and enjoying responsible self-government under certain traditional conditions. Second, to achieve a general acceptance by all the right of each community to remain in Kenya and play a part in public life (Gicheru 1976, 39). All the delegates, except those from the Right Wing Settlers United Party led by Captain

Briggs accepted the principle and agreed to build up goodwill and confidence among races.

The further removal of restrictions on the colony resulted in Africans forming wide political organizations. This led to the formation of the Kenya African National Union (KANU) in March 1960 and the Kenya African Democratic Union (KADU) in June 1960. It was these two main African political parties in Kenya that became the mouthpiece of Africans in the ensuing constitutional conferences in London.

The Lancaster House conference of 1960 resulted into a new constitution. This constitution was to come into operation after the general-election of February 1961. In the 1961 elections nearly all-open seats were won by the African candidates. KANU won a majority of the seats but refused to form the government before Jomo Kenyatta was released from restriction. Accordingly, KADU the next largest political party was asked to form a government. KADU accepted and its leader became the Leader of Government Business. Kenyatta was released from prison in 1961. Thereafter KANU tried to negotiate for a coalition government under his leadership which however failed. KADU, then urged the introduction of a constitution on federal lines with much authority delegated to the regions.

Towards the close of the year, the Secretary of State announced that a conference would be held in London in February 1962 to discuss the constitutional framework for

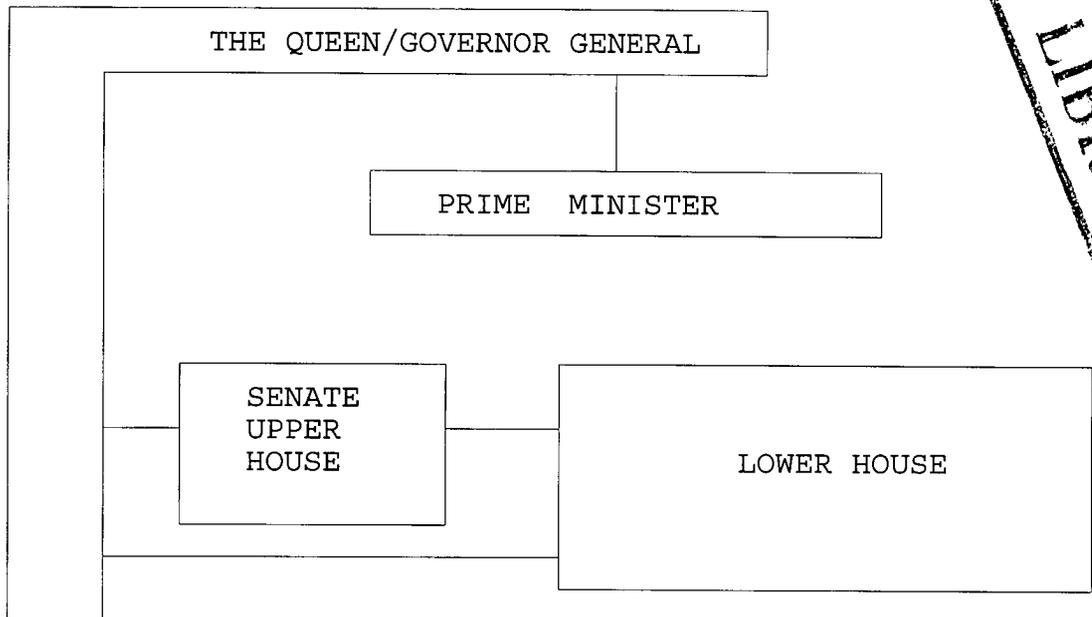
Kenya's advance to independence through internal self-government. The 1962 conference which took place in London under the chairmanship of Mr. Maulding, then Colonial Secretary, was primarily concerned with the choice between regionalism supported by KADU and the strong unitary government favoured by KANU.

After negotiations a compromise was eventually reached on the framework of a new constitution to cater for internal self-government. Furthermore the participants also accepted the immediate formation of a coalition government which would settle the details of the constitution in conjunction with the British Government. It was also agreed that elections would be held before the self-government constitution was promulgated. This was to be followed by further negotiations on the arrangements as to when full independence would take place (East African Standard 23<sup>rd</sup> September, 1962).

The rest of 1962 and the early part of 1963 were taken up with the drafting of the constitution and the preparation for elections. The constitution was published in April 1963.

Figure 1

Structure of Parliament at Independence in 1963:



IFERA LIBRARY

Parliament in 1963 made of the following:

1. The Queen/Governor-General
2. Prime-Minister
3. National Assembly  
Upper House had 41 Senators one per district including Nairobi area.  
Lower House had:
  - (i) 117 elected members, 5 year term
  - (ii) 12 specially elected members

### 2.3 KENYA PARLIAMENT IN THE POST-COLONIAL PERIOD

Kenya achieved internal self-government on 1<sup>st</sup> June 1963 under the new constitution. The constitution provided for the creation of a National Assembly to replace the Legislative Council. The Assembly consisted of two houses namely the Senate and House of Representatives. The constitution further provided that, "parliament unless sooner dissolved, shall

continue for five years from the date when the two houses of National Assembly first meet, after any dissolution and shall then stand dissolved" (Constitution of Kenya (1963) Section 65). Under the same constitution, Kenyatta became the first Prime-Minister of Kenya.

As already observed, the National Assembly consisted of two Houses. The Senate was made up of 41 senators, elected to represent administrative districts, while the House of Representatives consisted of 117 constituency members and 12 specially elected members. The twelve specially elected members were elected by the constituency members and the Attorney-General as an ex-officio member. Voting for both senators and constituency members was subject only to the qualifications based on age and residence. Each House elected its own Speaker. In relation to financial matters, the House of Representatives had exclusive responsibility and financial Bills could be passed by the House in spite of opposition from the Senate. All other Bills however required the concurrence of both Houses before they could become law (Slade 1967;17).

On 11<sup>th</sup> June 1963, the first meeting of the National Assembly as constituted by the Kenya Independence Order in Council, (1963) was held. Kenyatta as Prime-Minister and his government then asked that the constitution be amended as a preliminary to independence. The Secretary of State held consultations with a Kenya ministerial delegation in London in June 1963 about steps to be taken for the final transfer of

power to the Kenya Government. On 2<sup>nd</sup> July 1963 the Secretary of State announced in the House of Commons that subject to the necessary preparatory steps being completed in time, Kenya would become independent on 12<sup>th</sup> December 1963 (Times, 3<sup>rd</sup> July 1963).

Kenya became independent on 12<sup>th</sup> December 1963. With this development, the Governor became Governor-General and the British government relinquished certain reserved powers. However there was no change in the composition of the National Assembly. The independence constitution of 1963 gave provisions for a parliamentary form of government. The executive authority still remained vested in the Queen. The authority was exercised on her behalf by the Governor-General, who in turn was to be advised by the Prime-Minister and his Cabinet (Gertzel, 1970:125). According to the constitution, parliament was supposed to be a bi-cameral legislature.

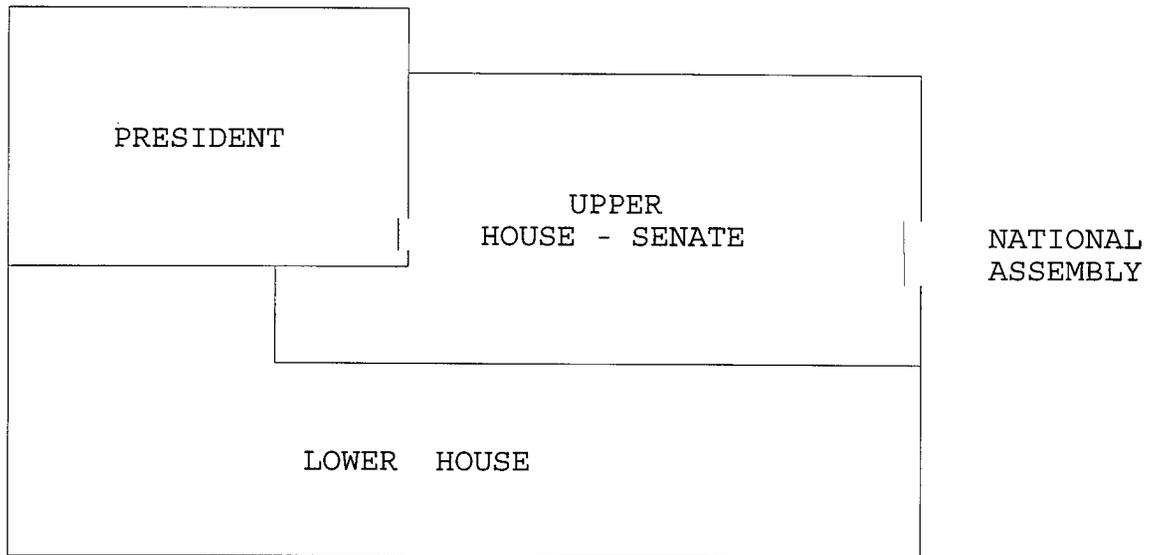
The attainment of independence brought a shift in the political agenda to development and nation-building. This signified a need for responsiveness to political demands of a different kind, unlike the colonial period whereby the prime-motive of anti-colonial forces had been to destroy colonialism. For one year until 12<sup>th</sup> December 1964, Kenya was independent under a "Dominion" pattern of government. As already observed, the British monarch, through the Governor-General was the formal Head of State and also the Head of Executive branch of the Kenya Government. The one year period

of Dominion Government was highly decentralized, and the three arms of government namely the executive, the legislature and the judiciary were complementing each other in the state functions. This is a baseline from which the Kenyatta Government made a departure. This is due to the fact that Kenyatta was disdainful of power-sharing with the legislative and judiciary and he abandoned the decentralized structure his regime had inherited at independence. This was done through the promulgation of the 'republican government' in December 1964. Prior to this, between November 1963 - November 1964 there was steady defection from KADU to KANU. The great surrender was ultimately, pronounced by the leader of KADU leader Mr. Ronald Ngala on the floor of the House of Representatives in November 1964. Kenya thus became a de-facto one-party state.

The Republican Government came about as a result of the first major amendment made on the constitution in 1964. The amendment known as the "Amendment Act" No. 28 of 1964, established the Republic of Kenya. The amendment radically altered the position of the executive, providing for a president who is both the Head of State and Head of Government. Executive authority in the Republic of Kenya was now vested in the President.

Figure 2

Structure of the Republican Parliament in 1964:



Parliament at December 1964 made of the following:

1. President
2. National Assembly {Upper House - Senate  
                          {Lower House  
National Assembly composed as at 1963 no change.

The bi-cameral legislature was, however, retained without any change. Furthermore, the constitution retained many of the checks upon the executive by the legislature which are characteristic of a parliamentary system of government and which link the executive and legislature closely together. First, the president must himself be an elected member of the House of Representatives. He therefore sits in the National Assembly as a member in his own right. Second, the constitution provided for a Cabinet, which consisted of the president, the vice-president and such other ministers as the president may

choose. All cabinet ministers were to be elected members of one or other of the two Houses of the Assembly (Gertzel 1970, 125-6).

The Amendment Act No. 28 of 1964 was followed by other series of enactments, mostly constitutional changes affecting the nature and composition of the National Assembly. These enactments exemplified a determined effort to centralize state authority in the executive branch and to weaken the influence of the legislature.

The Constitution of Kenya Amendment Act No.16 of 1966 for example defined the circumstances under which a member of either House could lose his parliamentary seat. One of the ways is, if a member, without obtaining permission from the Speaker of the House, fails to attend the House for eight consecutive sitting days in a session. However there was a provision that the president might in any case, direct that a member should not be required to vacate his seat for failure to attend as aforesaid. The constitutional amendment further stipulated that members of the National Assembly, who were sentenced to a term of imprisonment for a period exceeding six months could also automatically lose their seats.

The Amendment Act No. 16 of 1966 was followed by the (Amendment) No. 2 Act No. 17 of 1966. This amendment was necessitated by the move by Oginga Odinga (then Vice-President of the State and Party) to form a new opposition political party, the Kenya People's Union (KPU). This decision to form

an opposition party came about when the 'radicals' within KANU led by Odinga Oginga and Bildad Kaggia were manoeuvred out of KANU. The incident occurred in Limuru in, May 1966 during party elections when the 'moderates' in the party manoeuvred them and their key supporters and voted them out of their positions in the party. Odinga and his group in turn responded by forming KPU. The formation of KPU returned Kenya to a multi-party state. However, within a few days of the formation of KPU the government decided that something had to be done to stop KPU from recruiting support among parliamentarians. By that time upto 29 members of Parliament (MPs) had crossed the floor to join the new party. To avoid further exodus of MPs from the ruling party, Tom Mboya, who was by then the Secretary General of KANU proposed an amendment to the constitution. The amendment provided that any member who resigned from a political party which had sponsored him at his election would loose his seat and seek a fresh mandate from his electors. This was the case when President Kenyatta prorogued the National Assembly on 30<sup>th</sup> April 1966, and twenty-one members were required to vacate their seats. The act of the state had thus saved the ruling party from possible loss of parliamentary majority.

While the two Houses existed, the lower House was the stronger of the two. This was because it was the Lower House and not the Senate that had the power to move a vote of no confidence in the Executive. The Senate could not, however,

be dismissed as powerless. It had a continuing life which the lower House did not. Its consent to all legislation was necessary, including any legislation that amended the constitution itself (Gertzel, 1966, 489).

The relationship between the two Houses however turned out to be difficult. This was because, with the promulgation of the Republican Government in 1964, regionalism was abolished and the original *raison' d'etre* for the Senate disappeared. The Senate was conceived of in the first place as a reviewing House; its function was to review (as well as to initiate) legislation with particular consideration to any possible implications of discrimination against either a tribal or a racial minority. It was for this reason that the Senate was given a vital role in the amendment process; any amendments to the constitution that touched upon the then "entrenched" clauses (all of which related to fundamental rights and the position and powers of the then regions) required a 90% majority in the Senate (The Kenya Independent Order in Council, 1963, Schedule 2, the Constitution of Kenya S. 71).

However the constitutional amendments passed between October 1964 and April 1965 not only abolished regionalism and the powers of the then regional authorities; they also changed the amending process itself, so that any amendment to any part of the constitution now required only a two-thirds majority of each House (Act No. 14 of 1965, the Constitution of Kenya

(Amendment) Act 1965 S. 71). Subsequently, it became clear, that bi-cameralism was not ideal to the needs of independent Kenya and that the original fears that had necessitated the creation of a Senate, no longer existed.

Due to this development, the parliamentary constituencies (Preparatory Review) (No. 2) Act No. 27 of 1966 was enacted. This enactment empowered the electoral commission to review the boundaries of the parliamentary constituencies into which the country was divided. The Act provided that the number of constituencies should not be more than one hundred and seventy-five nor less than one hundred and sixty. The main purpose of the Act was to provide constituencies for the senators when and if the two Houses were merged together.

In December , 1966, both Houses resolved to amend the constitution and to merge the Senate and House of Representatives into one House. With the merging of the two houses, an additional 41 new constituencies were created. These new constituencies were to be represented by the 41 existing senators. The new National Assembly created thus consisted of one-hundred and fifty-eight constituency elected members and two ex-officio members namely the Speaker and Attorney-General. These new changes received the assent of the president, and took effect when the National Assembly was prorogued, on 5<sup>th</sup> January, 1967.

The new National Assembly sat for the first time on 15<sup>th</sup> February 1967 and it went on until 1969. This period saw the

executive being strengthened further. The tenth amendment Act 45 of 1969, altered the method of presidential election by stating that in future, the president would be directly elected by the national electorate at the time of a general-election; that all candidates for a general-election must be nominated by a political-party; that at the time of a general election every political party taking part in the election would be required to nominate a presidential candidate; that at the polls, the ballot paper would pair the presidential and parliamentary candidate belonging to the same party. The tenth amendment also changed the composition of the National Assembly by replacing the 12 specially elected members, who were elected by the parliamentarians, with 12 nominated members appointed by the president. This amendment and the previous ones before it produced a tremendous cumulative effect, that ended up reducing the power and effectiveness of the legislature as a policy-making institution. The end result was the emergence of government by an oligarchy of cabinet ministers and top state bureaucrats that has become increasingly independent and occasionally defiant of the National Assembly.

In October 1969, KPU was banned and its leaders detained, and in November of 1969, President Kenyatta dissolved parliament and declared a general election. The ensuing elections were held under the umbrella of a single party. Kenya again became a de-facto one party state.

The newly elected Assembly held its first session on 6<sup>th</sup> February 1970. On 9<sup>th</sup> August 1974, President Kenyatta dissolved the second parliament and declared a General election which was held on 14<sup>th</sup> October 1974. The third parliament assembled for the first time on 6<sup>th</sup> November 1974. The third parliament witnessed the death of President Kenyatta who passed away on 22<sup>nd</sup> August, 1978. He was succeeded constitutionally by his Vice-President for 12 years, Daniel Arap Moi and parliament proceeded on uninterrupted. The House adjourned sine die<sup>4</sup> on 23<sup>rd</sup> August 1979. The President then dissolved parliament to pave way for the fourth general parliament elections in Kenya's post independence history. These elections were held in late 1979.

When Moi came to power, he didn't shift radically his mode of leadership from that of his predecessor Kenyatta. Indeed the legislature continued to be dominated by the executive branch. This was so because Moi made successful attempts, by one means or another, to pack the National Assembly with his 'supporters' (Fostensen and Scott, 1987, 94). (The dominance of the Executive was further strengthened when the security of tenure of judges were removed. The action weakened the judiciary vis-a-vis the Executive). (The Weekly Review, February 3, 1989, 9). Thus if anything, under Moi, the dominance of the executive over the other arms of

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<sup>4</sup> This is a situation whereby Parliament adjourns indefinitely.

government was enhanced.

The fourth parliament was inaugurated on 4<sup>th</sup> December 1979 after the general elections of the same year. It was during the fourth parliament that an amendment was passed to make Kenya a de-jure one-party state. In April, 1982, there were reports that Odinga and some of his supporters were planning to form a new opposition party. In response to Odinga's manoeuvres the government broke with past practise and pushed a bill through the National Assembly in June making Kenya a de-jure one-party state. The constitution of Kenya (Amendment) Act No. 7 of 1982, amended the constitution by inserting Section 2A which stated that, "There shall be in Kenya only one political party, the Kenya African National Union". This move by the government meant that parliament's role as a "check and balance" on the executive was further curtailed. In the de-facto one-party state, backbench opposition had existed whereby factions of the ruling party MP's did oppose their cabinet counterparts. However in the de-jure one-party state, opposing voices were systematically locked out of the system either through disciplinary action or election rigging.

The effectiveness of the National Assembly in Kenya was further adversely affected by the fact that it is only the president who is empowered to summon, prorogue and dissolve parliament (Section 58(2) Constitution of Kenya). As such an assertive parliament could be prorogued or even dissolved to

pave way for fresh elections in advance of parliament's normal five year life span (Kivutha Kibwana, 1988). A good example is when President Moi dissolved parliament in 1983 to pave way for general elections about a year before the full term of parliament ended. This was primarily because a large proportion of the National Assembly had allegedly galvanized into a faction around a senior Cabinet Minister seeking to demise Moi's government through the constitutional mechanism of a vote of no confidence. Charles Njonjo, the Minister of Constitutional Affairs, was the alleged traitor. In the ensuing elections, most of the MPs identified as pro-Njonjo didn't make it back to parliament.

The fifth parliament was inaugurated on 7<sup>th</sup> October 1983 after the hastily convened 1983 general elections. It was during this fifth parliament that various attempts were made to elevate the ruling party KANU above the legislature. Upon assuming the presidency in August 1978, Moi promised to introduce changes in the party to make KANU a partner in the governance process. Immediately after his election as KANU president, he reportedly stated: it is my determination to rejuvenate the party, because only a strong party can fulfil its political policies for our government to follow (Daily Nation, Nairobi, 1978). Two years later in an address to a KANU meeting, he reportedly said that KANU would be involved at all levels of national planning and explaining national policy (Daily Nation, Nairobi, 28<sup>th</sup> March, 1980, p. 4). And

in the following year he stated that KANU was the ruling party; it was the government and therefore his voice (Daily Nation, 23<sup>rd</sup> May, 1981).

In some cases intentions to enhance the dominant role of the party had been made without being followed through. In 1986 for example, the then Secretary-General of KANU Burudi Nabwera announced that in future government ministries would be required to appear before KANU Governing Council meetings to give an account of their ministries and be questioned about their performance (Kenya Times, 17<sup>th</sup> December 1986). This intention was never accomplished. And in 1988 the then Party Chairman Oloo Aringo outlined the areas in which the party would help formulate public policies. The areas included, conceptualization of African socialism; environmental conservation; land utilization; population and resource development; employment creation; investment strategy; defence; internal security and foreign policy (Kenya Times 15<sup>th</sup> December, 1988). This intention also wasn't followed up.

The president in his rejuvenation of the party efforts formed the KANU disciplinary committee in December 1985. The committee was however later disbanded. Its problems began precisely because unlike the other party organs, its activities were beginning to receive as much attention as those of the state organs themselves. By calling a Cabinet Minister to appear before it for attacking its work in parliament, the committee was challenging the constitutional

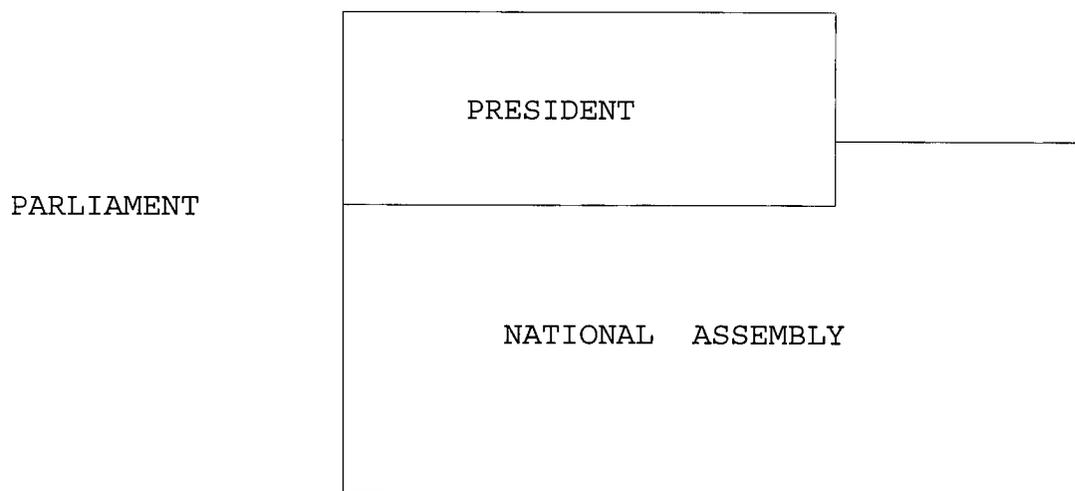
authority of a key organ of the state.

The fifth parliament was prorogued by President Moi on December 24, 1987. This was followed by the 1988, General Elections which ushered in the sixth parliament amidst claims of rigging in various constituencies in the country. The sixth parliament was inaugurated on 12<sup>th</sup> April 1988. It was during the sixth parliament that multi-partyism was brought back into operation in Kenya. This happened after the spirited campaign by the church, political activists and donor community. The Constitution (Amendment) No. 2 Act No. 12 of 1991 amended the constitution repealing Section 2A which had legally provided for KANU to be the sole political party in the country. And with that followed, the proliferation of various political parties. Apart from enabling the formation of other political parties legally, the repeal of Section 2A also led to the limitation of the presidential terms of office to two terms. However, the objectives of the bill to amend the constitution for this purpose indicated that the change would not operate in retrospect. Therefore President Moi was exempted for the three terms he had served, and could run for the same position for another period of two terms. Other changes were introduced in the constitution to match it with the multi-party political set-up. The most important change concerned the election of the president and the formation of government. According to those changes, the person to become president must garner twenty-five per cent of votes cast in

five out of the eight provinces in Kenya in addition to having the most votes. Such a president would form a government of the party. The sixth parliament was dissolved on October 28, 1992 to pave way for the December 29 multi-party elections. KANU romped home victoriously amidst claims of irregularities by the opposition parties. The seventh parliament evolved out of a clamour for pluralism that took years to convince the governing party that the country was ripe for liberal democracy. Thus the country once again reverted to multi-partyism.

Figure 3

Composition of Parliament after Abolition of Senate, 1966-1993:



Total Elected members	158
Specially elected members	12
Total members of parliament	170
Parliament 1988 to date	

- (i) President
- (ii) National Assembly with 188 elected members      188
  - Nominated members (by President since 1969)      12
  - Total members of Parliament                              200

In conclusion, we observe that independent Kenya's parliament has experimented with both multi-party and single-party systems. The first parliament sat from June 1963 based on self-internal governing status with Jomo Kenyatta as the Prime-Minister with his team of 15 cabinet ministers. KANU formed the government while KADU led by the late Ronald Ngala became the main opposition. The late Sir Humphrey Slade was elected the speaker and a Nairobi politician Mr. F. de Souza the deputy speaker. In 1964 KADU dissolved itself and KANU remained as the only de-facto political party. No political party emerged to oppose KANU upto 1966 when 29 sitting members of parliament led by the Vice-President Oginga Odinga resigned to form KPU. Hence, KPU officially became an opposition party. The second era of multi-party system ended 3 years later when KPU was proscribed and its leaders detained. Kenya once more became a de-facto single-party state. Kenya thus existed as a de-facto one-party state until 1982 when the contentious constitutional Amendment Bill was moved in parliament by Mr. Charles Njonjo. The Bill was passed and Section 2A was inserted into the constitution thus making KANU the only legal party until December 1991 when parliament repealed it to return Kenya back to multi-party parliament.

## CHAPTER THREE

### THE ROLE OF KENYAN PARLIAMENT IN FOREIGN POLICY MAKING DURING THE KENYATTA ERA 1963-1978

#### 3.1 INTRODUCTION

The policy making process in Kenya officially begins with either the drafting of a Bill, the drafting of a cabinet paper or the drafting of a private members motion and presenting the same to parliament. In the case of a Bill, a minister desiring to introduce a bill in the House awaits the publication of the Bill in the Kenya Gazette before delivering to the Clerk of the National Assembly a sufficient number of copies of the Bill for distribution to members. The Bill is then introduced in the House by way of a first reading. After the Bill is read a second time, it stands committed to a committee of the whole House unless the House commits the Bill to a Select Committee. The Bill is thereafter open for debate by members. On adoption of a report on a Bill, a third reading takes place. Thereafter the Speaker may correct formal errors or oversights therein before the certification and submission of a Bill to the president. A bill which is approved by the House is normally submitted to the president for his assent. Once a bill receives the presidential assent it becomes an Act, and hence an official policy of the government.

Similarly, cabinet papers and private members motion have to be submitted to the clerk who in turn submits them to the Speaker for perusal. If the draft motion is approved by the Speaker it is then moved in the House and if necessary seconded before being opened for debate. At the end of debate

the speaker puts the question to the House upon which the members approve or reject the motion. A motion is deemed to be the property of the House after the question has been proposed and cannot be withdrawn without the leave of the House. A motion accepted by the House doesn't bind the Government. However a bill after finally passing through the National Assembly and receiving the President's assent becomes an Act of Parliament and hence law in the country. It is this binding on the Government. This position on policy process in general also applies for foreign-policy. This chapter examines the role played by the Kenyan Parliament in foreign-policy making during the Kenyatta era from 1963-1978.

During this period there was a total of 22 motions relating to foreign-affairs that were brought for debate before the National Assembly. Out of this number 14 motions were approved while 8 were rejected by the House. In order to evaluate the effectiveness of the House on foreign policy issues we will begin by reviewing the debates on some of these motions.

### **3.2 THE POLICY MAKING DURING THE FIRST MULTI-PARTY PERIOD: 1963-64**

The first multi-party system in Kenya lasted from 1963-64. During this period three motions on foreign-policy were debated in the National Assembly. The first motion was moved by Hon. Ronald Ngala (KADU) on 7<sup>th</sup> June, 1963. The motion dwelt on the need for federation among the three East African states.

The idea to incorporate Kenya in an East African Federation was mooted as early as 1963. KANU in its election

manifesto of 1963 said:

"We shall build on the foundations of the East African Common Services Organization and of the East African Common Market to bring the people of Kenya, Uganda, Tanganyika and Zanzibar into closer political association" (KANU Manifesto, 1963).

It therefore came as no surprise when, on 7<sup>th</sup> June 1963, the leader of the opposition, Hon. Ronald Ngala moved a motion in parliament to have the East African Federation formalized between the three countries (HRP Vol. I, Part I, 1963, Col. 403).

In his reply, on behalf of the government, the then Minister for Justice and Constitutional Affairs Hon. Tom Mboya (KANU), said that it had always been the intention of the KANU government to have an East African Federation. He told the House that both the President of Tanganyika Dr. Julius Nyerere, and the Prime-Minister of Uganda, Dr. Milton Obote, had dedicated themselves to the unity of East Africa. Mboya further told the House that the government accepted the spirit of the motion. The House thus resolved:

"That this House would welcome a Federation of East Africa this year and urges the Government of Kenya to negotiate on the basis of creating one East African nation embracing amongst other fundamental aspects, one flag and one head of state and that personal ambitions, tribalism or territorial constitutions must not be allowed to stand in the way of this vital step towards the unity of East Africa" (HRP Vol. I, Part I, 1963, Col. 430).

One year later, after the motion was adopted, not much had been achieved towards the East African Federation. This prompted a opposition KADU politician, Martin Shikuku, to move another motion on 17<sup>th</sup> June 1964 seeking the acceleration

of the East African Federation. The motion read:

"That in view of the fact that all the people in Kenya were promised East African Federation immediately after Kenya's independence, this House calls upon the Government to accelerate the machinery for this purpose" (HRP Vol. III, Part I, 1964, Co. 254).

Mr. Shikuku said that upto the specific moment he was talking, the House hadn't received any information in so far as the federation talks were concerned. This was despite the fact that the three leaders of the government and the people of East Africa assembled in Nairobi on 5<sup>th</sup> June 1963 and pledged themselves to the political federation of East Africa.

Shikuku however noted that other developments had been taking place. For instance on 11<sup>th</sup> April 1964, there was a meeting held in Nairobi of the heads of states of Tanganyika, Kenya, Uganda and Zanzibar. Although no concrete statement was issued after this meeting, Tanganyika and Zanzibar united on the 24<sup>th</sup> April of the same month. This according to Mr. Shikuku proved that the governments of Tanganyika and Zanzibar must have found the Kenya Government simply paying lip service and dragging its feet. Due to the delay, Mr. Shikuku observed that the House was the only place to decide what was to be done. Shikuku told the House:

"We gave the powers to those leaders to speak for us. We have waited well over a year, and now I think Hon Members, the time has come for us to tell them what we want and they must act accordingly, because it is we who put them where they are. If they cannot do it then they must know that we are going to do it.

The power we gave them was from respect and if they cannot do what we want, we can take it over and do what we can do" (HRP Vol. III, Part I, 1964, Col. 257).

The Kenya Government, however, was not solely to blame for the failure of the E.A. Federation. This was evident when Kenyan backbenchers decided to take action following the silence on the part of the government. The Kenyan back-benchers held meetings with both their Tanganyika and Ugandan counterparts. In the meetings, resolutions were passed in accordance with the pledges that had been made to the people. However comments from the leaders were not in conformity with the spirit of the meetings. For instance in Uganda Dr. Milton Obote came-up with a statement saying that he was not going to be pushed, while in Kenya Kenyatta described the resolutions as ill-timed.

What emerged therefore after the statements by the leaders of Uganda and Kenya respectively was a struggle between the executive and the legislature to control events in their respective countries. In reaction to these developments Mr. Shikuku observed that all Hon Members were equal and therefore parliament was the right place to decide on the federation. He thus said:

"We are going to fix here, the date, time and we hope the Hon. Ministers and anybody concerned will go by that" (HRP, Vol. III, Part I, 1964, Col. 257).

Mr. Shikuku also noted that although a working committee was appointed in June 1963, nothing had been heard about it.

These developments forced the Kenya Government to act on the federation matter.

In response to the motion Kenyatta told the House that the mover of the motion was ignorant of what the government had done about the federation issue. He said that the three heads of government were in agreement as they had been in 1963. He

emphasized, however, he said that the federation was not something that one could achieve through magic. This he said, was so because there were both economic and political factors which had to be sorted out. According to Kenyatta, to achieve a proper federation one had to work out details and that was why there were various committees. He asserted that all the three heads of state were committed towards the achievement of federation. He ruled out the possibility of enlightening the members of parliament on the day to day discussions, saying that the government was not like a newspaper office with public meetings (HRP, Vol. III, Part I, 1964, Col. 268-275).

From Kenyatta's statement, it was evident that the government wasn't going to let parliament be the determinant institution on matters relating to the federation of East Africa. The government as such was out to ensure that it dictated the direction of events. This, however, was not how parliament in a liberal democratic country like Kenya was expected to operate. On the contrary what was expected was constant consultation between the executive and the legislature with the former seeking the approval of the latter for most of the important decisions, but with practically no leverage to force the legislature to accord its approval against its will and against the will of the nation.

Kenyatta's speech was supported by none other than his own trusted minister, Tom Mboya who was a member of the working committee. Mboya noted that some of the negotiations of necessity must be kept within the negotiating groups and between the respective governments. According to Mboya, it was a must that the House accepts that position (HRP, Vol.

III, Part I, 1964, Col. 277). Mboya justified the delay in federation on the grounds, that it was necessary to take more time to consider the implications and avoid possible mistakes which could result in disintegration after federation.

Despite the assurances by Kenyatta and Mboya, the backbenchers both of the ruling party KANU and the opposition party KADU were not satisfied. This resulted in the KANU Parliamentary Group forming a committee to help the government achieve federation of the three East African States. The members of the backbench acted in unanimity without giving much consideration to the political parties they belonged.

According to Zephania Anyieni (KANU), the KANU Parliamentary Group Committee, sent delegates to both Uganda and Tanganyika. From these visits, the group that went to Uganda found out that Uganda wasn't ready for federation. However, the group that went to Tanganyika reported back that Tanganyika was ready. The delegation reported back that the President of the United Republic of Tanganyika and Zanzibar had this to say:

"Gentlemen, I know that Kenya is ready, we also are ready, but we know that Uganda is not ready, so go back to Nairobi and tell Mzee Kenyatta that I am ready for federation. If he wants, let him phone me at any time he wishes. I will come to Nairobi, we shall sign these documents, and we shall be federated (HRP, Vol. III, Part I, 1964, Col. 284).

Anyieni further told the House, that the next step, the delegation took was to go and see Mr. Kenyatta.

Kenyatta is reported to have told the delegation that he was trying to help Uganda, Tanganyika and Kenya come together. His interest, he said, was to have a federation of three and

not two countries. According to Anyieni, both the KANU Parliamentary Group and the opposition back-benchers were supporting Kenyatta. The unanimous view he said, was that if Kenya and Tanganyika were ready, the agreement should be effected. Due to these developments Mr. Anyieni sought an amendment to the motion which was moved originally. This was to the effect that instruments of federation be ratified by the Kenya National Assembly not later than 15<sup>th</sup> August 1964 (HRP Vol. III, Part I, 1964, Col. 289).

This move meant that the House was seeking to have the federation issue removed from the province of the executive to that of the legislature. This is due to the fact that although the Kenya Government was not solely to blame for the failure of E.A. Federation to materialize, its behaviour contributed to the failure. This behaviour also illustrated the subordination of parliament by the executive in foreign-policy making. Mr. Anyieni speaking on behalf of the KANU Parliamentary Group said that the group wasn't trying to control the government, but rather they were following-up the promises in the declaration by the three heads of state on June 5<sup>th</sup> 1963: promises which had indicated that federation would be implemented in the same year. The KANU Parliamentary Group backbenchers threatened that if they were not given an alternative date to the one they had proposed of 15<sup>th</sup> August 1964, then they would vote against the ministers.

The unanimity between the KANU and opposition backbenchers was further evident when Oduya Oprong (KANU) rose to contribute to the motion. According to Oduya Oprong the representatives of the people were supposed to know every

single thing that was going on within the government. The question of federation he observed was a political issue and the members were entitled to participate and contribute to it. This he said was being done irrespective of party differences. He thus said:

"We members on this side, and I think members of the opposition too, have taken measures because the working party of the government on federation is so weak" (HRP Vol. III, Part I, 1964, Col. 291).

Oduya Oprong accused the government of treating the federation issue as if it was an administrative business which was in their purview. He further alleged that the Kenya Government's working party was not being frank with the members of the House. This he said was contrary to their counterparts in Tanganyika and Uganda who had been very frank in their respective countries. When the question of amendment was put to vote the amendment was carried by 59 votes to 28 votes (HRP Vol. III, Part I, 1964, Col. 326).

While members in the House, got more aggressive in their demand for federation, the government resorted to the tactic of not responding to the members queries in the House. This prompted Shikuku who moved the motion on the acceleration of federation to air the following sentiments in his replying remarks:

"... I have heard from reliable sources that the date might as well be postponed. But I would like it to go on record that once we have passed that we should ratify the instruments of federation by 15<sup>th</sup> August this year, we are going to be called to this parliament and this parliament is not going to be suspended *sine die*. That is the intention of the Government to avoid the whole issue" (HRP Vol. III, Part I, 1964, Col. 352).

This view was supported by Hon. Anyieni who said that since the House had voted in favour of federation, the government had only two options. One was to do everything to effect federation on or before the 15<sup>th</sup> August, or if the government failed to do this, the government must resign. The verdict was that if it could not undertake one of the options then it meant that they were not regarding parliament as an important institution meant to take part in the decision-making process. Anyieni thus said:

"There will be no point in us coming here to spend the tax payers money everyday if what we agree to is not carried out by the government. This means that the Cabinet have no confidence in the majority of the members of this House and if they do not have confidence, then we also, we the majority, do not have confidence in the members of the Cabinet. Therefore, they must decide now" (HRP Vol. III, Part I. 1964, Col. 679).

The suspicion by members of the House that federation would not be implemented by August 15<sup>th</sup> of 1964 and that the House would be adjourned to suspend debate on the issue were confirmed on 14<sup>th</sup> August 1964. On this date, Hon. Oginga who was then Minister for Home-Affairs moved a motion that the House should adjourn until 1<sup>st</sup> September of the same year. While moving the motion, Odinga said that the adjournment was necessitated by the central legislative assembly meeting which was going to take place in Dar-es-Salaam the following week. Such meetings he said promoted the East African Federation (HRP Vol. III, Part II, 1964, Col. 1740).

The adjournment of the House, was viewed by parliamentarians as meant to avoid the date of August 15<sup>th</sup> which had been set aside for the signing of the Article on the

Federation of East Africa. This necessitated Hon. Maisori-Itumbo (KANU) to observe that the Cabinet was keeping some secrets amongst themselves and that is how they were neutralizing the power of parliament. The same line of argument was taken by Hon. Shikuku who noted that the prime-minister was contradicting himself, being quoted at one time as saying that parliament was a supreme-authority and on the other hand not implementing what the supreme-authority passes in its legislative functions.

The trends of debate on the two motions on federation clearly shows that working relationship between parliament and the executive was already characterized by mistrust. The evidence adduced shows that the government side in the House was willing to approve motions which it considered to be of national interest. However the executive was reluctant to implement the motions which had been approved in the House.

The third motion during the first multi-party period confirmed that the Kenyan executive was unwilling to collaborate with parliament in the formulation and implementation of foreign-policy. The 1963 Majimbo Constitution gave provisions as to how international agreements could be sanctioned by the National Assembly. According to Section 68(i) of the 1963 Constitution parliament was empowered to make laws relating to international conventions as well as enter into agreements with other nation-states.

It was within the auspices of Section 68(i) of the 1963 Constitution that the leader of opposition Hon. Ronald Ngala (KADU) moved a motion in parliament in 1964 which sought to

have foreign agreements fully debated in the House before being ratified by the Government. The motion exemplified the need by parliamentarians to ensure that matters relating to foreign-affairs gained consent from the House. While moving the motion Hon. Ngala said:-

"That in view of the national importance of pacts and agreements between our country and Britain and foreign-countries such as Russia, China and the USA etc., this House urges the Government to ascertain that proposals for agreements are first fully debated in this House with the view to getting the mandate of the House, before the signing of any such agreements" (HRP, vol. III, Part II 1964, Col. 2214).

Ngala's concern was that a decision should be made on this matter, at an early period of independence in order to set a precedent to be followed by future governments. Ngala who was leading the opposition party - (KADU) - at the time gave three reasons to support his motion. His first reason was that Parliament being the supreme-authority in the land was the right place for the matter to be addressed. Second, Ngala noted that it was common practice in most countries for international affairs to be discussed in respective parliaments before ratification. This, he said, meant that various countries of the world knew that once they had committed their governments, it also followed that they had committed the whole country. It was therefore strange that the Kenya Government wasn't discussing international agreements in its own parliament. Third, Hon. Ngala observed that if parliament was denied the opportunity to veto international agreements, this would be synonymous with stating that parliament wasn't important to the Government.

This motion by Ngala witnessed a strong degree of party loyalty as the members of the House of Representatives gave their views in the debate that ensued. For instance Ngala was supported by senior members of his party when they rose to contribute on the floor. To this end, Hon. Ngala was supported by the Vice-President and Chairman of his party, Hons. Masinde Muliro and Daniel Arap Moi. In his contribution Hon. Muliro respectively. Muliro alleged that government ministers were signing pacts with strings attached, thus making the country economically dependent on the Metropolitan States. This, he said, was tantamount to mortgaging the independence of Kenya. Hon. Moi on his part observed that the public ought to know about the international agreements. The reason, he said, was that since a minister definitely represented Kenya, it followed that the case they were putting forward was for Kenyans as a whole (HRP Vol. III, Part II, 1964, Col. 2220 and 2228).

Party influence on legislators was further evident when senior cabinet ministers from the ruling party, Kenya African National Union (KANU), gave strong rejoinders in response to their opposition counterparts. The then Minister for Commerce and Industry, Hon. Dr. Gikonyo Kiano, while conceding that the motion might be well intentioned, questioned its wording. Hon. Kiano said that the motion should have allowed the government to discuss the pacts and agreements with their counterparts, and then later lay the consensus to parliament. In this way, he said, the motion would be acceptable to the government; but in the way it stood, it wasn't acceptable to the government (HRP Vol. III, Part II, 1964 Col. 2222).

The seriousness with which the government viewed the motion was put more aptly by the then Minister for Justice and Constitutional Affairs Mr. Tom Mboya. Hon. Mboya was at the time the official spokesman of the government in the House. Besides, Hon. Mboya was reputed for presenting well researched contributions in the House. In this particular case, Mboya gave one of the strongest rejoinders in response to Mr. Ngala's motion. He gave various reasons why the motion couldn't be taken seriously by the National Assembly, and why the government deemed it necessary not to adopt it. First, Mboya defined the position of parliament vis-a-vis the executive. He said that the functions of the House were legislative and not executive. By this Mboya meant that parliament could legislate but the executive actions of the government were outside parliament. Second, Mboya told the House that only one part of the 1963 Constitution referred to the question of implementing international obligations. This was Section 68(i) of the 1963 Constitution. The above section prescribed the manner in which such conventions, pacts or agreements could be entered into and who should be consulted before this was done. Third, Mboya observed that international issues usually tended to be delicate and some issues were usually outside the purview of parliamentarians and required the services of technicians. In this connection Mboya had this to say:

"This House cannot be so naive as not to appreciate that whilst negotiations are taking place with another country, the issues under negotiation are often quite delicate and to subject these issues to a full scale debate in this House amounts to saying, there should be no agreement at all. If people are going to be given

all the facts, all the documents, all the correspondence, all the technical information in this House before we enter into an agreement, there will be no single agreement signed between Kenya and any other country. Some of the agreements take months to negotiate and in many cases it is necessary to employ the services of technicians until the details are ironed out" (HRP Vol. III, Part II, 1964, Col. 2234).

According to Mboya there could be no blanket policy on international pacts, instead each issue could be treated on its own merit. Mboya therefore dismissed the motion saying it didn't have any constitutional grounds. The government he said opposed the motion in total.

Mboya's dismissal of the motion on constitutional grounds, didn't however deter opposition members from pursuing the matter. The opposition legislators held their ground that agreements and pacts should be the responsibility of the supreme authority in the country which was parliament. According to Hon. Stanley Oloitiptip, a member of the opposition party KADU, the Cabinet was responsible for the day-to-day working, but when it came to important agreements and pacts, it should be the responsibility of the supreme body. The implication here was that Cabinet Ministers should seek the consent of parliament before going to make agreements abroad with other countries. In order for this to be practical, Hon. Oloitiptip sought an amendment to the motion moved by Hon. Ngala to include constitutional provisions which would ensure that no international pacts were signed without the consent of 2/3 of members of the House of representatives.

What emerged from the proposed amendment by Hon. Oloitiptip was the realization by the opposition that they

were less in number to defeat the ruling party members in a motion to change or amend the constitution. This is explained by the fact that Hon. Oloitiptip was urging the government to introduce constitutional provisions instead of getting his opposition counterparts to back a motion to amend the Constitution.

The position implied above was confirmed by Messrs Argwings Kodhek and W. Kamau, both of the ruling party KANU. Kodhek on his part observed that international agreements were between governments and therefore the notion of gaining the consent of 2/3 majority in the House didn't arise. Kamau on the other hand opposed both the original motion and the amendment. He asserted that the government was there to rule the opposition as well as the country. According to Kamau, the sole reason why the opposition brought the motion to parliament was to try and find out the secrets of the government (HRP Vol. III, Part II, 1964, Col. 2489).

The attitude taken by the ruling party members in this debate obviously angered Hon. Ngala. When he stood to reply to the motion, he accused the government of having ganged up outside to oppose the motion in the House. According to Ngala this act was a reflection of a sign of irresponsibility. This, he said was due to the fact that his intention was not to stand in the way of the government in making agreements with any other country. Instead all that the motion wanted was Parliament to be kept in the know as to what agreements were being made. Hon. Ngala finally warned that if the government refused to let the legislature know what was happening, then the opposition would object to the attitude of the government

most strongly. The motion was however rejected (HRP Vol. III, Part II, 1964, Col. 2493). The tone in which this important motion was discussed, and its failure to go through set the trends in which subsequent motions on foreign policy were to be discussed throughout the Kenyatta era.

This motion seemed to have made the government apprehensive of the way the opposition party was coming out strongly on policy matters. As indicated earlier the House was adjourned on 14th August 1964, and resumed on 1st September 1964. Barely a month after the House resumed, the opposition party KADU was dissolved on 10th November 1964. This suggests that behind the scenes negotiations between the ruling party and the opposition had been taking place. Thus on the material date, the leader of the opposition Ronald Ngala announced in parliament that KADU was joining the government under the leadership of Jomo Kenyatta. (HRP Vol. III, Part III, 1964, Col. 4415).

This development meant that Kenya now became a de-facto one party state. On 12<sup>th</sup> December of the same year, Kenya gained republican status and Kenyatta became the first president of the Republic of Kenya.

### **3.3 FOREIGN POLICY MAKING DURING THE FIRST DE-FACTO ONE PARTY PERIOD: 1964-66**

The first de-facto one party system in Kenya was experienced between 1964 and 1966. This situation arose in November 1964 when the official opposition party KADU voluntarily dissolved itself and its members joined the ruling party KANU. During this period six motions on foreign-affairs were debated in parliament. Whereby 5 motions were approved

by the National Assembly while 1 was rejected. The executive implemented 3 motions approved by the National Assembly while 2 were not implemented on grounds that the Kenyan executive needed to work in liaison with other African countries. Out of the 6 motions two were elaborate. Those were the motion on the Government take-over of the management of the Lumumba Institute and the motion on the Unilateral Declaration of Independence in Rhodesia. The less elaborate motions included: motion on Sessional Paper No.13; motion on the establishment of a Commonwealth Secretariat; motion on the confiscation of South-African Immovable Assets; and motion on friendly relations with foreign-countries. In this section we shall use the motion on the Unilateral Declaration of Independence of Rhodesia (W.D.I.) to illustrate our thesis.

The unilateral declaration of independence of Rhodesia was an international issue which came to the attention of the Kenyan parliament on 11<sup>th</sup> November 1965. The motion was moved in parliament by the then Vice-President Hon. Oginga Odinga. Hon. Odinga told the House that the government had learnt with great regret the happenings in Rhodesia in which the minority white racists had decided to declare unilateral independence of that country and a take over from the British. He said that the Government of Kenya had taken immediate steps and called a cabinet meeting to discuss the issue. He promised that the type of action to be taken would be communicated by the Minister for External Affairs. But Odinga cautioned the House that this was not the hour to act unilaterally nor emotionally rather it was the time to cool tempers, since the matter was for the whole African continent (HRP Vol. VII,

1965, Col. 404).

While seconding the motion, Hon. Joseph Murumbi, the then Minister for External Affairs, told the House that the president had issued the following statement:

"An emergency meeting of the Kenya Cabinet held in Nairobi today, 11<sup>th</sup> November 1965, strongly condemned the action of Southern Rhodesia white minority government in declaring unilateral independence. The Kenya Government will not recognize the illegal, racist regime in Southern Rhodesia and strongly supports the recent resolutions of the organization for African unity and the General Assembly of the United Nations. The Kenya Government wholeheartedly supports our African brothers in Southern Rhodesia and calls for unity in this hour of trial against the common enemy. My government will watch the situation closely and I will keep in close touch with African leaders" (HRP Vol. VII, 1965, Col. 405).

Hon. Murumbi as Odinga before him appealed to Members to remain calm since the government would keep the House informed of the situation as it developed. In the meantime he asked the House to have confidence in the government, that it would take the right action as the situation demanded.

Despite the assurance, the statements by the two senior members of the Kenyan Cabinet didn't go down well with some members in the House. For example Hon. Anyieni noted that although the backbenchers didn't have so much power, they wouldn't be satisfied with the statements being given by the government denouncing the racist regime of Southern Rhodesia. He said that what they would like to see was action being taken and he proposed that although the Kenya Government couldn't take any unilateral step, it must be willing to take a lead and encourage other African states to joint action,

since Kenya had more or less the same background as the people of southern Rhodesia (HRP Vol. VII, 1965, Col. 408).

Contrary to the expectations of the backbenchers, Cabinet Ministers of the Kenya Government sought action from the organization of African Unity (OAU). Hon. Tom Mboya observed that the OAU's future was going to be on the balance. This was because if action was not taken on Rhodesia nobody would believe in any future resolutions. Hon. Njoroge Mungai on his part said that this was not the time for Africa to keep talking. He said that while too many resolutions had been passed in the Organization for African Unity, in the United Nations, and many words had been spoken in the House, Ian Smith who was the leader of the minority government in Southern Rhodesia on his part was not talking, he had taken action and therefore Africa must also take action (HRP Vol VII, 1965, Col. 415 and 417).

The House, however, felt that the government should play a more active role in the UDI affair in consultation with the National Assembly rather than asking the OAU to take action on its behalf. In this connection, Hon. Members expected to be involved in the steps being taken by the Kenya Government in consultation with the O.A.U. in search of a solution to the U.D.I. affair. This however, didn't turnout to be. It was out of this anomaly that Hon. J.D. Kali (Nairobi East) accused the government of not keeping its word. He said that whilst the government promised the House that it would be kept informed of what was going on and the steps to be taken; nothing seemed to have been done. He said that the House had not been informed of anything except promises by the

organization for African unity, resolutions and secret meetings in Dar-es-Salaam and Nairobi. The suspicion with which the House held the government was put more succinctly by Hon. C. Kiprotich (Kericho East). He said:

"I remember, one day, we demanded an East African Federation, and then one of the government spokesmen here came and told us that things were running smoothly. The same thing is happening now about Rhodesia. We are being told here, "You wait and see" (HRP Vol.. VII, 1965, Col. 713).

In response to these accusations, the government maintained its stand that the only way it could act was through the Organization of African Unity. This, Mr. Odinga, the then Vice-President, said, was the only way that all the African countries could act.

On 15<sup>th</sup> December 1965, the President, Hon. Jomo Kenyatta issued a statement in the House on the Kenya Government policy on Rhodesia. The statement addressed the following issues. First, Kenyatta said that the government had brought pressure on the British Government to take decisive action to crush the rebellion and lead the country to majority rule. He said that the Kenya Government must make it clear that the responsibility of the present condition in Rhodesia was with the British Government.

Second, he said that the Kenya Government had considered the resolutions passed by the assembly of heads of states and governments at its meeting in Accra in October 1965. The government, he said, had severed all trade and economic relations with Rhodesia and had stopped all money transactions between Kenya banks and Rhodesia.

Third, he said that the government was concerned that the Zambian Government had expressed serious doubts about the wisdom of breaking diplomatic relations with Britain. He said that the government believed that any action taken must advance the cause that was being supported in Rhodesia. A division among African states, he said could have serious repercussions not the least of which would be the threat to the Organization of African Unity itself.

Finally, the president noted that in the circumstances, the Kenya Government had now decided to consult more fully with its East African neighbours including Zambia and other African states to determine the best action to take. He said that the government had the feeling that any unilateral action by any African state would not meet the situation (HRP Vol. VII, 1965, Col. 1049-1051).

This statement from the president emphasized that the government wasn't going to act in isolation from other African states. In essence the statement sought to put an end to the debate on the U.D.I. in parliament. This, it did and the issue wasn't raised in parliament again until after the opposition party Kenya People's Union (KPU) was formed. The decision to put a halt to the debate came from the executive arm of the government and not from the National Assembly.

In summary we can conclude that the move from the multi-party system to a de facto one party system didn't dilute the vibrancy of the National Assembly. Rather the opposing views in parliament which had been associated with the opposition party were now internalized within the backbench and the backbench took the responsibility of questioning the

activities of the executive or government.

### **3.4 FOREIGN POLICY MAKING DURING THE SECOND MULTI-PARTY PERIOD 1966-69**

The Republic of Kenya became a multi-party state for the second time between 1966 and 1969. During this period 8 motions relating to foreign affairs were brought before the National Assembly. These motions found their way into parliament in two levels. The first level involved motions brought to parliament by members of the ruling party KANU. Those were 4 in number and they were given a national outlook with MPs from both sides of the House contributing equally.

The second level involved motion which were brought to parliament by members of the opposition party KPU. These motions were also 4 in number. But unlike the motions brought by KANU members, these motions only got support from opposition members and in most cases were not approved by the National Assembly, due to the insignificant number of KPU MPs in the House. The total number of motions brought before the National Assembly during this period was therefore 8 out of this number 4 motions were approved while 4 were rejected by the National Assembly. 3 of the approval motions were implemented by the Kenyan executive while 1 was not implemented on grounds that the country had to adopt the resolutions passed by the United Nations Security Council.

The subject matter of the motions debated during this period were as follows; motion on Tanzania's Bar on Kenya Currency; motion on Kenya's Foreign Policy; motion on Kenya's attitude towards the Middle-East war; motion on Mr. Attwood's Book fitted with Reds and Blacks; The East-African Co-

operation Bill; the motion seeking the Breaking of Diplomatic Relations with the United States, Great Britain and Israel, and the motion on the need for free movement of Trade and Labour in East Africa; in this section we shall use the motion on Mr. Attwoods book titled the Reds and Blacks to illustrate our thesis.

The motion was moved by Hon. Okello Odongo (KPU) on 3<sup>rd</sup> November 1967. It sought to discuss Mr. Attwood's book titled the Reds and the Blacks with the aim of passing a vote of no confidence on the government. Attwood initially served as the Ambassador of the United States of America to the Kenya before he wrote the book. The motion stated:

"That taking note of all that has been revealed in Mr. William Attwood's book, The Reds and the Blacks concerning the inside working of Kenya's Government; noting that this revelation establishes that Kenya Government has allowed certain foreign ambassadors in this country to have access to the innermost part of the government policy-making body; noting that this access has made it possible for those foreign-ambassadors to control, direct and influence the policies and actions of Kenya Government; and noting that this situation had made a mockery of the independence of the Republic of Kenya; This House resolves that it has no confidence in the present government and demands its resignation forthwith" (The National Assembly Official Report: Vol. XIII (Part I) 1967, Col. 1685).

Attwood's book according to Hon. Okello-Odongo made several negative allegations about Kenya's political system. The first case concerned Mr. Attwood himself when he was an ambassador in the country. The book revealed that Hon. Joseph Murumbi when he visited Washington made a statement to the effect that America was a cruel country. However through the

intervention of Mr. Attwood, the statement was changed.

Second, the book claimed that there was an incident where the Kenya people held a demonstration against the American Embassy. It was described in the book that the next day Mr. Arap Moi, who had become the minister for Home-Affairs, invited the ambassador to the office and apologized. Hon. Moi is said to have assured the ambassador that: not all people in Kenya were against America, therefore the ambassador need not worry (National Assembly Official Report: Vol. XIII (Part I) Col. 1689 - 1690). These incidents, according to Mr. Okello-Odongo, proved that the country was not adhering to the principle of non-alignment, but was rather sympathetic to the western nations.

The third incident mentioned by Hon. Okello-Odongo related to the Chinese Embassy. According to Odongo the book quoted Kenyatta revealing to certain foreigners the Kenya Governments non-positive attitude towards the chinese. Odongo noted that the nature of the government's relations with another country was a secret, and as such it was perturbing that the President could discuss such confidential matters with a third party.

The fourth incident quoted Attwood talking of the times when he would find it difficult to approach the President. However, he found remedy in Mr. MacDonald the then British High Commissioner to Kenya who was a very trusted friend of the President and who helped him to get easy access to President Kenyatta. This incident according to Hon. Odongo diluted the extent to which one could attest that Kenya was a sovereign country (HANSARD Report, Vol. XIII (Part 1) 1967,

Col. 1690-1691).

The motion was seconded by Hon. Luke Obok (KPU) who asked KANU parliamentarians to support the motion which was simply deploring the fact that a foreign diplomat had wide freedom to get access to secrets and records in government offices. Obok noted that if the House failed to condemn the government, it would amount to an admission that the government approved of what had taken place between Mr. Attwood and those who gave him the information of the internal running of the country.

Other MPs who took to the floor during the debate included the then Assistant Minister for Education Hon. G.M. Mutiso (KANU). All these MPs who contributed were unanimous that the motion had substance, but they disagreed as to whether it had weight enough to make the House pass a vote of no confidence in the government. The ruling party - KANU - MPs while conceding that the motion was relevant fell short of approving its declared intention of passing a vote of no confidence in the government. The opposition - KPU - MPs on the other hand wanted the motion accepted in total which could have resulted in the government of the day being ousted from office through a vote of no confidence.

KANU MPs, namely, Hons. Mutiso, Omweri and Shikuku held the view that although what had been revealed in the book was a concern for all Kenyans, it wasn't proof enough for members to express a vote of no confidence in the government. Arising from this Hon. Shikuku sought an amendment on the motion to the effect that the House resolve that such unfortunate incident would never occur again. The amendment was approved by the House. (HRP Vol. XIII (Part 1) 1967, Col. 1695-1696,

The government responded to the motion through the then Minister of State, President's office Hon. James Nyamweya. Nyamweya told the House that although there had been some lapses on the protocol side, the government was aware and was looking seriously into that section so that no further embarrassment or lowering of the dignity of the government would occur again. But it was clear that the government did not take the motion seriously. Hon. Nyamweya as the official respondent of the government admitted that he had taken the motion lightly unlike other motions which had been brought to the House before. To this effect, he said:

"... However, why should I give serious consideration to someone who is a member of a party in parliament which consists of only nine members, asking for a vote of no confidence where he knows he cannot get it? Why should I deal with that particular aspect of the motion? If this matter was raised by a KANU member, I would have dealt with this matter with some serious consideration. However now, it does not deserve that" (HRP Vol. XIII (Part 1) 1967 Col. 3077).

Hon. Nyamweya concluded that the case had not been made out to necessitate a vote of no confidence. It was for this reason, he said, that the government totally rejected the allegations contained in the motion. To this end Hon. Nyamweya asked the House to reject the motion.

The mover of the motion, Hon. Okello-Odongo was the next on the floor to reply and he took issue with Minister Nyamweya for saying that he did not take the motion seriously because it was moved by the opposition party KPU. Hon. Okello-Odongo observed that this was a wrong approach to public affairs. The government he noted should take everything seriously

whether it is said by a very low man in the village or by a worker who has no access to the House. The motion as amended when put for the vote was still rejected by 33 votes to 14 votes (HRP Vol. XIII (Part 1) 1967 Col. 3085-3088).

The rejection of this motion further showed the apathy that existed between the ruling party and the opposition party. It proved that the ruling party was intolerant of the opposition and most of its members would not back the opposition in case of a motion being put to the vote. This is proved by the fact that it was a KANU member Hon. Shikuku who sought an amendment to the motion which did away with the section on the no confidence in government. However the ruling party members still found it wise to vote against the motion as amended.

The evidence adduced in this motion clearly showed that the President of Kenya had in a number of occasions acted against the national interest of the country in the conduct of foreign-affairs. However the government while rejecting the motion chose not to look at the issues at hand but rather dismissed the motion on the grounds that it was sponsored by an opposition party which had only nine members.

The outcome of this motion also showed that the institution of parliament during this period was characterized by division along political party lines. This is true in the sense that despite the House amending the motion by removing the contentions clause on the vote of no confidence, most of the ruling party KANU members still found it fit to vote against the motion. This diluted the impact that the House was expected to have on the conduct of foreign-affairs.

### 3.5 FOREIGN POLICY MAKING DURING THE SECOND DE-FACTO ONE-PARTY PERIOD 1969-1978

The opposition party KPU existed for about three years only. It was formed in April 1966 and banned in October 1969. The banning of KPU, however, was not followed by a legislation to make Kenya a de-jure one party state. The government retained the legal provision which theoretically permitted the formation of opposition political parties. This was to remain so until 1978.

During this period 5 motions relating to foreign-affairs were brought before the House, whereby 4 motions were approved by the House while one was rejected. Out of the 4 approved motions 2 were implemented while the other 2 were not implemented. The motions tabled before the National Assembly during this period were as follows:- The International Relations Bill; Motion on Kenya's attitude towards the Rhodesia Republic; Motion on Proposed British Sale of Arms to South-Africa; Motion on the Federation of African States and Motion on the Sour relationship between Kenya and Uganda. It was also during this period that the president imposed his powers upon the National Assembly by enforcing the adoption of Kiswahili as the official language to replace the English language which had been used since independence. This was done in total disregard to the provisions of the Constitution. In this section we shall use the motion on the proposed British sale of arms to South Africa to illustrate our thesis.

The motion was moved by Hon. Joseph Gatuguta (Kikuyu) on 23<sup>rd</sup> July 1970. The motion sought to debate the proposed British sale of arms to South Africa. While moving the motion Hon. Gatuguta had this to say:

"Mr. Speaker, the House and the whole country is aware of the recent announcement made by the government of the United Kingdom to the effect that they are going to resume the sale of arms to South Africa. This a question which had disturbed the whole conscience of mankind, not only Kenya. It is fair for the parliament of this country to express its opinion about what it feels about this matter. Our policy, sir is very well known, that we are against racialism and that we are against colonialism. However, it is extremely necessary for us to take action on this matter. I know that the government had already issued a statement through the Minister for Home Affairs and the view of the Kenya government are known. I wish to say that I think the public do agree with the stand taken by the Kenya Government on this matter. However, we would like to see constructive action by the government. We would like the minister to tell us what the government intends to do to stop the United Kingdom from indulging in this kind of thing (HRP XX (Part III) 1970, Col. 2916).

While elaborating on what this motion entailed Hon. Gatuguta said that the house didn't agree with the reasons given by the Government of the United Kingdom to the effect that the purpose of the arms was maritime defence. On the contrary Hon. Gatuguta observed that the conservatist government was out to supply arms to racist South Africa in order to enable it continue with her policy of suppressing nationalist movements in that country. Due to this anomaly, Hon. Gatuguta proposed that the time had come for Kenya to break-off diplomatic relations with Britain until the time they would stop supplying arms to South Africa. A second move according to Gatuguta was to call upon all the African countries who were members of the Commonwealth of Nations to pull out of the organisation because of Britain's unbecoming activities. Hon. Gatuguta pleaded with the government to take

a firm action and stop the supply of arms which was destructive (HRP Vol. XX (Part III, 1970, Col. 2918-2919).

The motion was seconded by Hon. Mark Mwithaga who was of the view that statements alone would not deter Britain. This was so because Britain was determined to go ahead despite the words uttered by the Ministry of Foreign Affairs and the Kenyan diplomatic mission. According to Mwithaga the problem could be solved at three levels. The first move, he said, was to break away from the British Commonwealth. The second move was to break all the diplomatic relationship with any country that had diplomatic relationship with Britain. The third move was for the Kenyan Government to tell the OAU to sack all member countries working hand in hand with Britain. The aim here was to stop the British intelligence service from penetrating the OAU. Hon. Mwithaga told the house that these moves were possible and could only be achieved through consent which was lacking at that moment. To this effect Hon. Mwithaga said:

"... we must express this with candid affection and the Minister for Foreign Affairs must be able today to become a true politician with power in his hands. I do not believe that diplomatic sugar-coated words will be effective but they must be serious words and we must let Britain know today that this House condemns the club and we will be proposed to get out of the club, no matter what it costs us" (HRP Vol. XX, (Part III) 1970, Col.2922).

The motion was supported by among others Hons. Charles Murgor, James Mbori and Martin Shikuku. The motion was also supported by Hon. Wafula Wabuge who provided two steps to be adopted to bring about a solution. The first step according to Wabuge was for the government to withdraw from the Kenyan

Commonwealth games team which was participating in Edinburgh. This action would show that the Kenya Government was very disappointed with the British Government. The second step would be to close the British High Commission in the country, despite the debt accrued from loans advanced to Kenya by Britain. This second step was supported by Hon. Jackson Mulwa (Makueni) who called upon the Government of Kenya to sever diplomatic relations with Britain and at the same time enlarge its army and be prepared for any eventuality (HRP Vol. XX, (Part III) 1970, col. 2923-2931).

Hon. G.G. Kariuki (Laikipia West) on the other hand warned the government that any decision taken by the OAU should be binding on all African states and a replica of the UDI shouldn't take place. To this effect he said:

"... if Britain does not trade with African states, apart from South Africa, we can also try and get customers to buy our things from other nations. We have the Eastern world where we can also buy our arms and do away with the British arms and the British tie. This is the action one can take. Let us decide from today onwards, that no more goods will come into Kenya from Britain and then we will see whether we can benefit from Japan, China and Russia, Mr. Speaker sir, this is because I think we should be free to decide what we can do (HANSARD Report, Vol XX (part III) 1970, Col. 2932-2933).

Hon. Kariuki lamented that the idea of merely sitting in the House and condemning Britain would not solve the problem since parliament had no answer to the arms sale. Hon. Kariuki said that the answer to the problem would be found if the government came out and supported parliament, especially the backbenchers who recommended the severing of economic ties with Britain. Hon. Kariuki noted that this was the answer to

the problem and if not adopted then members would continue crying and shouting in the House but to no avail (HANSARD Report, Vol. XX (Part III) 1970, Col. 2933). The motion was also supported by the then Assistant Minister for Health Hon. Jahazi and Hon. Morara. Hon. Morara in particular accused the Minister for Foreign-Affairs, Mr. Njoroge Mungai of reverting to the mass media instead of enlightening members of the House of what was going on.

The Minister for Foreign-Affairs, Mr. Njoroge Mungai replied to the motion, on behalf of the government. Hon. Mungai noted that while it was right for the House to condemn Britain, the same House should go ahead and condemn other European countries who were also supplying South Africa with arms. Hon. Mungai also told the House that the Kenya Government had decided to use all the channels it had to make sure that the weapons didn't get into the hands of the racist South African regime. To this end what was needed was a co-ordinated effort of the African countries, the Commonwealth countries, and other friendly nations, both big and small to put pressure on Britain not to send those weapons to South Africa. However in his final words Hon. Mungai agreed with the condemnation of Britain for sending weapons to South Africa. The next order was then called by the Speaker (HANSARD Report, Vol. XX, (Part III) 1970 Col. 2937-2942).

The nature of debate in this motion showed that with the country having reverted to a de-facto one party state the government was now being condemned from within. The ruling party members, most of them backbenchers now took advantage of the absence of an opposition party to put the government to

task on issues which they felt were national and yet hadn't been addressed with the consent of the National Assembly. Prior to the banning of KPU such a motion would most likely have been brought by the opposition and wouldn't have elicited much support from KANU members. This was because in the case whereby two political parties exist the party whips would whip up support for their respective parties.

The debate in this motion also showed that parliament in Kenya was lacking institutional power in the formulation and implementation of foreign policy. This was mainly because the concept of separation of powers was not being adhered to. This was also the reason why Hon. G.G. Kariuki lamented that in order for parliament to have any input in foreign-policy, the Government should come out and support the resolutions passed by parliament. The position then was that the government merely gave lip service that it supported resolutions of the House but never went ahead to implement them.

The trend and pattern of debates in the second de-facto one party parliament which had been characterized by tolerance however began to change in mid 1974. This was a result of the Executive's (President) interference in the conduct of National Assembly affairs. For instance on 5th July 1974, the president acted in a manner which left no doubt that the Executive arm was eroding the powers of the legislature. On this particular date there was a communication from the chair on the adoption of Kiswahili as the official language of parliament. The Hon. Speaker Fred Mati said:

"Before Mr. Mutiso-Muyu stands to reply,  
I have an important announcement to make.

I have spoken to His Excellency the President on the question of this House switching from English to Swahili. I have explained to him the difficulties we have in switching over the Swahili but it is his feeling that we should as an experiment start straightaway. But we shall in due course start sorting out the difficulties. He is going to listen to what Hon. members are going to say in Swahili. So, all other problems which we have like the question of our palantypists and the constitution are taken into account. However, he would like to hear Swahili spoken right away, to see that we make a start. So as from now, I am afraid Mr. Mutiso-Muyu will have to reply his debate in Swahili" (HANSARD Report XXXV, 1974 Col. 20-21).

Rising on a point of order the then Assistant Minister for Information and Broadcasting Hon. Kase noted that as law makers parliamentarians were expected to protect the Constitution and as a result if the President's wish was to be undertaken, then a Bill need to be brought to parliament to address the issue. Kase therefore asked the Speaker and the relevant persons concerned to bring a Bill before parliament since parliamentarians had to protect the Constitution which they took oath to protect. But in a rejoinder the Speaker, Mr. Mati conceded that he had also mentioned Kase's views to the President, whereby the Constitution of Kenya clearly stated that English be the official language to be used in parliament. This meant that a particular section of the constitution had to be amended. However, the Speaker told the House that President Jomo Kenyatta had urged him that Kiswahili be adopted immediately while he looked into the technicalities.

The then Assistant Minister for Home Affairs Hon. Martin Shikuku on his part sought an amendment to Standing Order No.

62 which said that English was the official language to be used in parliament. While conceding to Shikuku's observation, the Speaker noted that the Constitution was above all the Standing Orders and as a result a Bill had to be tabled in the House first before the amendment of the Standing Orders. And with that ruling MPs went ahead to adopt Kiswahili as the official language in parliament. The situation remained the same until Daniel Moi ascended to power and English was once more adopted to be used alongside Kiswahili in the House. The anomaly here was that President Kenyatta used his powers to impose a decision on parliament and later legalized the decision through the same parliament. This action was taken in total disregard of the constitutional provisions as to how parliament and the Executive should interact. It was again evident that the Kenyan Parliament lacked the capability to act as a "check and balance" of the executive.

### **3.6 CONCLUSION:**

This chapter set out to inquire into the role of the Kenyan Parliament in the conduct of foreign-affairs during the Kenyatta era. To accomplish this we observed various motions, debates and speeches in the House which had a bearing on the conduct of foreign-affairs.

The period between 1963 and 1964 witnessed a very vocal parliament with members freely airing their views. It was also during the same period that the first multi-party system in Kenya was experienced. The idea of a multi-party state, it seemed didn't go down well with the government in power. For instance the fact that the motion of the East African

Federation was passed and an ultimatum given to the government wasn't taken lightly by the government. Furthermore the fact that the ruling party backbenchers were voting alongside their opposition member counterparts spelt doom for the government in case of future deliberations in parliament. It therefore came as no surprise that behind the scenes negotiations and canvassing went on, which led to the voluntary dissolution of the opposition party KADU by its leader Ronald Ngala.

The dissolution of KADU was followed very closely by the achievement of Republic status in Kenya on 12<sup>th</sup> December 1964. As we saw in the chapter the period 1965 to 1966 saw parliament acting in unanimity in most decisions that they took. This explains why the UDI issue although brought to parliament didn't elicit a lot of excitement and aggressive demand for action as might have been the case before December 1964. The decline in aggressiveness by the parliament may be explained by the fact that from 1965 onwards Kenya was a de-facto one party state.

The trend, however, changed when it became evident that the government in power was leaning more towards the western countries. This resulted in two different factions springing up within KANU, one aligned to the west and the other the east. The end result was that the group which was aligned to the east was manoeuvred out of KANU. The group, led by Oginga Odinga responded by forming an opposition party - Kenya People's Union. The formation of another opposition party, in this case ensured that the government was kept on its toes once more. Issues which had been left untouched such as the East African Federation and the UDI affair were brought back

again in the limelight by the opposition legislators. The opposition party KPU was banned in 1969, and parliament was to experience a lull once more as related to the conduct of foreign affairs, till Kenyatta's death in 1978.

In this chapter, it also became evident that apart from the government putting obstacles and also ignoring parliament when it came to the conduct of foreign-affairs, the inability of most parliamentarians to grasp what foreign-affairs and the whole subject of international relations entailed was also an inhibiting factor.

The evidence presented in this chapter shows clearly that apart from parliament not being empowered fully by the constitution to enable it play a prominent role in the conduct of foreign affairs, the little avenues through which it could contribute to the same conduct of foreign-affairs were usurped by the government of the day.

Finally, it is our contention that during the Kenyatta era parliament was relatively liberal and motions were debated in a free atmosphere. However the same parliament didn't have real autonomy and therefore failed to act as a "check' and balance" of the executive in matters relating to foreign-affairs.

## CHAPTER FOUR

### THE ROLE OF PARLIAMENT IN FOREIGN-POLICY MAKING DURING THE MOI ERA: 1978-1993

#### 4.1 INTRODUCTION:

Kenyatta died in office in August 1978 and was by Daniel Arap Moi. During Moi's tenure covering the period from 1978-1993 only two motions relating to foreign-affairs were debated in parliament and both were approved. Most issues relating to foreign-affairs were therefore handled by the bureaucrats under the direction of the president. Arising from this situation, the only other avenue available to MPs to deliberate on foreign-affairs issues was either through parliamentary questions in the National Assembly, or during open debates such as the debate on presidential address to the National Assembly and the budget debate. The failure of parliament to handle foreign-affairs issues as had been the case during the Kenyatta era was brought mainly by Moi's direct intervention to stifle the powers of parliament and by his style of leadership.

Throughout his tenure, President Moi has been at the centre stage in the management of foreign-policy. Since he took office he has visited many countries personally to promote Kenya's national interests (Orwa 1992, 297). In his efforts to stamp his authority on the governance of the country, Moi through his proxies in parliament amended the Constitution by introducing Section 2A which made Kenya a de-jure one party state. In effect this meant that KANU became the only legal party permitted in the country. This gave Moi a legal avenue through which he entrenched his authority in

the country.

The entrenchment of Moi's authority over the state became more evident when his government went ahead, to whittle the powers of the National Assembly in a number of ways which rendered parliament to be ineffective as a co-partner in the governance of the country and inconsequential in the conduct of foreign-affairs in particular. Such measures included the selection of candidates for parliamentary elections by the ruling party KANU (Khapoya 1980, 19; Okumu and Holonquist, 1984, 66) and the rigging of the 1988 elections which ensured that only pro Moi candidates made it to parliament (Horresby C. and Throup D, 1992). Furthermore such measures ensured that Moi wouldn't face any opposition in parliament. The end result was that under the Moi regime, parliament has played no meaningful role in the foreign-policy making process in the country. It simply ratified decisions which had been taken outside parliament by the executive arm of the government.

#### **4.2 MOI'S LEADERSHIP STYLE AND THE ROLE OF PARLIAMENT IN FOREIGN POLICY FORMULATION:**

Moi first officially addressed the National Assembly as the new President of Kenya on March 6, 1979. In his speech the president made these remarks:

"... in addition, I advise all members of parliament not to see the National Assembly and its activities in isolation. The National Assembly is a key element in our total national institutional framework for running our country and managing its economy. There are other important national institutions in that framework especially government ministries, the judiciary and the civil service as a whole. All these elements in our institutional infrastructure must work closely together, and in harmony if

our country is to remain stable, united and able to develop rapidly for the benefit of all citizens (National Assembly Official Report, Vol, XLIX, 1979, Col. 4).

In connection with the above statement, President Moi observed that members of parliament should work more closely with government departments. The president noted that there were many matters which individual members of parliament could settle through consultation with ministries without always taking such matters for debate in the House. According to Moi, lack of such consultation had at times resulted in motions being passed in the House without a thorough analysis of their financial and policy implications. As a consequence he said it had not always been possible for the government to implement such motions in full.

In order to address this anomaly, the president requested members of parliament to be consulting ministers on specific matters or problems which they considered could be dealt with by the government. When undertaking such consultations, the president said, members of parliament should regard senior civil servants as useful sources of objective advice on such matters (National Assembly Official Report, Vol. XLIX, 1979, Col. 4). It is imperative to note that the president was assuring members that during his tenure, parliament and other state institutions would work hand in hand in the policy-making process and governance of the country.

The beginning of Moi era also witnessed an attempt by both the government and parliamentarians to equip the National Assembly with the necessary strength to enable it to meet its objectives. It was in this spirit that a motion on the

adoption of Sessional Paper No. 10 of 1979 was tabled in parliament on 26<sup>th</sup> July 1979. The Sessional Paper was concerned with the review of Standing Orders of the House. The motion was moved by the then Minister of Health Hon. James Osogo, on 14<sup>th</sup> August 1979, and it specified the intended amendments on the Standing Orders. The motion was seconded by the then Assistant Minister for Economic Planning and Community Affairs, Hon. Mutunga.

Hon. Wafula Wabuge while contributing on the above motion spoke at length on Committee E which addressed itself to foreign-affairs issues. Hon. Wabuge (Kitale West) stated:

"... Mr. Speaker, Committee E deals with defence, conventions, treaties, agreements and foreign-relations. This committee is very important and I think that if we establish such a committee, all Hon. members here would be part and parcel of government policy. What happens now is that we come and ask questions here regarding policies or matters affecting this country and other countries. We do this because in most cases Hon. members are in darkness, and even when they got opportunity to visit foreign-countries, they do not know how to interpret Kenya's policies or stand on certain matters concerning our foreign-policy. This is also because we do not have a link between parliament and the Ministry of Foreign Affairs ... We hope that the committee will deliver the goods when it is formed (National Assembly Official Report, Vol. LI, 1979, Col. 1435).

This problem of lack of awareness in foreign affairs was also evident during the Kenyatta era as already observed in the previous chapter, but this time around the parliamentarians wanted a committee established within the National Assembly to specifically deal with the subject.

After deliberations on the various General Purposes Committees, the Speaker reported to the House that the Committee of the whole House had considered and approved the following resolution:

"That the Sessional Paper No. 10 of 1979 laid on the table of the House on 26<sup>th</sup> July 1979 be adopted and that the amendments of the Standing Orders recommended in the first schedule thereof as amended be made and are hereby made with effect from the day this third parliament is dissolved" (HRP, Vol LI, 1979, Col. 1462).

The Hon. Attorney-General Charles Njonjo then moved that the House does agree with the said resolution of the Committee of the whole House in the said report. It was seconded by the then Vice-President and Minister for Finance. Hon Mwai Kibaki. The House passed the motion.

The General Purposes Committee as specified in the Standing Orders are entitled to investigate and inquire into the activities and administration of the ministries or departments assigned to them, and such investigation and inquiry may extend to proposals for legislation (National Assembly Standing Order No. 151). However despite the adoption of the motion, Committee (E) mentioned above never got off the ground as required. This particular set-back marked the beginning of parliament's lacklustre performance during Moi's tenure.

It is normal to expect that a regime change in a developing country such as Kenya should mean a significant shift in policy especially foreign-policy. Continuity in foreign-policy is usually assumed to be a consequence of a long historical tradition. Kenya, having been independent for

only about three decades cannot be said to have established this tradition (Katete Orwa, 1992, 297). Whereas Kenyatta maintained a low profile in the management of foreign-policy, President Moi has been at the centre stage in the management of foreign-policy, Kenya's close relations with western European countries has been strengthened by personal presidential visits. The president however didn't restrict his visits to western countries, he also visited eastern countries.

President Moi's personal diplomacy and visits to various countries was applauded by members of parliament (MPs). The MPs felt that during the Kenyatta era, the country's foreign-policy was not clear but under President Moi, the country's foreign-policy had been made clearer.

For instance on 29<sup>th</sup> May 1980 Hon. Mulira while commenting on the American hostages in Iran had this to say:

"I think it is very immoral and indeed very wrong that a country should break all diplomatic and international laws and hold diplomats of another country hostages for no reason. The Iranian Government has done so.... I think that is wrong and I must say that we must again appreciate the stand the president took to condemn this act. ... Sir, before his Excellency the President took over the reigns of power in this country, we used to have very unclear stand on the Middle-East issue. In most cases when it came to the question of voting in the United Nations General Assembly, we used to lie low or abstain but now it is quite clear that now we are able to deal with most of those countries of the Middle-East. Our stand goes together with that one of the Organization of African Unity and other countries of the world. This I think has helped us a great deal and particularly the minister of foreign-affairs who is now able to stand up with confidence whenever he is dealing with other countries" (National Assembly

This position was supported by Hon. Joseph Kamotho (Kangema) who noted that the number of trips that the president had made abroad since taking power had definitely shaped Kenya's foreign-policy which had never been defined before. According to Hon. Kamotho, in the past, Hon. members in the House used to talk a lot about issues of international policies connected with the nation-state of Kenya. The image of Kenya in Africa he said was terribly bad because the country's leadership then was seen as being biased towards the west. The situation however changed when President Moi took over since he had really shaped Kenya's international policy.

President Moi made efforts time and again to enlighten members of the National Assembly and the country as a whole, on the nature of Kenya's foreign-policy. For instance, President Moi like his predecessor Mzee Kenyatta asserted that Kenya wasn't intending to abandon the policy of non-alignment. Thus on 9<sup>th</sup> March 1982, in his presidential address to the National Assembly, he stated:

"... Furthermore, I know I am speaking on behalf of all of you and all Kenyans except a few disgruntle individuals, when I stress that we have no intention of abandoning our policy of non-alignment or losing any of our independence in planning and executing all our affairs. I am making this rather obvious remark in order to stress that we do not want and certainly do not need any of the cheap slogans and the outworn dialectic employed in attempts to get Kenya to become a kind of satellite of some foreign-power. Mr. Speaker, on this important occasion I want to assure you all, and the other Kenyans outside this House, that for so long as I hold this present office, which will be entirely for the people to determine, such

attempts will never succeed" (National Assembly Official Report, Vol. LVII, 1982, Col. 4).

Despite these assurances from the president that Kenya was a non-aligned country, other activities were taking place which suggested otherwise. The central activity which caught the eye of members of parliament was the establishment of a military base in Kenya by the United States of America.

Due to the contradiction in the pronounced policy and the actual practise that was taking place Hon. Mwashengu wa Mwachofi raised a query in the House on 22<sup>nd</sup> April 1981. Hon. Mwachofi asked the minister of state in the office of the president, that since Kenya had availed military facilities to the USA, the minister should fully report to the House what the agreement was all about in the following order: (a) the content of the agreement (b) the commitment on the part of each of the countries, and what benefits Kenya was to get from the agreement.

Replying on behalf of the government Hon. Justus Ole Tipis who was the Assistant Minister of State in the President's office said that it was not in the national interest to discuss openly arrangements made between Kenya and another friendly government on defence and security matters. Hon. Ole-Tipis further told the House that arrangements laid between the Government of Kenya and other friendly governments, including the United States of America were designed to ensure that Kenya maintained her territorial integrity and independence. Kenya security arrangements he noted, would be severely compromised and exposed if such matters were openly discussed in parliament or elsewhere.

But this argument by Hon. Ole Tipis didn't go down well with some members of parliament. Hon. Wacira, for example, noted that the Americans were supplying arms to Kenya's enemies namely Somalia, while at the same time Kenya was also friendly to the Americans and needed some assistance from them. He thus wanted the assistant minister to inform the House whether Kenya's security would be jeopardized in view of the fact that arms were being supplied to Somalia. Hon. Mwachofi also observed further that what was being regarded as secret and confidential in Kenya was readily available to people in the United States of America.

Hon. Ole Tipis remained adamant and said that it was in the interest of the nation that no further supplementary questions should be entertained and as such he wasn't going to add anything to the answer he had already given (The National Assembly Official Report, Vol. LIV 1981, Cl. 1261). From Hon. Ole Tipis answer to MPs queries, it was clear that the government wasn't ready to account for the presence of a USA military base in the country. This stand it seemed wasn't taken lightly by the MPs. Thus one year later on 30<sup>th</sup> March 1982 Hon. Mwachofi was on the floor again to seek clarification on the Kenya/United States agreement on military facilities.

Hon. Mwachofi reminded the House that the Charter of the Organization for African Unity (OAU) didn't provide for member countries to allow foreign-countries to have military bases in the said member countries. Hon. Mwachofi noted that it was unbecoming for Kenya which was a member state to violate the OAU Charter. Furthermore this violation of the OAU Charter

didn't augur well for the country since President Moi of Kenya was the then Chairman of OAU. Arising from this, Hon. Mwachofi requested the Kenya Government to break the agreement with the U.S. Government over the military facilities.

The government once more responded to the suggestion through the Assistant Minister, Office of the President, Hon. Ole Tipis. Hon. Ole Tipis as in the previous year noted that security matters involving the state couldn't be talked about openly. Doing so he said, would be a security risk to the nation. This answer by Hon. Ole Tipis suggested that on security matters, the executive didn't expect parliament to play a role. Hon. Mwachofi however didn't agree with this position. According to Hon. Mwachofi, bilateral issues involving Kenya with another country was an important matter to parliament which was the supreme-authority in the land. Furthermore, he noted that even before the agreement was reached, it should have been brought to the House first for parliament's consent.

Hon. Mwachofi's view was supported by Hon. James Orengo (Ugenya). Hon. Orengo told the House that when Kenya gained independence, the first act was to close down British military bases which were in Kahawa and other places, so as to confirm that it was a truly independent nation. To this effect Hon. Orengo said:

"... knowing that the intention of super powers now is to make sure that wars are not fought on their own land but wars should be fought on other lands, so that they do not lose their lives, would the assistant minister still insist that the presence of a foreign-military base in our country is for the security of our nation or is it for the security of the Americans".

The reply from Hon. Ole Tipis was a negative one, since he dismissed Hon. Orengo's observations as merely a dream. In the final analysis Mr. Ole Tipis said that he wasn't going to add anything to the answer he had already given (The National Assembly Official Report, Vol. LVII, 1982, Col. 503-504). The government at the end of the day didn't account for its action on the military bases to parliament. One can therefore rightly observe that to some extent the country was aligned to the United States of America (U.S.A.).

In this section, it is evident that from the time Moi ascended to power in the last quarter of 1978 upto 1982 when a constitutional amendment to introduce Section 2A was enacted, no substantive motion on foreign-policy was brought up before the National Assembly; instead issues on foreign affairs which were discussed in the House were through questions or during open debates.

#### **4.3 THE DE-JURE ONE-PARTY SYSTEM AND EXECUTIVE SUPREMACY: 1982-1993**

After the constitutional amendment that made Kenya a de-jure one-party state, there was only one substantive motion relating to foreign-affair that was debated in parliament between 1982 and 1993. Besides, the motion cannot be said to have been very significant. The failure of parliament to debate foreign-policy issues during such a long period of time is itself an indication of how the role of the House on foreign affairs had really declined.

The motion for the adjournment under Standing Order No. 20 was moved by Hon. Aloo Aringo on 17<sup>th</sup> November 1983. The motion dwelt on the agreement on the Reopening of

Kenya/Tanzania border. While moving the motion. Hon. Aringo said thus:

"That this House records its thanks to His Excellency President Daniel Arap Moi for the promotion of co-operation between Kenya, Tanzania and Uganda; and requests His Excellency the President to convey the thanks of this House to the Presidents of Tanzania and of Uganda for signing the Arusha Settlement" (HRP, Vol. LXI, 1983, Col. 347).

The motion was seconded by the then Minister for Energy and Regional Development Hon. Nicholas Biwott. Hon. Biwott observed that in the motion the role of the President was very important because without him, members would not have had an opportunity to discuss the motion. The motion was supported by a number of MPs, including Hons. Oluoch Kanindo, Khalif, Mwakileo, Martin Shikuku, Paul Ngei, Fred Omido, Salatt and Mwidau and Mwai Kibaki.

While supporting the motion, Hon. Mwai Kibaki, the then Vice-President and Minister for Home Affairs thanked Hon. Aringo for responding to the needs of the moment by promptly taking the motion to parliament (HANSARD Report, Vol. LXI, 1983, Col. 354-374). As can be seen the motion wasn't brought to parliament to make the government enforce the issue in question, rather it was brought to parliament, to give the members a chance to glorify the president's action or to approve what the executive was already in the process of implementing.

It is appropriate to observe that the constitutional amendment of 1982 which made Kenya a de-jure one party state provided Moi with an avenue to control parliament. Political parties can influence legislature behaviour in a variety of

ways. Authoritarian political parties for example, control the actions of their legislators through their national party apparatus (Nelson, 1982). It was within those auspices that Moi sought to achieve greater loyalty from the ruling party KANU, and furthermore eliminate any opposition even from within parliament. Moi embarked on disciplinary measures on dissenting voices within KANU. Such disciplinary measures included suspension, which could result with expulsion. Moi's action to suspend or expel members were lauded in parliament by senior cabinet ministers thus making it appear that the actions of the president had full blessings of his cabinet ministers, and members of the August House. For instance, on 20<sup>th</sup> September 1984, Hon. Mwai Kibaki the then Vice-President stated in parliament:

"... that we as the parliament, of which the president is a member, are totally loyal to him; and that it is for that reason that we welcome the action taken to discipline, by expelling from the party, all those whose behaviour has brought some disrepute to the status of KANU members. This is so that any other such people will in future know that KANU is prepared to take firm and strong action. I am sure that we all agreed that we are loyal to the president both in his two capacities, that is Head of State, Head of Government and Head of KANU" (The National Assembly Official Report; Vol. LXIII, 1984, Col. 3685).

This position was supported by another senior Cabinet Minister, Hon. Robert Ouko, who praised the KANU executive committee led by President Moi for the courage, honesty and sincerity in expelling those whom he called self-seekers.

These developments seemed to have rendered the position of parliament vis-a-vis the executive (presidency) ambiguous. On paper it was clear that parliament was the supreme-

authority in the land, however in practice it was obvious that the presidency and the ruling party KANU had more with much powers than the National Assembly. These changes were however, being noticed by parliamentarians. Thus, on 21<sup>st</sup> March 1984 Hon. Peter Okondo (Busia South) told the House that it was only parliament that had been able to crack some of the very knatty points that had been bothering the nation. He thus said:

"We must retain that responsibility, we must retain that aspect as leaders of this nation. That cannot be taken away from us because if we do take it away from us ourselves, then we will have what you would call an emasculated parliament, a rubber stamp, which only stamps what other authorities have done. And that is not going to be the future of this House" (The National Assembly Official Report, Vol. LXII, 1984, Col. 18).

However such intermittent observations which sought to put the authority of the House in place didn't deter the president and the ruling party KANU, in their quest to overshadow the National Assembly. As already observed in chapter two, there were moves in mid 1980's to strengthen the party for instance the 1985 re-organization of the party secretariat which involved creating a number of posts and appointing fairly well qualified and experienced personnel to fill them. The idea was however abandoned six years later. The other area where change was beginning to be noticed was in the working of the Disciplinary Committee, appointed by the president in Dec. 1985. It was disbanded two years later, after being accused of over-reaching itself and trying to surpass the president's authority.

The president himself while acknowledging the authority of parliament, stressed that there must be party discipline. For example, on 3<sup>rd</sup> March 1987, he told the members of the National Assembly that throughout their participation in the business of the august House, they should always bear in mind that they were members of the ruling party KANU - a mass movement that was entrusted with the heavy responsibility of guiding the nation in its development process. He said that this reflection would no doubt serve as a reminder to all Honorable members that in order for the party to offer the required leadership, it was vital for the party to be a disciplined organization. President Moi noted:

"You are all members of this mass movement, whose government has declared this to be a year of discipline. You are members of the highest authority in the land according to our cherished constitution. I would like therefore to urge you all to observe fully all the standing orders of the House, the KANU code of discipline and all other rules and regulations which govern the conduct of those of you who undertake important responsibilities in various institutions" (National Assembly Official Report, Vol. LXXI, 1987, Col. 6-7).

From this statement, it is apparent that Moi was out to use the party to obtain loyalty within parliament. Moi's other way of controlling parliament and which rendered the institution ineffective was his intervention in the electoral process. During the Kenyatta era anyone wishing to stand for elections could do so, with the exception of former KPU officials.<sup>5</sup> National elections were relatively fair and votes turn-out was generally high. The situation began to change in

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<sup>5</sup> Participation was also limited to those who refrained from openly challenging the Kenyatta regime.

1983. Although electoral procedures remained the same, the president became actively interested in the outcomes. In some constituencies candidates were prevented from running by being persuaded to withdraw or declared ineligible by KANU.<sup>6</sup> In others the president silently endorsed the candidates he favoured. For example, Simeon Nyachae who was popular and was tipped to win the Nyaribari Chache seat was denied to contest. This was intended to favour Andrew Omanga.

To achieve greater control over the electoral process, the president announced several controversial changes of election procedure in 1986. The most controversial change was the introduction of a voting system. This electoral method required that voters line up at the polling station behind the agents of candidates holding pictures of each contestant. Although queuing was supposed to be used only at the first stage of elections for the National Assembly to determine the three finalists for whom the winner could be elected through secret ballot, the fear and intimidation that characterized the whole procedure reduced votes turn-out significantly. In the 1988 elections, when the procedure was first used, since independence, only 23 per cent of the registered voters voted, despite too much publicity by KANU for people to turn out to vote. The number of formal complaints of fraud filed with the election commission after the election was also the highest in Kenya's history (Barkan, 1992, 182).

A second controversial procedure of the queue voting

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<sup>6</sup> For example, the then Chairman of Narok County Council and now Minister, William Ole Ntimama who was widely expected to defeat the minister with responsibility for internal security, Mr. Justus Ole Tipis.

system which specify that candidates receiving 70 per cent of the vote at the queuing stage would be declared the winner also contributed to the widespread view that many of the elections were rigged. The queuing voting system and the 70 per cent rule which accompanied it, were, however, abandoned with the advent of multi-partyism.

The changes in the electoral procedure, coupled with the president's use of the KANU governing committee to discipline the so called errant members, meant that the president's authority and actions was rarely questioned in parliament. It was under these circumstances that the second and the final motion on foreign affairs, during our study period, was brought into the National Assembly.

The Bill touching on foreign affairs to be tabled in the National Assembly during this period followed President Moi's comments on 3<sup>rd</sup> March 1987 during the official opening of the House, which touched on East African Community. Moi made the following remarks:

"... Mr. Speaker, following the break-up of the East African Community, the three governments have entered into discussions to establish useful forms of co-operation. The 1967 treaty or East African Co-operation formally ceased to exist on the 14<sup>th</sup> of May 1984, when the Presidents of Tanzania and Uganda and myself signed the East African Community Mediation Agreement. The remaining issues of the mediation exercise were concluded at the last meeting of ministers from the three countries. The pension funds of the former East African Community, which had been invested for the crown agents, have now been remitted to the partner states in proportion to each country's pension liability. I am glad to inform honorable members of this House that Kenya's share of 19 million pounds sterling has already been received by the Central Bank. The East African

Mediation Agreement Bill will be before the House seeking to give legal effect to the Mediation Agreement of 14<sup>th</sup> May, 1984, repeal the treaty of East African co-operation Act. Honorable members of this House will be asked to give legal effect to the provisions of the agreement establishing Eastern and Southern African Management Institute with the conclusion of those legal and financial arrangements the three sister states can continue with renewed determination to negotiate for new forms of regional co-operation (National Assembly Official Report, Vol. LXXI, 1987, Col. 6).

Three months later on 9<sup>th</sup> June 1987, the East African Community Mediation Agreement Bill was read in parliament for the second time. The then Minister for Planning and National Development Hon. Andrew Omanga enlightened the House on the activities of the defunct East African Community. The East African Community, he said, used to administer certain common services such as railways, post and telecommunications, the East African Airways, Civil Aviation and many others. Regrettably, however, in 1977, the East African Community services collapsed. It was then necessary thereafter to find a way of dividing up the assets of the East African Community and to find a way of dealing with issues that related to the situation, when the three East African governments used to have a corporation in the sense of the East African Community.

Arising from these developments it became necessary to appoint a mediator, and a Doctor Victor Ulbricht was appointed to look into the whole question of mediation. Ulbricht's task was to find out how the assets and liabilities of the East African Community could be apportioned between the three East African Governments. The Ulbricht report indicated that as at 1977, the East African Community assets were valued at 1.432

million US dollars and these were held at that particular time in the ratio of 52 per cent in Kenya, 32 per cent in Tanzania and 13 per cent in Uganda. After a lot of negotiations, the Mediation Agreement of 1984 established that the apportionment of the assets should be in the ratio of Kenya having 42 per cent, Tanzania 32 per cent and Uganda 26 per cent.

According to Mr. Omanga, the Bill before the House was meant to give effect to the mediation agreement which had already been signed by the three heads of states of Kenya, Uganda and Tanzania and also give legal effect to matters relating to the issuing of the mediation agreement. To that effect, Mr. Omanga said:

"In doing so, we will be taking care of the situation in so far as those assets that now remain in Kenya are concerned. Those assets will now properly and legally be known to belong to Kenya and as in the case of the Bill which has already been read a second time, Tanzania has already passed this required legislation in their parliament and we are required to do the same and Uganda will also be required to do the same (The National Assembly Official Report, Vol. LXXII, 1987, Col. 33).

From the above statement, it is evident that the mediation agreement was purely arrived at by the three heads of state. Parliament was only being called to give legal status to the decisions of the three heads of state.

The inability of parliament to be a determinant institution in this matter was put even more adequately by the then legal-adviser to the government, Attorney-General Mathew Muli. According to Hon. Muli the main object of the Bill was to give effect to the East African Community Mediation Agreement which was signed at Arusha on 14<sup>th</sup> May 1984 by the

three presidents. Hon. Muli told the House that the agreement also provided for the abrogation of the treaty for East African co-operation which was signed on 6<sup>th</sup> June 1967 between the three government (HANSARD Report, Vol. LXXII, 1987, Col. 35). It can therefore be observed correctly that parliament had become a mere "rubber stamp" which was simply used to ratify decisions which had been taken elsewhere.

#### **4.4 THE SECOND "LIBERATION": 1990-1993:**

Towards the end of 1989, critics of the Kenyan Government began to voice their demand for a more liberal political system in the country. Having observed the collapse of communist regimes at the pressure of the populace, the government critics began to openly demand change. On January 1<sup>st</sup>, 1990, Reverend Timothy Njoya delivered a highly critical sermon at St. Andrews Church, Nairobi, likening the one party system in Kenya with the collapsing monolithic communist regimes. He called for the repeal of Section 2A of the Constitution which prohibited the formation of more political parties in the country. The call was met with a lot of criticism from the KANU government, but it received a resounding support from other sections of the Kenya society led by the Law Society of Kenya, NCKK and individual leaders such as Oginga Odinga, Charles Rubia and Kenneth Matiba (Wanjohi, 1993). A movement for the restoration of multi-party democracy had thus began. The movement came to be known as the second liberation.

Through a combination of internal and external political pressure, coupled with political and economic conditionality of aid, the KANU government was forced to abandon its resistance to change and legalize the existence of other political parties other than KANU in Kenya. The repeal of

Section 2A in December 1991 was not a KANU initiative out of sensitivity to the need for a more liberal and democratic system, rather it was an imperative fixed by internal and external forces as a condition for future co-operation with political authorities in the country.

According to Katete Orwa (1992) when one observes Kenya's relations with western countries during the Kenyatta and Moi era one observes a slight difference. During the reign of Kenyatta, Kenya was a show case of a political and economic system that the west wanted to see in most third world countries. Due mainly to the intensity of the cold war, Kenya's strategic geographical position in the East/West rivalry, western countries never took issues with the Kenyatta Government over detention of the regime's political opponents. Similarly, the west could not raise question about a single party political system. The position remained the same during the first decade of Moi's tenure.

But, with the collapse of communism in the former Soviet-Union and the decline of its power many western countries have increasingly questioned political and economic developments in Kenya. This has at times led to uneasy relations between the Moi Government and Kenya's closest western allies. Whereas the `Kenyatta regime' blamed "communists" for its domestic political problems, the Moi regimes has since 1988 accused western countries, especially the Nordic States. Verbal conflicts with the American Embassy in Nairobi since 1989 has been unprecedented in the history of Kenya-America relations. During the Kenyatta regime, it was unthinkable that Kenya would break diplomatic relations with a Western European country over the latter's policy towards Kenya's political system. But in 1990 Kenya broke diplomatic relations with Norway alleging that Norway was meddling in Kenya's internal

affairs.

Verbal conflicts with the American Embassy in Nairobi were so intense that they also took centre stage in the National Assembly. For the better part of early 1991, members of parliament openly criticized the United States of America (USA) for the activities of its ambassador to Kenya Mr. Smith Hempstone. However, while most members unilaterally blamed the US Government, other MPs for example, Hon. Lengees observed that before Mr. Hempstone came to the country, there had been no interference with the government's policies from the United States (HANSARD Report, Vol. LXXXII, 1991, pp. I.1 to I.2).

The frequent complaints by MPs about the activities of the US ambassador to Kenya compelled the then Minister of Foreign Affairs Hon. Ndolo Ayah to take the floor and enlighten members on the government's stand on diplomats. This was on 26<sup>th</sup> March 1991. Hon. Ayah told the House that there were regulations under normal diplomatic rules as to how any diplomat accredited to Kenya could move about the country. Hon. Ayah stated:

"Normally, what happens if a diplomat wants to get out of station, which means Nairobi to visit province or district, he will inform us and we then liaise with the office of the president for security reasons, to make sure that we also know what the diplomat is going to do. The itinerary is approved by the two departments of government, so that we are aware of what the diplomat is doing. So we have some control" (The National Assembly Hansard, Vol. LXXXII pp. C.3).

The ministers statement however didn't satisfy some members of the House. Hon. Kubo, for example, observed that what the minister should tell the House was whether ambassadors were allowed to challenge government decisions, policies and statements since this was what the Americans were

doing.

In reply Hon. Ayah told the House that diplomats were not allowed to challenge government policies in public. They could as friends of Kenya point out what their governments expected from their Kenyan counterparts. This, he said, was the normal practise. But what was not expected was for an ambassador or diplomat to publicly challenge the Kenya Government's action or policy. According to Hon. Ayah, the diplomats were allowed by the conventions to converse with their Kenyan counterparts and point out what their governments thought about the activities of the Kenyan Government. While the conventions were quite clear, Hon. Ayah noted that there were all kinds of bad people, who would because of bad manners, bad training or ill-intentions and so, go out of their way to do the right thing in the wrong way. Under these circumstances the Kenya Government usually called them in and reprimanded them. But if it goes beyond tolerance the Kenya Government normally asked them to leave or ask their governments to recall them home (The National Assembly Hansard, Vol. LXXXII, 1991, pp. C.3 - D.4).

As already observed, Kenya broke diplomatic relations with Norway in 1990 alleging that Norway was meddling in Kenya's internal affairs. The decision was taken by the Kenyan executive unilaterally, and parliament wasn't given a chance to debate the matter before the decision was taken. But this didn't stop members of parliament from demanding more details about the events. This was a significant development in the sense that prior to the repeal of Section 2A in 1991, it was nearly impossible for MPs to question the action of the

executive during the de-jure one party state. The move to a multi-party system therefore brought about tolerance within the National Assembly. Thus on 14<sup>th</sup> April 1993 Hon. Gichuki asked the Minister for Foreign-Affairs and International Co-operation the following questions:

- (a) What reasons led to severance of diplomatic relations between the Republic of Kenya and Norway; and
- (b) What steps he is taking to restore diplomatic relations between the two countries.

The above question was answered by the Assistant Minister for Foreign-Affairs and International Co-operation Dr. Hezron Manduku. In answer to part (a) of the question, Dr. Manduku noted that the establishment and maintenance of diplomatic relations between states entailed certain requirements. Some of the cardinal and universal principles of international law as enshrined in the Charter of the United Nations for the sustenance of diplomatic relations included reciprocal recognition and respect for each other state's sovereignty and mutual obligation to refrain from interference in international affairs of each other's state.

Dr. Manduku told the House further, that in the immediate period preceding October 1990 when Kenya severed diplomatic relations with Norway, Norway was harbouring a number of Kenyans hostile to the government. The same Kenyans were engaged in subversive activities geared towards the unlawful downfall of the constitutionally elected Government of Kenya. According to Dr. Manduku, this group of Kenyans became a source of anti-Kenya Government propaganda, which was widely and openly orchestrated by the Norwegian media, leading to

strained relations between the two countries. Attempts by the government to diffuse this situation, including through the then established diplomatic channel proved futile.

Dr. Manduku informed the House that against the government's expectations, Norway took up the false anti-Kenya government propaganda and used it as a basis for its relations with Kenya. The Government of Norway used the same basis to openly interfere with the internal affairs of Kenya. As an example Dr. Manduku gave the case of the former legislator Koigi Wamwere who initially went into exile in Norway. He told the House that despite the government assurance that Koigi's case would be dealt with in accordance with the Laws of Kenya, the Norwegian ambassador on instructions from his government, insisted in directly going to the courts contrary to acceptable diplomatic practise.

Dr. Manduku noted that apart from the foregoing, the Norwegian Government even made demands that the Kenya Government should release Koigi to Norwegian authorities. It was in the light of these circumstances that the government considered that the basis for the maintenance of normal diplomatic relations between the Government of Kenya and Norway was no longer existent. Accordingly, the government severed diplomatic relations with Norway in October 1990.

In answer to part (b) of the same question Dr. Manduku informed the House that initiatives were being taken through friendly governments which would hopefully lead to amicable discussions with the Government of Norway on the resumption and normalization of relations between the two countries (The National Assembly Hansard, Vol. 1, 1993, pp. C.1). Once again

it was evident that an important decision touching on national interest of the country had been taken outside parliament. Parliament in this case could only seek an explanation on a matter it had been denied opportunity to deliberate, as should have been the case.

#### **4.5 CONCLUSION**

In this chapter, it is quite evident that during his era, especially during the de-jure one party system President Moi deliberately emasculated parliament. While this emasculation was generally meant to consolidate Moi's central role-playing in the governance of the country, it also served to render parliament ineffective in the conduct of foreign-affairs in the country. Furthermore Moi chose to make foreign-policy directly his responsibility and he went about his duties with vigour not giving the members of parliament, most of whom owed the seats to his goodwill, any chance to take part in the decision-making process. Hence as during the Kenyatta era, the provision of separation of powers was not adhered to, rather it was even interfered with more extensively.

Evidence adduced in this chapter also show that several attempts were made to make the ruling party KANU stronger than the institution of parliament. KANU became assertive, insisting that henceforth the supremacy of parliament could have meaning only as an expression of the supremacy of the president. The end result was that parliamentarians became apprehensive and could not debate national issues freely.

Finally, the chapter looked at the second liberation period upto 1993. The short period covered witnessed some degree of tolerance from the ruling party. However it cannot be said conclusively that this will be the trend in the succeeding years.

## CHAPTER FIVE

### FACTORS RESPONSIBLE FOR THE WEAKNESS OF PARLIAMENT IN THE CONDUCT OF FOREIGN POLICY ISSUES IN KENYA

#### 5.1 INTRODUCTION

Parliament as the collective expression of the citizens of a country is expected to be an important player in foreign affairs. Parliament is entrusted with the duty to make laws as well as make it possible for the Government in power to raise taxes and authorize its expenditure. Arising from this, it is evident that in liberal democracies a country's membership to any international organization is partially controlled by Parliaments. This is because it is the parliament which approves allocation of funds to pay for membership fees and annual subscriptions, to such international organizations. The power of fiscal control which is enjoyed by all parliaments in liberal democracies, therefore, makes the institution a very important actor in world affairs.

Kenya has had a parliament since its independence in 1963. This parliament has functioned uninterrupted throughout the post colonial period, save for the periods during recess and at the end of each parliamentary term or session. But whereas, the country has had an operational parliament throughout the post-colonial period, its role in foreign policy formulation progressively declined during the entire period under study. There are a number of factors which have been responsible for the declining role of the parliament in foreign policy formulation in Kenya. These factors are: Executive dominance over other branches of government,

including the parliament, non-implementation of motions, local orientation of the M.Ps, insubordination of parliament to the Ruling Party, lack of resources and technical information and the neglect of parliament by the government.

## **5.2 EXECUTIVE DOMINANCE IN THE CONDUCT OF FOREIGN-AFFAIRS**

All over the world, there is an assumption that diplomatic relations are very sensitive such that they should not be subjected to public debates the way you do with domestic affairs. Governments prefer to handle such matters through diplomatic channels. Personnel who man those diplomatic channels are career diplomats who have had very long training in Diplomacy. However, Parliament's modelled on the West-Minister model, where the majority party forms the Government usually have provisions which entitles the opposition parties to question government policy on foreign-affairs. Since the opposition parties tend to be in the minority and sometimes non-existent, a government can always bull-doze a foreign-policy it wants and proceed to pursue it accordingly. This has been the case in Kenya.

As early as 1966 it became evident that the executive wasn't ready to open itself up to criticism. For instance there was an announcement on June 23rd, 1966, that henceforth the President would relinquish his responsibility as leader of Government Business in the House. Subsequently, the assignment of that responsibility was passed on to a Minister of State in the President's Office (House of Representative Debate Vol.VII Part III, 1966). In January 1968, the Minister of State was replaced in that position by the Vice-President

(East African Standard, Jan. 5, 1968). This case therefore illustrates the divergence between theory and practice of Kenya's Constitution. Under the constitution the president as a member of the National Assembly is required like any other member to attend and participate in the proceedings of the House. However, in practice he never does. This has therefore meant that the President can't be seriously challenged to account for the omissions of his government by the representatives of the people.

Likewise in the year 1968 it became evident that members of Parliament who were in the cabinet couldn't air their personal views on national issues be they domestic or international. This position ensures that the House doesn't act in unanimity as one body, rather it ends up being divided between the Government composed of Cabinet Ministers and the backbenchers in case of a one party or the ruling party and the opposition in case of a multi-party system. The inability of Cabinet Ministers to air their personal views was justified on the need to have collective responsibility among government ministers. It was none other than the then Hon Vice-President and Minister for Home-Affairs Hon. Arap Moi who explained to the House what collective responsibility entailed.

Hon Arap Moi told the House that the President had given instructions to Ministers and Assistant Ministers to the effect that they could not wear two hats at the same time. The implication Hon Moi said was that they must speak for the Government and not themselves and that it was a ruling from the President that all Ministers and Assistant Ministers must speak in line with Government policy. Hon. Moi said:-

".... upon his appointment, responsibility is conferred on a Minister or an Assistant Minister and this suggests that he must adhere to certain things without criticizing the Government. If he wants to resign his post in the Government then he would be free to criticize". (Hansard Report, Vol.XIV, 1968 Col. 193).

The executive has also interfered with Parliament's function through the appointment of nominated members. Originally the 12 nominated members of Parliament were elected by the M.P's acting as an electoral college. The idea was to enable Parliament to be nationalistic so that people who were unrepresented through the elected members could find an opportunity to be represented. This was the original idea that the framers of the constitution had in mind. However, as the years went by and Parliament became more vocal, Kenyatta through various manipulations, amended the Constitution in 1968 and bestowed the right of nominating members of Parliament to the President of the country. Since then both Kenyatta and Moi made sure that they used that power to nominate persons who were loyal to them, and who they were sure would always support them.

The executive also does control a lot of matters that should be in Parliament's domain. This is due to the fact that we copied the British tradition while it wasn't suitable for Kenyans. A majority of Kenyans do not understand the way a republic should function, thus the supremacy of Parliament is not clearly understood. This is compounded by the fact that in Kenya the Head of State is also the head of the Party as well as the head of several other institutions to the extent that Parliament has become an appendage of the

executive. The situation becomes further aggravated in a Multi-party system whereby the President while being a competitor still appoints the electoral commission which has direct loyalty to him.

The other change which enhanced the powers of the Executive took place in 1969. This was the date when a new Constitution incorporating all changes since 1964 and making further changes upon the independence constitution was proposed and enacted. Under the new changes the President was empowered to appoint members of the Electoral Commission (Act No.50 of 1969, S.41). The Independence Constitution had envisaged a situation whereby the electoral commission would act as one of the checks on executive power. Among the duties of the electoral commission, is the supervision of elections and determination of boundaries of parliamentary constituencies.

There were two implications in the changes as they relate to the electoral commission. First, the executive is entrusted with discretionary powers in the manner of constituting the very instrument which organizes the representational basis of the legislature. Second, the executive has the power to sanction delegation of the commission's functions to public officers or authorities. As all public officers hold office at the pleasure of the president and are in some cases appointed by him, it appears that the person to whom such functions would be delegated would be under a fairly strong duty of loyalty to his appointor (Ojwang 1975, 131). Hence the electoral commission can hardly be visualized as a body independent of the

executive arm of government.

Another change in the constitution which further strengthened the executive vis-a-vis the legislature, was made in 1975. Before the amendment, a candidate for elections found guilty of an election offence by a court of law was barred from contesting a parliamentary seat, until after the expiry of five years, commencing from the date of verdict (Cap. 7, Laws of Kenya s.6). The amendment No.2 Act of 1975 altered this position by vesting the President in his prerogative of mercy, power to pardon any person found guilty of an offence (Amendment to s. 27 of the 1969 Constitution). The probable effect of this was interference with the independence of the MPs. The MPs are not likely to seek confrontation with the President since the President holds power to pardon once an MP commits an offence. Moreover, he holds power of reprieve in case an MP loses his seat as a result of absenteeism from Parliament without the permission of the speaker.

The 1982 constitutional amendment which made Kenya a one-party state by law was a further manifestation of the need by the executive to solidify its position. The result was that the President of the Party also automatically became the President of the nation. As shall be seen in the next section, this meant that divergent views contrary to those of the head of state, wouldn't be entertained.

The most salient aspect of virtually all these amendments is the extent to which they widened the powers of the executive at the expense of other organs of the government. Besides the amendments, the Constitution of Kenya also gives

the President wide legislative powers. This is illustrated by section 30 of the Constitution which vests the legislative power of the Republic of Kenya in the Parliament, which consists of the President and the national assembly. In the exercise of this functions as the head of state, the President is empowered under Section 52 of the Constitution to address the National Assembly at any time he thinks fit to do so. In the exercise of his functions as the head of the government and as a member of the National Assembly, the President is empowered under the same Section to attend all the meetings of the Assembly. He also takes part in all the proceedings and votes on any question before the National Assembly. The point to note here is the way the occupant of the Office of the President enjoys wide power vis-a-vis the rest of the members of Parliament and over Parliament itself. Unlike the rest of the members of the Parliament who are constitutionally bound to attend the National Assembly's sessions, the President's attendance is by right. He can choose to or not exercise that right.

The Constitution also gives the President powers which, no doubt, makes the occupant of the office appear to be standing above Parliament. The President of Kenya is empowered under Sections 58(1) and 59(1) and (2) to summon, prorogue and dissolve Parliament. The President prorogues Parliament by issuing a proclamation in the official Kenya Gazette, until he summons it again through the same gazette. The impact of this is that it is at the President's pleasure to decide when sessions of Parliament commences and ends. The powers of prorogation and dissolution are a major source of

strength for the President and his government. The MPs will no doubt have to take these powers into account when they criticize the government since the President could by dissolution, force them to go back to the electorate and defend their seats, with all the uncertainties involved (Ojwang 1975, 133). This wide constitutional powers put Parliament's existence at the mercy of the President. However the President is expected to weigh these powers with political expediency.

This enhanced role of the executive therefore undermines the supremacy of the legislature in exercising its role in the formulation of policy. The growth of executive power has therefore ensured that the National Assembly cannot live-up to the control functions, it was designed to perform. The provision on separation of powers has therefore been abused over the years.

### **5.3 NON-IMPLEMENTATION OF MOTIONS**

The non-implementation of motions has been one of the most difficult hurdles which the National Assembly in Kenya has faced in its quest to ensure that the policies it approves are implemented. The executive has been reluctant to implement motions passed by the House. For instance, as early as 1966, members of the House had noticed the frequency with which motions passed in the National Assembly were not being implemented. It was in this background that Hon. Kerich moved a motion in Parliament on 8th March 1966 seeking authority to have the motions passed in the House implemented. While moving the motion Hon Kerich had this to say:-

"That in view of the fact that so many motions have been moved in this House, and have not been implemented, this House requires the government to state categorically whether it intends to rule by decree using Parliament as a rubber stamp and a junior partner or set-up Parliamentary Committees to investigate ways and means and advise the Government how to implement such motions". (Hansard Report, Vol.VIII (part 2) 1966, Col.1778-1779).

Hon Kerich's contention was that the government had been taking the members lightly and yet the reality was that the public spoke through Members of the National Assembly. That meant that when the government ignored members motions, it was also ignoring the public.

Hon. Kerich's motion was supported by Hon. Shikuku who said that the Government was actually underrating the authority of the people. This was so because if they did not implement what the House had passed, then they had diluted the importance of the House to almost nothing. Hon. Shikuku said that the House had almost been turned into a debating club. (Hansard Report, Col.VIII (part 2) 1966, Col.1786).

It is worth noting that the above motion was brought to Parliament after similar complaints had gone unheeded. For instance on 9th November 1965 Hon. Justus Ole Tipis had blamed the Cabinet for not implementing the resolutions passed in the House. According to Hon. Ole Tipis this spoilt the relationship of the supremacy of Parliament with that of the executive. Members he said were not in Parliament to be used as a sort of a small debating club:

"We are not coming here to be used as a sort of a small debating club. We are here as legislators and we are here to put our views and the views of those who elected us and it is upto the Government

to implement the resolutions of this Honourable Parliament, if they do not do that, then of course I think they are making a very great mistake which I hope is not deliberate". (Hansard Report Vol. VII, 1965, Col.220).

This problem of non-implementation of motions has also been experienced during Moi's tenure. Five years into Moi's tenure, Hon. Wamalwa Kijana lamented in the House on 21st March 1984 over the non-implementation of motions and stressed that any private members motion brought before the House and accepted by the government or accepted by the House even when the government had opposed them should be implemented. He thus said:

"There have been a lot of questions as to really what is the point of private members' motions if they are going to be either accepted by the government or passed by the House, in spite of government opposition and then nothing happens. It becomes an exercise in futility". (Hansard Report, Vol. LXII, 1984, Col. 18).

Six years later the situation had not changed and this prompted Hon. Mwamzandi on 14th March 1990, to note that when a motion was passed in the House, it was upon the Government to look for ways and means of implementing that motion. This he said had not been the case and Members of Parliament had been worried about the non-implementation of motions and questions raised in the House. Hon. Mwamzandi therefore amongst other members called for the establishment of an implementation committee. But Hon. Nicholas Biwott, who was then deputy leader of Government Business, speaking on behalf of the Government didn't support the establishment of an implementation committee. According to Hon. Biwott if such a committee was established it would be a "witch-hunting

committee". He said that it was better for members to be responsible. (Hansard Report Vol. LXIX. B.3 and F.5). We are of the view that for Parliament to improve its effectiveness, an implementation committee should be formed in the House.

#### **5.4 LACK OF RESOURCES AND TECHNICAL INFORMATION**

Most members of Parliament have also failed to contribute to the formulation of foreign-policy due to a lack of knowledge on foreign-affairs matters. This became evident as early as 1966. For instance, on 23rd February 1966 Hon. Theuri asked the Minister for Foreign-Affairs if he would tell the House why some of the Members of Parliament who were interested in foreign-affairs, were not given a chance to tour with the Minister, or were not allowed during the long recess to be taught foreign-affairs at the Kenya Institute of Administration. The question was answered by the then Assistant Minister for Foreign-Affairs Hon. Robert Matano. In an answer to the first part of the question, Hon. Matano said that it was not possible, nor was it the usual practice for members of Parliament to accompany government Ministers on all occasions. This, he said was because in some instances visits to foreign countries were of a confidential nature, and besides consideration had to be given to the costs for which the Ministry had no provision to cover. And in answer to the second part of the question, Hon. Matano said that the Ministry of Foreign-Affairs didn't have any courses then, on foreign-matters, but could if it was desired, co-operate with the Kenya Institute of Administration in devising a special course for those who were particularly interested in expanding

their knowledge of foreign-affairs. (Hansard Report, Vol.VIII, 1966, Col.1311-1312). This issue was never followed-up.

Legislators also felt that in order for the House to competently handle foreign-matters, there was need to keep them briefed on international issues. This was due to the fact that members were unable to follow-up debates at the United Nations. Arising from this fact Hon. Shikuku said it was necessary for the government to keep the House constantly informed. The situation however didn't change since the government chose to respond only in cases where there was a question raised, or a motion tabled in Parliament.

Besides the lack of technical information, scarcity of financial resources, also has contributed to the weakness of Parliament in Kenya. The lack of adequate financial backing has meant that Parliamentarians in Kenya have been unable to come up with researched papers during debates in the House. This is because they have been unable to employ research assistants who may assist with research on foreign policy matters.

The lack of research work by M.Ps may also be attributed to lack of awareness. In an interview with some principal clerk assistants in the House, it was evident that a average M.P does not consider the lack of research papers a handicap. This means that when a motion is tabled in the House, most M.Ps simply go to the Parliament Library to gather the little data that they can lay their hands on, for debate on the motion. The principal clerk assistants also observed that some M.Ps do not even read newspapers. This, they said was in contrast to M.Ps in the developed world who have press

secretaries who constantly keep them informed of what is happening such that a M.P is at all times on his toes. It is however important to note that press secretaries have not been very necessary in Kenya because the electorate do not consider policies and issues a critical factor for electing a MP.

In an interview with some M.Ps it became evident that the lack of adequate resources was one of the problems, but not the source of all the problems leading to the weakness of the Kenyan Parliament. According to a number of M.P's the main cause of the weakness of Kenyan parliament is the rejection attitude of a majority of M.Ps. A glaring example was the fact that while M.Ps had been complaining that they were being underpaid, the day their salaries were increased by over 100 percent there was no quorum in the House. This occurred during the seventh Parliament in 1994. Some of the M.P's observed that although an effort was being made to provide Parliamentarians with office facilities at Charter Hall, this may not improve the quality of Parliamentarians that we have in the country. This, they said was because the poor quality of Parliamentarians had largely to do with the intellectual mediocrity that permeates the society. Most of the M.P's interviewed asserted that even if an average M.P was given an office, research assistants and press secretaries, it wouldn't have a significant impact if the M.P doesn't have a reading habit. To this extent the interviewed M.Ps said that very few of their colleagues did any meaningful reading of anything. The informant MPs observed that the quality of debate in the National Assembly has remained low because most M.Ps dwell on irrelevances. The position about M.Ps not being keen on

reading is testified to by the fact that for nearly six months that I was conducting my research in the Parliament library only one M.P was present there consistently.

The issue about Hon. Members being ill-equipped to perform their duties effectively was addressed in Parliament on 12th March 1980. The matter was raised by Hon. Wamalwa Kijana. He had this to say:-

"As you probably all know, Government consists of three arms; the executive, the judicature and the legislature. Now when you look at the judiciary, you will find the Members of the Judiciary are very well taken care-of; when you look at the executive, members of the executive are very well taken care-of, provided with transport and so on. However, when you come to look at the backbenchers, in this sense the legislature, they suffer from what I might call 'benign neglect'. Mr. Speaker you find that the backbenchers do not have an office or a house in this town". (Hansard Report, Vol.L11, 1979-1980, Col.202).

Hon. Wamalwa recalled that the President had in his speech of March 6, 1979 given about half the time to the position of Hon. Members of Parliament, and as such Parliament should follow this up to make sure that if members didn't have a decent place to live or sleep in, they would at least have an office where they could sit and gather their thoughts, and be accessible to the people who wanted to see them. This plea by Hon. Wamalwa however went unheeded and members of parliament continued to operate from their private houses and offices.

Besides the lack of adequate resources and negative attitude among a majority of MPs, the lack of interest by the voters in the foreign-policy pursued by Kenya has tended to leave foreign policy in the hands of an elite group of bureaucrats and top business executives. This is mainly

because the voting pattern and election results in Kenya is hardly influenced by the trend of the foreign-policy objective of the Government. Politicians have a penchant for turning to election winning issues. Conversely, issues which do not interest the voters are largely ignored. In an interview with principal clerk assistants in the National Assembly, they were all unanimous that a member of parliament is first and foremost a representative of the people. They also noted that the M.P in Kenya is not developed beyond the infancy stage. The M.P here comes to regard himself as a representative of the people, and hence the watchdog of the public good.

Furthermore, members of Parliament are primarily oriented to local concerns and are only interested in national policy generally as it influences their constituents. For example, during a part of 1965, consistent alignments based not on the backbench - government cleavage, but on differences of opinion on policy emerged as the most significant divisions within Parliament and therefore within KANU. These policy differences consequently moved into the forefront of the debate. One disagreement clearly concerned the allocation of resources. Most members of Parliament were understandably anxious to put the case for their own constituencies as strongly and as frequently as possible. Backbenchers, especially those from poorer areas, feared the neglect of their districts, by comparison with those represented by more senior members of the government (Gertzel 1970, 42).

Cabinet Ministers were seen as enjoying greater opportunities of promoting and satisfying the demands of their own constituencies as compared with ordinary members. The

backbenchers therefore challenged anything that implied neglect of their own areas, in terms of allocation of resources, services and development projects, loans to farmers and traders, and posts in the civil service. Their anxiety on this score led KANU backbenchers on more than one occasion in 1964 to support KADU members who shared the same fears of government neglect to the minority tribes who they represented. Hon. Oduya Oprong (KANU, Teso North), for example, twice supported KADU motions expressing dissatisfaction with the treatment given to the western part of Kenya, from which he came. This neglect of the backward areas which continued in 1965 stimulated criticisms of government policy on the grounds that it did not spread development and economic benefits evenly (Officials Report, HRP, Vol. III, Part II, 1964, Col.2260). Occasional exceptions exist however. This is where an MP had developed stronger national orientations through education, specific professional or technical experience and/or a sustained prominence in political affairs at the national level. But generally MPs see policy in a local context.<sup>7</sup> As such they seek answers to specific questions relating to their areas and not to questions aimed at policy direction (Jeffrey James, 1972:15).

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<sup>7</sup> A research by Jeffrey James done in 1972 confirms this fact. When a random sample of roughly a third of MPs was asked the question, "Are you primarily a law-maker, a spokesman for your constituents, a man elected for his wise decisions and independent of his constituents, or perhaps someone concerned primarily with national rather than local issues 3/4 (76.1%) identified themselves as constituent spokesman, with the remaining (24%) dividing evenly among the remaining alternatives.

Secondly, members of parliament are prevented from actively pursuing the ramifications of specific legislation by their lack of familiarity with the technical aspects of the question, the legislation is focused on. This problem is enhanced further by the technical legal language in which legislation is written. Moreover, the volume of written material that must be read and studied before serious debate can occur is awesome to most MPs. And to complicate this situation further support facilities are not forthcoming. The fact is that research assistants, legislative aides, legal consultants or advisers and secretarial personnel are generally non-existent. Thus an MP is truly on his own as he approaches a piece of legislation for analysis and study.

#### **5.5 INSUBORDINATION OF PARLIAMENT TO THE RULING PARTY**

While the first, second and third Parliaments in Kenya had characteristics of how Parliament in a liberal democracy should operate, the same cannot be said about the fourth, fifth and sixth Parliaments. It was during the fourth Parliament, which also marked Moi's first tenure in office, that the institution began to decline drastically. This period show, the ruling Party KANU asserting its authority in a way that Parliament became subordinated to the party. Thus there began to emerge a lot of party directions in Parliamentary work or activities. For example, the Party started to organize for Parliamentary Group Meetings to be held in advance and decisions would be made smoothly or ratified when it came before the National Assembly. The same scenario increased in the 5th Parliament from 1983-88. But

the Sixth Parliament 1988-1992 perhaps had the most dubious distinction of being the worst Parliament ever in Kenya. It was mostly used as a rubber stamp by the executive arm of the Government. It subordinated itself to the ruling party and the executive. According to an interview with the Principal Clerk Assistant, there was fear even amongst members of the House. This was evidenced by the fact that they were making erroneous decisions in the House and then they would complain later that they didn't have any options. The period also marked the beginning of serious agitation for a Multi-Party System.

The fact that Kenya had a single Party for a long time also meant that during such periods there was very little room to question the authority of the Party in the National Assembly. In any case the ruling Party was dormant and the President chose to use the civil service as a primary source of his rule. However the impact of the ruling party was felt more strongly after the enactment of Section 2A in the Constitution which made Kenya a de-factor one-party state. The enactment of Section 2A was closely followed by the disgraceful removal of Charles Njonjo from his powerful position in 1983 as Minister for Constitutional Affairs. Njonjo was subsequently removed from political activity. Immediately after Njonjo's political exist, Moi called the first General Election to be held under a de-jure one-party system. The September 1983 election gave the first legal mandate for Kenya to be governed by a president under one-party system, thus making the institution practically supreme in the land.

The hardest hit institution by the introduction of section 2A was the National Assembly itself. In 1983, KANU became assertive, insisting that henceforth the supremacy of Parliament could have meaning only as an expression of the supremacy of the ruling Party. What the party didn't state was that KANU itself was an expression of the Supremacy of the President. By 1988, a new political reality had come to be, and the supremacy of the President over all other institutions in the land was complete. This development had a precedent in earlier days of Kenya's history. The colonial governor in Kenya enjoyed supreme power over other institutions, the legislative council being largely an advisory council whose decisions were considered for action if they conformed with the views of the Governor. (Wanjohi 1993). With the advent of Multi-Partyism it is hoped that this anomaly will be rectified.

#### **5.6 THE GOVERNMENT'S NEGLECT OF PARLIAMENT**

According to an interview with the principal clerk assistants, it became evident that successive governments have generally neglected parliament. This has mainly been due to the fact that there hasn't been enough resolve to improve the effectiveness of parliament as an institution. In this respect the government is not solely to blame. For instance the principal clerk assistants noted that M.P's while in the backbenches speak of the need to improve Parliament but when they become Ministers, their tone on such matters change.

The neglect of parliament is so acute that M.Ps don't look official at all in their duties. M.Ps in Kenya lack even

the most basic necessities such as letter heads which would make their position within the state look official. Furthermore the facilities and provisions within the precincts of Parliament are not open for use by a average M.P. The only facility which can be said to be accessible to every M.P is the Parliament library which has a sitting capacity of around 20 people, while the National Assembly has 200 members.

Similarly the staff working in the National Assembly are still appointed by the executive. This means that the executive use the staff and the facilities in Parliament Buildings according to their will. This is contrary to the constitutional provision which requires that parliament be an autonomous institution which can employ and dismiss its employees so as to be independent as opposed to the executive controlling it.

The government has also not been helpful in effecting initiatives in the National Assembly. For example Standing Order No.151 provides for the creation of General Purposes Committees by the National Assembly. Among the many General Purposes Committees, Committee(s) deals with international relations. Unfortunately those General Purposes Committees have been non-functional due to inadequate funds. This is contrary to comparable jurisdictions such as Britain, New Zealand and Australia. In those developed countries, unless in a situation of emergency, all major matters undertaken by government ministers, and also all major matters that require ratification by the government always come before those committees for discussion and approval. Even in an emergency situation, the decision taken still comes to those policy

bodies for ratification.

The determination of the executive to control parliament even with the advent of multi-partyism was evidenced by the Presidential Circular No.1 of 1993 which places the National Assembly under the Office of the President. This means that any question touching on the National Assembly is answered by the Minister of State in the Presidents Office. This has meant therefore that the legislature which is meant to be a check and balance of the executive is subordinated to the same body which it is supposed to check and balance.

## CHAPTER SIX

### CONCLUSIONS AND RECOMMENDATIONS

#### 6.1 CONCLUSIONS:

The central purpose of this study has been to analyze the role of the Kenyan Parliament in foreign-policy making process in Kenya. This role has been examined within the context of separation of powers. The two central questions in our study have been; first, Is the institution of parliament in Kenya vested with real autonomy and therefore has the capability to act as a "check and balance" of the executive? Second, what factors limit the effectiveness of the Kenyan Parliament in foreign-policy making?

In a bid to provide a satisfactory response to these questions, we generated one major and two minor hypotheses. In the major hypothesis we advanced that the capacity of the Kenyan Parliament to contribute meaningfully in foreign-policy formulation is a function of the degree to which the constitutional provision of separation of powers has been undermined over a period of time. In the first minor hypothesis it was advanced that the undermining of the constitutional provision of separation of power over the same period has been dependent on the nature and status of the presidency. And in the second minor hypothesis it was advanced that the more domineering the presidency, the more compromised the role of parliament has been in foreign-policy. From the evidence presented in this thesis it is clear that all our hypotheses have been proven.

The decision-making theory approach in foreign-policy was adopted as the conceptual framework for this study. The decision situation encompasses the total "external setting" and "internal setting" in which nation-states make their choices. Decision-makers of states that are not super-powers or great powers must usually consider their position within a subordinate regional system, as well as dominant bilateral relations. In foreign-policy decision-making there is the question of the temporal psychological context in which the decision arises. This has to take into cognition whether the requirement for reaching a decision comes as a complete surprise or as the result of prior planning. Whether the time available for deliberation and choice is adequate for the demands of the situation and how the decision-makers view the importance of the issues at hand. The parliament of Kenya has been examined within the decision-setting using three models which capture the decision process whether critical or non-critical. Thus our central argument as is captured in this conceptual framework is that in the foreign policy process, parliament is supposed to be one of the institutions involved in the formulation and implementation of foreign-policy decisions in Kenya. In Kenya, the role of parliament in this process has generally been insignificant, especially during the Moi era.

The effective role of parliament in foreign-policy making in Kenya is undermined by a number of factors. These factors include, the executive's dominance in the conduct of foreign-affairs. This is a result of successive constitutional amendments which have widened the powers of the executive at

the expense of other organs of the government. Besides the amendments, the Constitution of Kenya also gives the president wide legislative powers which make the occupant of the office appear to be standing above parliament. The president has power to summon, prorogue and dissolve parliament, powers which put parliaments existence at the mercy of the president. This enhanced role of the executive has undermined the supremacy of the legislature in exercising its role in the formulation of policy. The growth of the executive's power has therefore ensured that the National Assembly cannot live-up to the control function it was designed to perform. This is largely attributed to the fact that the provision of separation of powers has been undermined over the years.

The second factor which has undermined the effective role of parliament in foreign-policy making in Kenya is the non-implementation of motions approved by the National Assembly. This has been one of the most difficult hurdles which the National Assembly in Kenya has faced in its quest to imprint its authority in the formulation and implementation of foreign-policy. Since independence, the executive has been reluctant to implement motions passed in the House. Honourable members felt that for parliament to improve its effectiveness an implementation committee should be formed, a request that the government side in the House turned down.

A third factor is the lack of resources and technical information. Most members of parliament have failed to contribute to the formulation of foreign-policy due to a lack of knowledge in foreign-affairs. A situation which the members acknowledged made them incapable of following up

debates at the United Nations forum. Besides the lack of technical information, scarcity of financial resources also contributed to the weakness of parliament in Kenya. The lack of adequate financial backing has meant that parliamentarians in Kenya have been unable to employ research assistants who may assist by researching on foreign-policy matters. This situation is compounded by the fact that the lack of interest by the majority voters in the foreign-policy pursued by Kenya has tended to leave foreign-policy in the hands of an elite group of bureaucrats and top business executives.

The fourth factor is the insubordination of parliament to the ruling party. This became more evident during the fourth parliament which also marked Moi's first tenure in office. During this period parliament began to decline drastically with the ruling party KANU asserting its authority in a way which made sure that parliament got subordinated to the party. Thus this began to emerge a lot of party directives in parliamentary work or activities especially after Kenya became a de-jure one party state in 1982.

Finally, the fifth factor has been the government's neglect of parliament. Both the Kenyatta and Moi government have generally neglected parliament. This can be mainly attributed to the fact that there hasn't been enough resolve to improve the effectiveness of parliament as an institution. The magnitude of the neglect of parliament is so enormous to an extent that MPs lack basic commodities such as letter heads, coupled with inadequate facilities as well as logistical provisions within the precincts of parliament.

While it is acceptable that the executive should play a leading role in the conduct of foreign-affairs, we feel that parliaments role in the same conduct of foreign-affairs can become effective if the following recommendations are taken into account.

## **6.2 RECOMMENDATIONS:**

In order to strengthen the role of parliament in foreign-policy in Kenya we provide the following recommendations, based on the findings of this study.

- (i) The executive is sometimes conferred legislative power which is traditionally vested in the legislature as per montesquieus doctrine. But when legislative power is temporarily bestowed upon the executive, such grant is deemed a necessity in the modern state and is justified only on the following conditions: first, if there is too much pressure on parliamentary time; when parliament cannot possibly deliberate on all issues pertaining to a legislation. This point is best illustrated when one considers that MPs use the adjournment debate extensively, to raise particular issues and generally to criticize members of the Cabinet. But an adjournment debate, since it is limited to half an hour, normally at the end of a days proceedings, it offers to the MPs only the briefest of opportunities to state their case. Second, if the subject matter requires a high level of speciality, the expertise of which parliament generally lacks to effectively solve the issues. Such technical issues of national importance are better handled by

experts supplied by the executive.

Thus the executive where it has been allocated legislative or judicial powers must submit, in case of the former to parliamentary control and in both cases unless otherwise stated to judicial review. These are the checks and balances; which are supposedly the cornerstones of the doctrine of separation of powers.

(ii) There is need for the establishment of a Parliament resolution committee. This is because the Kenyan Parliament passes many motions and likewise many questions are answered in the affirmative. However there should be a process of follow-up such that Parliament doesn't just become a talking shop. The evidence available showed that while there were no problems in the implementation of motions introduced in the House by the government the same was not the case with private members motions, most of which remained unimplemented. What is desirable at this stage is to make Parliamentary Committees more effective instead of pressuring for resolutions which end up gathering dust.

(iii) There should also be liaison between Parliament and the various ministries, whereby the Committee in charge of a ministry liaises with the civil servants in the said Ministry. Acting from a point of ignorance doesn't auger well for the country.

(iv) The representation of Members of Parliament in the annual U.N General Assembly Meetings could be strengthened. They could also form part of the country's official delegations to the various meetings of some prominent U.N

specialized agencies.

- (v) Members of Parliament should take a keen interest on regional issues so as to get first hand information on such matters like the conflict in the Horn of Africa and the concomitant problems of refugees, drought and famine. A clear understanding of regional issues will contribute positively to the orderly development in that region. This is because members of the Parliament will be able to talk with authority on the problems that the executive might prefer to keep quiet about.
- (vi) Finally the government should provide logistical support for parliament and parliamentarians. Parliamentarians need essential provisions and services such as offices, research assistants, secretaries, a good library as well as the improvement of physical facilities in Parliament Buildings. There should also be seminars for MPs so that they can sharpen their knowledge in various fields including foreign-policy.

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