



## INTER-PARLIAMENTARY UNION

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### LEGAL FOUNDATION FOR THE IPU Explanatory note prepared by the IPU Secretariat

At the recent IPU session in Bangkok, a round of preliminary discussions took place on the proposal to "re-establish" the IPU on the basis of an international convention. IPU Members were subsequently invited to continue their reflection on the matter both internally and through their respective geopolitical groups, addressing their questions to the IPU Secretariat if need be.

To facilitate this process, the Secretary General was requested to provide oral explanations to the geopolitical groups and prepare a succinct note with answers to some of the frequently asked questions about the proposed convention and its implications.

This note was first presented to the Preparatory Committee of the 3<sup>rd</sup> World Conference on Speakers of Parliament in early May 2010 and is now submitted to the entire IPU membership as food for thought, with a view to an in-depth discussion on the matter during the forthcoming IPU session to be held in October 2010.

#### Introduction

1. Today there is widespread international recognition of the importance of having democratic parliaments in all countries that can fully assume their constitutional role at the national level and provide a parliamentary dimension to international cooperation.
2. It is also necessary for the international community to pay far greater attention to parliaments and provide them with more sustained support. This includes a need for greater understanding of and support for IPU's unique role as the world organization of parliaments.
3. An international convention would offer an unequalled opportunity for the international community - represented by governments and by parliaments - to work together through the IPU in pursuit of these twin objectives. For these reasons, the President of the IPU has started to engage the IPU membership and many Speakers of

parliament in a reflection on the possibility of "re-creating" the IPU through an international convention.

### Objective

4. The proposal aims at securing a clear expression of States' commitment to work together in the IPU - through their parliaments - to promote democracy at the national and international levels.

5. The proposal involves concluding an international convention on the IPU whereby States would vest their representation in the IPU in their national parliament, and therefore not alter its parliamentary nature. The Convention would enhance the IPU's political and diplomatic status and strengthen its ability to promote democracy. It would place the IPU on an equal footing with other major international organizations and would facilitate cooperation with them. It would also allow the IPU to operate with the necessary guarantees in all countries.

### Background

6. The Inter-Parliamentary Union traces its origins back to a time when very few international organizations were based on a treaty concluded between States. The founders of the organization drafted Statutes and Rules which they agreed to apply and uphold. The first Statutes were adopted in 1894; the latest amendments were passed in 2009.

7. Over time, the Organization's membership grew from a few members of parliament to groups of parliamentarians in each country and, eventually, to the national parliaments themselves. Today, over 150 countries are represented in the IPU through their parliaments.

8. The IPU does not conform to traditional legal doctrine whereby the term international organization has come to be defined by reference to a particular method of establishment. Under this formal approach, international organizations are necessarily based upon multilateral treaties and the law of treaties forms part of the law of international organizations.

9. While the Statutes define the IPU as the international organization of the parliaments of sovereign States and some States recognize the IPU as an international organization, others do not. The IPU clearly has a legal personality that allows it to act on the international plane. It concludes agreements with parliaments to organize conferences. It receives grants and implements projects under formal agreements to which it is a party.

10. However, the IPU is not based on an international convention and as long as this situation persists, the IPU will remain in an ambivalent situation: a recognized actor on the international scene without the status of an international organization.

11. This ambiguity colours the IPU's dealings with many States and international organizations and it adversely affects the Organization's ability to carry out its mandate to the satisfaction of its members. It is reflected in the United Nations General

Assembly resolution granting the IPU observer status in which UN Member States classify the IPU as an organization that has an "inter-State" character.

## Issues

12. So far, discussions have taken place within the IPU Executive Committee and the Committee set up to prepare the 3<sup>rd</sup> World Conference of Speakers of Parliament. The issues raised by members during these discussions can be divided into six broad areas. Some of the more salient points made when addressing these issues are summarized below.

(a) Is this really necessary?

The view of the proponents of the proposal is that it is both necessary and urgent for parliaments to bolster IPU's public profile and to provide it with substantial political and material support, and that this can be achieved by concluding an international convention for the Organization in which States commit themselves to promote democracy through parliaments working in the IPU.

The IPU is a global forum for parliamentary debate and exchanges. It facilitates inter-parliamentary cooperation. Its interlocutors are parliaments and parliamentarians. They are the Members, they formulate the political views of the organization, they help organize its activities and they participate in them. Governments have not traditionally been significant counterparts of the IPU.

The IPU has a unique mandate and rich expertise in relation to democracy and the rule of law. It is a parliamentary organization and it knows and understands parliaments. It is a centre of excellence for parliamentary practice that helps develop standards for parliaments, assist them in assessing their performance and develop programmes to make them more representative, accessible, transparent, accountable and effective. It defends the human rights of parliamentarians. It helps women enter parliament and politics. It builds capacity in parliament to more effectively legislate and hold government to account in a broad range of areas.

In all of these activities, the IPU is increasingly working in countries in close contact with States represented by their governments. Many of these activities can only be carried out successfully through the cooperation of governments and often with their financial support. The IPU is currently facing a demand for its services that it cannot meet for lack of support and resources.

The IPU also faces problems of double taxation, absence of immunities for its officials and problems of obtaining visas for delegates attending conferences. These problems can be solved if the IPU is recognized as an international organization established through a Convention.

(b) Are there any other ways of achieving the main objectives?

It is possible to ask each parliament to pass legislation that would have the effect of assimilating the IPU with international organizations under each country's national law. Proceeding in this manner would however not bring the political and material support to the IPU that is being sought. Moreover, it would be no less cumbersome than concluding an international convention and ensuring its

ratification in Parliament, and it would provide no guarantees of uniform treatment of the IPU.

Other alternative avenues for action do not readily present themselves. It would not appear feasible to address the issue through a resolution of the United Nations General Assembly because the IPU is not (and should not be) part of the UN System, and because a UNGA resolution on this subject would require unanimous support by all Member States which may be elusive.

(c) Is it possible without fundamentally altering the IPU or its relations with its members?

Consultations undertaken so far with constitutional and international legal experts indicate that it is possible for States to establish an international organization through an international convention and to vest the representation of the State in that organization in an entity other than the Government. It is therefore possible from a juridical point of view to "re-create" the IPU through an international convention without altering its parliamentary nature. Parliaments would continue to represent each country in the IPU and would lead and take the Organization's decisions.

Concluding an international convention would represent an opportunity to modernize the IPU. Beyond merely employing more contemporary language when describing IPU's objectives, it could involve streamlining some of its structures and working methods. However, those decisions would in the first instance have to be taken by the IPU's membership. Any project for a Convention would first need to be endorsed by the IPU membership.

The proposal does not entail a change in IPU's relationship with its members. The Convention does not require devolution of power from national parliaments to the IPU. The IPU complements and assists parliaments, but it is not a substitute for them. Any comparison between the IPU and the emergence of parliamentary assemblies attached to regional inter-governmental bodies would therefore a priori not be appropriate.

The discussions so far have not revealed a desire or need for changing the nature of the parliamentary representation in the IPU. Those (very few) parliaments that prefer to be represented in the IPU through a National Group could continue to do so under the proposed convention.

(d) Will it lead to a divided IPU?

An international convention would have to be preceded by extensive consultations among IPU Members and their governments and it clearly should only be pursued if a very large number of them are in agreement. It is expected that the convention will be adhered to from the very beginning by a large number of countries. It is also suggested that entry into force of the Convention should require a relatively high and geographically representative number of ratifications.

Parliaments have on past occasions demonstrated an ability to influence governmental decisions that relate to the IPU. Several substantive resolutions adopted by States in the UN General Assembly that relate to cooperation between the UN and the IPU have counted very significant numbers of formal sponsors.

That said, during an initial period it may be expected that some Parliaments will be members of the IPU by virtue of their current membership whereas others will be members as a result of their country having signed and ratified the Convention. This is unavoidable. Two types of Members will therefore need to be foreseen in the Convention itself during a period of transition. It will also be necessary to make some provisions in the Convention so that States that are party to the Convention are protected from other countries taking "unilateral" decisions regarding the IPU.

(e) Is it linked to the IPU becoming a "parliamentary counterpart" to the United Nations?

The short answer to this question is yes. Establishing a stronger relationship between the United Nations and the IPU requires the IPU to be clearly recognized as an international organization based on a Convention concluded between States.

The IPU is at the origin of the notion that international cooperation and the United Nations requires a "parliamentary dimension". It is a leading proponent of a greater parliamentary presence in international cooperation. It helps parliaments identify the steps that they and States need to take to bring greater democracy to international relations and it assists them in their implementation.

Greater progress requires close cooperation with and support from governments since international cooperation is organized by States acting through their governments. To this end, the IPU needs to be more clearly acknowledged as an international organization with all the prerogatives to engage fully with States and other international organizations.

The IPU sees itself as the global parliamentary counterpart to the United Nations. It is committed to helping parliaments understand the work of the United Nations and facilitate their task of providing a parliamentary dimension to the work of the United Nations. It requires a strategic partnership between the UN and the IPU which, in turn, presupposes that the IPU itself is clearly recognized as a fully-fledged international organization.

The IPU's vision for its own role has been set out by the first two global Speakers Conferences and is reflected in the position paper adopted by the IPU's Governing Council in 2007 (see at [www.ipu.org/Un-e/ipu-117-un-e.pdf](http://www.ipu.org/Un-e/ipu-117-un-e.pdf)). It identifies a supporting (not supplanting) role for the IPU. In order to carry out this role, however, the IPU needs to be (and be perceived as) an equal. For this reason as well, it is essential for the IPU to be an international organization based on a convention.

(f) What are the expected cost implications?

Concluding an international convention for the IPU does not have a cost implication per se since the organization already exists. However, part of the rationale for the project is to obtain greater support by countries for the IPU and its mission. That will also entail providing it with additional financial resources.

Currently the IPU operates with a budget of some CHF 12,000,000 funded by its members. In addition, it seeks funding for an initial additional amount of some CHF 6,000,000 from voluntary sources. Currently the IPU is developing a mission statement and strategy for its future development that will be accompanied by a more detailed description of expected financial requirements.

While these amounts may be somewhat higher than the estimates developed so far, they nonetheless remain very modest in comparison to the significantly larger



amounts that several countries spend on financing inter-parliamentary cooperation and capacity building programs for parliaments either directly on a bilateral basis (government to government) or indirectly through inter-governmental organizations.

### Process

13. The proposal has so far been discussed by the Executive Committee during its 256<sup>th</sup> and 257<sup>th</sup> sessions in February and March of this year. At its request, the Secretary General briefed the six geopolitical groups on the initiative and responded to their initial questions during the 122<sup>nd</sup> IPU Assembly in Bangkok last month.

14. At the concluding sitting of the IPU Governing Council on 1 April, the IPU President urged all Members to study the matter in the coming months and to share any questions with the Secretariat, which will be at their disposal for further clarification. The Secretariat will share both the questions it receives and the clarification it provides on a continuous basis with the membership to facilitate progress at the next session in October.

15. Each geopolitical group is encouraged to follow the example set by the African Group, which is setting up a working group, with representation from the different regions of Africa and the participation of its Executive Committee members, to study the proposal in depth. The working group will consult with experts and governments and will present its opinion to the African Group when it meets in October. The IPU Secretariat is at the disposal of the African Group, and indeed of all the other geopolitical groups, to assist them in their deliberations. The Executive Committee will also set up its own working group to reflect further on that subject and consult with a small group of Member Parliaments.

16. The IPU President encouraged Speakers of Parliament to discuss the matter when they convened for the 3<sup>rd</sup> World Conference of Speakers of Parliament in Geneva in July 2010. The President concluded that the Executive Committee would proceed in a thorough and measured manner, allowing sufficient time for all Members to consider every aspect of the proposal.

### Conclusion

17. Concluding an international convention on the IPU will demonstrate States' commitment to work together - through their parliaments - to promote democracy at the national and international level. It will directly benefit parliaments and their members. It will give political and diplomatic support to the IPU and will strengthen its ability to promote democracy and help strengthen parliaments everywhere. It will place the IPU on a more equal footing with other major international organizations and will facilitate its cooperation with these organizations. It will make it possible for the IPU to operate with the necessary guarantees in all countries.