

**COMPARATIVE STUDY OF DRAFTING STYLES OF THE UNITED NATIONS (UN) AND
EUROPEAN UNION (EU)**

BY

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PG/NILS/1900021

BEING

**A DISSERTATION SUBMITTED TO NATIONAL INSTITUTE FOR LEGISLATIVE
AND DEMOCRATIC STUDIES/UNIVERSITY OF BENIN POST GRADUATE
PROGRAMMES IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE
AWARD OF MASTERS IN LAW (LLM) LEGISLATIVE DRAFTING**

APRIL, 2022

DECLARATION

I, **Idris MOHAMMED** with Matric No: **PG/NILS/1900021**, hereby declared that this Dissertation was solely written by me and it is a record of my work. I declared further that this Dissertation has not been presented by anybody previously, either in part or whole to this University or any other institutions of higher learning for the award of degrees of any kind or programmes and that all sources of data or information have been duly acknowledged by proper references.

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DEDICATION

I humbly dedicate this LLM Dissertation to my daughter, Miss Maimuna Amatullah Idris, may Allah continue to bless you.

CERTIFICATION

This is to certify that this dissertation titled “Comparative Study of Drafting Styles of the United Nations (UN) And European Union (EU)” was carried out by Idris MOHAMMED, and has been supervised and scrutinized on behalf of the National Institute for Legislative and Democratic Studies/University of Benin (NILDS/UNIBEN) Post Graduate Programmes for the award of Master of Laws (LLM) Legislative Drafting.

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ACKNOWLEDGEMENT

I am grateful to Allah the most merciful, Prophet Muhammad (SAW), my Supervisor Dr Clinton Tonye Jaja for making this accomplishment a reality. I also thank the Director Legal Services (Army), Major General MU Wambai mni, the former and present Acting Chief of Staff of the Directorate of Legal Services (Army), Colonel ME Elom (Rtd) and Lieutenant Colonel SO Okebukola respectively. My sincere appreciation also goes to Major A Mohammed, currently on International Assignment with the Armed Forces of Liberia and other Staff Officers of the Directorate of Legal Services (Army) for their enormous support and encouragement in my academic pursuit.

I most respectfully extend gratitude to my late parents (may their souls rest in aljanatul firdausi) for bringing up a child and inculcating virtues of discipline and learning. I thank Mrs Aisha Ahmed Tahir, my wife for her support and encouragement throughout the academic tussles. I appreciate my living guardians, brothers and sisters in persons Colonel AA Yusuf of the Directorate of Army Public Relations, Alhaji Haruna Bala, some elders and mentors in our family circles to mention but few. I will also like to thank Dr Usman Ibrahim, all my Lecturers, Mr Tarkwasa Galadima and other staff of NILDS/UNIBEN.

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LIST OF ABBREVIATIONS

AC	Appeal Court
AGF	Attorney General of the Federation
All ER	All England Report
QB	Queens Bench
CA	Court of Appeal
SC	Supreme Court
FRN	Federal Republic of Nigeria
COP	Commissioner of Police
UN	United Nations
EU	European Union
AU	African Union
ECOWAS	Economic Community of West African States
LPELR	Law Pavillion Electronic Law Report
Paras	Paragraphs
NILDS	National Institute for Legislative and Democratic Studies
UNIBEN	University of Benin
NWLR	Nigeria Weekly Law Reports
KB	Kings Bench
OPC	Office of the Parliamentary Counsel
UK	United Kingdom

VCLT	Vienna Convention on the Law of Treaties
NIALS	National Institute of Advanced Legal Studies
TFEU	Treaty on the Functioning of the European Union
USA	United States of America
COREPER	Committee of the Permanent Representatives of the Governments of the Member States to the European Union

ABSTRACT

This study was one of the aspects of law that is had relatively few literature. This was a problem for the researcher and this made it difficult for many researchers and drafters to have uniform standards on legislative drafting over time particularly when drafting UN and EU treaties. The objective of this study therefore was to examine the similarities and differences between the drafting styles of the UN and EU, as foreign or diplomatic relations, commerce and international trade encourage cross-breeding of ideas, legislations and other instruments. The study also considered comparative study of law within the context of drafting styles of the UN and EU and the extent of its application with a view to draw lessons for Nigeria legislative drafting styles. This was achieved through in-depth study of a process called “Transplant” or “Adaptation” and principle of “Functionality”. This was why comparison of the drafting styles of UN and EU was used as justification for this study and to underscore the need for drafters to understand that the use of comparative study.

Comparative law in this context was just a guide and did not translate to the fact that each State or inter-organisation should adopt “hook, line and sinker”, the legislative style of another State but only functional laws should be adopted. In the course this study, the researcher concentrated more on the unique features of drafting styles of the UN and EU to make comparisons, since the main objective of the study was to examine the similarities and differences between the two inter-governmental organisations’ drafting styles, simpliciter. Additionally, comparative study of or comparative law was used as means of justifying the study and this was achieved through research into various literature on comparative law vis-à-vis legislative drafting textbooks or journals. In essence, the research was doctrinal based.

The major findings in this study was that a comparison of drafting styles of the UN and EU cannot be achieved without making references to extant literature on comparative law since the issue of comparison of the two institution relates to international law and jurisprudence on the law making capacity of the organisations. Even though legislative competence of the two organisations had

been subject of debate, this study further found that by virtues of Vienna Conventions on Law of Treaties, 1969, the UN and EU treaties have the force law. A lesson drawn from this specific finding was that in Nigeria, courts have consistently held that treaties are laws and this implies that drafting of treaties could be seen as legislative drafting. The study also found that the EU has a more organized and uniform system of drafting its EU Legislative Act which other organisations and countries like Nigeria could draw a lesson therefrom.

This study thereafter, recommended that drafters of UN and EU treaties should adopt “Principle of functionality” in their drafting styles and that the legislative drafting styles of the UN should be modelled as that of the EU to give it full legislative aura and characteristics. This is also a lesson for Nigeria to key into, as the non-availability of drafting manual hinders drafting. Though in Nigeria, statutes (Interpretation Act and Acts Authentication Act) and other rules guide drafters, it would be ideal if a manual is provided specifically for drafters as obtainable in the EU. In conclusion, the study was able to compare the legislative drafting styles of the UN and EU using comparative law principles and it was observed and opined that Nigeria could draw lessons from the two inter-governmental organisations.

CHAPTER ONE

INTRODUCTION

1.0 Background to the Study

The foundation or idea of comparative study in the legal profession could be traced to two German Lawyers, K Zweigert and H Kotz¹, where in their works on comparative law they stated that comparative law started in Paris in 1900, the year of Exhibition. They posited that a country could adopt a foreign law if it is useful as only a fool would refuse the quinine just because it did not grow in his back garden. The two German Lawyers thereafter formulated the “Principle of Functionality” that postulates that, once a foreign law is functional, another jurisdiction may adapt/adopt the said foreign law. However, Nicole and Scaffardi² on their part categorised comparative study of law practice into three jurisdictions.

The first category are those jurisdictions where the modalities of the use of foreign law in the field of the legislative process tend to assure the use of *strict sensu* of the concept of “**transplant**”. These jurisdictions transplant the foreign law of a country into theirs after an a priori evaluation by the national legislators, who must have ascertained the appropriateness and the legal coherence of the foreign law for the recipient legal system. Example of countries that practice this is the Peoples’ Republic of China.³

Thus, the importance of comparative law to legislative drafting cannot be over emphasized. This is due largely to the fact that there is no individual or group that has monopoly of knowledge of legislation. This interdependence of knowledge extends to the realm of legislative drafting. However, this research will focus more on the comparison of the drafting styles of the United

¹. Konrad Zweigert and Hein Kotz, An Introduction to Comparative Law (trans. Tony Weir, 2nd ed. • Oxf.U.P., 1987) p.1.

². Nicola Lupo and Lucia Scaffardi, Comparative Law in Legislative Drafting (Eleven International Publishing, 2014) p. 12.

³. Ibid.

Nations (UN) and European Union (EU) and avoid dwelling extensively on comparative law, since these organisations have no full legal regimes like those of a country like Nigeria or UK. Though the UN and EU make treaties, rules and regulations for their members, the study seeks to compare the drafting styles of the treaties, rules and regulations of the organisations, who have in recent times transmogrified into law making institution due to the instrumentality of the, UN Charter 1945⁴, Vienna Convention on the Law of Treaties, 1969⁵(VCLT) and EU Legislations.

Legislation by its nature has been described as the process of making law and has been aptly captured by Crabbe when he said “Governments need legislation to govern. The governed need well drafted, readable and understandable legislation.”⁶ Legislative drafting on the other hand is the art of communicating the language of the law to the people.⁷ Accordingly, this study considered the concepts of legislation, legislative drafting and styles and relates same to its adaptation by the identified international organisations. Therefore, the subjects of comparison are: nomenclature, drafting personnel, scrutiny, structure among others.

1.1 Statement of the Research Problem

The main problem of the research therefore, is dearth of literature on drafting styles of the UN and EU. The study seems to be a new area of law. However, since the study is anchored on two important areas of law, i.e. comparative study of law and legislative drafting, the researcher have to make do with extant literature on comparative law, legislative drafting and laws of international institutions respectively. These aspects are integrated into the study, as a discussion on one without the other will create gaps. The researcher however, observed further that in drawing lessons from the study to Nigeria on the drafting styles of the organisations, since the

⁴. Article 52 of the Charter provides that; “Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security...” and this forms the basis of EU and other regional organisations.

⁵. Article 29, VCLT states that a treaty is binding upon each party in respect of its entire territory, an indication that treaties are laws and have force of laws.

⁶. VCRAC Crabbe, Crabbe on Legislative Drafting (2nd edition. Lexis Nexis 2008) p. 17.

⁷. G.C. Thornton, Legislative Drafting (Butterworth & Co Publishers Ltd London 2nd Edition 1979) p. 44.

discussion did not concern the country, there is problem of adaptation. This is because, experiences have shown that Nigeria hardly draws lessons from foreign laws but adopt them without considering the implication. For example, the Child Rights Act, 2003 which was copied from the 1989 UN Convention on the Rights of the Child, contains provision on compulsory vacation for children by parents. However, this is not practicable in Nigeria due to economic and socio-cultural reasons. Though an international convention binding on member States including Nigeria, a good drafter must be wary of including this circumstance as a provision in the said law.

Additionally, in the course the research, ordinarily the researcher would have preferred physical visits to UN and EU Headquarters where the drafting Offices are located for interviews with stakeholders, but this was nearly impossible due to time factor and lack of adequate resources to achieve same considering that majority of these offices are not located in Nigeria. The researcher therefore blends the doctrinal research methodology of sourcing information and data from other non-literal sources by accessing the websites of the organisations.

1.2 **Research Questions**

This study sought to interrogate certain issues and they are as listed below:

1. What is the importance of comparative study in legislative drafting and whether the UN and EU inter-governmental organisations apply the knowledge of comparative study in their drafting?
2. Who are the drafters of the UN and EU treaties, conventions, protocols, rules and regulations and whether same qualifies as legislations?

3. What are the similarities and differences between the drafting styles of the inter-governmental organisations and observable challenges of adopting drafting styles of the UN and EU or drawing lessons in Nigeria.

1.3 Objectives of the Study

1. The main objective of this study is to examine the similarities and differences between the drafting styles of the UN and EU, as foreign or diplomatic relations, commerce and international trade encourage cross-breeding of ideas, legislations and other instruments.

2. To examine comparative study of law within the context of drafting styles of the UN and EU and the extent of its application respectively.

3. To come up with findings on the uniqueness of the drafting styles of each of the international organisations and draw some lessons for drafting legislation in Nigeria.

1.4 Scope of Study

This study covers the following areas:

1. The drafting styles of the UN and EU and the historical development of comparative study of the drafting styles from the period comparative law was developed till date.

2. The study further considers the territorial coverage of the UN and EU and their drafting styles, the relationship between the drafter, of the UN and EU, the application of comparative study in legislative drafting and how it affects the style of drafting legislation and lessons for Nigeria.

1.5 Significance of the Study

The study is important because of the following reasons:

1. Drafting styles of each jurisdiction varies from those of another jurisdiction and comparative study encourages cross-fertilisation and interactions and enables both international and domestic laws to be transplanted or imported from one jurisdiction to another.
2. Legislative drafting is an aspect of law that comparative study becomes inevitable and applicable as exploring different systems' styles of drafting brings about growth and development in legislative drafting.
3. The UN and EU evolved overtime due to rising diplomatic relations, commerce and international trade and this necessitated the need for uniform drafting styles to guide drafters of UN Treaties and EU Legislations.
4. The study exposed researcher to how the inter-governmental organisations adopt different language of communication and a legislative drafter need to identify and understudy the complexity in the diversities of the institutions.
5. The study enables us to know the similarities and differences in terms of nomenclature, drafting personnel, legislation drafting, scrutiny, structure etc. of the inter-governmental organisations and lessons drawn for Nigeria drafting styles.

1.6 Research Methodology

Essentially, the researcher adopts the doctrinaire (doctrinal) research methodology as the major methodology in this study considering that the major doctrines of comparative law and legislative drafting are examined. The research was conducted by using relevant textbooks and non-doctrinal sources such as websites or internet to access some information without necessarily conducting interviews. Other internet or online sources explored include some articles or scholarly publications on the topic as well. The reason for adopting this methodology is due to the nature of the topic.

The research is descriptive as it is concerned with collection of data for the purpose of describing, evaluating and comparing prevailing practices among the international organisations as it relates to legislative drafting. However, an education researcher⁸, have classified descriptive research to include: survey, case study, developmental studies, correlational studies and comparative or ex-post facto studies.

Thus, this study adopts the correlation because it measures variables and determine their degree of relationship⁹ and comparative or the ex-post factor studies as it research based on chosen facts from independent variables. It is a research methodology where a researcher only observes¹⁰. The researcher observed that many scholarly publications on legislative drafting are contained in textbooks and articles by both foreign and few Nigerian authors. Another justification is the fact that researcher cannot afford the luxury of time and resources to visit the said inter-governmental organisations for on-the-spot information or data.

Notwithstanding the challenges, the researcher was able to make comparative study of the UN and EU drafting styles based on the available data in the textbooks and internet sources without deviating to areas that may call for physical visit to the locations of the inter-governmental organisations. In the final analysis, the researcher proffers solutions in form of recommendations and lessons to be drawn from the drafting styles by Nigeria which could serve as guide to future researcher on the topic or allied aspects, since no knowledge is new or insular.

1.7 Organisation of Chapters

This study is divided into five (5) Chapters with sub-Paragraphs. Chapter One (1) of the research focuses on: background of study, statement of problem, research questions, objectives of the

⁸. Abiola Olufemi O, Procedures in Educational Research (Hanijam Publications, Kaduna, 2007).

⁹. Ibid p. 38.

¹⁰. Ibid p. 42.

study, scope of study, significance of the study, research methodology and organisational of chapters/chapterisation.

Chapter Two (2) of the research is Literature Review and sub-divided into: theoretical and conceptual frameworks where some key terms such as comparative law, legislative drafting, styles and international organisations will be defined and explained.

Chapter Three (3) extensively deals with the main topic of research i.e. the Comparative Analysis of Legislative Drafting Styles of the UN and EU, while Chapter Four (4) attempts to also clarify some issues such as the guidelines to drafting legislations and extent of implementation of the legislative drafting principles by the organisations. Chapter Five (5) of the research deals with conclusion, findings and recommendations.

CHAPTER TWO

LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

This chapter reviewed the various literature consulted in the course of research. Review of related literature in any discipline is important as it is the analysis (summary and synthesis) of the extant literatures in a systematic and organized manner with the purpose of identifying and stating the existing knowledge base, exposing gaps in knowledge and giving directions for further studies¹¹. Inferentially, this entails the examination and critique of relevant textbooks and other materials consulted during research with a view to identifying gaps, lacunae or loopholes and making recommendations.

2.1 Literature Review

As earlier stated, literature review entails the analysis (summary and synthesis) of the extant literatures in a systematic and organized manner with the purpose of identifying and stating the existing knowledge base, exposing gaps in knowledge and giving directions for further studies. However, the preoccupation of this study was to compare the similarities and differences of the legislative drafting styles of the inter-governmental organisations with a view to making some recommendations or drawing some lessons for Nigeria. An attempt to identify gaps and fill same would foist a situation of suggesting a reform in the legislative processes of the organizations, because the law making status of these organisations is still debatable.

Nonetheless, with the coming into force of the UN Charter 1945 and VCLT 1969, it becomes more convincing by writers on legislative drafting that the organisations make laws for their members. Thus, Article 52¹² provides that; “Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the

¹¹ . Bethel Ihugba, Legal Research Methodology and Reporting Writing (Unpublished Lecture note to LLM Class 2021).

¹². UN Charter, 1945.

maintenance of international peace and security...”and this forms the basis of EU and other regional organisations. Sequel to Lisbon Treaty, the EU Legislation is by virtue of Article 289 of the Lisbon Treaty divided into Legislative Acts, Delegated Acts and Implementing Acts. These Acts have similitudes of normal laws passed by the legislature of different countries, and in the case of the EU, on all fours with the national laws in some aspects.

Similarly, Article 29, VCLT states that a treaty is binding upon each party in respect of its entire territory, and implies that treaties are by their nature, laws and have force of laws. Hence, this study as could be seen subsequently, concludes by making some findings on the research questions, objectives and recommendations.

Some relevant literature were reviewed in the course of the study to appreciate the knowledge base or data contained therein. This is more so as no knowledge is new or insular but products of research. Accordingly, in reviewing the various literature, effort was made at compartmentalizing the discussions into sub-topics of; comparative study, legislative drafting, drafting styles, evolution of the UN and EU and comparison of: nomenclature, drafting personnel, legislation for drafting, structures, and so on. This in essence portrays the fact that the topic is sub-divided and the literatures on each were reviewed.

Basically, many authors and scholars have dwelt on comparative law. However, as earlier pointed out, the lead proponents of comparative law were two German Lawyers, K Zweigert and H Kotz respectively. Additionally, a list of other literatures reviewed include but not limited to:

1. Konrad Zweigert and Hein Kotz, *An Introduction to Comparative Law* (trans. Tony Weir, 2nd ed. • Oxf.U.P., 1987).
2. Nicola Lupo and Lucia Scaffardi, *The Use of Comparative Law in Legislative Drafting* (assessed online at <www.google.com> 25/10/21).

3. G.C. Thorton, Legislative Drafting (Butterworth & Co Publishers Ltd London 2nd Edition 1979).
4. Gunther Schefbeck, Legislative Drafting: Back to Basics (Summer School Lex 2012).
5. E.C. Page, Law and the Construction of Policy: A Comparative Analysis, (Draft Paper prepared for the Annual Conference of the Political Studies Association, Brighton, Session 6, Executive Politics, Bureaucracy and Legislation Tuesday 22 March 15:30-17:00 culled online at <www.google.com/comparative legislative drafting> assessed on 25/11/21).
6. Sylvester Imhanobe: Legal Drafting & Conveyancing, (Sylvester Imhanobe Legal Research Ltd, 2nd edition 2002).
7. Shaimaa Atalla, Legislative Drafting, (An article published on the website: <<http://www.Shaimaatalla.com/vb/showthread.php?t=404>> assessed on 25/11/2021).
8. TC Jaja and JO Adesina (SAN), Introduction to Legislative Drafting and Drafting Process in Nigeria (Malthouse Law Books 2019).
9. E Azinge and V Madu (Eds), Fundamentals of Legislative Drafting (National Institute of Advanced Legal Studies (NIALS) Lagos 2012).
10. WimVoermans, Styles of Legislation and their Effects, (Article in Statute Law Review · August 2010 <https://www.researchgate.net/publication/50296757> assessed on 24/8/21).
11. DW Bowett, The Law of International Institutions (Fourth Edition Stevens & sons London 1982).
12. Christian N Okeke, International Law in the Nigerian Legal System (Golden Gate University School of Law, assessed at <www.cokeke@ggu.edu> 28/11/21).

13. Malcolm N Shaw QC, *International Law* (Sixth Edition, Cambridge University Press 2008).

14. DT Adem, *Legislative Drafting: Manual* (LexisNexis 2014).

The Use of Comparative Law in Legislative Drafting by Nicolo and Scaffardi examines whether contemporary or modern parliaments use foreign and comparative law in the legislative process. It discusses the importance of comparative study to legislative drafting. It also dwells on the 'dialogue' among judges and comparative law scholars. Some of the themes treated include the origin of comparative legislative drafting and how the experience of parliaments in the European context of transplanting a legislation from one jurisdiction and the extra-European legal systems.

Konrad Zweigert and Hein Kotz, two German Lawyers in their Book, "An Introduction to Comparative Law" established the theory of comparative law. It is from this work that researchers drew inferences and principles on comparative study of the drafting styles of the UN and EU. To them, comparative law is an intellectual activity with law as its object and comparison as its process. Using the German Civil Code as an example, the two German Lawyers said that Lawyers constantly have to juxtapose and harmonise the rules of their own system that is, compare them, before reaching a decision or conclusion. Thus, they described comparative law as the comparison of the different legal systems of the world. Comparative law was also viewed from the perspective of private international law and public international law respectively.

The two Lawyers proposed the "Theory of Functionality" as the basis of comparative law. This theory simply postulates that the reception of foreign law or legal institution is not a matter of nationality but usefulness or relevance and need. That once a foreign legal system is functional or useful, a country could adapt or transplant its legal system as only the foolish one would refuse quinine just because it didn't grow in his back garden.

Relatedly, it was observed¹³ that, there are several literature in the last two decades, regarding the “dialogue” among judges or “trans-judicial dialogue” but less attention has been devoted to the “dialogue” among legislators or more importantly “inter-parliamentary dialogue” concerning the use of comparative law among parliaments, regarding legislative activity.

Highlights on the principles of legislative drafting were critically analysed by Gunther Schefbeck in his book on Legislative Drafting, Back to Basics. He defined legislative drafting as writing laws. To him, legislative drafting is the art of writing the laws or various legislations. However, this definition is inadequate because, some authors have different perspective of the meaning of legislative drafting.

GC Thorton for instance, defined legislative drafting as the process of communicating the language of the law to the people. Whether the medium of communication here is by written text or print media or radio communication is subject to debate as, Thorton did not elaborate on the means rather he identified five stages of drafting legislations as instruction, understanding, analyzing, drafting (composition) and scrutiny. These are further highlighted and explained in the course of this study.

EC Page, Law and the Construction of Policy is a Draft Paper prepared for the Annual Conference of the Political Studies Association, Brighton, Session 6, Executive Politics, Bureaucracy and Legislation which highlights the characteristics of statutes as reflections of distinctive approaches to the construction of policy in different jurisdictions. The writer stated that legislation is arguably the most powerful instrument of government. He defined legislation as the expression of government authority backed up by the state’s monopoly of legitimate force. In the Draft Paper, the writer explored a way of looking at legislation in between two levels of abstraction, that is, law as supreme instrument and law as the idiosyncratic content of any

¹³. Nicola Lupo and Lucia Scaffardi, The Use of Comparative Law in Legislative Drafting (Assessed online at <www.google.com> 25/10/21).

individual piece of legislation. This Paper is relevant to this research because, it assisted in understanding the theory and concept of legislation, systems of law making, legislation for drafting and scrutiny.

The writer, emphasized that legislation is written to be passed by the Legislature and should not contain items that would hinder its passage. However, the writer observed that a range of features of the legislative environment may make it difficult to pass some laws in some jurisdictions. Citing example of Germany, where the role given to the Ministry of Justice and the *Bundesverfassungsgericht* in scrutinising legislation makes it more difficult to pass than in France and Sweden where administrative personnel (*ecole administratif*) are involved. This research therefore shall consider the various mode of scrutinising legislation among the inter-governmental organisations.

Sylvester Imhanobe (2002)¹⁴, defined legislative drafting as the ‘art’ of legislative writing. It is the process whereby a policy is put in a legal language called “Bill” ready for presentation to the legislative house for passage into an act or a law. He also highlighted the various styles of legislative drafting in terms of structure of a bill, composition of sentence and so on.

Shaimaa Atalla¹⁵ where she defines legislative drafting as the transformation of the raw material of which the law consists into practical and applicable rules in a way that helps achieve the goal of the essence. Edoaba Omoregie (2020)¹⁶ explains legislative drafting process from the stage of having a clear policy directives or policy focus to other stages such as instruction, understanding, analyzing, drafting and scrutiny.

¹⁴. Sylvester Imhanobe: Legal Drafting & Conveyancing, (Sylvester Imhanobe Legal Research Ltd, 2nd edition 2002).

¹⁵. Shaimaa Atalla, Legislative Drafting, (Being an Article published on the website: <<http://www.Shaimaaatalla.com/vb/showthread.php?t=404>> assessed on 12/11/21).

¹⁶. Edoaba Omoregie, Legislative Process and Drafting Lecture Notes (Unpublished), LLM Legislating Drafting, NILDS 2020.

Jaja and Adesina (2019)¹⁷ described legislative drafting as writing the text of a document that is to be made into legislation through some formal legal procedure. They further discussed what legislative drafting is all about, the basic principles of drafting, the literal, golden and purposive rule of interpretation of statutes.

Azinge (2012) states that legislative drafting is a critical aspect of law-making in any organized society.¹⁸ Drafting style on the other hand has been described as the way legislation voices the message, as a vehicle of symbolic communication.¹⁹

D.W. Bowett, *The Law of International Institutions* was used in this research solely to examine the law of international the UN and EU. The work assisted in providing a guide on the structures and institutional framework of the inter-governmental organisations. Similarly, Malcolm N. Shaw QC, *International Law* is a reliable International Law text that elaborately dealt with the principles of international law, organs of the UN and EU and Law of Treaties.

Christian N. Okeke, *International Law in the Nigerian Legal System* treated international law and the law of treaties. It emphasised on how treaties become binding on State Parties particularly in Nigeria, where by virtue of Section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as altered), no treaty shall be binding unless it has been ratified. This provides a guide to the researcher on how some of the international treaties are ratified, domesticated and adapted in Nigeria legal system among others.

D.T. Adem *Legislative Drafting: Manual* exposed the researcher to the rudiments of legislative drafting. The text is also a source of information because it defined legislative drafting and the various stages of drafting. The text also provides a guide on drafting of penal provisions,

¹⁷. T.C. Jaja and J.O. Adesina, *Introduction to Legislative Drafting and Drafting Process in Nigeria* (Malthouse Law Books 2019).

¹⁸. E. Azinge and V. Madu (Eds), *Fundamentals of Legislative Drafting* (National Institute of Advanced Legal Studies (NIALS) Lagos 2012).

¹⁹. Wim Voermans, *Styles of Legislation and their Effects*, (Article in *Statute Law Review* · August 2010 <<https://www.researchgate.net/publication/50296757>> assessed on 24/8/21).

statutory corporations, financial bills and other types of bills. Most importantly, the various structures of a bill, such as the long title, preamble, commencement, short title, principal provisions, miscellaneous provisions and final provisions (saving, repeals and schedules) have been adequately considered as well.

This study therefore deems it necessary to have an insight into some of the topics and issues discussed in the above listed literature, to analyse and detect gaps inherent in them with a view to making contributions or recommendations at the end of this report writing. Taking it one after the other, it is important to consider drafting styles, how it evolved from comparative study and lessons that could be drawn for Nigeria's legislative drafting.

Legislation is said to be a significant means of changing the law, and the combination of legislation and comparative law cannot be overemphasized. It has been observed that certain attributes of legislation must be considered when discussing comparative legislative drafting.

These attributes are:

1. Legislation is usually prospective and not retrospective.
2. Legislation comprehensively change or alter a legal system.
3. It cannot be amended easily once passed or enacted.

Hence, it was summed up that²⁰:

“A statute, once passed possess an obstinate life.... It is easy for any law to become what Schillar has called an ‘incurable disease’.”

Rousseau²¹ described the formidability of the legislator's task by stating that “Il faudroit des dieux pour donner des lois aux hommes” meaning it would take gods to give men laws.

²⁰. Ernst J. Cohn. Comparative Jurisprudence and Legal Reform (Unpublished Ph.D. thesis. Univ.Coll. London. 1946, assessed online via <www.google.com/comparative> law)p.125.

The discussion on comparative study of drafting styles of the UN and EU, as was observed, is incomplete without dwelling on two doctrines “reception” and “transplant” respectively. Reception or transplant of a legal system was defined as an act of receiving a large or substantial part of one’s legal system or legislation from another country.²² Historically, famous reception was the reception of Roman Law in many European Countries.

The Common Law system was received, in different ways by Ireland, U.S.A., Canada, Australia, India, various African countries, etc. In Nigeria, we have been thought in History that most of our laws are received English Laws due to the interplay of colonialism in the past.

It was noted that the spread of the common law has been well documented elsewhere²³, and in "conquered" or "ceded" colonies (as opposed to "settled" colonies), it was a firm principle of English colonial policy to leave intact the law already in force in the territories.²⁴ The result of the British colonisation has been that at the present time nearly one third of all people alive live in regions where the law is more or less strongly governed by the Common Law, Nigeria inclusive. Presently, Nigeria adopts the British style of judicial precedent where the ratios of previously decided cases are applied to a case in point or at hand. However, in *Thomas v Federal Judicial Service Commission (2016) LPELR-48124(SC)*, pp 5-5, paras C-F, the Supreme Court held that a case is only an authority for what it decided. The doctrine of stare-decisis or precedent which provides for this principle operates where the issue determined by the Court in an earlier case is the same or similar to the issue the Court is subsequently approached to determine. Where therefore, an issue had not been previously raised at and determined by the

²¹. Jean-Jacques Rousseau, *Du Contract Social (Social Contract)* 1762.

²². Turpin, *The Reception of Roman Law* (1968) 3 *IrJur* (n.s) 162, (assessed online at <www.google.com> on 25/10/21).

²³. Konrad Zweigert and Hein Kotz, *An Introduction to Comparative Law* (trans. Tony Weir, 2nd ed. • Oxf.U.P., 1987), pp.226-245 (*The Spread of the Common Law Throughout the World*), pp.246-263 (*The Law of the U.S.A.*). Also a series of BBC talks on 'The Migration of the Common Law' (1960) 76 *LQR* 39-77.

²⁴. Zweigert and Kotz, *op cit.*, p.228.

Court, a decision arrived by the Court cannot rule a subsequent one on totally different fact(s) and or law(s) from those in the earlier case²⁵.

Some writers therefore, have comparatively classified reception as either voluntary or involuntary or as occurring either “*imperio rationis*” or “*ratione imperii*” that is by reason of imperialism.

On the guiding principle of comparative study, Zweigert and Kotz postulation, as earlier stated should be based on the “principle of functionality” that is once the foreign law is functional, a particular jurisdiction may adopt the law. In developing comparative law, they classified it into *macro-comparison* and *micro-comparison* respectively. Macro-comparison compares the spirit and style of different legal systems, the methods of thought and procedures they use or operates, which is similar to what this study entails. On the hand, micro-comparison deals with specific legal institutions or problems, that is, with the rules applicable to solve or resolve a particular problem or conflicts. For example, it seeks to resolve certain questions as “What rules determine the allocation of loss in the case of traffic accidents?”

However, the pertinent question here is whether UN and EU Treaties qualify as legislations or law like those of other sovereign nations. This issue as earlier reiterated have been resolved by the UN Charter and VCLT. EU’s treaties, legislative acts have also been classified as laws since they are made to bind member States and adopted by the member States. In the same vein, Nicole and Scaffardi on their part categorised comparative law practice into three jurisdictions. The first category are those jurisdictions where the modalities of the use of foreign law in the field of the legislative process tend to assure the use of *strict sensu* of the concept of “**transplant**”. These jurisdictions transplant the foreign law of a country with theirs after an a priori evaluation by the internal legislators, who must have ascertained the appropriateness and

²⁵. See also the case of *Clement v Iwauanyanwu* (1989) 3 NWLR (Pt 107) 39.

the legal coherence of the foreign law for the recipient legal system. Example of countries that practice this is the People's Republic of China.

The Second category as proposed by Nicole and Scaffardi are those jurisdictions that practiced the "partially interested in transplant". In these legal systems, the activity of study and comparison is normally present above all in the first phase of the lawmaking process. Foreign laws are applied at ad hoc committee levels or matters concerning legislative initiatives only. It is not used at the final stage of the lawmaking. Examples of the countries that practice this style are the UK, Italy, Canada and other Commonwealth countries.

The third category is the "transplanting hostile" countries such as the US where they do not allow any external influence to affect their legislation except on common international themes or topics such as child rights, sexual orientation laws, treaties of common good etc.

From the above, it is submitted that comparative study of the drafting styles of the UN and EU cannot be discussed in vacuum without recourse to comparative law, since treaties of these organisations are seen in recent times as laws binding on the member States. Comparative Law as a topic plays important role in understanding the legislative drafting styles of the international organisations under review. This is because it assists in comparison and evaluating how each organisation received and transplanted its legislative style from another jurisdiction and lessons to be learnt therefrom.

On the other hand, Gunther (2012)²⁶ defined legislative drafting simply as writing laws. GC Thorton defines legislative drafting as the process of communication of the language of the law to the populace. He identified five stages of drafting legislation as instruction, understanding, analyzing, drafting (composition) and scrutiny. Sylvester Imhanobe (2002)²⁷, the 'art' of

²⁶. Gunther Schefbeck, *Legislative Drafting: Back to Basics* (Summer School Lex 2012).

²⁷. Sylvester Imhanobe: *Legal Drafting & Conveyancing*, (Sylvester Imhanobe Legal Research Ltd, 2nd edition 2002).

legislative writing whereby a policy is put in a legal language called “Bill” ready for presentation to the legislative house for passage into an act or a law.

Accordingly, from the arrays of these authorities, it is submitted that the definitions and opinions expressed on legislative drafting and styles above are correct however, none of these literature have specifically addressed the study of the drafting styles of the intergovernmental organisations and lesson to be draw for Nigeria. This therefore, is the focus of this research, LLM dissertation.

Gap in Knowledge

The primary aim of reviewing literature overtime has been to expose gaps in knowledge and this study in comparing the legislative drafting styles of the UN and EU observed that there were no specific literature on drafting styles of the organisations. This is a great gap in knowledge as even Bowett’s Laws of International Organisation did not dwell extensively and contextually on drafting styles but legal and institutional framework of the organisations. It is therefore the humble opinion of researcher that there is need for more scholarly publications on drafting styles of the UN and EU to cover the gaps.

2.2 Conceptual Framework

2.2.1 Conceptualisation of Comparative Legislative Drafting, Meaning of Legislative Drafting Styles and Structures

As the name implies, comparative legislative drafting is the use or application of the drafting styles of an institution or a nation in the process of drafting a legislation of another institution or nation. This definition is coined from relevant texts earlier reviewed. It could also be described as a concept that seeks to encourage a drafter to adopt or adapt the legislative drafting styles of a particular nation in drafting a legislation, where same is functional and useful.

Legislative drafting has been defined as the writing of a text in documents with the intent of making laws. This entails that where sentences are constructed and presented in a print form with the purpose of expressing government policy or providing rules and regulations for the people, it is regarded as legislative drafting. Legislative drafting is the process of constructing a text of legislation and should be distinguished from legal drafting which involves the construction of texts applied in judicial processes²⁸. It is also not synonymous to law making processes but part of the processes. Hence, it was posited²⁹ that the drafting process is part of the legislative process, which in turn is part of the policy process.

The process of drafting a legislation is divided by Garth Thornton into five stages viz:

1. Understanding the proposal.
2. Analysing the proposal.
3. Designing the proposal.
4. Composing and developing the draft.
5. Scrutinising or verifying the draft.

Stage one involves receiving and understanding instructions from a client, who must be a policy maker. Drafting instructions are data provided to the legislative drafter by the policy makers as means of assisting the drafter to draft effective legislation within the parameters detailed by the policy makers of the government³⁰. They are usually in form of sketch or skeletal draft. After the drafter has been properly briefed by the initiator, the drafter makes efforts to understand the instructions and background such as to have a clear picture of the purposes of the proposed legislation, and the defect it intends to correct. This however, does not preclude the drafter from

²⁸. T.C. Jaja and J.O. Adesina, op cit, p. 17.

²⁹. Helen Xanthaki, Legislative Drafting: A New Sub-discipline of Law is Born (IALS Students Law Review, Volume 1, Issue 1, Autumn 2013), p. 58.

³⁰. Ibid.

making a request for additional information peculiar to the legislative proposals. The drafter may make it clear to the instructors the kind of drafting instructions which will be most helpful to the drafter. The drafter's request may be specific or general. Whatever method the drafter adopts, the bottom line is that the drafter has to have proposals or instructions in a way that shows that the drafter comprehends all the relevant issues precipitating the need for the legislation.³¹ The drafter may not be an expert in that area which the policy tends to address; however, the drafter must possess some key attributes and qualities, namely:

- a. Proper understanding of the instructions received,
- b. He should be well trained and properly qualified to deal with the subject-matter as instructed,
- c. He should take great care while drafting,
- d. Have great patience.

A drafter should employ all the innovative techniques and analytical skills at his disposal. Another very important factor for the drafter is time. He must also be able to communicate effectively and successfully in a clear form using language that is readily comprehensible to understand the proposal correctly. This process of understanding the proposal therefore involves the question of setting, maintaining and developing drafting standards so that a quality bill is produced.³²

Thornton³³ advises that it will be of great assistance if the drafting instructions provide adequate information on the following matters:

- a. Sufficient background information;

³¹ DT Adem, *Legislative Drafting: Manual* (LexisNexis 2014), p. 25.

³² Augustin Mico, *The Drafter's Role in the Drafting Process*, (LLM 2011-2012 LLM in Advanced Legislative Studies (ALS) <<https://core.ac.uk/reader/9831034>> accessed on 14th July, 2021).

³³ Helen Xanthaki, *Thornton's Legislative Drafting*, Great Britain: Bloomsbury Professional Ltd, 2013), pp. 302-325.

- b. Principal purpose of the law proposed;
- c. Principal means by which to achieve the purpose; and
- d. The impact of the proposals on existing circumstances and law.

Thornton emphasizes that “good instructions are a pearl beyond price and not only improve the quality of the bill but also reduce drafting time”. This emphasizes the importance of the quality of bills, which can only be achieved if the drafting instructions from which they came are of high quality as well. Drafting instructions should be simple and in clear language and may make reference to any relevant legislation or related literature. Understanding of the proposal by the instructor will be successfully completed if the drafting instructions are well established by both the drafter and the initiator.

In the UK, drafting instructions are instructed or briefed out by Government Departments for government bills. The instructions are sent to the Office of the Parliamentary Counsel (OPC) and often referred to as the “Bill Team”. In Nigeria, the practice is similar but the equivalent of the OPC is the Federal Ministry of Justice, where there is the Legislative Drafting Team of State Counsel, who receives the Bill and propose the draft.

However, private members’ Bills, are not necessarily forwarded by the policy maker to the OPC as the legislator proposing the legislations could engage a private legal practitioner to do receive the instructions and draft the Bill for him/her.

Stage two is the compilation of a legislative plan, also known as a legislative research report. Here, the drafter having received instructions from the policy initiator and after achieving proper understanding of the instructions, goes into the examination of the proposal in detail to determine whether the proposal will lead to making a new law or amending an old law as the case maybe. This stage involves researching the legislative proposals in relation to existing laws, to ascertain potential danger areas and practicality of such proposals. Laws that are relevant must be studied

in other to determine the legality of what is proposed. For instance, the drafter must consider whether every element of the proposal complies with the constitutional provisions. The drafter owes the instructor the duty to inform the instructor such elements of the proposal that may infringe of the fundamental rights of persons. The various areas in this stage which the drafter should look at include:

- a. The Provisions of the Constitution, which includes the Fundamental Rights, the Legislative List and the Fundamental Objectives in Chapter 2 of the Constitution;
- b. Other existing laws that may affect the subject-matter of the proposals; and
- c. The practicality of the legislative proposals
- d. Jurisdiction and Territorial coverage of the legislation.

The drafter is also at this stage supposed to gives advice on possible legislative solutions to any inconsistencies that emanate from such analysis and in a situation the instructor insist and appears ready to damn the consequences; the drafter should put his advice in writing.

The drafter may use the following checklist to see if the measure is necessary and likely to be effective and whether it is comprehensible: Is action necessary? What are the alternatives? Is it required at national level? Is a new law needed? Is immediate action required? Does the scope of the provision need to be as wide as intended? Can the length of the period for which it is to remain in force be limited?

The third stage which is the designing the law, comes after the drafter had fully understood the instructions and analyzing the instructions by the initiator. This stage involves producing a hierarchical structure for the proposal and outline structure or plan for the law, which facilitates the drafter in the drafting process. There may be situations where the drafter may find it difficult to proceed to this stage; the best thing to do is to go back to the first stage to see whether the instruction was clear enough or the second stage to ensure the instructions are properly analyzed.

Once it is sorted out, the drafter may then proceed to this stage which is also referred to as the planning stage of the law. Legislative plan includes the following elements of content:

- a. Identification of the causes of the problematic behaviours behind the social need;
- b. Preliminary choices such as delimitation of the scope, history and comparative experiences.
- c. Potential solutions to the problems by using foreign experiences (comparative law), academic opinion etc.
- d. Conformity including measures;
- e. Description of the proposed solution.
- f. Analysis of the effectiveness of the proposed legislative solution.
- g. Analysis of the bill's probable cost and benefits (this is why in France system is that a Bill is usually accompanied by what is called *Travaux Preparatoires* which mandates the proponents of any legislation to attach the cost implication of the Act to avoid unnecessary government expenditures. In the Senate Standing Rules 2011 as amended, Order 77 Rule 3 made a similar provision for Nigeria which requires that a Bill must be submitted with a Compendium of Financial Implication).
- h. Identification of the monitoring and feedback systems e.g. the Legislative Impact Assessment mechanisms, such as periodic evaluation of the effectiveness of the bill or sunset clause introducing limited life of the bill;
- i. Justification of the bill's implementing provisions.

In construction of a building, the frame work is first designed to show the structure of the building, this is also the case of this stage in which provides the structure of the legislation. It is the duty of the drafter under this stage to take into account the most rational method by which the law is divided into parts and its normative provisions are ranked within those parts to effectively bring out their interrelationship. In designing, the drafter prepares a legislative plan

which serves as a preliminary exercise for working out the outline of the Bill in a logical sequence for coherence and concise communication of the Bill. Designing a structure facilitates communication of the content of the law and achieves objects of the drafting instructions. It is important for the drafter to set a target and time frame within which to achieve the task as instructed.

It is also important for the drafter to follow the general arrangement of legislation peculiar to the jurisdiction which the drafting is meant for. There are various parts of a Bill and some are peculiar to some jurisdiction. However, a Bill may be divided into Preliminary which includes the long title, short title, commencement, preamble, enacting formula, purpose clause, application, duration; Principal Provisions which may be Substantive and Administrative provisions; Miscellaneous Provisions which include offices, power to make regulations, etc and Final Provisions which include transitional provisions, savings, repeal, schedules, etc. The drafter should ensure he is familiar with the jurisdiction he is drafting for in order to properly place items in the proper part and forms. An example of a legislative plan in designing a Bill for An Act to Establish a National Forest Conservation:

1. Title of the Bill
2. Interpretation
3. Application
4. Establishment of the Agency
5. Establishment of the Board, its composition, Tenure, Removal,
6. Management and Conservation of Forest
7. Permits by the Board
8. Prohibited Activities, ie burning bushes, cutting down trees etc;
9. Notice to the Board before Cutting;

10. Offences and Penalties;

The next thing the drafter is expected to do is to compose the draft Bill in a logical order and arrangement, which is discussed in the next stage. The drafter is required to go over the draft many times to ensure perfection. On the first glance at the composed legislation, there might be errors and omissions of important aspects of the Bill. The drafter should be careful in following precedents while drafting.

The drafter should ensure that the provisions of the constitution is adhere to such as the principles of human rights, and also issues of authority such as giving an appropriate authority the necessary powers. The power to make subsidiary instrument should be consistent with the enabling statutes. In *Powell v May*³⁴, the Court observed that a Bye-law cannot permit what the statute expressly forbids and vis-visa; although it can forbid what will otherwise be lawful at common law. Also, the validity of the subsidiary legislation may be challenged not just on the ground that it is inconsistent with the enabling statute but also any other statute³⁵. In *Famfa Oil Ltd v AG Federation & Anor*³⁶, the Court of Appeal posits that it is the law that subsidiary legislations must conform with the principal law which provided the source of their existence³⁷.

The final stage is the scrutiny of the draft legislation. At this stage the draft is tested and verified to see whether the text reflects the policy rules forming the basis of the legislative text. In other words, it has to prove whether the drafter has fully complied with the drafting instructions. At this stage the drafting process takes the form of much revisionary work by the policy makers and drafters.

The drafter should always have the draft checked or proof read by another drafter to ensure an error free work. This is because there are errors an independent mind can quickly detect which

³⁴. (1946) KB p. 330.

³⁵. Section 1(3), Constitution of the Federal Republic of Nigeria, 1999 (as altered).

³⁶. (2007) LPELR-9023(CA), p. 29, Paras E-F.

³⁷. See also *Omatseye v FRN* (2017) LPELR-42719(CA).

may be obscure or subconsciously skipped by the drafter and such drafting faults might be detrimental to the work.

In going through the draft, the drafter should ensure the followings:

- That the draft achieves all the objectives of the instructions given by the instructor,
- That the draft fits generally into a body of law,
- That the draft complies with the laws especially the Constitution,
- That the draft is coherent and flows logically,
- That the languages of the draft are clear and without ambiguity.
- Where there are other laws referred, those laws are up to date,
- That punctuations, spellings and style used in drafting is consistent and accurate,
- That the draft covers all the subject matter as regards that legislation.

Flowing from the foregoing, it is important to emphasise how these stages of drafting have shaped the character of UN, EU and other inter-governmental organisations under consideration.

This is however reviewed as follows:

1. Application of Drafting Stages to UN Treaties: Under the UN as an inter-governmental treaties are made pursuant to resolutions or general consensus of the State Parties. The proposal inform of policy is therefore presented to experts within the Legal Department, who is responsible for drafting of Treaties and other Instruments such as Conventions, Declarations, and Resolutions. In drafting, the Legal Department ensures that the five stages identified are complied with particularly during scrutiny. Unlike in England where the “*four eye principle*” of scrutiny of handing over a Bill to different sets of people to scrutinise, the UN just like in Nigeria, Bills are scrutinized by the lawyers/counsel, who drafted the laws, the UN. They are counsel in the Legal

Department of the UN as in Nigeria, where they either employed in the Office of the Attorney-General or Legal Department of the Parliament or National Assembly.

2. EU Drafting: In the EU, some 23, 000 staff members work in the Commission in over 30 departments, known as Directorates-General (DGs) or Services, each responsible for a particular policy sector. The President of the Commission is charged with ‘ensuring that it acts consistently, efficiently and as a collegiate body’.³⁸The initial preparatory work for legislative proposals is in the hands of officials from the DG. The EU encourages consultation to ensure openness, participation of member States and effective legislation. Similarly, in 2001 the EU, boost the idea of impact assessments carried out as part of the preparation of Union legislation. The EU Commission has since then required all major legislative proposals forming part of the Legislative and Work Programme integrated impact assessments covering the economic, social and environmental impacts of the measures envisaged.

The aim is to promote a more analytical, evidence-based approach to policy making by analysing at an early stage what is the nature of the problem to be addressed and what are the policy objectives and then determining the available options and assessing the likely economic, social and environmental impacts of those options in order to compare their advantages and disadvantages³⁹.The Commission’s impact assessments are carried out by the technical experts in the DG for the sector concerned, who must follow the Commission’s Impact Assessment Guidelines.

The First draft of EU Legislation forms the basis of further drafts and is usually produced by the technical experts in the DG. They rarely have specific expertise in legislative

³⁸. Article 17(6) Treaty on the Functioning of the European Union (TFEU). See also Articles 1 and 3(2) of the Commission’s Rules of Procedure (OJ L55, 5.3.2010), p. 60.

³⁹. See the TFEU, *ibid*.

drafting (although one or two DGs have, within their own legal units, lawyers to help with drafting). Thereafter, there are wide consultations before the other drafts are made. However, under Article 23(4) of the Rules of Procedure the Commission, Legal Service must 'be consulted on all drafts or proposals for legal instruments and on all documents which may have legal implications'. The Legal Service acts as the Commission's in-house lawyer providing it with legal advice and representing it in all court cases.

Drafting styles on the other hand, Gibbon⁴⁰, notes: "Laws are coded in language, and the processes of the law are mediated through language. The legal system puts into action a society's beliefs and values". Drafting style is the way legislation, as a vehicle of symbolic communication, voices the message⁴¹. Drafting styles deal with nomenclature of the laws, structure, scrutiny, publication and so on. This must be distinguished from "syntax", that is the basic syntax and principles of legislative expressions, which has its foundation from the elements of style in writing generally. Syntax deals with constructions of texts, sentences and arrangements of words in a legislation. It is the art of composing the legislation.

One of the earliest writers on legal composition or syntax was George Coode⁴². His paper 'On Legislative Expression or The Language of the Written Law' was published in 1843. Although his analysis dealt with legislative composition, it is also of considerable value in drafting legal documents because the objectives are similar in each case. Coode explained the elements of legislative expression in the following terms: 'THE EXPRESSION of every law essentially consists of:

-firstly, the description of *the legal Subject*,

⁴⁰. Wim Voermans, *Styles of Legislation and their Effects*, op cit, p. 39.

⁴¹. Ibid.

⁴². Deji Adekunle (SAN), *Legislative Drafting, Syntax and Expression* (Unpublished NILDS LLM Class Lecture Notes, 2019/2020 Session).

- secondly, the enunciation of *the legal Action*.

To these, when the law is not of universal application, are to be added,

- thirdly, the description of *the Case* to which the legal action is confined; and,

- fourthly, *the Conditions* on performance of which the legal action operates.

Coode viewed the law as imposing rights, privileges or powers and corresponding liabilities and obligations on those who must confer the rights, privileges or powers. Thus, Coode's analysis could be seen from few EU legislations and various treaties of the UN as follows:

1. Amending Delegated Regulation (EU) 2019/2035, Supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council, as regards rules for establishments keeping terrestrial animals and hatcheries, and the traceability of certain kept terrestrial animals and hatching eggs. This is a Long Title of EU legislation seeking to regulate the keeping of terrestrial animals and hatcheries. Article 38(1) of Delegated Regulation (EU) 2019/2035 provides that operators keeping bovine animals are to ensure that those animals are identified by specified means of identification, while Article 38(2) thereof allows operators to replace those specified means of identification with alternative ones. Under Article 38, the "operators" are the subject, "keeping bovine animals" is the object while the action is "to ensure that those animals are identified" within the context of Coode's analysis.

2. There are so many provisions of some UN Treaty that also contain the Coode's principles of legislative expression. However, since most of the provisions of the UN Treaties are of general application to member states, it is usually expressed with "subject-action" sentences at times without the "case-conditions" phrases. Take for instance, the "Optional Protocol to the International Covenant on Civil and Political Rights" which

was adopted and opened for signature, ratification and accession by the UNGA Resolution 2200A of 16 December 1966 and entered into force on 23 March 1976, Article 1 of the Protocol reads:

A State Party to the Covenant that becomes a Party to the Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to the jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

3. Thus, the above provision of the Optional Protocol to the International Covenant on Civil and Political Rights contains Coode's "subject and object" i.e. "A State Party to the Covenant and to the Protocol" while the concluding also includes "condition" that "No communication shall be received by the Committee...".

Furthermore, the styles of drafting was clearly defined as the wording (general use of language, definitions, terminology, etc.), structure (its divisions, ways of referencing, etc.), and superstructure (its ways of presenting its relation to and the hierarchy between it and other legislative texts, etc.) of the legislative text, as well as its legal-cultural identity (within its own legal system and how that system is influenced by its origins, for example in the civil or common law tradition)⁴³.

The importance of drafting styles to this study therefore, cannot be over-emphasised. This is due to the fact that differences in the structure and the use of language in legislation may impede the implementation or co-ordination efforts of domestic legislators. Citizens and businesses are also

⁴³. Ibid.

increasingly affected by cross-cultural legislative interaction. Due to the internationalization of commerce and the reduction of barriers to the free movement of goods, especially within in the EU, commerce is increasingly governed by ‘law from abroad’ - be it World Trade Organization or EU law implemented in their national system - or even by domestic legislation of other EU Member States (e.g. the consumer law of other Member States in the case of internet shopping).

Thus, a different style of legislation than that with which one is familiar with could hinder ready access to the text of the legislation and its comprehension, even where it is translated into your domestic language. It may compromise the integrity and coherence of national bodies of law. The intensity of cross-cultural legislative interaction and subsequent transfer of ideas - and interdependencies resulting from it - therefore make insight into the styles of legislation of other countries rewarding. Moreso, increased insight into the legislative styles of others may prove to be an attribute during negotiations on international or EU legislation or decisions. It may also be helpful in their interpretation and domestic implementation.⁴⁴

This therefore implies that the drafters in Nigeria could draw lessons or inferences and adopt or adapt the legislative drafting styles of either of the inter-governmental organisations to ensure coherence in the drafts. However, as shall be seen subsequently under the comparison of EU legislation, the various inter-governmental organisations adopts different styles of drafting and in expressing the syntax, they also conform with the Coode’s elements.

Structure of a legislation is the arrangement of the various parts of the legislation. It has been observed⁴⁵ that there is no uniformity in the structure or form in which a Bill or draft law should look like. This depends on the jurisdiction and the drafter. Reed Dickerson⁴⁶ stated as follows:

⁴⁴. Wim Voermans, op cit, p. 41.

⁴⁵. D.T. Adem, op cit, p. 39.

⁴⁶. R. Dickerson, *The Fundamental of Legal Drafting* (Boston: Little Brown and Company, 1965) p. 57.

There is, of course, no all-purpose arrangement that is the most suitable for all sets of ideas; nor is there even a person who may later be called on to amend the single idea arrangement for specified set of ideas. Every sensible arrangement reflects a point of view. What may be the best arrangement from one point of view may not be best from another. The draftsman should make sure that he is reflecting the point of view that best advances the purpose of his client.

Thus, a comparison of the structure of UN and EU drafting styles are in Table 1 below.

TABLE 1: SHOWS EXAMPLES STRUCTURE OF LEGISLATION IN NIGERIA, UN AND EU TREATIES.

FEATURES	NIGERIA	UN	EU
Preliminary Provisions	A BILL FOR AN ACT TO ESTABLISH THE NATIONAL CENTRE FOR CRIMES CONTROL	No Long Title but there is preamble e.g. “The State Parties Having regard to the Treaty establishing the United Nations..... Whereas:..... Has adopted...”	Amending Delegated Regulation (EU) 2019/2035 Supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council, as regards rules for establishments keeping terrestrial animals and hatcheries, and the traceability of certain kept terrestrial animals and hatching eggs.
1. Long Title			
2. Preamble	Not applicable	Applicable	Applicable

3. Enactment Clause	Enacted By the National Assembly or State House of Assembly or Order in Council for Bye-Laws	Having regard to... the State Parties have agreed as follows	Having regard to., Has adopted this Legislative Act as follows:
4. Commencement	Usually the date as follows Commencement: 5 th May, 1999.	The day of adoption, adopted this.....day of 1978	Same as UN
5. Purpose Clause	Not applicable (only France and other prototype countries)	Implied from the preamble	Implied from the preamble
6. Short title	This Act shall be cited as: Economic and Financial Crime Act, 2004.	UN Convention on Biological Diversity 1992	EU Treaty on Use of Common Currency or Amending Delegated Regulation (EU) 2019/2035 Supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council

7. Application	This Act shall apply or be applicable to persons involved in committing economic and financial crimes and other related offences.	This Treaty/Protocol/Convention/Covenant shall be binding in its entirety and directly applicable in all Member States.	This Delegated Act/Regulation shall be binding in its entirety and directly applicable in all Member States.
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The above represents the exercise of this research to unravel the peculiarities of the drafting styles and structures of UN and EU. Nigeria's was brought into the Table to assist researcher in understanding the structures and drawing lessons for Nigeria subsequently. The structure of a legislation therefore has no particular format. For example, in Nigeria, the short title and the interpretation sections are placed at the end of the Bill while in other climes, like France, it comes at the beginning. Notwithstanding the differences in arrangement, a Bill is usually structured as follows:

1. Preliminary Provisions:

- Long title
- Preamble (not necessary except in Constitutions, where the Bill is of ceremonial character or relates to local of private enactments).
- Enactment Clause.
- Commencement.
- Duration/expiry.
- Application.

- Purpose clause (in France).
 - Definitions/interpretations.
 - Short title (Appears at the end in most Nigeria's laws).
2. Principal provisions:
- Substantive provisions.
 - Administrative provisions.
3. Miscellaneous provisions:
- These may create offences, limitation of time, arrests and search, service of notices etc.
4. Final provisions:
- Savings and transitional provisions.
 - Repeals.
 - Consequential amendments.
 - Schedules (in Nigeria but EU and UN uses Annexes).

It is equally important to note that structurally, a legislation may be divided into Parts, Chapters, Sections, Sub-Sections, Paragraphs and Sub-Paragraphs respectively. A section is the unit of text that is the basic component of an Act and referred to in the UN and EU treaties and other international laws as Article.

Preliminary provisions are the introductory aspects of the legislation and should contain the checklist enumerated above such as the long title and some jurisdictions, the short title. The long

title sets out the purpose or scope of the Act or legislations and indicates or states the main feature of the Act⁴⁷. It gives a general description of what the law is all about.

Thornton⁴⁸ advised that a comprehensive long title may serve a valuable purpose in assisting to communicate the intended spirit and scope of the Act. It presents an opportunity to the drafter to say in plain terms what the legislations are all about, but a purpose provision may be more effective. Examples of Long Titles based on jurisdictions are itemised in the Table 2 below.

TABLE 2: LONG TITLES OF UN AND EU TREATIES/LEGISLATIVE ACTS

UN	EU
<p>No Long Title but there is preamble e.g. “The State Parties Having regard to the Treaty establishing the United Nations..... Whereas:..... Has adopted...”</p>	<p>AMENDING DELEGATED REGULATION (EU) 2019/2035 SUPPLEMENTING REGULATION (EU) 2016/429 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, AS REGARDS RULES FOR ESTABLISHMENTS KEEPING TERRESTRIAL ANIMALS AND HATCHERIES, AND THE TRACEABILITY OF CERTAIN KEPT TERRESTRIAL ANIMALS AND HATCHING EGGS.</p>

⁴⁷. D.T. Adem, op cit, p. 50.

⁴⁸. Ibid.

The role of the preamble as earlier noted, is diminished to a cosmetic one in the case of archaic or ceremonial laws⁴⁹, or to a transitional one or constitutional provisions. The enacting clause is a requirement without which the law lacks legitimacy. The short title is a means of reference to the law and varies from jurisdiction to jurisdictions. Recent or modern drafters prefer to emplace the short title at the final provisions along with commencement, duration, expiry, application and interpretation provisions.

Substantive provisions introduce rights, powers, privileges, and immunities of persons to be benefited or regulated. These provisions are drafted as prescriptions, prohibitions, regulations or combinations. Statutory corporations are introduced with care: their powers can only be those awarded to them by statute and those which are necessary for the completion of the purpose of incorporation (even if they are not directly awarded to them by statute). Licensing and registration provisions cover the appointment of a licensing authority, the object of its activity, the manner of application for the licence, the sanctions for breach of the obligation to obtain a licence or fraudulent behaviours in the procedure, appeals procedures, inspection issues, subsidiary legislation and any transitional regimes⁵⁰.

Miscellaneous provisions prescribe punishments, fines, and penalties in appropriate cases. It is trite that where the primary purpose of a statute is expressly enforceable by fine, imprisonment, or similar punishment, it is penal. Penal provisions are construed strictly and not extended by implications, intendments and analogies. This is because it will work injustice and achieve unintended results as held in *Umoera v C.O.P.*⁵¹.

Final provisions include savings, transitional provisions, repeals and consequential amendments, and schedules. Savings provisions preserve or “save” a law, a right or privilege that would

⁴⁹. Helen Xanthaki, op cit, p. 61.

⁵⁰. Ibid.

⁵¹. (1977) 7 SC 12. See also *FRN v Ifegwu* (2003) 15 NWLR (PT.842) 113; and *Bello v The Diocesan Synod of Lagos* (1973) 3 SC 72.

otherwise be repealed or cease to have effect. In other words, saving provisions keep in being laws, rights or obligations that might otherwise disappear when an existing law is repealed. Transitional provisions are necessary to enable a smooth transition to be made between the existing law and the new law; they tie up the loose ends which would otherwise be left dangling. Although savings and transitional provisions are often confused, they are two different species and should carry separate headings. Savings provisions do not relate to time: they simply preserve a circle of persons or activities from the field of application of the new regime; they are long term provisions. Transitional provisions focus on regulating for the short term issues that continue to fall within the field of application of both the old and new regime but the regulation changes with the new regime. They are short term provisions that regulate the transition between the old and the new regime for the same class of subjects, or objects, or activities.

Repeals are deletions of provisions or Acts from the statute book. They must be introduced expressly to avoid confusion. Implied repeals, namely repeals that come about de facto but have not been expressly introduced in the legislative text are an anomaly of drafting and cannot be tolerated. At the end of the day repeals are a drafter's not a judge's job. Repeals can be simple, where legislation is no longer required (unusual in practice); combined with re-enactment, where a new enactment consolidates the law that is essentially unchanged; or combined with replacement, where existing legislation is being remoulded to meet new circumstances in different ways (the most usual circumstance in practice).

It is still questionable whether amending Acts or subsidiary legislation deriving from the repealed Act need to be expressly repealed. From a constitutional and statutory interpretation perspective they do not need to be repealed, as they will have merged with the principal Act on coming into force. From that point of view, express repeal of such an amending Act or provision would be required only in the rare instance that it had not yet come into force at the date of

proposed repeal. But from a drafting perspective where clarity and certainty in the law lies at the heart of the matter, express repeal even of delegated legislation is crucially helpful to the user, and must be upgraded to best practice. Repeals are supposed to be clear and no decision of a court of law made under a repealed law can withstand the test of time. In the case of *Citibank (Nig) Ltd v Abia State Internal Revenue Service*⁵², it was held that the decision of the trial court which was based on the deleted Sections 65 and 66 of the Personal Income Tax Act, 2004, was an exercise in futility, as the Court based its decision on non-existing law.

Schedules are provisions attached to the main text of the law, hanging from a substantive provision within the text. They free the main body of an Act from a possible charge of untidiness. The use of schedules can make a substantial contribution to effective communication by clearing away procedural and other distinct groups of provisions to schedules in order to present the main provisions of the statute prominently and in a less cluttered package.

The **Keeling Schedule** is a device which ‘sets out the wording of the enactment, indicating by bold type the changes proposed.’ It is only used where the changes made by the Bill in the previous enactments are exclusively textual amendments or repeals. The Keeling technique not only shows, in the Schedule how the law will look once it is amended, but also makes clear, in the text of the Bill itself, how the law is being amended⁵³.

2.2.2 Principles of Legislative Drafting

The principles of legislative drafting are many depending on the legislations. Some principles which may be applicable to one legislation may be necessarily apply to another law.

Nonetheless, four basic principles of drafting were developed by Robert Walter (1963), elaborated by Gerhart Holzinger (1988). The four principles are:

⁵². (2018) LPELR-46246(CA), Pp. 12 - 13, Paras E - D.

⁵³. Helen Xanthaki, op cit, p. 62.

- 1) Economy
- 2) Clearness
- 3) Systematism
- 4) Formalism

Note that there are possible divergences, e.g. economy vs. clearness⁵⁴. Similarly, the Legislative Drafting Guidelines for African⁵⁵ highlighted some principles of legislative drafting as follows:

1. An Act must be clear, simple and precise.
2. Concise and uniform.
3. Plain language should be used.
4. Acronyms should be used sparingly.
5. Proper use of punctuations
6. Gender-neutral language.

These principles are interrelated and this research agrees with the various classification to the extent that if duly utilized, would assist the drafter in presenting a formidable draft to his instructors. However, they are by no means exhaustive of the principles of drafting.

2.2.3 Legislative Drafting and Comparative Study

The relationships between legislative drafting and comparative study are seamless and interwoven to the extent that every legislative drafter do compare laws of one jurisdiction to those another before coming up with a draft. Comparative study is primarily aimed at improving knowledge in a difficult situation. Zegwert and Kotz observed that if one accepts that legal

⁵⁴. Gunther Schetback, Legislative Drafting, Back to Basic, op cit.

⁵⁵. Christo Botha et al, Legislative Drafting Guidelines for Africa, (assessed at <<http://sites.bu.edu>> on 25/10/21), p. 2.

science includes not only the techniques of interpreting the texts, principles, rules and standards of a national system, but also the discovery of models for preventing or resolving social conflicts, then it is clear that the method of comparative law can provide a much richer range of model solutions than a legal science devoted to a single nation, simply because different systems of the world can offer a greater variety of solutions than could be thought up in a lifetime by even the most imaginative jurist who was corralled in his own system.

They further described comparative law as “*ecole de verite*” which extends and enriches the supply of solutions. Over time, legislators across the globe have realized that better laws could be enacted only with the aid of comparison with foreign laws or some established legal principles. Nonetheless, Zweigert and Kotz advised that one must proceed with intelligence and caution and to those who are opposed to the idea of comparative law, they cited wise words of Rudolph V Jhering thus:

The reception of foreign legal institutions is not a matter of nationality but of usefulness and need. No one bothers to fetch a thing from afar when he has one as good or better at home, but only a fool would refuse quinine just because it didn't grow in his back garden.

They concluded that whoever elects to adopt a foreign solution to problems is superior. Gleaned from the above, the importance of comparative law to legislative drafting include but not limited to improve knowledge, enriches supply of solution, aid in law making processes. Additionally, it is a veritable tool for interpretation of statutes by the courts. In *White v Jones*⁵⁶, the question as to whether a lawyer had to pay for the harm suffered by a 3rd party as a result of his incompetence in heeding to client's instructions was resolved by Lord Goff, using comparative

⁵⁶. (1995) 2 AC 207.

law. There it was observed that the German doctrine of contract has no protective effect for third parties but the law was extended to tort and the lawyer was held liable for tort of negligence.

Comparative study like comparative law, improves research and education. It is also a source of inspiration for the growth of local laws or municipal legislations. For instance, almost all Nigeria laws are products of comparison with either the UK or other foreign countries. The doctrine of precedents which allows the application of the principles of a decided case to solve current legal issue is a typical example of such importation or role of comparative law. As would be seen, the UN and EU have one way or the other adapt the foreign laws of another country or international organization in their drafting styles and vice versa. It is therefore beyond doubt, that the EU for instance, as a transnational union, gives powers to its members to adopt EU treaties, legislative acts and other rules in their municipal laws or domestic policies.

2.2.4 Conceptual and Legal Framework of the UN and EU

Conceptualising the legal framework of the UN and EU is not a difficult task as the basic information need are usually summarized in their respective websites. Taking the institutions one after the other, this research briefly described the organisations and their legal framework.

United Nations (UN) Organisation

The UN is an international inter-governmental organization formed to provide a permanent institutional framework for the community and comprises more 160 member states. It was established in 1945 sequel to the World War II which also was as result of the lapses in the League of Nations, an earlier international organization. It is regulated by the UN Charter.

The aims and objectives of the organization were highlighted under Article 1 of the UN Charter as follows:

- a. The maintenance of international peace and security.

- b. The development of friendly relations among nations based on the principles of equal rights and self-determination of peoples.
- c. The achievement of international cooperation in the solution of international problems of an economic, social, cultural or humanitarian character and in the promotion and encouragement of respect for human rights and fundamental freedoms for all without discrimination.
- d. Serve as a centre for harmonizing actions for attaining the common objectives.

The UN is built on principles of sovereign equality of its members, fulfilment of obligations in good faith, settlement of disputes by peaceful means among others. Article 7 of the UN Charter established six principal organs of the UN as follows:

- 1. The UN General Assembly (UNGA).
- 2. The Security Council.
- 3. Economic and Social Council (ECOSOC).
- 4. Trusteeship Council.
- 5. The International Court of Justice (ICJ).
- 6. The Secretariat.

European Union (EU)

Primarily, it is important to note that European Union (EU), is a supranational organization conglomeration of many countries of Europe such as Italy, Romania, Spain, Sweden, France, Portugal etc, who come together to adopt a common front on certain legal issues and interests. It currently comprises 27 European countries and aimed at promoting economic, social and security policies. Originally, confined to Western Europe, the EU undertook a robust expansion

into central and eastern Europe in the early 21st Century. The UK which had been a founding member of the EU, left the organization in 2020⁵⁷. The EU was created by the Maastricht Treaty of 1 November, 1993 to enhance European political and economic integration by creating single currency (the EURO, €), unified foreign and security policy etc.

⁵⁷. D.W. Bowett, *The Law of International Institutions*, (Stevens Publishers, 1970).

CHAPTER THREE

DRAFTING STYLES, COMPARISON OF THE UN AND EU TREATIES OTHER LEGISLATIONS AND LESSONS FOR NIGERIA

This Chapter discusses the drafting styles of UN and EU and highlights the differences in the drafting styles among the two international organisations. The basic features of each organization's drafting styles and other key components are also considered in this Chapter, such as:

- a. Nomenclature.
- b. Drafting personnel.
- c. Legislation for drafting.
- d. Structure of legislation.
- e. Publication of legislation etc.

3.1 Drafting Styles of the UN and EU

United Nation (UN)

The UN just like the EU adopts the community legislative paradigm or style given that it is an international organization comprising many states parties, even though it is seen as political and security based international organization. Nigeria is one of the signatories to the UN Charter and there are differences in the legislative structures of Nigeria and that of the UN. The United Nations General Assembly (UNGA) is the main deliberative, policymaking and representative organ of the UN. This organ is not a full legislative body like the National Assembly of Nigeria or the Parliament or Congress in the UK and US. However, from the activities of treaty making

and other regulations, this study inferred some iota of legislative activities and could draw lessons for Nigeria.

The basic legal instruments or legislations in the UN are: Treaty, Conventions, Resolution, Declaration and Protocols. Resolution 13 of the United Nations General Assembly 1946 Article 13.1(2)(f) provides for Legal Department which is responsible for the drafting of treaties and other legal instruments. Under Article 31 of the UN Charter 1945 a treaty shall be interpreted in good faith, interpretation shall include preamble, annexes, any agreement, practices, any relevant rules of international law and a special meaning where parties agreed to it and also, the VCLT, 1969.

By virtue of Article 102 (1) of the Charter of the United Nations 1945, every treaty and every international agreement entered into by any Member of the United Nations after the present charter comes into force shall as soon as possible be registered with the Secretariat and published by it. By virtue of United Nations General Assembly (UNGA) Resolution 13, 1946 Article 13.1 (2)(e) it is the responsibility of the Department of Public Information of the Secretariat to Publish such treaty or agreement.

The supporting documents for UN legislations are as guided by Article 31(2) which provides:

The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

UN Legislations are enacted after a long preamble. The Preamble usually commences as: “The State Parties Having regard to the Treaty establishing the United Nations..... Whereas:..... Has adopted...” while the Enacting Formular is: “The State Parties to the Convention...Have agreed as follows:”.

The UN laws are divided into:

1. Preliminary,
2. Principal,
3. Final Provisions,
4. (Miscellaneous for Charters) and
4. Annex.

UN legislations are published or registered with the Secretariat for publication by virtue of Article 102(1) of the UN Charter 1945. Resolution 13 of the UNGA 1946, Article 13.1(2)(e) further provides that it is the responsibility of the Department of Public Information of the Secretariat to publish treaties or agreements.

TABLE 3: NOMENCLATURE OF NIGERIA AND UN LEGISLATION AS AN EXAMPLE

NIGERIA	UN
Act by National Assembly	Treaty, Convention, Covenant and
Law by State House of Assembly	Protocol.
Bye-Law by Local Government Council	

European Union (EU)

Though the EU has not accepted that it has Tricameral legislation comprising the European Commission, the Council of the European Union and the European Parliament, many scholars have categorised it as such. The EU still believes in its Parliament as lawmaking body. Since the latest amendment by the Lisbon Treaty, almost all basic legislation is adopted jointly by the Parliament and Council on the basis of a proposal from the Commission⁵⁸. The codecision procedure is now the ‘ordinary legislative procedure’ under Article 294 of the Treaty on the Functioning of the European Union (TFEU). There are just a few fields where codecision does not apply, such as taxation, the common foreign and security policy, and the conclusion of international agreements. Sequel to Lisbon Treaty, the EU Legislation is by virtue of Article 289 of the Lisbon Treaty divided into Legislative Acts, Delegated Acts and Implementing Acts.

TABLE 4: NOMENCLATURE OF NIGERIA AND EU LEGISLATION AS AN EXAMPLE

NIGERIA	EU
Act by National Assembly	Legislative Acts, Delegated Acts and Implementing Acts.
Law by State House of Assembly	
Bye-Law by Local Government Council	

1. Legislative Acts are legal acts adopted by an ordinary or special legislative procedure.
2. Article 290 (1) of the Lisbon Treaty, 2009 makes provision for Delegated Acts that a legislative act may delegate to the Commission the power to adopt non legislative acts to supplement or amend certain non-essential elements of the legislative act. These

⁵⁸. Article 113 TFEU, Article 24 of the TEU, and Article 218 TFEU respectively.

are non-legislative acts of general application which supplement or amend certain non-essential elements of the legislative act. The power to adopt this type of act may be delegated to the Commission by the European Parliament or the Council. Delegated acts are legally binding acts that enable the Commission to supplement or amend non-essential parts of EU legislative acts, for example, in order to define detailed measures. The Commission adopts the delegated act and if Parliament and Council have no objections, it enters into force.

3. On Implementing Acts, Article 291 of the Lisbon Treaty provides that Member States shall adopt all measures of national law necessary to implement legally binding Union acts. These acts are generally adopted by the Commission, which is conferred with implementing powers; in certain cases, the Council may also be called upon to adopt implementing acts. Implementing acts are legally binding acts that enable the Commission - under the supervision of committees consisting of EU countries' representatives - to set conditions that ensure that EU laws are applied uniformly.

Equally, EU Legislative Acts are divided into direct (binding) and indirect (non-binding on the members). Those that are binding have direct impact on the member states while the indirect (non-binding) has not direct impact but the member states are expected to enact implementing legislations to give effect to them in their home countries. Article 288 of the Treaty on the Functioning of the European Union outlines five types of legal acts that EU institutions may take. The term "legal acts" encompasses various types of legislative actions, as well as actions that American legal scholars would characterize as being administrative or quasi-judicial in nature. Legal acts fall into one of two categories: those that are legally binding and those that are not. Legally binding acts include regulations, directives, and decisions. Acts that are not legally binding include recommendations and opinions.

However, the treaties lay down the objectives of the European Union, the rules for EU institutions, how decisions are made and the relationship between the EU and its member countries. The EU treaties have from time to time been amended to reform the EU institutions and to give it new areas of responsibility. They have also been amended to allow new EU countries to join the EU. The treaties are negotiated and agreed by all the EU countries and then ratified by their parliaments, sometimes following a referendum.

EU observers refer to legal acts collectively as secondary law to distinguish them from treaty provisions, which are considered to be the EU's primary law. Some observers prefer to use the term "secondary legislation" when referring to legal acts and the term "primary legislation" when referring to treaties.

Direct Legal Acts Binding on Members

Regulations

Regulations are legal acts that apply automatically and uniformly to all EU countries as soon as they enter into force, without needing to be transposed into national law. They are binding in their entirety on all EU countries. An EU regulation is a binding legislative act of general application. Once enacted, a regulation must be complied with in its entirety in each of the Member States. If a regulation conflicts with a Member State's existing law pertaining to the same subject matter, the regulation supersedes the national law. For example, when the EU decided to restrict the use of geographic names to market certain types of agricultural products (e.g. "Parma ham"), it enacted Council Regulation (EC) No 510/2006. The use of the term "regulation" in a legislative context can be confusing for Americans, who are accustomed to thinking of regulations as rules issued by administrative agencies.

Directives

An EU directive is a legislative act that establishes a specific goal or objective without specifying the means by which the objective is to be achieved. Directives may apply to individual Member States, to groups of Member States or to all Member States. The objective set forth in the directive is legally binding on the Member States to whom it is addressed, but it is up to each Member State to enact its own implementing legislation to achieve the objective. An example is the Working Time Directive, which limits the total number of hours an individual may work per week, but allows Member States flexibility in enforcing the limit.

Directives require EU countries to achieve a certain result, but leave them free to choose how to do so. EU countries must adopt measures to incorporate them into national law (transpose) in order to achieve the objectives set by the directive. National authorities must communicate these measures to the European Commission. Transposition into national law must take place by the deadline set when the directive is adopted (generally within 2 years). When a country does not transpose a directive, the Commission may initiate infringement proceedings.

Decisions

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them. An EU decision is a legal determination of limited application, meaning that it affects only those to whom it is addressed. A decision may be addressed to one or more Member States, to one or more individual citizens or to other legal entities, such as corporations. For example, in 2009 the European Commission issued a decision in which it assessed a fine against the software giant Microsoft Corporation for abusing its dominant market position.

Indirect EU Legislative Acts Non-Binding on Members

Recommendations

A recommendation is an official statement issued by an EU institution to make its views on a particular subject known and to suggest a course of action without imposing any legal obligations on those to whom it is addressed. Recommendations are sometimes used by the European Commission to signal its disapproval of a practice and to suggest that legislation may be introduced in the future to discourage the practice. For example, in 2009 the Commission issued a recommendation to employers in the financial services sector urging them to refrain from structuring employee compensation packages in ways that encourage excessive risk-taking. Recommendations allow the EU institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed. They have no binding force.

Opinions

An 'opinion' is an instrument that allows the EU institutions to make a statement, without imposing any legal obligation on the subject of the opinion. An opinion has no binding force. Opinions are another vehicle by which EU institutions may make their views on a subject known without imposing legal obligations on the recipient. Opinions are most often used by EU institutions to comment on the work being done by other institutions, such as legislation being drafted by the Commission.

It should be noted that staff of the European Union agencies drafts legislation. The staff receive training in legal drafting. The Directorate-General for Legal Service of the European Commission has to be consulted on all draft legislation.

The process of drafting Union legislation begins in the Commission where the preparatory work is carried out by technical experts who produce a first draft. The Technical Experts rarely have specific expertise in legislative drafting (although one or two DGs have, within their own legal units, lawyers to help with drafting). That draft is the subject of numerous interventions by other Commission staff before a legislative proposal is adopted by the Commission. Some twenty-three (23,000) staff members work in the Commission in over thirty (30) departments, known as directorates-general (DGs) or services, each responsible for a particular policy sector. The President of the Commission is charged with ‘ensuring that it acts consistently, efficiently and as a collegiate body.

The Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation is the EU Drafting Manual 2015 (Manual). The Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation is the EU drafting manual. Joint Practical Guide is to be used in conjunction with other more specific instruments, such as the Council’s Manual of Precedents, the Commission’s Manual on Legislative Drafting, the Inter-institutional style guide published by the Publications Office of the European Union or the models in Legis Write. In addition, it will always be useful and often indispensable to refer to the relevant provisions of the treaties and the key basic acts in a specific field. Hence, the basic guidelines of drafting were provided in the Manual that the drafting of a legal act must be:

- a. clear, easy to understand and unambiguous;
- b. simple and concise, avoiding unnecessary elements;
- c. precise, leaving no uncertainty in the mind of the reader.
- d. This common sense principle is also an expression of general principles of law, such as:

- e. the equality of citizens before the law, in the sense that the law should be accessible to and comprehensible for everyone;
- f. legal certainty, in that it should be possible to foresee how the law will be applied.

Chapter 5 of the Manual provides that the person drafting an act of general application must always be aware that the text has to satisfy the requirements of Council Regulation No 1, which requires that such acts be adopted in all the official languages. That entails additional requirements beyond those which apply to the drafting of a national legislative text. First, the original text must be particularly simple, clear and direct, since any over-complexity or ambiguity, however slight, could result in inaccuracies, approximations or complete mistranslations in one or more of the other Union languages.

Chapter 5.3.2 of the Manual clearly emphasized neutrality in the use of language in drafting EU Legislation by stating that: *“As regards legal terminology, terms which are too closely linked to a particular national legal system should be avoided”*.

Chapter 15.4 of the Manual provides that the structural subdivisions of the enacting terms of a legal act are set out in the table below. Acts with a simple structure are made up of articles and subdivisions of articles. The higher subdivisions of acts begin with chapters, divided, where necessary, into sections. Only when the text is extremely complex can chapters be grouped in titles which, in turn, may be grouped in parts.

EU legislations are required to be published within thirty (30) days of passage into law and are published in Journal for 27 Member States in 23 Official Languages.

3.2 Special Features of the Drafting Styles of the UN and EU

TABLE 5: SOME FEATURES OF UN, EU, AU AND ECOWAS LEGISLATIVE DRAFTING

Features	UN	EU
Perceived Legislative Body	UN General Assembly	The Parliament/Council pass Legislative Acts while the Commission may make Delegated Acts.
Nomenclature	Treaty, Protocols, Conventions, Declarations and Resolutions	Act
Drafting Personnel	UNGA Resolution 13, 1946 Article 13.1 (2) (f), the Legal Department is responsible for drafting of Treaties and other Instruments such as Conventions, Declarations, and Resolutions.	Directorate of Legal Services for EU; in conjunction with other staff

3.3 Legislative Drafting Styles of the UN and EU Comparison and Lessons for Nigeria: Nomenclature, Legislatures, Drafting Personnel, Legislation Drafting, Scrutiny, Supporting Documents, Structure, Language, Interpretation and Rules of Interpretation and Publication

The comparison of the legislative drafting styles of the UN and EU, would be examined by comparing their nomenclatures, legislation drafting, drafting personnel, scrutiny etc. Tables have been and are still in use to itemize these checklists in the course of the discussions to ease comparison. However, it is important to briefly consider the terms as follows:

3.3.1. Nomenclature

By legislative nomenclature we simply mean the name given or used to describe the legislation in a given territory or jurisdiction. This varies from countries to countries and organisations. In Nigeria, legislations are given different names at different levels. At the Federal Level, it is called an “Act of the National Assembly”, at States Level, it is known as “Law of the State House of Assembly” while Local Governments in Nigeria pass Bye-Laws. At drafting stage, it is called a Bill. In the UN, it is called Treaty, Conventions and so on. The EU has Legislative Acts, Delegated Acts and Implementing Act.

3.3.2 Legislature

Legislature is the body mandated to make laws for a country. In the case of the UN and EU, the perceived legislative bodies have been clearly itemised at Table 5 above.

3.3.3 Legislation for Drafting

The Legislation for Drafting simply mean the document used to guide or serve as a practice direction for a drafter of a legislation. For example, in Nigeria the Interpretation Act of 1964⁵⁹ is used while the UK uses the Interpretation Act. France uses the *legistique* (a Drafting Manual Guide for Drafters). The UN by virtue of the VCLT 1969, a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The EU uses the 1998 Joint Practical Guide for Persons Drafting EU Legislations. This was revised in 2015. Other international institutions such the AU has no Manual for legislative drafting but uses the “Rules of Procedures of the Executive Council” in drafting decisions. The ECOWAS are guided their Rules of Procedures as well, and

⁵⁹. Cap I23, LFN 2004.

other Member States Legislative Drafting Guidelines and Regulations. Nigeria needs to draw a lesson from the EU to have a Manual for drafters of its legislations as obtainable in the EU, as the Interpretation Act may not accommodate new events or novel issues, same having been passed into law since 1964.

3.3.4 Scrutiny

Scrutiny is the process of vetting and correcting the text of a legislation to ensure conformity with the legal norms of legislative drafting. It could be conducted at two levels, the drafting stage and Parliamentary Scrutiny. This paper's concern is on scrutiny at drafting stage. Under the UN drafting style, the Legal Department is responsible for scrutinizing Treaties and other Instruments such as Conventions, Declarations, and Resolutions. Likewise, the Directorate of Legal for the EU, while other sub-regional organisations like the AU as an example, uses the Office of the Legal Counsel and STCs and ECOWAS' is the Office of the Legal Affairs scrutinise a draft law.

3.3.5 Supporting Documents

Under Article 31-33 of the VCLT 1969 all UN treaties must be supported with any other agreements and documents contained in Annexes. Article 31(2) of the VCLT 1969, provides that the context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

- (b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

The EU is similar to the Nigerian system, there is a mandatory requirement that legislation or Bills must be accompanied by supporting documents providing evidence to justify the Bill e.g. "...a rudimentary cost-benefit analysis". "...the useful civil law practice of attaching travaux préparatoires to the final draft..." Hence, the EU also encourages the use Impact Assessment Guidelines for its Legislations.

In Nigeria for example, since the year 2011, Order 77 (3) Standing Orders of the Senate 2011 (as amended) makes it mandatory for every bill to have an accompanying COMPENDIUM OF THE FINANCIAL IMPLICATIONS OF THE BILL. The Order states as follows:

“A compendium of the background information and financial Implications shall accompany every Bill”.

The above principle was adopted from Civil law jurisdiction.

Other institutions as the AU, Rule 20 of the Rules of Procedures of the Executive Council stipulates that a draft decision shall only be adopted after the Commission has provided its financial implications.

3.3.6. **Structure of Legislation**

The structure of an Act can act as a road map for users who want to find the relevant provisions. A well-conceived structure leads the user to the place of interest and, therefore, is important for the overall accessibility of an act. It may also contribute to the meaning of specific norms (the context of a chapter or a section can give a specific meaning to an article- *rubric est lex*) and structure may be used to avoid unnecessary repetition. It is typical for the style of most legislation in European countries to structure legislation using paper-based, written labels. The text of legislation is predominantly structured as one would structure a book. Text organized in

lines (not columns) running from top to bottom divided into parts, chapters, sections, etc.⁶⁰The structures of UN and EU Treaties and Legislative Acts are itemised at Table 6 below:

TABLE 6: STRUCTURES OF UN AND EU

Structure	UN	EU
Preliminary Provisions	Preamble Recitals has no conventional enacting Fomular, e.g. uses The State Parties to the Convention...Have agreed as follows:	Same
Principal Provision	Applicable Divided into Articles, Paragraphs and Sub-Paragraphs	Applicable
Miscellaneous Provisions	Applicable	Applicable
Final Provisions	Applicable with aids of Annexes	Same

3.3.7. Language

Language is tool of communication between two or more persons. The EU is a Union of many languages and these languages are commonly domestically perceived as bulwarks of national identity. Hence, language and multilingualism is a big issue in the EU. It is no surprise that the

⁶⁰. WimVoerman, op cit.

first ever Regulation of the European Economic Community was on languages. There are 23 official languages as of 1 January 2007 which makes for the drafting of EU documents challenging⁶¹.

There are other multilingual jurisdictions in the world whose experience is of great value not only for the EU but also more generally as jurisdictions that are faced with increasing volumes of supranational and international law. The UN has similar challenges. Other nations too have their own spoils, in terms of language dualisms.

Canada, for instance, is a federation with bilingual legislation. The country is famous for its co-drafting, a method by which each bill is drafted in parallel by two lawyers, one anglophonic and the other francophonic. This means that texts do not need to be translated, which reduces potential difficulties and operates better in a context of bijuralism. Federal legislation in Canada is bijural in nature because it applies in the civil law province of Quebec as well as in the other common law provinces. Federal legislation therefore needs to be adaptable to both legal systems.⁶² Bilingual drafting in a bijural context is no mean feat. To overcome some of the complications the Canadians have resorted to two harmonization Acts, ironing out divergences between federal law and provincial law, which have been adopted by Parliament⁶³.

In Switzerland, quadrilingualism is an element of Swiss national identity enshrined in the Constitution.⁶⁴ This has long been the case and as a result the Swiss have a lot of experience of multilingual drafting. Although the Swiss, unlike the Canadians usually do not co-draft as such (most of the time a proposal is drafted in one language only—commonly in German), the Swiss use an intermediate stage of revision and text control once a draft has been drawn up and

⁶¹. Wim Voermans, op cit.

⁶². CC BD Turcotte Canadian Federal Legislation in a Bijural Context (2009).

⁶³. The Federal Law-Civil Law Harmonization Act, (No. 1, S.C. 2001, c. 4 and the Federal Law-Civil Law Harmonization Act, No. 2, S.C. 2004), c. 25.

⁶⁴. Wim Voermans, op cit.

translated⁶⁵. To ensure that all texts are equivalent, coherent and precise, and meet with relevant ‘good legislation’ requirements, they are scrutinized by text revision committees within the executive. These committees also ensure that all language versions of a draft are of identical legal content. Another typical Swiss language feature is the language opt-in. The Languages Act gives citizens a choice of language for communication with the government (Article 6 (1)). This reflects Article 70 of the Swiss Constitution which provides that the official languages of the confederation are German, French, and Italian and that Romanesh is also an official language for communications with persons who speak that language. The concept of the latter ‘relative’ official language is an interesting one for the EU which is grappling with its flood of official languages.

Ireland too has a constitutional provision on official languages. Under Article 8 of the Irish Constitution, Irish is the official language of Ireland and English the second official language. Legislation, however, more often is drafted in English and then translated into English⁶⁶.

3.3.8 Interpretation

The rules of interpreting the UN and EU Treaties and Legislative Acts are itemised at Table 7 of this work.

3.3.9 Publication

The publication of a legislation is as the name suggests bringing into the notice of the people, the existence of the law. However, this must be through a legal instrument or legally approved medium. For example, in Nigeria, Laws are gazetted. Thus, by virtue of Section 3(2) of the Acts Authentication Act 1961, Cap A2, LFN 2004 the Clerk of the National Assembly shall cause a

⁶⁵. A Lötcher ‘Multilingual Law Drafting in Switzerland’ in G Grewendorf and M Rathert (eds) *Formal Linguistics and Law* (Mouton de Gruyter Berlin 2009), p. 386.

⁶⁶. Wim Voermans, *op cit*.

copy of the Bill in the Federal Gazette upon receipt of the signed copy. Under Section 6(e) of the Lagos State Laws 1992, Cap 12, the publication is to be made in the Official Gazette.

In the UN, treaties and other laws are “Registered” with the Secretariat for publication by virtue of Article 102(1) of the UN Charter 1945. Resolution 13 of the UNGA 1946, Article 13.1(2)(e) further provides that it is the responsibility of the Department of Public Information of the Secretariat to publish treaties or agreements. Whereas, the EU requires that its legislations are published within 30 days.

In a nutshell, Nigeria has a lot of lessons to draw from the drafting systems of the UN and EU given their peculiarities. This would further reduce the effect of “copying and paste” usually encountered in the course of drafting legislations in Nigeria. Accordingly, this study finds that the UN and EU drafting styles are similar in some aspects but different from those of Nigeria and other nations of the world. These differences are contained in the tables below.

TABLE 7: COMPARATIVE LEGISLATIVE DRAFTING BETWEEN NIGERIA AND UN AS AN EXAMPLE

Features	Nigeria	UN
Legislature	National Assembly (Senate and House of Representatives) at the Federal Level, States House of Assembly at States Level and Council Chambers at Local Government Level.	UN General Assembly
Nomenclature	Act of the National Assembly, Law of the States House of Assembly and Bye-laws In Nigeria, Acts enacted by the National	Under the United Nation they have Treaties, Conventions, Declarations, and Resolutions.

	<p>Assembly are the highest laws, followed by State Laws, and Local Government Bye-laws. See Parts I &II of the Second schedule (exclusive list & concurrent list) and the fourth Schedule to the 1999 Constitution of Nigeria (as amended).</p> <p>Nigeria is of Common Law Origin. Its origin dates back as far as 1066. Justices subsequently created a common law by drawing on customs across the country and rulings by monarchs. Common Law can thus be described as law that evolved from the pronouncement of judges and jurists.</p> <p>Common Law tradition favours precision and particularity, which can be described as “fussy law”. The style is characterised by concentration on detailed distinctions with focus on specific circumstances. That is the reason the Purpose Clause will not work in Nigeria. As it does not carry the weight of a law. And to this extent, a person can only be convicted for a crime that is specifically stated in a written law. This is explicitly stated in</p>	
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	<p>Section 36 (12) of the 1999 Constitution which provides as follows:</p> <p>S. 36 (12)</p> <p>Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.</p>	
<p>Drafting Personnel</p>	<p>Here there is a clear distinction between the policy developers and legislative drafters. Like Nigeria, Legislative drafting is the sole task of lawyers who are employed either in the Office of Parliamentary Counsel (as is the case in the UK) or the Office of the Attorney-General or Legal Department of</p>	<p>UNGA Resolution 13, 1946 Article 13.1 (2) (f), the Legal Department is responsible for drafting of Treaties and other Instruments such as Conventions, Declarations, and Resolutions.</p>

	the Parliament or National Assembly, as practiced in Nigeria.	
Legislation Drafting	Interpretation Act, 1964 is the guide for drafting legislation.	Article 31(1) of the UNGA Convention, which provides: 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
Publication	Acts Authentication Act of 1962 in section 3(2) provides the manner in which a legislation is published, thus “a duplicate of the Schedule when passed and signed shall be returned to the Clerk of the National Assembly who shall cause a copy to be published in the Federal Gazette; and the production of a copy of the Federal Gazette containing the Schedule as published shall be conclusive evidence for	Under Article 102 of the UN Charter, every treaty and every international agreement entered into by any Member of the UN shall as soon as possible be registered with the Secretariat and published by it. Hence, the UN Secretariat is responsible for the publication of all treaties while the Legal Department is responsible for

	all purposes.”	scrutinizing Treaties and other Instruments such as Conventions, Declarations, and Resolutions.
Scrutiny	The lawyers, who drafted the laws, also scrutinize the law. They are either employed in the Office of the Attorney-General or Legal Department of the Parliament or National Assembly as the case may be.	The Legal Department is responsible for scrutinizing Treaties and other Instruments such as Conventions, Declarations, and Resolutions.
Supporting Documents	In Nigeria, since the year 2011, Order 77 (3) Standing Orders of the Senate 2011 (as amended) makes it mandatory for every bill to have an accompanying COMPENDIUM OF THE FINANCIAL IMPLICATIONS OF THE BILL. The Order states as follows: “A compendium of the background information and financial Implications shall accompany every Bill”. The above principle was adopted from Civil	Article 31(2) of the 1969 Convention on Law of Treaties provides that: 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) Any instrument which was

	law jurisdiction	made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
Structure	<p>The structure is thus:</p> <ol style="list-style-type: none"> 1. Preliminary 2. Principal 3. Miscellaneous 4. Final 	<p>Uses Preamble:</p> <p>“The State Parties Having regard to the Treaty establishing the United Nations..... Uses recitals as Whereas:..... Has adopted...”</p> <p>Treaties are divided into:</p> <p>Preliminary, Principal Final Provisions (Miscellaneous for Charters) Annex. Schedules are referred to as Annexures. Enacting Formular is The State Parties to the Convention...Have agreed as follows:.....</p>

TABLE 8: COMPARATIVE LEGISLATIVE DRAFTING BETWEEN NIGERIA AND EU

Features	Nigeria	EU
Legislature	National Assembly (Senate and House of Representatives) at the Federal Level, States House of Assembly at States Level and Council Chambers at Local Government Level.	The Parliament/Council pass Legislative Acts while the Commission may make Delegated Acts.
Nomenclature	<p>Act of the National Assembly, Law of the States House of Assembly and Bye-laws</p> <p>In Nigeria, Acts enacted by the National Assembly are the highest laws, followed by State Laws, and Local Government Bye-laws.</p> <p>See Parts I &II of the Second schedule (exclusive list & concurrent list) and the fourth Schedule to the 1999 Constitution of Nigeria (as amended).</p> <p>Nigeria is of Common Law Origin. Its origin dates back as far as 1066. Justices subsequently created a common law by drawing on customs across the country and rulings by monarchs. Common Law can thus be described as law that evolved from the pronouncement of judges and jurists.</p>	Legislative Acts, Delegated Acts and Implementing Acts.

	<p>Common Law tradition favours precision and particularity, which can be described as “fussy law”. The style is characterised by concentration on detailed distinctions with focus on specific circumstances. That is the reason the Purpose Clause will not work in Nigeria. As it does not carry the weight of a law. And to this extent, a person can only be convicted for a crime that is specifically stated in a written law. This is explicitly stated in Section 36 (12) of the 1999 Constitution which provides as follows:</p> <p>S. 36 (12)</p> <p>Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.</p>	
Drafting	Here there is a clear distinction between the	Directorate of Legal Services for EU;

Personnel	<p>policy developers and legislative drafters.</p> <p>Like Nigeria, Legislative drafting is the sole task of lawyers who are employed either in the Office of Parliamentary Counsel (as is the case in the UK) or the Office of the Attorney-General or Legal Department of the Parliament or National Assembly, as practiced in Nigeria.</p>	<p>in conjunction with other staff e.g. Parliament has some ninety lawyer-linguists, who are in the Legislative Quality Units of the Directorate for Legislative Acts in the Directorate-General for the Presidency of the Parliament.</p>
Legislation Drafting	<p>Interpretation Act, 1964 is the guide for drafting legislation.</p>	<p>1998 Joint Practical Guide for Persons Drafting EU Legislation</p>
Publication	<p>Acts Authentication Act of 1962 in section 3(2) provides the manner in which a legislation is published, thus:</p> <p>“a duplicate of the Schedule when passed and signed shall be returned to the Clerk of the National Assembly who shall cause a copy to be published in the Federal Gazette; and the production of a copy of the Federal Gazette containing the Schedule as published shall be conclusive evidence for all purposes.”</p>	<p>30 days after passage, the Legislation is published in the EU Journal in 23 Languages of the EU</p>
Scrutiny	<p>The lawyers, who drafted the laws, also scrutinize the law. They are either employed in the Office of the Attorney-General or Legal Department of the Parliament or National Assembly as the case may be.</p>	<p>The Legal Department is responsible for scrutinizing Treaties and other Instruments such as Conventions, Declarations, and Resolutions.</p>

<p>Supporting Documents</p>	<p>In Nigeria, since the year 2011, Order 77 (3) Standing Orders of the Senate 2011 (as amended) makes it mandatory for every bill to have an accompanying COMPENDIUM OF THE FINANCIAL IMPLICATIONS OF THE BILL. The Order states as follows:</p> <p>“A compendium of the background information and financial Implications shall accompany every Bill”.</p> <p>The above principle was adopted from Civil law jurisdiction</p>	<p>Uses the France system of travaux preparatoires</p>
<p>Structure</p>	<p>The structure is thus:</p> <ol style="list-style-type: none"> 1. Preliminary 2. Principal 3. Miscellaneous 4. Final 	<p>Similar. But the LONG TITLE is for example; “Amending Delegated Regulation (EU) 2019/2035 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council, as regards rules for establishments keeping terrestrial animals and hatcheries, and the traceability of certain kept terrestrial animals and hatching eggs.”</p>

TABLE 9: COMPREHENSIVE COMPARATIVE DRAFTING STYLES OF THE UN AND EU

Features	UN	EU
Legislature	UN General Assembly	The Parliament/Council pass Legislative Acts while the Commission may make Delegated Acts.
Nomenclature	Treaty, Protocols, Conventions, Declarations and Resolutions	Act
Drafting Personnel	UNGA Resolution 13, 1946, Article 13.1 (2) (f), the Legal Department is responsible for drafting of Treaties and other Instruments such as Conventions, Declarations, and Resolutions.	Directorate of Legal Services for EU; in conjunction with other staff e.g. Parliament has some ninety lawyer-linguists, who are in the Legislative Quality Units of the Directorate for Legislative Acts in the Directorate-General for the Presidency of the Parliament.
Legislation Drafting	Article 31(1) of the UNGA Convention, which provides: 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.	1998 Joint Practical Guide for Persons Drafting EU Legislation

Scrutiny	The Legal Department is responsible for scrutinizing Treaties and other Instruments such as Conventions, Declarations, and Resolutions.	Same as UN
Supporting Documents	<p>Article 31(2) of the 1969 Convention on Law of Treaties provides that:</p> <p>2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:</p> <p>(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;</p> <p>(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.</p>	Uses the France system of travaux préparatoires
Structure	<p>Uses Preamble:</p> <p>“The State Parties Having regard to the Treaty establishing the United Nations..... Uses recitals as</p>	<p>Similar. But the LONG TITLE is for example; “Amending Delegated Regulation (EU) 2019/2035 supplementing Regulation (EU)</p>

	<p>Whereas:..... Has adopted...”</p> <p>Treaties are divided into:</p> <p>Preliminary,</p> <p>Principal</p> <p>Final Provisions</p> <p>(Miscellaneous for Charters)</p> <p>Annex.</p> <p>Schedules are referred to as Annexures.</p> <p>Enacting Formular is The State Parties to the Convention... Have agreed as follows:</p>	<p>2016/429 of the European Parliament and of the Council, as regards rules for establishments keeping terrestrial animals and hatcheries, and the traceability of certain kept terrestrial animals and hatching eggs.”</p>
Language	Multi-lingual	Same
Interpretation	<p>Under Article 31 of the UN Charter 1945 a treaty shall be interpreted in good faith, interpretation shall include preamble, annexes, any agreement, practices, any relevant rules of international law and a special meaning where parties agreed to it.</p>	<p>Interpretation is governed solely by principles developed piecemeal in the case-law of the Court of Justice, apart from one short Regulation on how time-limits are to be calculated, Council Regulation No 1182/71.</p>
Publication	<p>Registered in the Secretariat and Published by the Department of Public Information</p>	<p>30 days after passage, the Legislation is published in the EU Journal in 23 Languages of the EU</p>

CHAPTER FOUR

LEGISLATIVE DRAFTING, GUIDELINES AND IMPLEMENTATION BY MEMBER STATES OF THE UN AND EU

This aspect of the research deals with the legislative drafting guidelines for the various international organisations and how same are implemented or observed by some member states in their legislative drafting processes. On the other hand, this topic seeks to examine how the international organisations adopt some municipal legislative principles in their drafting. It also considers the extent of applicability or bindingness of the legislations of the organisations on the member states.

4.1 Legislative Drafting Guidelines of the UN and EU

As earlier stated under the drafting styles of the UN and EU each organization adopts a particular system of drafting. The UN has its guiding principles of drafting since it does not practice the “community method” as the EU.

Accordingly, under Article 31(1) of the UNGA Convention, a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. This implies that the UN is guided by the principle of good faith in interpreting and drafting legal text of legislations.

Under the EU practice of ‘Community method’ a central role is played in the legislative process by the Commission, which seeks to promote the general interest of the Union. Article 17(2) of the Treaty on the European Union (TEU) provides: ‘Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise’. Since the latest amendment by the Lisbon Treaty, almost all basic legislation is adopted jointly by the Parliament and Council on the basis of a proposal from the Commission. The codecision

procedure is now the ‘ordinary legislative procedure’ under Article 294 of the Treaty on the Functioning of the European Union (TFEU). There are just a few fields where codecision does not apply, such as taxation, the common foreign and security policy, and the conclusion of international agreements.

At the Parliament the proposal is assigned to the competent Committee⁶⁷ and a Rapporteur is chosen. The Rapporteur will present to the Committee a draft report comprising a draft legislative resolution and, where appropriate, amendments to the draft act. The Rapporteur is given a mandate by the Committee and represents the Parliament in the negotiations with the Council and Commission. When those negotiations are concluded, the Committee submits to the Plenary for voting its final report, again comprising a draft legislative resolution and any amendments to the draft act. In most cases, the Parliament proposes textual changes, known as ‘amendments’, to the Commission’s proposal. In the procedure at first reading, amendments may be tabled by any committee member at the committee stage, while in the plenary amendments are admissible only if they are tabled by the committee responsible, by a political group or by forty Members of European Parliament.

In the Council, the proposal is examined by a working party competent for the sector concerned (of which there are now some 160) composed of national experts from all the Member States and chaired by a representative of the country holding the six-monthly presidency of the Union. Administrative support is provided by the General Secretariat of the Council and usually consists of a civil servant from the Directorate-General for the sector concerned and a member of the Legal Service. The chair seeks to facilitate political compromises in the working party. In the case of codecision procedures, the chair will be given a mandate for the negotiations with the Parliament and Commission in the trilogues.

⁶⁷. There are currently 22 standing committees and 2 special committees.

In the most sensitive cases the working party may ask the Committee of Permanent Representatives of the governments of the Member States (generally known by its French acronym 'COREPER') or the Council itself (in the configuration of the ministers for the sector concerned) to define a 'general approach' which constitutes a negotiating mandate. The Member States' representatives on the working parties are generally all technical experts rather than lawyers and the system encourages them to reach a compromise over texts. According to the Council's Rules of Procedure⁶⁸: 'When discussing texts, delegations shall make concrete drafting proposals, in writing, rather than merely express their disagreement with a particular proposal'. To accommodate the different interests of all Member States, numerous textual changes to the Commission's proposal are generally suggested.

Under the EU, the negotiations between the three institutions are conducted in what are known as 'trilogues'.⁶⁹ The trilogues serve to bring the positions of the three institutions closer together and to enable the representative of each institution to keep it informed of the direction of the negotiations. Trilogues are of two types; informal and formal trilogues.

In the 'informal trilogues' the Parliament is generally represented by the Rapporteur of the competent Committee, the Council by the representative on the appropriate Working Party of the Member State holding the six monthly presidency of the Union and the Commission by the representative of the DG for the sector concerned.

The 'formal trilogues', which may be convened for particularly sensitive negotiations, the representatives will be at a higher level and the Parliament Rapporteur will meet, for example, the Chair of COREPER and the competent Director General from the Commission. Meetings of the trilogues are generally also attended by staff of the Parliament and by staff of the General Secretariat of the Council (usually a civil servant from the Directorate-General for the sector

⁶⁸. Rules of Procedure of the European Parliament, Rule 195 and Rule 156 respectively.

⁶⁹. See the Joint Declaration on practical arrangements for the codecision procedure (OJ C 102E, 24.4.2008, p. 111).

concerned and a member of the Legal Service). Meetings continue at intervals for months or years. In the majority of cases, the trilogues proceed smoothly and the act is now usually adopted at first reading. But in some 30% of cases a proposal will go to a second reading, after which, if there is still no agreement, it goes to conciliation.

Other relevant guidelines of EU legislative drafting which could not be exhausted here are or would be found in the 1998 Joint Practical Guide for Persons Drafting EU Legislation.

Other international and regional organisations such as the AU and ECOWAS also adopt the community method like the EU but have no a particular Legislative Drafting Manual. They are guided by the Rules of Procedure of the Executive Council and some guidelines of the ECOWAS Parliament Rules of Procedure in drafting. They also use the legislative drafting guidelines of member States in some cases. General principles of drafting legislations such as use of plain language, gender-neutrality among others are abide by in drafting AU normative messages⁷⁰ as well the ECOWAS. Though there is skeletal information as to the specific document used in legislative drafting, the two organisations have Rules of Procedures just like the EU that regulate proceedings in the Parliament. The Legal Departments assisted by Specilised Technical Committees of the two organisations assist in scrutinizing the texts of the legislations.

4.2 Implementation of the UN and EU Drafting Styles/Guidelines by the Member States

From the discussions above, it is apparent that the UN does not operate the community method of drafting and as such member states are not bound to implement its drafting style. This is not to say that the member states would not apply the regulations made by the UNGA, since once they are signatory to any treaty, convention etc, they are bound by it. In *Abacha & Ors v*

⁷⁰. Dr. (Amb) NamiraNegm and Dr. Guy-Fleury Ntwari, African Union Legal Drafting: Process, Mechanisms and Challenges, (Being an Article in the 8th International Journal of Legislative Drafting and Legal Reform assessed online at https://www.canlii.org/en/commentary/doc/2019_on_10/2/22) pp. 85 - 86.

*Fawehinmi*⁷¹, it was held that the difference between an ordinary civil contract and a treaty is that while the former derives its bindingness from municipal or domestic law of a State, a treaty on the other hand derives its binding force from international law⁷². However, to give a treaty a full force of law, the Supreme Court of Nigeria⁷³, posits that:

No doubt Cap. 10 is a statute with international flavour. Being so, therefore, I would think that if there is a conflict between it and another statute, its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation. To this extent I agree with their Lordships of the Court below that the Charter possesses "a greater vigour and strength" than any other domestic statute. But that is not to say that the Charter is superior to the Constitution as erroneously with respect was submitted by Mr. Adegboruwa, learned counsel for the respondent. Nor can its international flavour prevent the National Assembly, or the Federal Military Government before it remove it from our body of municipal laws by simply repealing Cap. 10. Nor also is the validity of another statute be necessarily affected by the mere fact that it violates the African Charter or any other treaty, for that matter - see: *Chae Chin Ping v United States*, 130 US. 181 where it was held that Treaties are of no higher dignity than acts of Congress, and may be modified or repealed by Congress in like manner: and whether such modification or repeal is wise or just is not a judicial question.

The EU however, adopt the community method. Under Article 291 of the Lisbon Treaty EU Member States shall adopt all measures of national law necessary to implement legally binding Union acts. These acts are generally adopted by the Commission, which is conferred

⁷¹. (2000) LPELR-14(SC).

⁷². See also Article 2 of the VCLT, 1969.

⁷³. *Abacha v. Fawehinmi* (supra).

with implementing powers; in certain cases, the Council may also be called upon to adopt implementing acts. Implementing acts are legally binding acts that enable the Commission - under the supervision of committees consisting of EU countries' representatives - to set conditions that ensure that EU laws are applied uniformly.

4.3 Extent of Application of the UN and EU Legislative Drafting Styles by other International or Regional Organisations and Municipal Legislations Lessons for Nigeria

All nations that have voluntarily signed an international obligation under the UN and EU adopts the various regulations contained therein. However, the pertinent issue that would agitate the mind of many is are those nations bound to apply the legislative styles of the international organisations. This is clearly in the negative. Legislative drafting is matter of choice and style and each sovereign country has its style. Notwithstanding, there are few instances where some countries have adopted some principles of the EU. Hence, R Bray and C Fasone⁷⁴ posit that, *“the European Parliament as well, and more generally the European Union, can be deemed as “transplant friendly”: unlike the national parliaments, the European Parliament is a parliament ‘born to be open’ and very used to comparative legislative analysis, and the European Union “is by definition a legal system open to ‘foreign influences”.*

⁷⁴.R. Bray & C. Fasone, “Foreign Influence” in EU Lawmaking: The Case of the European Parliament’, pp. 45-72, cited in Nicola Lupo and Lucia Scaffardi, op cit.

CHAPTER FIVE

FINDINGS, RECOMMENDATIONS AND CONCLUSION

This chapter summarises the entire findings made in the course study and came up with some recommendations in forms of lesson learnt and to be drawn in Nigeria. It also recommended areas requiring further research and the overall contribution of the study to knowledge since the entire research was conducted to add to already existing knowledge.

5.1 Summary of Findings

The study has so far focused on comparison of the drafting styles of the UN and EU and lessons to be drawn from them in Nigeria. In doing so, researcher sought to answer some research questions such as; What is the importance of comparative study in legislative drafting and whether the UN and EU organisations apply the knowledge of comparative study in their drafting? Who are the drafters of the UN and EU treaties, conventions, protocols, rules and regulations and whether same qualifies as legislations? What are the similarities and differences between the drafting styles of the inter-governmental organisations and observable challenges of adopting drafting styles of the UN and EU or drawing lessons in Nigeria?

It against the backdrops of these questions, this study aims at examining the similarities and differences between the drafting styles of the UN and EU, as foreign or diplomatic relations, commerce and international trade encourage cross-breeding of ideas, legislations and other instruments. The study also examines comparative study of law within the context of drafting styles of the UN and EU and the extent of its application respectively and come up with findings on the uniqueness of the drafting styles of each of the international organisations and draw some lessons for drafting legislation in Nigeria.

The research therefore has achieved its objectives by comparing the drafting styles of the UN and EU and identifying some lessons to learnt by Nigeria in the two inter-governmental organisations' practices. The study has been able to distinguish between striking similarities of the drafting styles of the UN and EU and answered some of the research questions such as identification of who the drafters of UN and EU treaties are, how they draft the legislations and whether they adopt comparative knowledge in their drafting styles among other issues.

This study therefore underscores the two aspects of law but with a correlational analysis of UN and EU drafting styles. On the whole, the researcher has been able to compare the drafting styles of the international organisations with particular references to their nomenclatures, drafting personnel, legislation drafting, structure to mention but few. In the course of this study, the researcher found as follows:

- a. A study on the comparative study of the drafting styles of the UN and EU cannot be achieved without making references of extant literature on comparative law since the issue of comparison of the two institutions relates to international law and jurisprudence on the law making capacity of the organisations. Thus, it is debatable as to whether the UN and EU can make laws just like the member States, and this was answered, particularly at Chapters 2 and 3 in the course of the study, in the affirmative.
- b. By virtue of the UN Charter, Lisbon Treaty, and VCLT and the Supreme Court's decision in *Abacha & Ors v Fawehinmi (supra)*, international treaties have force of law and this also affects the drafting styles of the organisations. That is, where for instance, a EU member state decides to adopt EU Legal Acts, which is binding, it must stick to the drafting styles as well. Hence, it was observed that some countries have adopted legislative drafting of others while other countries are hostile to adoption of foreign laws generally.

- c. The legislative drafting styles of the UN and EU slightly differs in terms of nomenclature, drafting manual and languages and there is no complete system of transplanting between the members States of the two international organisations.
- d. The EU system of legislative drafting is the most elaborate and comprehensive system and the best for Nigeria to draw lessons from since it has institutional framework for drafting and ensures member States participates adequately in deliberations and policy making.
- e. Only EU States have harnessed EU legislative drafting styles into their national legislative process. The UN Treaties, Conventions etc are only ratified by Member States but Nigeria hardly adopts their style of legislative drafting or are the laws drafted as treaties or conventions. This essence showed that the “Lessons for Nigeria” with regard to the legislative drafting styles of the inter-governmental organization is only theoretical and not pragmatic. This could not be unconnected with the fact of colonialism as most of Nigeria Laws are imported from the British due to historical coincidence.

5.2 Recommendations

The researcher therefore comes up with the following recommendations:

- a. Drafters of UN and EU treaties should adopt “Principle of functionality” in their drafting styles.
- b. The legislative drafting styles of the UN should be modelled as that of the EU to give it full legislative aura and characteristics. This is also a lesson for Nigeria to key into, as the non-availability of drafting manual hinders drafting. Though in Nigeria, statutes (Interpretation Act and Acts Authentication Act) and other rules guide drafters, it would be ideal if a manual is provided specifically for drafters as obtainable in the EU.

- c. The UN should make a manual or guideline of legislative drafting as the EU to harmonise their drafting styles and processes of law-making, as against resorting to the UN Charter and VCLT when drafting.
- d. There should be more scholarly publications on UN and EU legislative drafting and deliberative bodies.
- e. Efforts should be made to harmonise EU Legislative Acts, as against the present segmentation into Legislative Acts, Delegated Acts and Implementing Acts respectively.

5.3 Contribution to Knowledge

This study no doubt would contribute to knowledge and assist future researchers in this or similar aspects of the study as it makes comparison of the drafting styles of the UN and EU treaties, a relatively new and novel area of law. This study further contributed to knowledge by clearing the doubts as to whether the international and supranational organisations could actually or have the capacity to make laws, by relying on the UN Charter, VCLT 1969, Lisbon Treaties which clearly recognises the EU Legislative Act as legislations and the pronouncements by the Supreme Court on the prevailing nature of treaties on domestic laws.

The work further identified some lessons Nigeria could learn from the drafting styles of these organisations by having a manual for legislative drafters to complement extant laws and rules often consulted by drafters while drafting Bills in Nigeria. The study further emphasised the dearth of literature on the area of coverage and the need for more scholarly publications to contribute to knowledge before making some recommendations.

5.3 Recommended Areas for Further Research

As earlier reiterated, the study is somewhat novel and there is lack of sufficient literature specifically on the drafting styles of the UN and EU or other international institutions. This

however, is not far-fetched from the fact that the law making power of this institutions itself is still subject to debate. Accordingly, it would be of great importance for future researchers on this aspect of law to explore or research into the law making powers or legislative competence of the two organisations. Future researchers could also explore the viability of otherwise of having a drafting manual for legislative drafters in Nigeria and how some of the lessons learnt above could be harness to utilize the potentials of drafters.

5.5 Conclusion

Comparative drafting is the comparison of the drafting styles of the UN and EU. The study made reference to comparative law principles, since no knowledge is completely new. This research therefore, focusses on comparative drafting styles of the UN and EU and lessons for Nigeria. These international organisations were considered because they are the most formidable and active international organizations across the globe and identified as relevant to this research. The research adopts a comparative method of analyzing the features of the UN and EU legislative drafting styles.

The study is characterized with different comparative analysis of events, theories, facts and law of international institutions, in relation to the legislative drafting styles. The study brought out the distinctive features of legislative drafting styles of the inter-governmental organisations using indices such as nomenclature, legislature, drafting personnel, legislation for drafting, scrutiny, structure and publication.

The research also focused on the need for the UN, Nigeria and international organizations to key into EU model of drafting, particularly, in terms of having a drafting manual as reference document and for the UN to regularise their parliamentary structures as the EU Parliament. This study therefore, re-emphasised the lesson learnt by Nigeria from the legislative drafting styles of

the international organisations and resolved some questions as to the drafting styles, who the drafters are and whether they conform with the rules of drafting.

Accordingly, the researcher believed that lessons learnt from this research would guide legislative drafters in Nigeria and other African countries in their quest for having a distinctive inter-governmental organizations drafting styles and lessons on their respective national laws, like Nigeria. Thus, it is believed researcher has been able to justify the topic in view of the foregoing discussions.

BIBLIOGRAPHY

Textbooks

1. Adem D.T., Legislative Drafting: Manual (LexisNexis 2014).
2. Bowett D.W., The Law of International Institutions (Fourth Edition Stevens & sons London 1982).
3. Butt P., Modern Legal Drafting: A guide to using Clearer Language, (3rd edn., Cambridge University Press 2013).
4. Crabbe VCRAC, Crabbe on Legislative Drafting (2nd edn., Lexis Nexis 2008). 9. Crabbe VCRAC, Legislative Drafting (Cavendish Publishing 1993).
5. Dick R.C., Legal Drafting in Plain Language (3rd edn. Carswell 1995). 14. Driedger EA The Composition of Legislation: Legislative Forms and precedents (2nd edn rev, Department of Justice Ottawa 1971).
6. Dickerson R., Materials on Legal Drafting, (West Publishing 1981). 12. Dickerson R, The Fundamentals of Legal Drafting (Little Brown and Company, 1965).
7. Jaja T.C. and Adesina J.O., Introduction to Legislative Drafting and Drafting Process in Nigeria (Malthouse Law Books 2019).
8. Imhanobe S., Legal Drafting & Conveyancing, (Sylvester Imhanobe Legal Research Ltd, 2nd edition 2002).
9. Lupo N. and Scaffardi L., The Use of Comparative Law in Legislative Drafting <assessed online at www.google.com 25/10/21>
10. Schefbeck G., Legislative Drafting: Back to Basics (Summer School Lex 2012).
11. Shaw M.N. Q.C., International Law (Sixth Edition, Cambridge University Press 2008).

12. Stefanou C. and Xanthaki H., *Drafting legislation: A Modern Approach*, (Ashgate Publishing Company, 2008).
13. Stefanou C. and Xanthaki H., *Manual in Legislative Drafting* (DFID London 2005).
14. Thornton G.C., *Legislative Drafting* (Butterworth & Co Publishers Ltd London 4th Edition 1996).
15. Xanthaki H., *Thornton's Legislative Drafting* (5th edn, Bloomsbury Professionals 2014).
16. Zweigert K. and Kotz H., *An Introduction to Comparative Law* (trans. Tony Weir, 2nd ed. • Oxf.U.P., 1987).

Journals/Articles

1. Atalla S., *Legislative Drafting*, an article published on the website:
<<http://www.Shaimaatalla.com/vb/showthread.php?t=404> assessed on 28/11/21>..
2. Azinge E. and Madu V. (Eds), *Fundamentals of Legislative Drafting* (National Institute of Advanced Legal Studies (NIALS) Lagos 2012).
3. Crabbe VCRAC, 'A Developing Discipline' (CALC African Conference, Abuja, Nigeria in April 2010).
4. Crabbe VCRAC, 'The Role of the Parliamentary Counsel in Legislative Drafting' A paper writing following Sub-Regional workshop on Legislative Drafting for African Lawyers (Kampala, Uganda, 20-31 March 2000) <www.unitar.org/opg/dfm> accessed 6/12/15.
5. Negm N. (Dr) (Amb) and Ntwari G. (Dr), *African Union Drafting: Process, Mechanisms and Challenges*, Article published in the International journal of Legislative Drafting and Law Reform, Volume 8, Issue 1 (2019) <assessed at <https://www.canlii.org> on 12/2/22>.

6. Okeke C.N., International Law in the Nigerian Legal System <Golden Gate University School of Law, assessed at www.cokeke@ggu.edu 28/11/21>
7. Page E.C., Law and the Construction of Policy. A Comparative Analysis, Draft Paper prepared for the Annual Conference of the Political Studies Association, Brighton, Session 6. Executive Politics, Bureaucracy and Legislation Tuesday 22 March 15:30-17:00 <culled online at www.google.com/comparative legislative drafting>.
8. Voermans W., Styles of Legislation and their Effects, (Article in Statute Law Review · August 2010 <https://www.researchgate.net/publication/50296757> assessed on 24/8/21).

Other Sources/Unpublished Documents

1. William R., Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, Legal Affairs, Drafting European Union Legislation Note, © European Parliament, Brussels, 2012.
2. Jaja TC, Comparative Legislative Drafting (Unpublished Class Lecture Notes, NILDS LLM Class, 2020/2021 Session).
3. Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of EU Legislations, Luxembourg: Publications Office of the European Union, 2015.
4. Professor Omoregie E. (SAN), Legislative Process and Drafting Unpublished Lecture, LLM Legislative Drafting, NILDS 2020.