

**CASE STUDY:**  
**THE ROLE OF THE KOSOVO PARLIAMENT IN CONFLICT/POST –**  
**CONFLICT SITUATIONS**

**Introduction**

Kosovo is a small and landlocked territory in the center of the Balkan Peninsula. It borders Macedonia (FYROM), Albania, Serbia and Montenegro, and has an area of 10,877 sq. km; this is about one third of the size of Belgium. Kosovo is at present divided into 30 municipalities. The capital city is Prishtinë/Priština.

Kosovo has been under the auspices of the United Nations Mission in Kosovo (UNMIK) since June 1999. The large majority of the Albanian population has viewed independence as their only option, while many Kosovar Serbs would like to see Kosovo returned to Serbia or partitioned between Serbs and Albanians. Despite the uncertain future of Kosovo, United Nations Resolution 1244 has required that Kosovo continue to “promote the establishment of autonomy and self-government.” As a consequence, international donors have provided assistance to help in the development of democratic institutions and organizations under the Provisional Institution for Self-Government (PISG).

International development assistance began in 1999 and targeted, among other things, political party development and civic education programs. After the parliamentary elections of 2001, technical assistance to the Central Assembly was provided, and municipal government assistance was added. The future political situation in Kosovo is uncertain, and as such leaves most donors and

implementers in the position of having to attempt to deliver assistance programs without a clear picture of future developments and their effect on those programs.

There is a plan to bring closure to this political uncertainty. "Standards before Status" is often heard throughout Kosovo. The emphasis of the Standards program attempts to ensure that all of Kosovo's institutions, Central and municipal assemblies and governments make progress toward allowing the full participation of all minorities, and that new institutional arrangements allow for more effective local governments, accountable to communities. After "meeting" these standards, the success of which is to be determined by the summer of 2005, negotiations on Kosovo's final status are anticipated to begin in the fall.

The months of March of 2004 and 2005 have seen major developments that have once again pushed Kosovo onto center stage in the Balkans. The March 2004 riots demonstrated that the Albanians, with some unhelpful provocation from their own media, were frustrated with the inaction on their status. With the resignation in March 2005 of Prime Minister Ramush Haradinaj and his subsequent surrender to The Hague International Tribunal, many Kosovars felt that the Prime Minister had demonstrated the actions of a statesman and a respect for and adherence to international law even while he disagreed with the basis for indictment. There was no reaction throughout Kosovo to his resignation except support for his actions. The actions of the most recent Special Representative of the Secretary General (SRSG) are viewed differently than those of the previous SRSGs. Mr. Soren Jessen-Petersen is seen as a practical man who views Kosovo and its future in a realistic manner. This is quite different than the way in which previous Representatives were viewed. Those SRSGs were seen as attempting to re-integrate Kosovo into Serbia-Montenegro.

Given these recent actions and international pronouncements, there is hope but little patience on the part of Albanian Kosovars. They want what everyone wants; political security and economic development in order to resolve such issues as rampant unemployment. Without the ability to issue sovereign debt guarantees, use monetary instruments or tap into local savings for much needed long-term public investment in human resources and infrastructure, Kosovo remains largely unable to plan and create a future for its own people.

In order to meet the expected timelines, the Ministries and the Central Assembly have been rushing to draft and pass legislation that adheres to the Standards and complies with European norms and practices. As a consequence, much of the legislation that is drafted and passed is not well considered, discussed or subsequently amended. Much of what is passed into law lacks any basis in sound public policy with a lack of attention to clear objectives, consideration of alternatives and the building of public consensus of those being governed. As the OSCE has observed, there is little focus on the implementation of any of the laws passed. The priority is on passing legislation so that the laws are on the books, largely to demonstrate compliance. Thus rule *by* law triumphs over the democratic tradition based on the rule *of* law. Since laws once passed by the Assembly can only be promulgated by the SRSG, the Assembly's work is subject to veto, amendment or return of its bills for further consideration with no set time limits or consistent decision criteria.

Of late, great emphasis is also being placed on further decentralization, both administrative and political. There has been scarce attention by donors to building municipal institutions, and most legislators and government officials alike are unprepared for this task. The OSCE, NDI, USAID's Local Government Initiative and a few others have provided some assistance, but evidence on the ground suggests that it needs to be expanded and accentuated. Attention to capacity and

effectiveness issues of central government is starting to pick up speed following the preoccupation with Standards and future status. Additional help for local government, central and municipal assemblies, political parties, and the changing role to be played by civil society organizations is where the current demand exists. That is not to say that assistance is not required at the national level, but it must be more targeted to specific needs determined by dialogue with all those involved, as the ongoing UNDP Capacity Assessment exercise is attempting to do. The need for more intensified assistance and support to the Central Assembly is great and will grow as the debate on status continues even if current Members do not view that legislative strengthening quite as important as efforts to define the future of Kosovo.

### **Institutional Arrangements**

The Constitutional Framework of Kosovo, a UNMIK regulation adopted in 2001, sets up the election system of Kosovo and the basic structure of the Kosovo assembly. Accordingly, Kosovo, for the purposes of election of the Assembly, is considered a single, multi-member electoral district. 100 of 120 seats of the Assembly are distributed amongst all parties, coalitions, citizens' initiatives, and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.

The remaining 20 of the 120 seats are reserved for the additional representation of non-Albanian Kosovo Communities.

The geographical and gender requirements with respect to candidate lists submitted by parties, coalitions and citizens' initiatives for the purpose of the election to the Assembly is specified by the SRSG on the recommendation of the Central Election Commission

The Central Election Commission (CEC) was established in 2000 with a UNMIK regulation. The Central Election Commission is composed of nine Kosovar members and three international members. The Deputy Special Representative of the Secretary-General for Institution Building serves as the Chairperson. The Chairperson and members, and alternates who will sit for them in their absence, are appointed by the Special Representative of the Secretary-General. Their term of office is two years, subject to earlier termination of an appointment by the Special Representative of the Secretary-General.

The overall constitutional framework of the administration of Kosovo is defined primarily by UN SCR 1244, by the Constitutional Framework for Provisional Self-Government in Kosovo, plus the relevant UNMIK regulations and amendments.

UN SCR 1244 was a document that reflected an urgent need to reach a cease-fire and to reach a compromise between NATO and the Russian Federation and the People's Republic of China. The crucial component of the resolution was the fact that Kosovo was considered an integral part of the Federal Republic of Yugoslavia (FRY). UN SCR 1244 refers specifically to the principle of "a political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region".

In the first regulation issued by UNMIK "all legislative and executive authority" was vested in UNMIK itself and assigned to the SRSG. At the end of 1999 a Joint Interim Administrative Structure was set up to start a process of sharing responsibility for administrative services with "all communities of Kosovo". Municipal elections were announced in July 2000, and took place on 28 October 2000. The powers of these Municipal Assemblies were quite limited, and

UNMIK administrators supervised local administrators. The Constitutional Framework of May 2001 therefore represented a further step in an evolutionary process. The Constitutional Framework defined all the rights and responsibilities of the Assembly of Kosovo, including those of the President of the Assembly, the President of Kosovo, the Government, the Ministries, and the Prime Minister. The structure of the Assembly is comparable to that of regional governments throughout the European Union. Out of 120 seats of the Assembly, 100 were assigned in proportion to the number of votes received. The remaining 20 seats were reserved for the non-Albanian Kosovo Communities. Representation for the Serb Community and for the other non-Albanian Kosovo Communities was also guaranteed in the different institutions of the Assembly (Presidency of the Assembly, the various Committees, the Government, and the Ministries). Again, this by and large follows standard procedure in constitutional democratic systems.

The supremacy of the authority of the SRSG in relation to the Provisional Institutions of Self-Government (which include the Assembly) is reaffirmed in chapter 12 of the Constitutional Framework, in accordance with the terms of SCR 1244. The Assembly of Kosovo was set up in a framework that defined extremely limited powers. One could even argue that it has a basically consultative function. But the fact of having to act under very tight institutional constraints does not make its actions any less relevant.

### *Recent parliamentary elections*

During the period from 1989 through 1999, there was little opportunity for Kosovo citizens to participate in governmental structures. As a consequence, most newly elected Assembly members in 2001 had little knowledge of the way in which the legislative process worked. Much of the training provided was new, and

the skills required to accomplish the tasks ahead had to be learned. Without offices, staff or funding, the newly elected members had to rely on the international community for assistance in almost every respect.

The single constituency, proportional election system with no threshold resulted in elections with no winning party. After the parliamentary election on 17 November 2001, no party received a majority. Out of a voter turnout of 64%, the Assembly seats were divided between 15 parties with the Democratic League of Kosovo (LDK) being the largest party with 47 seats, followed by the Democratic Party of Kosovo (PDK) with 26 seats and Alliance for the Future of Kosovo (AAK) with 8 seats. The Koalicija Povratak (KP), a Kosovo Serb (K/S) coalition party, got 12 seats and 10 seats set aside. In addition to these 10 seats set aside, four were set aside for the Kosovo Roma, Ashkalis and Egyptians, three for Bosniacs, two for Kosovo Turks and one for the Goranis.

The powers reserved to the Special Representative of the Secretary General (SRSG) of the United Nations have proved both a blessing and a curse to the Central Assembly. Duties and responsibilities of the Assembly were set by the Constitutional Framework and the pre-prepared rules and procedure of the work of the Assembly by UNMIK. The reserved powers have allowed the SRSG to selectively delete or refuse to promulgate legislation passed by the Assembly. While this has prevented inappropriate legislation from becoming law, it has also precluded the Members from taking actions they felt were necessary for Kosovo. These reserved powers in many ways have removed the issue of accountability of the Members. Rather than placing the responsibility for passing needed legislation on the Assembly and living with the consequences of their actions, it has allowed, and sometimes encouraged, a more political environment to emerge within the Assembly.

Discussions about the division of power between the 3 main parties (LDK, PDK and AAK) seriously delayed the signing of an agreement on the President and the Government of Kosovo; however, by the end of February 2002, the agreement was finally signed. During the three-year-rule of this coalition there has been no opposition in the parliament, and the expectations of the population and the accomplishment of priorities have hardly been fulfilled. The present formula of “co-governance” (LDK, PDK and AAK) is considered as outdated and many stress the need for a strong opposition.

#### *Political parties and parliamentary parties*

There are two parties that are considered to have radical views in Kosovo but they have very few supporters. In the 2004 Assembly elections, both these parties won one seat each; as a result, they have a weak voice in the Assembly.

After the 2004 elections there is a clear division between the government and opposition parties. The coalition between the LDK and AAK made it possible for the creation of an opposition. This is the first ever opposition in the history of Kosovo and as such is struggling to find its role in the parliament. A model for a constructive opposition may be emerging with the advent of ORA, a new party formed two months before the 2004 elections. First established as a citizen initiative and limited in its diversity, it has assumed a positive role in contributing to change. Their stated intention is to monitor the Assembly from within and to report violations of procedure, etc. As evidence of this intention, with only seven members in the Assembly, they were able to force a rule that a financial impact statement be attached to all pieces of legislation. Badly outnumbered and with little experience, they accomplished this by making the case with the media. ORA also asked that an investigation committee be initiated to examine expenditures and that Members be trained on the computerized system installed by the UNDP

to improve communication and access to information. ORA may be in the process of sending the message that constructive opposition can work. Moreover, ORA may encourage other parties, such as the PDK, to assume such a position. The PDK's announcement of its intention to form a "shadow government" demonstrates a desire to monitor the government and perhaps to begin to develop concrete opposition policies.

At the insistence of the opposition, the role of decentralization in providing Kosovars better access to their government officials, better services, and addressing a number of other local and internationally supported objectives was debated. The Assembly still needs to adopt a Law on Local Government (yet to be drafted), a Law on Local Finance and a Law on Local Elections in light of the difficulties afflicting Kosovo's 30 existing municipalities. Weather or not to initiate pilot projects to experiment with further decentralization without the proper legislation was part of the debate. The Assembly was split on how to implement reforms without the required legislation, the infrastructure for new municipal units and the associated start-up and recurrent costs not currently budgeted for.

The PDK, as the largest opposition party, is hosting a roundtable in one municipality entitled, "Is This the Way to Run a Democracy?" Invitees include UNMIK, the OSCE, EU, NGOs and journalists. The intent is to examine the actions of the Assembly and their inaction in answering questions that are required under UNMIK regulations, to determine how money has been spent and to explain why the municipality leadership at times invites only members of its own party to Assembly meetings. Party oversight of the Assembly's activities including media and civil society organizations is an innovation that is just beginning and could yield a number of benefits if it were promoted.

### *Parliamentary prerogatives*

The Kosovo Assembly, according to its Rules and Procedures, has the authority to elect the President of Kosovo within 15 days of its inaugural meeting, and following the appointment of the President of the Assembly and of the Presidency, or whenever the office becomes vacant. Any nomination must be supported either by the party having the largest number of seats in the Assembly or by at least twenty-five Members of the Assembly. The election of the President of Kosovo is conducted by secret ballot. Any candidate receiving the votes of two-thirds or more of the Members of the Assembly is declared as elected. If in the first ballot no candidate is successful, a second secret ballot takes place, again on the basis of a two-thirds majority being required. If no candidate is successful in the second ballot, then in the further secret ballots any candidate receiving the votes of an absolute majority of the Members of the Assembly is declared as elected.

The Assembly is also authorized to dismiss the President of Kosovo with the following procedure: (1) The motion for the dismissal from office of the President of Kosovo is supported by at least fifty Members; (2) The Assembly, following a debate, votes upon the motion; (3) the debate and vote of the Assembly is conducted within five working days of the tabling of the motion; (4) The motion receives the support of two-thirds of the Members of the Assembly to be successful.

The Kosovo Assembly also votes on the proposed Government of Kosovo by the President of Kosovo. In addition, the Assembly can initiate a motion of no confidence in the Prime Minister. The motion should have the support of at least thirty Members. The Assembly may initiate a motion of no confidence in the Prime Minister only if, with the support of a majority of its Members, it elects the

new Prime Minister at the same time and votes for the list of Ministers proposed by him or her.

The Assembly may file a motion for interpellation to review a certain issue related to the work of the Government or the Ministry.

However, in Kosovo, Ministers generally do not appear at committee meetings, even if requested. Nonetheless it is at these committees where testimony is heard, hearings are sometimes held, and proposed amendments are made to drafts. During the Second Reading in the Plenary Sessions, amendments are passed or rejected with little or no time for discussion on their merits. The Parliamentary Groups rarely have enough time to review each piece of legislation that is being considered, and often do not fully brief their members on the content of bills, not to mention any proposed amendments. Legislation is thus passed with little information as to its exact intent. The revised Rules of Procedure currently under consideration would provide for committees to receive the draft law before the First Reading. If adopted, this could mean a better examination of the law and a more meaningful discussion during First Reading and thereafter.

The Assembly committees have been unable to require the attendance of Ministers as needed and then only rarely on business rather than consideration of new legislation. The one committee that has managed to secure regular attendance from the Prime Minister's office is the Committee on Judicial, Legislative, and Constitutional Framework. Its success may merit investigation in order to understand to what extent it has succeeded and why.

The newly amended Rules of Procedure, when passed, will provide provisions that would require attendance on the part of the executive under certain circumstances, preferably within carefully prescribed rules. It is not enough,

however, to ensure a greater opportunity for oversight. Additional resources including technical assistance will need to be provided to committees in striking a balance between their legislative and oversight functions as part of a work plan process to guide their activities and deliberations. As recent training has demonstrated, committee Members have a great deal to learn about Kosovo's budgeting and finance practices in order to exercise oversight on public spending. There are other tools and techniques that will need to be imparted to oversee the implementation of the Acts of the Assembly including the connection between subsidiary legislation and the principal Acts, and to examine the impact that such rules and regulations appear to be having in light of the original intent and purpose of such Acts. The Assembly has not been able to effectively exercise its role in the oversight of the executive. It has not yet understood that it is not only a law-making body, but it has the duty to hold the government accountable as well as to express the voice of the citizens. The accessibility and representation of the members to the constituents is a lesson that has been taught but apparently not yet absorbed by many of the members due to the closed list/single constituency electoral system that promotes the party as the responsible representative.

*Interest groups, pressure groups, lobbies and their institutionalisation.*

According to the Rules and Procedures of the work of the Kosovo Assembly, the work of the Assembly is open to the public. The first ever rules and procedures of the work of the Assembly, written in 2001, made the work of assembly committees closed to the public. A number of civil society organizations, assisted by a number of international NGOs, succeeded in their advocacy efforts to open the committee meetings to the public. Assembly committees are beginning to see the advantage of inviting NGOs and different interest groups to discuss laws and amendments. There have been a number of cases when NGOs and interest groups have worked with Assembly committees on certain laws. In addition, NGOs are

starting to lobby Assembly members on certain issues of interest to their constituencies; An example of a law in the drafting of which an NGO participated was passed a few months ago, and shows the way in which NGOs and the opposition united to advocate against certain amendments in the law which had the potential to restrict the freedom of association.

### *International assistance to the parliament*

Different international development agencies have provided training on basic democratic structures and policies, instruction for committee chairpersons, legislation and promotion of governmental accountability and transparency through improved constituent relations, expanded public outreach and improved municipal assemblies. The Assembly Support Initiative (ASI), made up of the OSCE, EAR and other international donors and implementers is the coordinating body for donor-provided training. Before ASI was formed, there were common complaints from MPs that they were receiving the same training from several different donors. Coordination was clearly needed. While ASI has performed the coordination function, many of those initial donors have since left Kosovo or turned their efforts to other areas and have left much of the assistance work at the Assembly to NDI. As an example, the Frederick Nauman Stiftung Foundation, one of the major contributors to Assembly support, no longer provides assistance. The funding for the programs was redirected to civil society organizations.

The Kosovo assembly continues to receive support for UNDP, OSCE and USAID.

After an initial series of orientation conferences, donors focused on providing assistance on good governance legislation in the form of technical assistance on creating the Rules of Procedure for the Central Assembly and freedom of

information legislation. Donors worked with legislators on constituent relations, effective committees, and forming and conducting public hearings. The donors' role has been one of working on process rather than substantive issues involving specific policy, legislative or oversight matters. The need for expertise to assist on these issues is clearly needed.

## Parliamentary Practices

### *Public confidence in parliament*

According to the Early Warning reports jointly funded by USAID and UNDP, the Assembly of Kosovo enjoys great confidence of the public. The following are the trends of confidence during the last four quarters.

	Jan-Apr 2004	May-Aug 2004	Sep-Dec 2004	Jan-Mar 2005	
Satisfaction with UNMIK's performance*, %	24.7	20.7	24.1	29.7	↗
Satisfaction with Assembly's performance, %	64.3	59.1	64.5	73.7	↗
Satisfaction with SRSG's performance, %	32.4	-	69.9	81.2	↗
Satisfaction with Government's performance, %	73.4	71.9	72.2	81.2	↗
Satisfaction with KFOR's performance, %	83.0	81.0	85.7	81.0	↘

### *Votes of no-confidence in the government*

There have been no votes of no-confidence in the government initiated during the work of the Assembly. However, the PDK, the biggest opposition party in

Kosovo, has voiced its concern about corrupt behaviours and practices of a certain number of Ministers many times. The PDK has also prepared written accusations against certain members of the government and has submitted it to SRSG and UNMIK police. It is not certain if these accusations are based on facts and if serious investigation is being conducted. The print and broadcast media have closely followed and covered the events that followed the PDK accusations.

### *Government-sponsored legislation*

One issue that has yet to be resolved is the fact that while the Assembly has the legitimate role of initiating legislation rather than solely depending on the Ministries for all draft laws, it has been more than reluctant to accept that role, which was clearly outlined for it in the Assembly Rules of Procedure. Much of the legislation that has been drafted by the Ministries, according to the “Assessment of Administrative Capacity in Kosovo” arises from foreign consultants that have “little knowledge of or expertise on the conditions in Kosovo, and as a consequence, the laws may be unrealistic with confusion between different legal systems and other forms of contradiction.” (p.36) In addition, since attorneys write many of the laws with little knowledge of the Kosovo social issues, often the laws do not reflect actual societal needs.

The implementation of laws previously passed and promulgated has been seriously overlooked. Many pieces of legislation have yet to be implemented by the government, including, for example, the Law on Access to Public Documents. Despite training by international donors to familiarize those responsible with its provisions, deadlines required in the legislation have been missed by the government. As the OSCE has pointed out, many laws now promulgated have not yet been implemented, nor are the rules and regulations by which implementation occurs fully developed, approved or put in place. This is a serious problem of the

government executive and one which affects all other branches. Oversight by the Assembly of its Acts needs to occur or risk undermining the role of law in an aspiring democratic society.

A new and important area for National Assembly Members is the consideration of important government policy initiatives rather than solely draft legislation. The recent case of the proposed initiative on decentralization and local government reform saw the Assembly taking on the government's policy framework as a prelude to the implementation of a pilot scheme and legislation.

In the Central Assembly's attempt to comply with the Standards Implementation Plan as well as the European Union's own requirements, a great deal of legislation has been rushed through the process. Between June and September of 2004, approximately 80 pieces of legislation were passed. In 2005 over 100 pieces of legislation are being considered. While compliance with the implementation of the Standards is a priority, it has become almost impossible for Members or staff to review and understand each draft law that is submitted. During recent years, the legislative process in many cases became detached from thoughtful public policy formulation. As a consequence, the Assembly with its critical representational, law-making and oversight responsibilities may have become more of a "rubber stamp" than a reflective examination expected of such a deliberative body.

During consideration of legislation, the Minister introduces the draft law during the First Reading at the Plenary Session. Comments are made by Parliamentary Group chairpersons, Committee Chairs and others desiring to express their views, although they may possess little knowledge of the legislation and have had little time to study government's proposals. The draft law is then referred to the relevant committees, including the functional committee dealing with the sector in question (ie Health, Education, etc.), the Budget Committee and the Committee on Communities, where examination occurs.

Since the beginning of 2005, the Assembly has changed its meeting schedule. While committees now meet either weekly or bi-weekly, the Plenary Session is now meeting only once a month for up to 2 or 3 days. This Session supposedly occurs on the 4<sup>th</sup> Wednesday of each month, but that has not always been the case. The times are often undetermined, and the Assembly may be notified by the Presidency as late as the day before a Session is to be held. With no publication of the Session and an uncertain sitting calendar, it has been up to Parliamentary Group chairpersons to call each member. The recent practice has been for the President of the Assembly to decide when the Plenary Session will convene. As a consequence, consideration of the draft laws to be presented is often cursory at best.

Some members have engaged more in political acts than they have as legislators responsible for managing the difficult issues facing Kosovo. Blame for the inactivity and accusations have been heard from the Assembly and the SRSG. It is certainly true that many of the well-intended and qualified MPs who have attempted to conduct business in a democratic institution have been thwarted, but it is also accurate to say that it has, at times, provided an excuse for inactivity and political posturing.

It cannot be overstated that without adequate staff, support, offices and technical and legal expertise for research and drafting, the Assembly cannot be expected to function as one might hope. It is generally assumed by most international supporters that the support provided to the Assembly is insufficient to ensure quality output. After an initial delay in drafting and passing laws, many of those problems have been overcome or at least are capable of being resolved.

Up to now there has been no case of pre-term dissolution of the parliament.

### *Parliamentary crises*

There have been no serious parliamentary crises in Kosovo. There are constant complaints about the pace of work of the parliament and its role as a legislative body. The media and civil society continuously criticise the work of the Assembly, particularly the conduct of its President. The President of the assembly is heavily criticised for often disrespecting the Rules and the Procedures of the parliament, for not allowing debate and discussions of key issues that concern the citizens of Kosovo and for creating unnecessary tensions with the Serb minority members of the parliament. On 29 April, the SRSB sent a letter to the Presidency of the Assembly expressing his concerns about the events of the 21-22 April Plenary Session, after receiving an OSCE Assembly Monitoring report on the session in question. In the letter, the SRSB called on the Assembly Presidency, in particular Assembly President Nexhat Daci, to make a greater effort to take into account the interests of all political entities represented in the Assembly. He wrote that recent actions such as denial of the right to speak during a debate, unilateral decisions to delete Assembly Members' statements from the records of the proceedings, and threats to remove Assembly Members from future plenary sessions could harm the institutional credibility of the Assembly. The letter made reference to OSCE proposals to strengthen the Assembly's internal corrective mechanisms by holding regular meetings with the Assembly Presidency and by working with the legislative committee, which has a role in resolving procedural disputes.

The biggest crisis, if it can be called that, was the President's decision to commission a mural in the hallway of the parliament which irritated the Serb minority since it contained only Albanian symbols. This mural was the cause of the Serbs boycotting the work of the Assembly for more than one month. After

pressure from local media, civil society and UNMIK, the mural was covered and the Serbs returned to the Assembly.

### *Parliament and the public media*

The work of the Parliament is broadcasted regularly in the public media. In addition, the private TV stations also have the right to cover its work. The Private national stations choose to broadcast only sessions of particular interest to the public.

There continues to be a palpable fear by Members of dealing with the media, and perhaps for a good reason. The state of the media in Kosovo needs attention and assistance. While “yellow journalism” often occurs in newly emerging states or in post-conflict societies, the emphasis and coverage of personalities and scandals needs to be redirected. The Central Assembly can and needs to do a lot more to accommodate the media, help them understand how it operates, provide timely and accurate information, and establish the sort of symbiotic relationship that all successful legislatures manage to create.

### **The role of the legislature in conflict/post-conflict situations**

The Parliament of Kosovo has twenty reserved seats for minority representation and a 30% quota for gender representation.

Ten seats are allocated to parties, coalitions, citizens’ initiatives and independent candidates having declared themselves as representatives of the Kosovo Serb Community. These seats are distributed to such parties, coalitions, citizens’ initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly;

Ten seats are allocated to other Communities as follows: the Roma, Ashkali and Egyptian Communities four receive four, the Bosniak Community three, the Turkish Community two and the Gorani Community one. The seats for each such Community or group of Communities are distributed to parties, coalitions, citizens' initiatives and independent candidates having declared themselves as representatives of each such Community in proportion to the number of valid votes received by them in the election to the Assembly.

These affirmative actions for minority and gender representation, although imposed by international community present in Kosovo, have been well accepted by the majority of Kosovars. There are a number of political think tanks that argue that the reserved seats, gender quota and the single constituency proportional system weaken the accountability of members of the Assembly and its links to the constituency.

There is definitely a link between parliamentary crisis and the increase of tensions in general. There were two cases when the Kosovo Assembly insisted that they be consulted on issues that were of major interest to Kosovars and international community:

1. The issue of Kosovo agreeing to participate in talks with Belgrade in October 2003: These were the first high-level talks between Serbian and Kosovo Albanian officials. However, the then Kosovar Prime Minister, Bajram Rexhepi, stood by his decision not to attend the talks, brokered by the European Union. His argument for not going is that the government had not received authorisation from the Kosovo assembly. The international community tried to avoid discussing this issue in the parliament, since they were not certain of the outcome of the discussion.
2. The issue of implementing the decentralization policy framework, which called for implementing different models of decentralization in five pilot municipalities: The selection of municipalities and the whole decentralization

debate was politicized beyond repair. The assembly pressured the executive branch not to start implementing anything without the consent of the assembly. The international community did not favour any debate that would change the already agreed plans of decentralization. This issue created a polarization of the opposition and the position and even a split within the government coalition.

### *Relationship between parliament and the international community*

Sincere co-operation with the international community is sometimes lacking

1. Direct confrontation and non-cooperation
2. Responsive only to pressure from the international community
3. Regular monitoring of the activity from international organisations
4. Adoption of measures sponsored by international bodies

There are two “layers” of the international community in Kosovo: the international community represented in UNMIK and donors in Kosovo and the international community based outside Kosovo (COE, Stability pact, IMF, WTO). There are fewer tensions between Assembly and international organizations based outside Kosovo; tensions are higher with internationals based in Kosovo.

The Kosovo Assembly is regularly monitored by the OSCE. The Assembly members are not very comfortable with OSCE monitoring since they feel that the international community present in Kosovo, including OSCE, treats this institution with a patronizing attitude. There is a certain level of resentment for OSCE and other pillars of UNMIK. The resentment also comes from the fact that there are still many responsibilities that are waiting to be transferred to this institution as well as the international community’s (especially UNMIK’s)

tendency to push for decisions vital for Kosovo without the involvement of the Assembly.

*Missed chances for the parliament to avoid, alleviate the conflict*

In 17 March 2004, Kosovo faced violent riots directed towards the Serb minority. The riots lasted two days. The Kosovo Assembly missed its opportunity to act in alleviating this crisis.

*Missed chances by the international community to influence internal processes through the parliament*

As mentioned above, UNMIK very often has tried to push for decisions that affect Kosovo through individuals that they identify as allies within institutions at the cost of sidelining the role of the institutions, particularly the role of Assembly. This has created unnecessary tensions between the UN and local institutions many times. The international community's issues have a sense of urgency attached to them so it always seems that the international community has no time for allowing the processes of building local ownership to take place. There were many cases when the international community has discouraged debate out of fear that the outcome of debate may not be the one they would like. This fear and distrust in Kosovar institutions has not been productive and has resulted in outcomes that were not sustainable.

**Recommendations for the future**

*Change of parliamentary practices in relation to better managing of conflict and post-conflict situations*

The unexpectedly aggressive transfer of competencies in the justice sector entails the creation of the new Ministry of Justice (MOJ) and the Ministry of Internal Affairs (MOA), bodies that will assume responsibilities in the police sector. Whether a complete or partial transition to the new MOJ and MOA will occur are decisions to be made in the forthcoming period, but the embryonic institutions will be developed to become fully-fledged ministries by the end of 2005, or spring 2006 at the latest.

In light of these new developments, the Kosovo Assembly needs to think of its role in the security sector. In addition, the international development agencies need to prepare the Kosovo Assembly to gradually enable it to take the lead in the five strategic areas for Parliamentary action to promote peace through “non-militaristic” conflict mediation/resolution approaches, such as:

- Constitutional and Democracy Development Strengthening
- Reform of electoral legislation and systems
- Oversight of allocation of resources
- Legislative-constituent Peace Building capacity
- Electoral-related conflict mediation/resolution
- Observation of elections

The Kosovo assembly needs to be able to act as a democratic control in its role of controlling and overseeing the police forces (including the secret services) in the near future. The Kosovo Assembly has the last say in deciding on the strategy of the security policy. The Kosovo Assembly needs to learn to balance security needs with the other needs of the society. As is to be expected in a democracy, this is a subject of much debate. Many parliaments, especially in consolidating democracies, face difficulties in understanding the vast and complex security

sector, getting relevant information and assessing military data, operations, and requirements.

### *The role of international community*

The international community should take a proactive approach in preparing the Assembly of Kosovo for the new political developments that are going to happen in Kosovo. The final status process will be in a need of a parliament which is ready to mediate and serve as catalyst of the process.

### *Lessons learned*

The three main lessons learned regarding the role of the Kosovo assembly in the post conflict situations are the following:

- **DISEMPOWERMENT:** The biggest incentive and catalyst for assembly strengthening is clear division of responsibilities between the UNMIK and PIGS. As long as UNMIK continues to have veto power over any piece of legislation, the Assembly will be less motivated to commit itself fully to dealing with its weaknesses. Resolution 1244 and the Kosovo Constitutional Framework limited the Kosovo parliament's work and frustrated its members since they could not discuss any Constitution-strengthening issues, electoral system reforms, or oversight of reallocation of resources. Thus, Assembly members do not feel the pressures and the consequences of bad policy or a bad law since they blame the interventions of the UNMIK office of Legal Affairs and the SRSG. This also weakens the perception of the public over the work of the Assembly and confuses the advocacy effort of the civil society.

- **EXTERNALLY IMPOSED PRIORITIES:** The international community present in Kosovo has continuously imposed and is continuing to impose its priorities on the policies and the laws that Kosovo should adopt. This has also been accompanied with a sense of urgency that has left the Kosovo Assembly and civil society with no time to build any ownership over the policies and the laws that it had been adopted. This partially explains why most of the laws are not being implemented and why there is a lack of public pressure for the laws' implementation.
- **CONTINUOUS AND EFFECTIVE ASSISTANCE:** International donor community should continue to assist the Assembly with well-tailored and well-targeted assistance. Continuation of well-targeted assistance is key, especially at this stage of political development in Kosovo.

*Future increase of the role of parliament*

The Central Assembly is at a critical juncture as it evolves from an Assembly that operated with limited authority to one in which its bills, whether amended or not, are promulgated into law. The Assembly is Kosovo's second; it brings the added dimension of an opposition and is increasingly being given more responsibility, becoming more accountable for the legislation they pass and the consequences of their Acts. Progressively less intervention by the Office of Legal Affairs of the SRSG is making this possible based upon a political decision to minimize UN oversight only to matters directly related to Security Council Resolution 1244 or the Constitutional framework. Virtually everyone consulted agrees that the Assembly needs considerable assistance to perform the tasks of a modern democratic Assembly. There are a number of things it needs to decide for itself if it is going to succeed.

Kosovo needs a fully functioning Central Assembly today and immediately once its future status has been determined. With donor support decreasing, a way must be found to revitalize outside assistance through the ASI coordinating mechanism. Since Kosovo is looking towards integration into the European Union, those responsible for Assembly assistance must be knowledgeable about and capable of working with the European models.

After considering what has been accomplished and the challenges ahead, the objectives around which future assistance to the Assembly is organized should be the following:

1. Competent Executive Oversight over Policy Implementation. – Periodic and regular parliamentary oversight of the executive must occur to ensure government accountability for advancing the laws passed and the proper use of public funds that have been appropriated by the Assembly.<sup>1</sup> Ministries should be required to report to the Assembly on a regular basis, and not just when invited to explain or introduce a piece of legislation, but to demonstrate adherence to law already on the books and to account for their use of public funds.
2. Delegating and Monitoring of Subsidiary Legislation.– Subsidiary legislation is frequently delegated from the legislature as permitted under the constitution and Rules of Procedure to the Executive, which is charged with the implementation of the principal Acts of the Assembly. It is a way in which measures are established, usually in the form of rules and regulations, to allow for the practical application of law consistent with

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<sup>1</sup> To underscore the challenge, the Law on Access to Public Documents, one which NDI assisted in writing and went so far as to write the manual containing implementation guidelines as well as training government officials on its use, has not yet met the deadlines outlined in that legislation.

both its letter and spirit. The OSCE and others have observed that most Ministries have not been able to comply with deadlines for the drafting and adoption of subsidiary legislation. There are a variety of reasons. One problem is that the inconsistent use of terms in Acts of the Assembly have led to confusion and misunderstanding. The ASI produced a glossary of legislative terms, but much of the legislation that has been passed must be examined and the terminology harmonized between the different languages used in the Assembly before the necessary subsidiary legislation can be put in place. There are other reasons that may need to be investigated, but the bottom line is that the Assembly is responsible for monitoring and overseeing the implementation of its own Acts by the Executive. These obstacles must be identified and overcome, perhaps as an added responsibility of the Assembly's committees if law is to be translated into action.

1. More Effective Committee Consideration of Legislation. Although committees should be the primary body for examining legislation, there is currently only limited committee input into this important function of the Assembly. As described earlier, there is no time provided to committees to carry out their work, nor is there the opportunity for committees to explain in Plenary Sessions what they have done to bills and for the proposed changes to be debated. This was not the intent of the original Rules of Procedure (ROP), and it is hoped that a continuous review and improvement of the ROP - a more dynamic approach to rule making that is driven by Members - will eliminate this obstacle to more effective committee operation and contribution to the Assembly. Currently, the majority of the MPs are passing legislation with little or no knowledge of its contents - a frightening thought indeed. The role of committees and

their contributions must be maximized rather than marginalized, as is often the case.

2. More Effective Coalitions and Constructive Opposition. With the formation of ORA and the existing coalition between the LDK and AAK, the functioning of the Assembly as a deliberative body needs effective coalitions and a constructive opposition. ORA has emerged as a potential catalyst for reform and for bringing much needed change to the institution. ORA understands the need for positive solutions rather than simply negative statements. The PDK's announcement that it is forming a "shadow government" may also be an acknowledgement of the fact that they realize they must perform the role of an opposition. They have supported some of ORA's proposals behind the scenes, but they need assistance to determine how far they are willing to go, and if a type of coalition in opposition might be workable.
  
3. More Effectively Functioning Caucus or Parliamentary Group. Caucuses continue to perform poorly in the Assembly. There has been growth, but there remains little understanding of the actual function of a caucus. Clearly, the time they spend in meetings before Plenary Sessions is insufficient to brief members on legislation or to inform them of how that legislation adheres to their party platforms. While structure is needed, a better communication within their parties must also be stressed, and lines of communication established with members of the party who possess expertise needed on specific issues. The LDK example at the municipal assembly level in which mirror committees are formed within the local party branch shows improvement. Caucuses must become better at assisting members to understand legislation. Members of specific committees where knowledge and expertise resides should be in a position

to brief each of the parliamentary groups on the legislation they have examined rather than simply having the parliamentary group leader state that the group will be voting yes or no on specific pieces of legislation or amendments. Informed members can be helped through viable parliamentary groups. We recognize the challenge of trying to assist something that non-party members are not welcome to attend.

4. Familiarity and Ownership of More Dynamic Rules of Procedure.– If a legislature is going to perform its duties correctly, it must establish, thoroughly understand and comply with the rules of the game. Apparently, many Members have little knowledge of the Rules or their purpose. Nowhere do they make good reading and it is not until they are used to one's advantage, or that of one's opponent, that they begin to take on any significance. The passing of newly amended Rules provides an opportunity for greater understanding and appreciation as well as ownership on the part of those expected to respect such practices. Members must be aware of their rights and obligations and of the rights and obligations of the Presidency of the Assembly under the ROP concerning the application and interpretation of the institution's rules. The President has consistently taken great liberties and has often ruled contrary to the established rules of procedure. Monitoring of the President by the OSCE has recently resulted in anger and non-acceptance of the reports. The new party, ORA, has brought attention to the President's actions and has reported on them to the press. To date, none of this has convinced the President to comply with the Rules but that may be changing.
5. Building Implementation into the Legislative Process. There is a great need to appreciate the role of law in society and governance on the part of

the Assembly and its Members. There is a paucity of competent legal advice and assistance available to the ministries, the Assembly as a whole and committees in particular. While there are attorneys on the Assembly staff, they are used more as clerks than for their legal insights and skills. A sufficient number of professional staff with the requisite legal skills needed by the Assembly, including legislative drafting, research, analysis or interpretation, are hard to attract due to the low salaries that are not competitive with private or corporate practice. Without such advice and assistance, the Assembly and its committees are easily misled into believing that laws are the best and perhaps only solution to Kosovo's problems, without careful consideration to addressing the implementation difficulties that all laws are bound to run up against.

6. A Knowledge-Based Approach to Public Policy Issues.— Other than assisting the Assembly with procedural and legal matters, the Central Assembly's Members need and are requesting assistance with the broad range of policy issues that they are expected to address through their committee work. Such requests are encouraging and a logical extension of a Member's understanding and appreciation of the legislative process. They merit a serious and substantial response, both by the leadership of the Assembly and the donor community concerned with democratic governance. Initial assistance in the form of an orientation and training has been provided on budgeting and public finance issues, but for the wide variety of other issues confronting Members, a continuous on-demand source of technical assistance is needed. Such assistance could be provided in part through the establishment of a resource center offering Internet access, an index of sources available in Kosovo, a database of experts and organizations with acknowledged expertise. Utilizing the UNDP-installed hardware and software would give the resource center a

substantial head start. What is urgently required today is the capacity within the Assembly to draft scopes of work, to identify and, where necessary, make contracts with Kosovar and regional consultants, and to manage and benefit from their expertise as committees address their legislative and oversight responsibilities.