

DRAFT

Strengthening parliaments to better manage conflict and post-conflict situations

– An analysis of the Serbian Parliament and the Federal Yugoslav Parliament in the Kosovo Crisis -

By Dr. Jovan Teokarevic

Faculty of Political Sciences, Belgrade

Serbia and Montenegro

SUMMARY

This paper deals with the role of the parliaments of the Federal Republic of Yugoslavia (FRY) and of Serbia in the Kosovo conflict. It covers the period between March, 1998 and October, 2000. During the whole crisis parliaments of Serbia, Montenegro and FR Yugoslavia were almost non-visible, and had virtually no impact on events. The main reason for this stems from the nature of the political system that Serbia and FR Yugoslavia used to have at that time. Although the FRY Constitution (1992) envisaged a parliamentary system of government, and the Serbian (1990) Constitution envisaged a semi-presidential one (similar to the Montenegrin one), the real role of parliaments was incomparably lower than any of these two systems formally allowed. Contrary to Constitutional and legal provisions, the executive branch dominated over the legislatures in all possible ways, and throughout the whole decade of the 1990s. This was particularly visible in the most intensive parts of the decade, when Serbia and FR Yugoslavia were engaged in armed conflicts. The same is, of course, true for the Kosovo crisis.

Several specific factors decreased the role of parliaments. There was no international assistance to the Serbian and Yugoslav parliaments, since the country was for most of the 1990s under heavy international sanctions. According to all public opinion polls from the time our analysis, public confidence in parliament was very low - in most years, it did not pass 20 percent. No special commission in the Parliament was made to try to resolve the Kosovo conflict, which is one of manifestations of its the marginalized position.

Recommendations:

- 1) Parliaments should ask for the real separation of power, which would enable them to check and balance executive and judicial powers. Parliaments should then try to perform all functions they in principle have within democratic political systems (representation, law-making, voting governments and budgets, and particularly oversight and to be places for deliberation of important issues).
- 2) International community should: a) involve parliamentary representatives in debates and in international talks/negotiations about the crises, b) provide for various kinds of expertise and staff, and c) try to facilitate the organization of meetings with parliamentarians of other states, first of all with the states in conflict.
- 3) Special attention should be payed to the work of parliamentary committees. They should intensify the level of oversight over the domains in their portfolio: in addition to more expertise and less party-control, the existing or in some circumstances even better – new committees could

concentrate most of their time, human and material resources on a conflict/post-conflict situation, organizing frequent hearings, debates, asking for reports and conclusions that might be passed by the whole parliament.

4) A much better relationship should be made between parliaments on one side and media and the public, on the other, that would also increase the transparency and thus accountability of the members of parliaments.

I INTRODUCTION

Introduction: General assessment of the role of the assembly in the course of political developments in the country. A short description of the conflict or the avoidance of the conflict. Main actors. The involvement of the international community.

This paper deals with the role of the parliaments (assemblies, as defined by the constitutions) of the Federal Republic of Yugoslavia (FRY) and of Serbia in the Kosovo conflict. It covers the period between March, 1998 (when armed conflicts began in Kosovo between Kosovar Albanian militant groups and FR Yugoslav and Serbian police and the Army) and October, 2000, when Yugoslav President Slobodan Milosevic was defeated on federal presidential elections, which brought to the end his 12-years long autocratic rule in Serbia and FR Yugoslavia.

Short description of the conflict

During those two and a half years, and mostly without any considerable impact of the parliaments themselves, the conflict was developing in several stages:

1) During Spring 1998 armed clashes between the two sides intensified, on the background of two mutually excluding interpretations of the roots and course of the events. The Serbian/Yugoslav official side claimed that “Albanian terrorists” kept attacking Serbian policemen, soldiers and civilians, trying to achieve Kosovo’s secession from Serbia and FRY, and internationalization of the conflict that had been going on ever since the autonomous status of Kosovo had been revoked by the Serbian Assembly in 1989. The Albanian side claimed, on the other hand, that it was only defending itself from the mounting violence of the Serbian and FRY police and the Army, and that, in addition, the right and desire of ethnic Albanians to make Kosovo independent should be respected, as in cases of other nations during the disintegration of former Yugoslavia. In Spring of 1998 Serbian/Yugoslav police and military actions were condemned by the Contact Group and the UN Security Council and sanctions were introduced against FRY. International community asked FRY to restrain from using excessive force, which led more and more ethnic Albanians into death, refuge and despair.

2) In late Spring and early Summer, 1998, influential countries and international organizations (NATO, EU) engaged themselves in negotiations with the Serbian/Yugoslav Government. They insisted on the immediate stop of violence performed by the police and the army, as well as on the withdrawal of some of their units from Kosovo.

3) NATO also started contemplating military attacks on Serbia, as a means of preventing the “Bosnian scenario” – the spread of the conflict and human suffering in the face of inactive and disunited world community. When the number of incidents grew in summer, and the number of Albanian refugees fleeing from terror went up to several hundred thousand, an ultimatum was issued by NATO in Autumn of 1998. Yugoslav President Milosevic backed down, and in agreement in October of that year agreed to withdraw many armed forces, and to allow air-surveillance over Kosovo by NATO airplanes. An OSCE mission was sent to Kosovo, too, but all this did not stop the violence.

4) In early 1999 an international conference was held in Rambouillet (France), with the aim of not only stopping the conflict, but also of finding a new institutional/constitutional solution for the crisis, and more specifically for the status of Kosovo. The conference ended without success and two sides of the conflict didn't agree on anything. In March, 1999, NATO then activated its Actorder from October, 1998, and began air attacks on Serbia and Montenegro, with the pretext of preventing genocide over the Albanian population in Kosovo. International military intervention went on for nearly three months, until June 10, 1999. During the intervention police and military forces tried to ethnically cleanse a good part of the territory of Kosovo, pushing ethnic Albanians into exile and performing many crimes over them. NATO air campaign ended with the so-called Kumanovo agreement, and the UN Security Council Resolution No. 1244, according to which Kosovo was to be ruled by international civilian and military missions.

5) During Summer and Autumn of 1999 Albanians were able to return to their homes, while at the same time most of the Serbs and other non-Albanians from Kosovo left the province, under the Albanian pressure or under fear of its prospect. Formally speaking, in Serbian and FRY constitutions, Kosovo has remained an autonomous province of Serbia, and the UN SC Resolution confirmed that it was part of the FRY. In reality, Kosovo was exempted from the sovereignty of Serbia and FR Yugoslavia. This was reflected in a very complicated way in the Serbian political life: all citizens of Kosovo were still able to vote in elections held in Serbia and FR Yugoslavia, but only Kosovar Serbs were using this possibility, within the enclaves they were living, under international military protection. A difficult and chaotic situation witnessed the rise of the opposition parties in Serbia, which finally defeated Yugoslav President Milosevic in presidential election in October, 2005, and ousted him from power he had been exercising for

12 years. At the same time, tensions were growing within the Yugoslav federation, between the Montenegrin leadership, asking more independence, and the Serbian/Yugoslav one.

Parliaments' role in the conflict

During the whole crisis parliaments of Serbia, Montenegro and FR Yugoslavia were almost non-visible, and had virtually no impact on events. The main reason for this stems from the nature of the political system that Serbia and FR Yugoslavia used to have at that time. Although the FRY Constitution (1992) envisaged a parliamentary system of government, and the Serbian (1990) Constitution envisaged a semi-presidential one (similar to the Montenegrin one), the real role of parliaments was incomparably lower than any of these two systems formally allowed. Contrary to Constitutional and legal provisions, the executive branch dominated over the legislatures in all possible ways, and throughout the whole decade of the 1990s. This was particularly visible in the most intensive parts of the decade, when Serbia and FR Yugoslavia were engaged in armed conflicts. The same is, of course, true for the Kosovo crisis that started in March, 1998.

One can hardly point to a better case than Federal Republic of Yugoslavia for a claim that “mining” through the positive FR Yugoslav legislation can lead us to the most significant clues for problems that have gradually evolved into serious ethnic conflicts, and finally into a war. On the one hand, Yugoslav political and social reality had very little to do with constitutions and laws written in the last several years, ever since the state was created in 1992. The same is, certainly, true for many countries in the world, but the discrepancy in the main features was so big and alarming that it at least calls for special attention when one deals with laws and neglects reality, or doesn't pay enough attention to it.

FR Yugoslav constitutional system was far away from its practical realization in literally all spheres of life. It used to function more, or almost exclusively, in line with relations between various centres of political power and most of the time in uninstitutionalized ways. One should not, however, downplay the importance of the whole regional, political and international context created during the last “furious” decade, namely - a still not completely finished process of the disintegration of former Yugoslavia that's been haunting all its successor states. The impact of this setting on Serbia and Montenegro has been particularly strong, as they had been directly or indirectly engaged in all armed conflicts connected with the SFRY breakup, had been internationally unrecognized and were punished with international sanctions, going at the same time through a devastating economic crisis. All this – coupled with deeply undemocratic nature

and behaviour of the Serbian regime - radically eroded the traditional role that constitutional and legal provisions usually have – or should have - in each country.

Part One: Institutional Arrangements

Describe briefly the relevant parliamentary elections (elections which took place around the time of the conflict situation).

Elections for both the Serbian Assembly (held in August, 1996) and for the FRY Assembly (held in November, 1997) brought to power a coalition of parties that were key instigators of chauvinism, ethnic conflicts and wars in Serbia: Milosevic's Socialist Party of Serbia, his wife's party United Left and Vojislav Seselj's Serbian Radical Party. In fact, Milosevic continued to rule, only with partners that were partly new, but this time – unlike before – his partners were eager and capable of making much bigger influence within the coalition.

Those Milosevic's partners even acted more radically than him or his party in many occasions, including the treatment of the Kosovo crisis. The whole ruling coalition, to be sure, showed clear signs that it would not tolerate neither Albanian uprising, nor the enhancement of their rights in Kosovo. Having lost previous wars in Slovenia, Croatia, and Bosnia, Serbian regime was not ready to allow yet another defeat, now, on the territory it fully controlled with the help of extremely large and potent armed forces. It was also the territory it could easily lose, because the Albanians counted for 90% of the province inhabitants, they had the highest birth rates in Europe, and Serbs, with small birth rates, kept leaving Kosovo, fleeing from Albanian pressure, or searching for better personal economic prospects in this most underdeveloped part of former Yugoslavia.

Serbia's democratic opposition, gathered in the coalition "Together", with its very modest 22 seats in the Federal Assembly's lower chamber, was not able to influence the course of events, especially because it was chronically internally disunited and did not act in harmony with the party of the Montenegrin President Djukanovic (Democratic Party of Socialists). Although in favour of distancing from Belgrade as much as possible, the Montenegrin leadership had still to play along with Milosevic to some extent, fearing that the strong man from Belgrade would

otherwise try to replace them by force with another Montenegrin Party (Socialist People's Party) that was in open coalition with Milosevic, and that also held a place of the Federal Prime Minister. That's why Montenegrin votes from Mr. Djukanovic's party contributed to the election of Milosevic for the Federal President in the Federal Parliament, in 1996.

Political parties and parliamentary parties: is there an overlap between the major political and major parliamentary parties? Do militant groups claim or have parliamentary representation?

As before and after – from the beginning of the 1990s – all Albanian parties from Kosovo boycotted the mentioned parliamentary elections in both Serbia and the Federation, holding these elections and institutions illegitimate. It goes without saying that militant Albanian groups from Kosovo boycotted all elections, too. At that time, much more than before in the same decade, Kosovo was a completely divided society and polity, cut precisely along ethnic lines. Two dominant ethnic communities (Albanians and Serbs) ceased to mix or contact almost completely, and were in a kind of an undeclared war, within a system that used to be correctly described as apartheid. In addition to violence they were exposed to by the police, thousands of Albanians were fired from their jobs after the eradication of the autonomy of the province in 1989, and were replaced by Serbs. Serbs were in command positions virtually in all parts of social, economic and political life. Ethnic Albanians created in return “a parallel society” in Kosovo, that included education, health and social care, informal tax system, etc. Serbian regime tolerated this with pleasure, as an easier way of keeping the Albanians out of every aspect of the decision-making process. At the same time, parallel society offered some degree of self-rule and satisfaction among Albanians, and the whole situation was rather pacified while conflicts in other ex-Yugoslav republics were going on.

The Albanian general boycott of everything Serbian had also beneficial political consequences for Milosevic and his party. According to Serbian electoral rules (i.e. the distribution of electoral districts), 40 out of 250 MPs of the Serbian Assembly were supposed to be elected in Kosovo. As long as he favoured Serbs in Kosovo and presented himself as their protector against Albanians, Milosevic could count on all, or almost all those votes, because it was only Serbs who went to the polls. That was a big advantage of his on each elections held in Serbia throughout the 1990s.

In the second part of the decade ethnic Albanian parties from South Serbia participated in elections, but in 1996 one party got only one single seat in the Citizens Assembly of the Federal Parliament in 1996. No effort was made whatsoever by the authorities to try to use this Albanian presence (or better said recognition of the legitimacy of the political system) in the Assembly, for better contacts and improvement of relations with Kosovar Albanians. No effort or initiative of that kind was ever recorded in the Serbian or the Federal Assembly. It is not certain that this would have been the best channel, because for many Kosovar Albanians, those ones from South Serbia were considered national traiters. Last but not least, Kosovar Albanian political elite profited from the boycott, too, keeping control over the population, and was probably also not very keen on passing of the Rubicon – and beginning to communicate and negotiate with the official Belgrade.

Is there a clear cut division between government and opposition parties?

In addition to the Serbian-Albanian division, Serbian society itself suffered from yet another deep and almost irreconcilable division during the 1990s, between the President Milosevic's regime and the democratic opposition. The issues and lines of conflicts changed in time, opposition leaders occasionally collaborated with the regime they were supposed to fight... but basically the division was deep, real and dangerous, and it cut the whole society in the same way. For a decade after the introduction of a multi-party system in Serbia (1990) those two actors could not agree even on the most basic values, rules of the political game and direction the country should be heading to.

A similar division began to grow in Montenegro, as well, from 1998 on, first among the ruling party, Democratic Party of Socialists, only to become apparent, as time went by, full-scale within the society, too. On the one side was the political camp of the Prime Minister Djukanovic, ever more interested in breaking with the official Belgrade, and on the other – his former allies from the once same party, that established the new one, fully supporting Milosevic and all his policies, including the one in the Kosovo crisis.

This, of course, among other things, had important impacts on the work of the Parliament, in Serbia and in the Federation. Whenever the opposition managed to win enough seats in the Parliaments, it tried to block the ruling coalitions' policy. Even without too much formal political clout, democratic opposition in Serbia was able to gather quite a lot of public support. This didn't help much in the parliaments' votings, which led to repeated and prolonged

boycotts of the parliaments by the opposition. Parliaments became first and foremost the battle grounds, rather than places where various organized political interests could aggregate and offer added value in searching for solutions of grave problems Serbia and Montenegro were faced with.

At the same time, even a small majority in favour of the ruling coalition within the parliament tend to turn into a complete rule of theirs over the whole society. This was in harmony with the concept of power Milosevic always used to adhere to: power is in principle not divisible, i.e. power always means absolute power, regardless of how small the advantage one party had on elections. The same principle was of course used towards the Albanians from Kosovo, including their non-participation in the political life in Serbia. For the supporters of the regime there was nothing wrong in their absence from politics, since it was interpreted as a matter of their own choice.

On several occasions Serbian opposition and citizens gave a similar non-compromising answer to the regime, organizing long-time demonstrations. One of those, in 1991 (only three months after the first multiparty elections from December, 1990) ended in blood. Others were peaceful – like the three-month long demonstrations after the cheating on local elections in November, 1996 – and gained considerable concessions from the regime. It's worth noting, though, that there were no demonstrations in Serbia in favour of the position of the Albanians in Kosovo.

What are the prerogatives of the parliament vis-à-vis the executive, the president, etc.? Veto powers, control over the executive in cases of emergency, etc?

Although the principle of the division of power was in place ever since 1990, parliaments in Serbia and in the FR Yugoslavia were always junior partners of executive power, not their partners, not someone who could control or counterbalance the work of the executive. This is the main part of the explanation why parliaments also never engaged themselves in a serious way during the conflict in Kosovo. As in all other cases, they served only to confirm the already taken decisions of the government or of the president.

In the following section we shall present the possibilities that parliaments had formally on their disposal, according to the Federal and the Serbian constitutions.

Federal Assembly and Federal Executive Power

At the time that the Federal Constitution was passed in the year 1992, Slobodan Milosevic was already President of the Republic of Serbia. He had extensive constitutional competencies as the head of the Republic. It was completely appropriate for the Constitution to be passed at the federal level to promulgate a parliamentary regime of governance, where the President of the Federal Republic of Yugoslavia was having mainly a ceremonial role. This concept, on the other hand, was also acceptable for the other federal unit – the Republic of Montenegro, which had promulgated its Constitution after the Federal Constitution, in October 1992, and which contained provisions similar to the ones inscribed in the Constitution of the Republic of Serbia. The Constitution of the Republic of Montenegro was to a greater degree harmonized with the Federal Constitution than the Constitution of Serbia that, by the way, was never harmonized with the Federal Constitution at all.

Constitution of the Federal Republic of Yugoslavia of April 27, 1992 promulgated a parliamentary system of governance in which the Federal Government, in respect to the Parliament, is in very similar position like the German Government vis a vis the Bundestag. Section V of the Federal Constitution is regulating the organization of governance. Status of the Federal Parliament is prescribed in Article 78. Federal Parliament is composed of two Chambers (Article 80).

The status, function, election and term of office of the President of the Republic are prescribed in Articles 96. to 98. of the Constitution, stipulating that the President of the Republic shall have a predominantly representative role and competencies.

Federal Republic of Yugoslavia was a country with a federal setup, which is reflected in the fact that the state sovereignty and the state rule is exercised at two levels – at the level of the Federal State, and at the level of its member-states (federal units). Therefore, each republic has its own Constitution: Republic of Serbia has the Constitution of September 28, 1990. Promulgating a semi-presidential system, similar to the provisions contained in the Constitution of France, Republic of Montenegro, according to its Constitution (12/10/1992) has the provisions similar to the ones of the Republic of Serbia, but with less competencies vested in the head of state.

New constitutional solutions essentially have introduced a parliamentary system in FR Yugoslavia. Such system was an institutional attempt at democratization of society, in the circumstances of the absence of tradition of the multi-party democratic life and a necessity for construction of new political relations and values.

Although according to the previous Constitution, parliament was formally the most important institution, it was however not the venue where democratic decisions were being made. These decisions were being made in the alienated centres of executive power. The Parliament was only a decorative parliament and place for a formally legal and democratic promotion of the already made decisions. The Constitutions of member republics, however introduced semi presidential system.

Federal Parliament, as a representative body, consisted of two chambers: Chamber of Citizens and Chamber of Republics. Chamber of Citizens represents all citizens of the complex state, while the Chamber of Republics represents a typical house reflecting a complex – federal structure of the state community and is a representative body of the republics.

The Chamber of citizens is made up of federal deputies elected in the member republics. In direct elections by secret ballot, one federal deputy being elected for every 65.000 voters and each republic member has no fewer than 30 federal deputies. The Chamber of Republics is made up of 20 federal deputies from each member republic elected in direct elections (Article 80, Amendment III).

Federal Parliament has a classic function of a parliament, such as the following: constitutional function, legislative function, budgetary, control, electoral, etc.

The executive power consists of two parts: the first one is within the competencies of the head of state, the second being exercised by the Federal Government.

Article 96, of the Constitution and Amendments V, VI and VII to the Constitution of the Federal Republic of Yugoslavia from the year 2000, define the status, functions, and manner of election and termination of mandate of the President of the Republic. He performs classic representative functions of the head of state, he is elected at direct elections by a secret ballot and has the term of office for four years. Regarding the status of the Government, however, according to the Constitution (Article 99) it has an underlined independence and responsibilities in prescribing and conducting policies and in implementation of law in all spheres of live. Federal Parliament, according to provisions of Amendment II, elects and dismisses President and members of Government.

Federal Government is deemed elected if it is supported by the majority vote of all the federal deputies in both parliamentary Chambers, by secret ballot (Amendment VIII). Federal

Government is responsible for its work to the Federal Parliament (Amendment VIII). Federal Parliament may withhold the vote of confidence to the Federal Government.

On the other hand, in cases prescribed by the Constitution, Federal Government may dissolve the Federal Parliament (Article 83). Regarding the relationship between parliament and the head of state, Amendment V modified the manner of election of the President of the Republic. He was no longer elected by the Federal Parliament, but may be dismissed by the Federal Parliament if the Federal Constitutional Court decide and rule that he had violated Constitution (Amendment VII).

Functions of the President of the Republic and of the Federal Government are completely separated. Their interdependence is reflected only in the fact that the President of the Republic proposed the candidate for the Federal Prime Minister, and only on the basis of the proposal of the Federal Government, by decree, shall appoint and recall the ambassadors of the Federal Republic of Yugoslavia (Article 96). According to the federal structure of the state, the rule was defined that the President of the Republic and the Federal Prime Minister can not be elected from the same republic.

The delegation of legislative power of the parliament on to the executive branch of power in regular circumstances is not foreseen in the Constitution. However, in practice, there were cases of usurpation of competencies of the legislative power by the executive bodies through exceeding scope of their competencies.

Under extraordinary circumstances, pursuant to stipulations of Article 99. item 11 of the Constitution, such competencies are given to the Federal Government authorizing it to adopt measures regulating matters within the jurisdiction of the Federal Parliament. For example, during a state of war, imminent threat of war, or state of emergency, when the Parliament is not able to meet, Federal Government takes over the legislative power, i.e. adopts enactments within the jurisdiction of the Federal Parliament. Enactments adopted during a state of war may throughout the duration of the state of war restrict various rights and freedoms of man and the citizen, except those listed in Articles 20, 22, 25, 26, 27, 28, 29, 35 and 43 of the Constitution. Federal Government is obliged to seek the approval of the Federal Parliament for these measures as soon as it is able to convene.

During the NATO's bombing of FR Yugoslavia in 1999, when the state of war was in force in Yugoslavia, this constitutional provision was being applied so that all the significant elements of economic activities in the country were regulated by measures having the force of legal enactments. The Federal Government adopted them, while the time of application was limited only to the period of duration of the state of war.

During 1999 the Federal Constitutional Court got a number of initiatives for evaluation of constitutionality and legality of certain enactments, adopted by the Federal Government during the state of war. They were the cases, for example, of enactments limiting travel abroad of military conscripts, regulations pertaining to the foreign exchange operations, suspension of diplomatic relations with some of the western countries, which were not submitted for approval to the Federal Parliament, although the Parliament, after the adoption of the said enactments, and in spite of the state of war, was convened and in session.

Federal Constitutional Court, however, did not accept any of the initiatives mentioned above.

Serbian Assembly and Serbian Super-Presidentialism

Serbia's post-communist constitutional system has been often referred to by its advocates as a "rationalized parliamentarism", by which they mean that with the 1990 Constitution Serbia has joined countries that have introduced changes to the "pure" or British model of parliamentarism. In all countries changes were supposed to overcome the inherent weaknesses of the Westminster model, such as government instability and inefficiency within a too fragmented party system. And, just as other countries have got stronger executive power, the argument goes, Serbia did the same in its new Constitution.

In some countries the prerogatives of the Government have been widened, in other countries both the Government and the President got stronger, while in Serbia it was mainly the President. Those who defend such solutions deny resolutely most often objections to a too strong position of the Serbian president in the Constitution. The President's legal advisor thus says: it is "incorrect (...) [to assume] that elements of the presidential system in the Constitution of the Republic of Serbia come as a consequence of undemocratic circumstances, of authoritarian power, that the Constitution was tailor-made for one man and his personal power, that it's a communist-Bolshevik constitution, etc...".

The main author of the Serbian Constitution explained the role of the president in this rationalized form of parliamentarism in the following way: President "serves as a lever of this rationalization, but also as the [Benjamin de] Constant's 'moderatory power' which arbitrates along the line of relations between the National Assembly and the Government". This expert claims that Serbian Constitution has safeguarded the division of powers and prevented the concentration of power in one place, so there is no "supreme body of power". This official line

of thought in Serbia also suggests that in comparison with the President of the French Fifth Republic, Serbia's President is "a weak head of state", but at the same stronger than some others, for instance the Italian President.

Most other Serbian experts have persistently criticized the status of President in the Constitution of the Republic of Serbia, claiming that the Constitution introduced a too strong President, which in turn disbalanced the whole system of power in his favor. Some critics argue that such a powerful President may not lead to an over-concentration of power in France, because of a well established democratic system and long democratic traditions in this country, but in Serbia – still without those prerequisites - it produces nothing but bad results, strengthening personal power of the President: "Constitutional solutions about the President of the Republic, about his competences and relations with the People's Assembly, open the way for the establishment of personal power dressed in a veil of one kind of parliamentary-presidential system. This, of course, is deeply in conflict with the idea of democracy and the idea of the rule of law."

Two most contested prerogatives of the Serbian President are his powers in extraordinary situations and his relationship with the Assembly. The former is related with one general remark that is in order here. The most peculiar feature of the Serbian Constitution is that it is a genuine Constitution of a sovereign country. Federal Republic of Yugoslavia is not mentioned inside, because it was created two years after the adoption of this Constitution and, as it was already pointed out, Serbian Constitution has not been harmonized with the Federal one ever since. From the perspective of a sovereign country it seems natural that the Constitution mentions "Armed Forces", but according to the FRY Constitution, as a superior legal act, it is the domain of the Federation only, not of member republics. Contrary to the provision that the President of FRY commands those forces, Serbian Constitution says that Serbian President shall "command the Armed Forces in peacetime and in war, and the popular resistance in war, order the general and partial mobilization, organize the preparations for defense in accordance with the law" (Art. 83). The Constitution does not explain what are those Serbian "armed forces", neither do they exist.

Three more very long paragraphs of the same Article 83 speak about vastly enlarged competences of the President in extraordinary situations. First, if the Assembly cannot meet, the President can, after obtaining the Prime Minister's opinion, proclaim the state of war. Second, during the state of war or immediate danger of war the President can issue enactments that the Assembly is normally supposed to do (and that it will confirm later). A detailed and far-reaching sentence was added after that: "By way of enactments promulgated during the state of war it shall be possible to restrict some freedoms and rights of man and citizen, and to alter the

organisation, composition and powers of the Government and of the ministries, courts of law, and public prosecutor's offices". The formulation is obviously too, vague, and it would have been better if the Serbian Constitution had adopted the same approach to the restriction of freedoms and rights in such situations as the FRY Constitution which (in Art. 99) strictly enumerates freedoms and rights that cannot be restricted.

While President's competences mentioned so far have been directly related with the war and are – although really huge - more or less common in many contemporary Constitutions, there is one that enables him to proclaim state of emergency. A list of reasons seems to be too long, and there is only one single thing that can prevent the President from introducing the state of emergency in the whole country or in its part – and that is if the Government's supports fails. The President can do this only "at the proposal of the Government", which in other words means that if the President controls the Assembly's majority, possibilities for the abuse of power are almost indefinite. The whole paragraph reads as follows: the President shall "at the proposal of the Government, if the security of the Republic of Serbia, the freedoms and rights of man and citizen or the work of State bodies and agencies are threatened in a part of the territory of the Republic of Serbia, proclaim the state of emergency, and issue acts for taking measures required by such circumstances, in accordance with the Constitution and law."

The second set of Constitution rules that has attracted much attention and generated debates in Serbia is the relationship between the President and the People's Assembly. Critics claim that the Constitution failed to introduce President's accountability. He is popularly elected for a five-year term, can be reelected once again (Art. 86), and just like in the case of his counterpart at the Federal level, the Assembly itself (not the Constitutional Court, as in most countries with similar Constitutions) is to establish if he has violated the Constitution. Art. 88 says that the President "shall be responsible to the citizens of Serbia", but since it envisages an extremely difficult way of recalling him, the President stays largely immune to the punishment. The procedure in this case is the following: in order to begin the proceedings for his recall, a two-thirds majority is needed in the Assembly. This highly demanding request is followed by an even more radical one: there is a popular vote and the President is recalled only if the majority of the total number of voters vote in favor of the recall. In other words, while the President can be elected by only one quarter of the total number of voters (in the second round of elections), twice as much is needed for his removal. Such a high percentage practically eliminates the possibility that he can be recalled and in circumstances in which he can be hardly ever punished, this releases the President of almost any responsibility. This is the focal point of the President's

power in Serbia, the one that is essential because it does not depend on the composition of the Assembly.

President's relations with the Assembly contain one more solution that gives him big power. He is entitled to dissolve the Assembly "at the proposal of the Government containing justified grounds" (Art. 89). Like in the case of the state of emergency, the President here cannot act alone, but only upon the Government's initiative. Such a provision can be found in many semi-presidencies, but what is definitely missing in its Serbian version is one condition under which the President cannot dismiss the Assembly. Apart from the state of war, imminent danger of war and state of emergency (conditions mentioned in Art. 89), the already initiated non-confidence vote to the Government should have been specifically mentioned, too. That was anyway done in the Yugoslav Federal Constitution (Art. 83). The Serbian President used the absence of such a condition in October 1993, when he dismissed the People's Assembly, exactly at the time when the non-confidence vote was in motion.

Other functions of the President of Serbia include: proposing a candidate for the Prime Minister, as well as for the president and judges of the Constitutional Court, and some traditional ceremonial ones (Art. 83). He has suspense veto, but is bound to promulgate a law passed for the second time in the Assembly (Art. 84).

This analysis strongly suggests that the Serbian Constitutional system is definitely one variant of a semi-presidential system, with a very strong president. The basis of vast President's power are to be found first of all in a difficult procedure for his recall, but also in some aspects of his competences during the state of war and state of emergency. Through the whole text the Constitution very carefully and to the last detail enumerates President's competences, but pays only small attention to the restrictions that are to be imposed during their implementation (most importantly restrictions concerning freedoms and rights in special cases and conditions under which the President is not allowed to dissolve the Assembly).

Despite all said, the Constitutional provisions regulating the status of the President are not the only reason for a truly huge concentration of power in the hands of the Serbian President, while Slobodan Milosevic was in office. First, some other constitutions offer presidents even bigger power and the Serbian one is in that respect far below the standards introduced in the Russian Constitution, for instance. We might therefore say that even if Serbia in practice, during Milosevic's rule, used to have a kind of a "super-presidentialism", with all state institutions reduced to executive organs of the President, its Constitution still mostly remain within the semi-presidential model, albeit a more radical one.

Second, Serbian “super-presidentialism” was made possible by many factors that cannot be explained here. They include the lack of the rule of law and a genuine merge of the ruling parties in Serbia with the state administration which has not been discontinued because the change of regime has never taken place. Equally important, particularly within the semi-presidential model is the fact that Milosevic’s powers were grossly enlarged because the party he led had majority in the Serbian Assembly. In different circumstances (with Assembly’s majority not directly controlled by the President), power of the president would have corresponded with the Constitution’s prerogatives and would not have caused such a drastic disbalance between various parts of the government system.

What are the rules of internal regulation in parliament (standing order, etc.)

Although not completely different than solutions from other contemporary parliaments of Europe, Federal and Serbian parliaments had rules of internal regulation that had the following main problems:

- By allowing voting on the disputes regarding the execution of the rules by the speaker, it clearly gave an extra, undeserved advantage to the majority. This majority could simply overvote the minority on every occasion, as it often happened.

- Some rules have been followed only occasionally, when in interests of the ruling parties, for instance, TV broadcasts of the sessions were not allowed all the time.

- The work of the parliamentary committees was particularly poorly regulated. This was done partly on purpose, in order to decrease the chances of the minority to influence decisively the outcome of the debate. Committees never became the center of expert and political work, and executive officers have only rarely been questioned by the committees.

Interest groups, pressure groups, lobbies and their institutionalisation.

Interest groups were a phenomenon of an informal nature in Serbia and FR Yugoslavia, and despite their influence there was no attempt to institutionalise their presence.

What kind of assistance has the parliament received from international organisations?

There was no international assistance, since the country was for most of the 1990s under heavy international sanctions. They were first introduced by the EC in 1991, then in several waves by the UN Security Council, starting in May 1992. After suspension of some sanctions at the end of 1995 and a year later, they were, as it was already said, reintroduced exactly because of the excessive use of force by the Serbian police and the Army in Kosovo, in Spring, 1988.

Serbian and Federal parliamentarians were in this way deprived of any possibility to even meet their counterparts from other countries, let alone exchange views, learn something or receive any assistance from abroad. Sanctions existed mostly towards MPs of the ruling parties, while MPs from the democratic opposition parties had lots of contacts with colleagues and representatives of foreign governments, receiving probably some kind of help, too, of which there is no record.

Part Two: Practices

Public confidence in parliament

According to all public opinion polls from the time our analysis, public confidence in parliament was very low. In most years, it did not pass 20 percent. Parliament was generally seen as a place where idle, illiterate and amoral people quarrell among themselves, trying to grab the bigger part of an undeserved cake. Other state institutions had similar ratings, though, except for the Army, whose high ratings became a hardly explainable myth in Serbia. Serbian Orthodox Church's popularity was the highest one, unmatched by anybody else.

Poor image of the parliament in the eyes of citizens was not only a collateral damage of the crisis or some other factors, but also part of a government's plan according to which all democratic institutions should have been made as ugly as possible and humiliated, so that democracy loses in the end, as an idea, or as a solution for Serbia. Instead of democracy, the theory went, people should search for powerful leaders, that should have possibility to end democracy, if necessary, in favour of "national interests".

Votes of non-confidence in the government

There was one non-confidence vote during the period we are covering. On 18 May, 1998 Federal Prime Minister Radoje Kontic was voted out of office by both chambers of the Federal Parliament, because he obviously didn't distance himself enough from the Montenegrin Prime Minister Djukanovic. President Milosevic wanted a more reliable man for difficult times – the Kosovo crisis and a potential conflict with the international community because of it – and two days later another Montenegrin politician, Momir Bulatovic, was elected to the post of the Federal Prime Minister.

This episode shows very clearly limitations of the Parliament's work, and its complete subjugation to the executive. It also speaks about the political behaviour that can grow only in special, rather than normal circumstance, within all kinds of limits and constraints, rather than within fully functioning rules and institutions.

Pre-term dissolutions of parliament

There were no pre-term dissolution of parliaments during this period.

Parliamentary crises

No typical parliamentary crisis occurred in this period.

Establishment of special commissions on the resolution of conflicts

No special commission in the Parliament was made to try to resolve the Kosovo conflict, which is a clear manifestation of the marginalized position the Parliament had. Serbian Government, on the other side, had a vice-president and several ministers in charge of the crisis. In addition to other things they did, they also began a sensitive action – holding meetings of the parts of the Government in Prishtina, Kosovo's capital, in order to show that the Government is determined not to allow secession of Kosovo. There were plans to hold a session of the Assembly in Prishtina, too, but it has never materialized.

Impeachment procedures regarding the president

There were no impeachment procedures regarding the president during the time of the Kosovo conflict.

Parliament and the public media

Government sponsored legislation which has been adopted

The work of the Federal and the Serbian Parliament were of rather high interest for all kinds of media, but mostly when the public expected discussion on major topics, including the Kosovo crisis. The coverage of debates could not, of course, compete with dramatic events on the terrain. The second programme of the National TV was obliged to broadcast the Serbian Assembly's sessions.

As for the government-sponsored legislation, almost all of the legislation came from that source. Government's influence was complete, without any reservation. We shall mention here few examples, in connection with the media, that had great internal political impact on the Kosovo crisis.

Serbian and Federal Parliament first of all became part of the story of the suffocation of Serbian independent media which were reporting about the crisis. The regime's campaign against independent reporting from Kosovo began with the state news agency Tanjug's attack on the independent Belgrade daily Danas for the critique of the Yugoslav parliament that had payed respect only to the policemen killed in fights in Kosovo, but not to the Albanians killed. It turned out later that the main issue in this affair was the media's characterization of Albanians killed by the Serbian police. Since this is also the key to the whole way in which conflicts in Kosovo were mirrored in the press, it deserves some attention here. The prosecutor reacted as never before, because the accused newspapers wrote in their headlines (2 and 6 March, 1998) that "Albanians" were killed in fights with the police, while the official police statement, published in the "regime's press", spoke about "terrorists". This turned out to be of exceptional significance to the Serbian regime, especially after accusations against it began to pour from abroad for excessive use of violence by the police, resulting in deaths of many civilians, and not only of terrorists.

The second example is about the media legislation and shows even greater responsibility of the parliaments, which, first, did not curb the executive effort to fully control the media, and then, secondly, with its own legislation imposed censorship in connection with the Kosovo crisis. In October 1998, the ruling Serbian three-party coalition used the occasion of NATO threats against Serbia, related to the policy towards Kosovo, to impose first (on 8 October) the Government's "Decree on Special Measures in the Circumstances Warranted by NATO Threats or Armed Attacks". The Decree lasted only a week, which was enough for three leading independent dailies to be temporarily banned. After 13 October, when Milosevic made an agreement on Kosovo with US Ambassador Holbrooke, the most restrictive elements of the

Decree became cornerstones of the new Information law, independent media were accused for treason, and the purge could begin. Trials had a genuine political character, were obviously engineered, and all of them ended in just one day, according to one of the law's most bizarre provisions. Independent media were usually found guilty for alleged efforts to bring down the regime with violent methods. Their journalists, editors and owners got drastic fines (in one case a total of approximately \$200 thousand), which clearly showed one of the goals of the power-holders – to ruin those media financially for good. This is certainly not the way in which a parliament should support the solution of a crisis.

Part Three: The role of the legislature in conflict/post-conflict situations

Was, is there adequate representation of all interested parties?

No, the representation of the Kosovar Albanian side was completely lacking all the time, sometimes also because that was their wish. Albanians didn't participate in elections, didn't have their own Assembly in Kosovo's capital and were censored in Serbian media.

Controlling government, tempering government, or mediating between the government and some militant groups?

However strange it might seem, parliaments under our observation neither controlled, nor tempered the government, nor mediated between the government and militant groups. They were instrumentalized by the governments.

*Which parliamentary prerogatives were most important in the avoidance/prevention of crisis?
Legislation, control over the executive, declarations, etc?*

Although legislation is basically important, it could be slow. Control over the executive seems to be much more efficient and important, when there's one. In the Serbian-FR Yugoslav case, it was the government which controlled the parliament, not the other way round.

What is the link between parliamentary crises and conflict situations: do crises increase or decrease political tension?

There was no genuine parliamentary crisis because of the Kosovo crisis. It would have been better if there had been one, to show the hidden variety of opinions, to increase government's accountability and sensitivity for the matter, and to open towards the public.

Were there missed chances for the parliament to avoid, alleviate the conflict?

One way to respond is no, because the Assembly of Kosovo had been long dissolved for good (1989) and one or the other kind of state emergency was in place in Kosovo for almost a decade. MPs from the Federal and Serbian Parliaments didn't have anybody to talk to in Kosovo from the realm of legislative power.

On the other hand, Serbian Assembly could work on the long-term programme of ending state of emergency that it itself had once imposed in Kosovo. Chances for that were minimal, though, because of the understanding of the crisis – armed rebellion of the Albanians against the Serbian state – that MPs shared with the majority of the citizens.

What was the relationship between parliament and the international community: cooperation, confrontation, yielding to pressure, provoking violence, etc?

Were there missed chances by the international community to influence internal processes through the parliament?

International community could have engaged some more influential Serbian and Federal parliamentarians from all parties, more directly, in all phases of the crisis, in the form of parliamentary meetings, or in some other form. Instead, it chose to impose and keep sanctions, isolating the whole country, together with people's representatives. Cooperation with the democratic opposition continued, but this only strengthened an extremely negative view of the ruling class towards any kind of international mediation and assistance.

As ordered by the executive power, Serbian and Federal Parliaments were in fact helping the isolation of the country. This was done in two occasions, in which parliaments supported the view that the crisis should not be internationalized, and that foreign countries and international organizations should not interfere in something that was by parliaments considered internal affairs of the country.

On 23 April, 1998, a referendum, previously supported by the Serbian Assembly, was held in Serbia. Majority of the people voted in favour of non-interference of foreigners in the Kosovo crisis. This was obviously a manipulation of the Serbian president, who wanted to legitimate his future actions in negotiations with international organizations and influential states. The important thing is that a legislative organ took part, by allowing a fastly and only superficially organized referendum.

On December 3, 1998, both chambers of the Federal Assembly adopted at separate sessions a Declaration condemning pressure, threats and interference by the United States of America in the internal affairs of the Federal Republic of Yugoslavia. It is worth quoting a part of the Declaration, to see the language and ideology that stood behind the Parliament's work.

“The Assembly declares:

1. All present, as well as past, U.S. pressure is in fact support for separatism and terrorism in Kosovo-Metohija and causes destabilization of the region.
2. Resolutely rejects and condemns all forms of pressure, threat and gross interference by the USA in the internal affairs of the FRY. In order to attain its destructive objectives in the Balkans, the United States of America, its official representatives and services, are giving direct support and assistance to the separatism and terrorism and financing the opponents of the independence, stability and progress of the FRY. In this way, the USA, as a super power, places itself in the service of the terrorists and separatists, forces that have declared their aim to be retailoring of international border, creating of a so-called "Greater Albania" at the expense of the territories of

sovereign states in the region. This is in violation of the fundamental principles of the U.N. Charter and of resolutions of the U.N. Security Council condemning terrorism and separatism, and jeopardizes the lasting peace and stability of the region.

3. Invites representatives of the USA to stop deceiving the U.S. and world public that, with their policy of threats and blackmail towards Yugoslavia, they are in fact working for human rights, the protection of ethnic minorities and democracy.

4. Resolutely condemns the contacts and cooperation of ranking U.S. officials with Albanian terrorists, murderers, kidnappers and hardened bandits of the Albanian drug mafia and organised international crime in general. In this way, U.S. representatives are giving open support to the separatism and terrorism in Kosovo-Metohija, despite the proven fact that the separatists and terrorists have ties with terrorist organizations in Asia, the Gulf, east and north Africa, which competent U.S. services know full well.”

Part Four: recommendations for the future

How should parliament change its practices in the future in order to better manage conflict and post-conflict situations?

In order to better manage conflict and post-conflict situations, parliaments (particularly if they function within regimes that cannot be called completely democratic) should – on the most general level - first of all insist on the realization of the principle of the separation of power within the country’s political system. In other words, they should strive to be able to enjoy competences they are entitled to by the Constitution. In this way, they could check and balance the executive and judicial powers.

On a more concrete level, parliaments should then try to perform all functions they in principle have. Through the *representative function* of their parliaments should try to widen the representation of all parts of the society as much as possible, and to eliminate discrimination of some parts regarding representation, especially those parts that might be in conflict. They could, for instance, think of adjusting the electoral system, i.e. amending and/or changing particular laws and rules that have impact on areas concerned. The very groups in conflict could find additional representation via parliaments if special standing or ad hoc committees are founded,

with the aim of organising hearings, fact-finding missions, writing reports and recommendations (that might be sent to the executive branch, after the adoption within the committee or the parliament itself).

Through passing laws, as another typical function, parliaments could have large freedom in influencing conflict/post-conflict situations. By choosing what laws should be passed and when, parliaments could thus impose priorities, decide on their own working schedule and opt to contribute to the fast and adequate solving of the conflict situation. Careful wording of each piece of legislation in connection with the conflict/post-conflict situation would contribute to the same aim, too, as well as a good preparation of the whole law-making procedure, starting from the help of the staff, to the collaborative work of various factions in drafting, to the swift voting.

Another parliament's *function – that of oversight* – should also be strengthened much more. Parliaments should perform a continuous control of the work of the executive, including all issues that belong to the conflict/post-conflict domains. Parliaments could ask to be represented in negotiations (if they exist), or to be briefed frequently by the Government on the development of the issue. Committees could take care of this, either those already existing, or new ones that can be created.

By voting the budget, as another function of parliaments all over the world, parliaments could show in practice that they care about a certain conflict/post-conflict situation, and that they want to devote it a part of the country's finances. *Voting for a certain government*, and certain ministers within it, is a powerful tool at the disposal of parliaments in such situations, too. Although the choice is usually limited by party affiliations of MPs, some degree of liberty of choice at least between people from the same party always exists. Parliaments could thus appoint people who they think are better-suited to deal with the conflict/post-conflict situation.

Last but not least, parliaments could show that in addition to all before mentioned roles, they are, or at least should be one of the main *body in each country for deliberation of major issues* a society faces, however difficult and unpleasant those issues could be. By taking initiative and through its own work imposing a topic on the society's agenda, even against its predominant mood, parliaments could also shape the coming debate, as well as the results.

What should the international community do in the future, in order to provide better assistance for national parliaments in conflict/post-conflict situations?

1) Involve parliamentary representatives in debates and in international talks/negotiations about the crises. Widening the circle of people involved doesn't have to mean that the number of direct negotiators goes up. Parliamentarians could act as important advisors, or members of wider bodies, appointed for this purpose, that could include other categories, like experts... It is impossible to imagine visits of delegations from other states or from international organizations, dealing with a conflict without some participation of parliamentarians.

2) International community could also provide for various kinds of expertise and staff. In many countries, like in Serbia, parliaments suffer a lot from lacking both, for economic or other reasons. Parliaments and political parties could hardly reject an offer of such kind if it comes from international community. Foreign experts and staff should be, of course, an exception rather than a rule, and should be replaced by domestic people as soon as possible. That could also mean that such services could continue to be financed from abroad in various ways for an additional period of time, but the aim should certainly be self-sustainability and increase of services experts and staff could offer parliamentarians.

3) International community could also try to facilitate the organization of meetings with parliamentarians of other states, first of all with the states in conflict. This is not always easy, for a variety of reasons, but is very useful. Parliamentarians very often do not see the possibility – or the need, for that matter – to become part of the exchange between states, which has detrimental consequences particularly if the conflict is between two states. Parliamentarians should meet as often as they can, and establish one more channel of communication, that might become instrumental in resolving a conflict.

What are the three main lessons learned thus far regarding the role of parliament in conflict/post-conflict situations?

1) An independent position should be secured for the parliament, and by the parliament, from the government's complete influence. Dissenting voices should be heard if they exist, and they should also come from the Parliament. It is not a luxury, it is the duty of parliamentarians.

2) Parliamentary committees should be much better equipped, and motivated, to deal with conflict/post-conflict situations. The former includes a much more numerous and better educated permanent and part-time staff that could produce expertise. The latter means that parties

represented in the parliament should allow for a less strict discipline, i.e. much more productive behaviour of MPs: they should be encouraged to take initiative and responsibility, seeking various ways of conflict-solution.

3) A much better relationship should be made with the media and the public, that would also increase the transparency and thus accountability of the members of parliaments.

How can the role of parliaments be increased in the future?

1) By increasing its budgetary powers: this is the oldest but perhaps the most effective control people's representatives could impose over the government. In times of conflict, a range of innovative solutions might be thought of, like frequent reporting of the executive, special budget lines for the solution of the conflict, old and new committees cooperating on the subject.

2) By better organizing the work of the committees that should intensify the level of oversight over the domains in their portfolio: in addition to more expertise and less party-control (already mentioned above), the existing or in some circumstances even better – new committees could concentrate most of their time, human and material resources on a conflict/post-conflict situation, organizing frequent hearings, debates, asking for reports and conclusions that might be passed by the whole parliament.