

in order to avoid political interferences and possible deadlock, in particular with issues related to minority rights.

- The status process would provide at least some principles that would have to be taken into account when drafting the Constitution. For this reason, the drafting should take place only when the result of the negotiation is known.
- At the same time, prior to starting the drafting of the Constitution, important preparatory work needs to be done and some participants believed that a drafting body could be mandated by the Assembly after the outcome of the status process is known.



Recommendations:

- Experts explained that during this preparatory phase, all political forces including all groups must come to an agreement on a number of important questions:
 - How to proceed with the drafting?
 - Who should be in charge?
 - What rules of procedure should be followed?
 - How should input from the people of Kosovo be channelled?
 - How should societal input be taken into account?
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OPENING REMARKS

OPENING SPEECH BY AMBASSADOR WERNER WNENDT

20 July 2006

Ladies and Gentlemen,



I would like to welcome all of you to this Parliamentary and Expert Roundtable on Constitutional Issues. A particular warm welcome goes to President Berisha and all the Members of the Assembly, as well as the members of the working group on the Constitution. Your attendance shows how much importance you give to a serious discussion on future constitutional arrangements for Kosovo. I would also like to welcome all the experts, who travelled here from all over Europe and even from as far as the United States to contribute with their expertise and experience to this event.

Tonight is about getting together, and I am looking forward to informal discussions with all of you and I kindly urge you to fully use this opportunity to discuss with the experts. Let me, however, start by briefly underlining the reasons that brought all of us together.

This roundtable is part of the OSCE Support Programme in 2006 to offer you with technical expertise and additional skills. While it is not in our mandate to directly participate in the negotiation process, our aim is to indirectly support all of those in Kosovo involved with the negotiation, including issues related to constitutional matters. As you know, nobody is questioning the fact that with a status settlement there will be the need to adopt new constitutional arrangements, and we felt that now it was a good time, before the summer recess and the beginning of a new negotiation phase, to organize this kind of brainstorming.

The OSCE is not in favour of any particular constitutional model or outcome. We all agree that this a highly sensitive issue. However, by organizing this round table the OSCE seeks to promote inclusiveness and create a sense of ownership by opening a large debate, involving experts as well as Assembly Members. I do believe that, as is the case anywhere else in the world, the Assembly should play a crucial role in such a process. Members of Parliament have the essential role of representing the population and finding the best possible solution for the future of Kosovo.

This roundtable is designed to be a platform for discussing issues like different outlines for constitutions, the inclusion of human rights in the constitutional framework and the overall importance of such a document in a democratic society. Some of the questions raised will deal with the balance between the Legislative, the Executive and the Judiciary. Of course the extent to which certain aspects of a future electoral system are included in a constitution, or not, will be discussed. We will get competent and valuable input from experts, including examples of best practices.

As we all know, designing such a framework is an essential step towards a democratic society; however, it is not enough. In my view this is one of the most important points: general principles are essential but how to concretely implement these provisions is even more important. You can have, as was the case in the Soviet Union, a very good text, something strong on paper, but something that is not implemented, be it for political reasons or because not enough resources are available. My country, Germany, on the other side is a good example of a proper implementation of the Constitution. After WWII, the Constitutional Court was established as a strong institution and it took its task very seriously to promote and implement the Constitution, especially when it comes to human rights protection mechanisms. So, how can we guarantee proper implementation? Which oversight mechanisms need to be in place? Those are fundamental questions we hope this conference will help to clarify.

As you see, it is quite easy to get drawn into this topic, even in the opening speech. However, there are two days in front of us to go into extensive details and to have a fruitful discussion and even, as we also hope, to clarify the need for an agreement between all communities involved on some of the most pressing topics, such as human rights and minority rights, the functioning of the judicial system and the leading role of the Parliament.

Let me wish a pleasant and relaxing evening before meeting you again tomorrow at our first session. I would like to thank you again for your presence and give the floor to President Berisha.

OPENING SPEECH BY PRESIDENT OF THE ASSEMBLY OF KOSOVO, HIS EXCELENCY KOLE BERISHA

20 July 2006

Dear Ambassador Wnendt

Dear participants,



It's my great pleasure to participate in the opening of this parliamentary and expert roundtable devoted to a very important topic. It is also my duty, on behalf of Kosovo's Parliament, to thank the OSCE for organizing this roundtable and providing the participation of international experts. OSCE really deserves the gratitude of the Kosovo Assembly not only for organizing this conference, but because it has done a very good job in Kosovo and in the region, in general.

Kosovo is at the end of the marathon, which aims at determining its future status. That is why, as any other country, it should have its highest legal – political act, the constitution.

Without dwelling into legal explanation on the contents of the highest constitutional act and on fields that it should regulate, I would like to remind you that this roundtable aims at reviewing basic moments and orientations, without which the constitution could not be drafted. Included in this roundtable are the following issues: comparing the constitutional systems functioning in the world, differences between these systems, their functionality, division of powers between the President, Assembly, Government and Judiciary, the government structure and transfer of competences from the central to the local ones, human and minority rights, electoral system, etc. In a nutshell, the discussions will centre around the elements appropriate to Kosovo situation and aspirations, and its citizens towards a democratic and prosperous state with equal opportunities, regardless of ethnic, cultural, language or racial diversity, will be discussed here.

We need to be well provided with necessary knowledge, competences and qualification. I am confident that the expert's professionalism will facilitate the achievements of this roundtable.

Certainly, the roundtable is a right step at the right time and in the right direction. Current processes in Kosovo require efforts to be stepped up for drafting the constitution which, needless to say is *Conditio sine qua non*, would enable Kosovo to have its highest legal – political act ready and hence avoid the constitutional and institutional gap once status is resolved.

I am convinced that this roundtable will come up with a successful offer, which will be of a great value to a future draft constitution for Kosovo.

I say this, taking into account not only the topics of this conference, but the names of the distinguished and respected names of participants, most of whom are personalities with academic knowledge and great experience in organizing institutions. I am also optimistic about the outcome of the roundtable taking into consideration the list of participants from Kosovo, many of whom are our colleagues, who have significant experience not only in the Kosovo constitutional practices after the war, but even earlier in drafting the former Yugoslav Constitution. As you already know 1974 constitution was very advanced.

In the past all of Kosovo's peoples were in favour of protecting it, by taking to the streets of Kosovo, although the Kosovo citizen's cry was ignored at that time by the international community. The fall of the Berlin Wall and other democratic winds that blew in the 90's brought about a movement in Kosovo, which resulted in the adoption of a new constitution, adopted in Kaçanik, under the threat of Serbia's police forces.

However, this is history and I wouldn't like to dwell on it. What I want to express is that I am looking forward to the optimistic and positive outcome of this meeting in Skopje. The reasons for this are obvious: the generous support of international community and the good will and readiness of Kosovo institutions.

Constitutional Framework has become tight or a sort of obstacle to the processes and dynamic of Kosovo developments, but even as such it might be taken into consideration, when drafting the new constitution, in several aspects, in particular the normative part.

Moreover, our colleagues from Kosovo brought a draft with basic principles for which I am positive will serve as a solid basis for drafting the Kosovo Constitution.

OPENING REMARKS

Dear participants,

I am not presenting a special project, or specific ideas on constitution, as I am sure that this will be done by the experts of this roundtable. However, I would like to point out that we want and we need a modern constitution. A constitution that releases positive energy, enables a free market economy, spirit of cooperation with neighbours in the interest of peace and stability in the region. We want a constitution, which guarantees human and minority rights, an advanced model, which guarantees equality for minorities, a constitution that enables the functioning of the legal state, and democracy and is based on the models of the most advanced countries.

To date, we have managed to regulate many things by the law. Now we want to regulate the promises called standards, in the best possible and most powerful way, through a Constitution.

Therefore, I came from Prishtinë/Priština, that is from Kosovo Assembly to Skopje, not to issue ultimatums, or express my reservations or hinder the process, but to express my good will and readiness for utmost support and cooperation in drafting the Kosovo's highest legal document. We don't want improvisations, neither texts that are covered with anger, folklore and reminiscences from the past, but a functional and modern draft. We would like this text to have a long life, simply because it will articulate the aspirations of Kosovo citizens, who will feel and consider it as a document that opens the horizons and not creates limits.

We have made it clear from the get go, and this was not hypocritical but we really meant it, that Kosovo in the future will be a state of equal citizens, that it will be a secular state of the most advanced standards for the human rights and freedoms of all its citizens. These components will be reflected and included, in the most adequate and functional manner, in the constitution and they will be guaranteed through the legitimate instruments of the constitution itself.

So, these would be our expectations from today's meeting in Skopje.

Thank you once again for your efforts and wish you the very best in your endeavours.

