

**Democratization and Institutional Development under International
Administration: The Institutionalization of the Kosovo Assembly**

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Abstract

The thesis examines the process of legislative institutionalization in the context of post-conflict international administration and democratization. The empirical base of the thesis is a case study of the Kosovo Assembly in its first two sessions of its existence (2001-2008). The Kosovo Assembly provides a rare opportunity to analyse an institution from its design stage through its initial trajectory of institutionalization. The study reveals that the first legislative term proved the most significant in the establishment of internal norms and practices which were crucial to the Assembly asserting its autonomy as the most legitimate political institution vis-à-vis the international administration. The Assembly became the centre for struggle of delineating authority between the international and local administration, which in turn resulted in a considerable degree of internal institutionalization and democratization of the Assembly. The case of the Kosovo Assembly illustrates that pressure and imposition by exogenous actors can contribute in the assertiveness of domestic political institutions to reinforce their autonomy and establish their own internal working practices so as to maximize their contribution to state building and democratization. This however came at the price of almost total disconnect between the domestic and international governing structures.

Within the broader frame of democratization under international administration, the thesis examines major theories of legislative institutionalization and their utility for understanding the institutional development of the Kosovo Assembly. Qualitative data was derived from 50 face-to-face interviews with Assembly Members, civil servants in the Assembly, executive officials, members of civil society organisations that follow the work of the Kosovo Assembly, as well as international staff working or having worked in Kosovo during the time period concerning this study. The interview data were deployed in conjunction with documentary analysis and participant observation.

The Kosovo experience of democratic peacebuilding by international administration points to theoretical and practical ambiguities in understanding how political institutions, especially representative institutions, are configured and develop within democratic regimes institutionalized by 'outsiders'. Overall, however, the thesis concludes that institutionalization in post-conflict societies is a means of modulating conflict in an institutional setting.

*For my grandmother and my parents without whose love and encouragement I would have
not made it.*

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List of Abbreviations

AAK: Alliance for the Future of Kosovo
ASI: Assembly Support Initiative
DSRSG: Deputy Special Representative of the Secretary General
EAR: European Agency for Reconstruction
FRY: Federal Republic of Yugoslavia
IAC: Interim Administrative Council
ICTY: International Criminal Tribunal for the former Yugoslavia
IOM: International Organization for Migration
JIAS: Joint Interim Administrative Structures
KDI: Kosovo Democratic Institute
KTDP: Kosova Turkish Democratic Party
KFOR: NATO-led Kosovo Force
KLA (UCK): Kosovo Liberation Army
KTC: Kosovo Transitional Council
LDB: United Democratic Movement
LDK: Kosovo Democratic League
LDD: Dardania Democratic League
MTA: Military Technical Agreement
NDI: National Democratization Institute
OSCE: Organization for Security and Cooperation in Europe
PDK: Kosovo Democratic Party
PISG: Provisional Institutions of Self-Government of Kosovo
SFRY: Socialist Federal Republic of Yugoslavia
SLKM: Serbian List for Kosovo and Metohija
SLS: Independent Liberal Party
SNC: Serb National Council
SRSB: Special Representative of the Secretary General
UN HQ: United Nations Headquarters (New York)
UN SCR: United Nations Security Council Resolution
UNHCR: United Nations High Commission for Refugees
UNMIK: United Nations Mission Interim in Kosovo
USAID: United States Agency for International Development
VAKAT: Bosnian Coalition Political Party

Preface

On 10 June 1999, the United Nations Security Council passed Resolution 1244 (UNSCR 1244), establishing the United Nations Interim Administration Mission for Kosovo (UNMIK). By virtue of this resolution, the Special Representative of the Secretary General of the UN (SRSG) was vested with legislative and executive powers for the administration of Kosovo. Pursuant to UNSCR 1244, UNMIK established the Joint Interim Administrative Structure (JIAS) a consortium administration combined of local and international staff that governed the province until 2001.

On 15 May 2001, the SRSG promulgated Regulation No. 2001/9 on a *Constitutional Framework for Provisional Self-Government in Kosovo*, a joint product of extensive negotiations involving domestic and international actors. According to its preamble, and in line with the mandate established in UNSCR 1244, the purpose of the Constitutional Framework is ‘to develop meaningful self-government in Kosovo pending a final settlement, and to establish provisional institutions of self-government in the legislative, executive and judicial fields through the participation of the people of Kosovo in free and fair elections.’ The first general elections were held in Kosovo on 17 November 2001, to elect a total of 120 members of the Assembly of Kosovo. Election of the Assembly members is based on an agreed-upon formula that ensures representation of all communities and minorities in the legislative body. After the establishment of the Kosovo Assembly, JIAS was replaced by the Provisional Institutions of Self-Government (PISG) presented in UNMIK regulation 2001/9, which brought about a new stage of self-government in Kosovo.

From 2001 to 2009, Kosovo was governed by two parallel structures. UNMIK reserved executive powers over the core sectors in judicial, customs, internal and external affairs, whereas local Kosovo institutions were set up to tackle economic and fiscal policy, education, health, transport and trade, all of which were subject to the veto of the Special Representative of the Secretary General. This set-up was mainly geared towards fostering the growth of local self-governing institutions intended to take over the rest of the reserved powers from the international administration when the final status of Kosovo was settled.

The final settlement came in February 2008, when the Third Constitutive Assembly of Kosovo declared Kosovo an independent and sovereign state. The Council of the European Union issued Joint Council Action 2008/124/CFSP on 4 February, effectively replacing the UN civilian administration with EULEX, a civilian mission which will support the further development of Kosovo institutions and maintain certain executive powers in the rule of law.

Chapter 1

1.1. Introduction

This thesis explores the role of representative institutions in the context of post-conflict democratization and international administration. In particular it examines the case of the Kosovo National Assembly while under the administration of the United Nations Mission in Kosovo. The timeframe of this research follows the establishment of the Kosovo Assembly from the first general elections in 2001 through the beginning of the third term and the declaration of independence in 2008.

Examining institutionalization and democratization in Kosovo provides a new opportunity to look at how representative institutions emerge, not only in a post-conflict setting, but also under international administration. This study builds on established theories on post-conflict institutionalization and democratization and brings in a new perspective on the dynamics of state building in the 21st century. Moreover, Kosovo provides a unique opportunity to examine legislative institutionalization from the design stage through the initial establishment of institutional norms, practices and democratic representation. The examination of these processes provides broader understanding of how practices of international state-building initiatives have evolved over time and how they affect local understanding of representative government and conflict resolution through institutionalization of political institutions.

The empirical study is framed within existing literature and theories of democratization and institutionalization. The conjoined nature of these theories was acknowledged in Andreev's (2008:38) observation that one of the 'principal motives' for studying the development and institutionalization of political institutions is to understand how they affect democratization and democratic consolidation.

In effect these theories provide two levels of analysis. On one hand, institutionalization and institutional design theories will guide the assessment at the level of institutionalization and the consequences of institutional design on the Kosovo Assembly

and its relations with other political actors. On the other hand, theories of democratic transition and consolidation will guide the assessment of the role that political institutions play in the democratization of the polity.

1.2. Political Institutions in the Context of International Administration

The end of the Cold War coupled with globalization processes at the end of the 20th century allowed for a short period of international cooperation at an unprecedented level. The United States, as the main international actor in the post-cold war era, pursued international politics inspired by neo-liberalism and democratic peace theory. Post-communist societies as well as post-conflict societies were to democratize with the help of the international community with most of the funding and guidance coming from the United States and the European Union. Kosovo was the first instance where an international administration was agreed upon at Security Council level. This was considered the dawn of a new era, where the United Nations would embrace a new role beyond peacekeeping to also engage in building democratic societies. In this context, the establishment of political institutions in Kosovo under international administration is a new experience. As such, Kosovo provides a unique case not only to examine major theories of democratization and institutionalization in a new context but to also draw lessons from the process itself. Given that representative institutions are at the centre of the democratic regime, this research focuses on the institutionalization and democratization of the Kosovo Assembly under international administration.

Yet the thesis moves beyond standard discussions of the relationship between theories and processes of institutionalization and democratization, to provide a novel examination of this relationship within the context of international administration. It seeks to understand how political institutions, especially representative institutions, are configured and develop within democratic regimes promoted by ‘outsiders’. To date the study of political institutions in democratic transition and consolidation has been mostly concerned with internal actors within a given polity. Democratization studies that have engaged external factors as variables have done so only as ‘influencing’ rather than ‘conditional’ or ‘determining’ factors (See e.g., Rustow, 1970, O’Donnell, Schmitter and Whitehead, 1986, Rueschemeyer, Stephens and Stephens 1991, Huntington 1991, Whitehead 2001).

There are two reasons for this, one being that placing countries under international civilian administration or supervision is a relatively recent phenomenon; the other assumption is that these political institutions are of no consequence in political development in their polities so long as the international administration is in charge.

Large-scale international interventions in post-conflict countries, mainly through multilateral military peacekeeping missions, tended to be accompanied before the Cold War by the adoption of neutral positions with regard to the establishment of political institutions in those countries. However, peacekeeping alone proved to be unsuccessful if not accompanied by an effort to establish sustainable and lasting political institutions to facilitate stability and peace once the international peacekeeping missions expired. Post-Cold War international involvement, as a rule, promoted democratic regimes to address this gap. The first large-scale international civilian administrations started to take form only in the late 1990s in places like Bosnia, Kosovo, East Timor, Afghanistan and Sierra Leone. Along with peacekeeping troops, these missions were tasked with promoting free and fair elections, establishing local democratic governing structures, the rule of law and free-market economies: in other words, they were tasked with state-building. Where studies have been undertaken in this direction, they have concentrated on the characteristics of the international administrations and their effectiveness through the prism of conflict resolution and peace-building. Studies on the nature of institutions in post-conflict or divided societies have overlooked the context in which local institutions evolve and the importance of the international veto over the decision-making process. The main reason may be that they are not considered central in the decision-making process and democratic transition, given that their authority is limited by the international administration. Hence local political institutions evolving under the tutelage and supervision of international administration are different 'creatures' from political institutions evolving through the democratization process of fully sovereign countries, which is why the explanatory power of the literature on democratization and institutionalization is limited in its application to these institutions.

At this point a distinction needs to be made between international influence and international engagement. The first instance, that of international influence in promoting democracy in emerging democracies, has been studied extensively under the umbrellas of nation-building, state-building and democratization. These studies are mainly concerned

with the ways in which external factors *influence* local political actors through various incentives and conditions in building democratic regimes (Waller 1995, Hesse 1998, Belmont 2002, Biber 2002, Bochsler 2006, Kotchegura, 2008). In the second instance, international actors not only influence the process, but they *engage* in making decisions and establishing political institutions, as opposed to only promoting them as they are vested with executive powers.

The establishment of political institutions by international administrations is therefore a new concept in political science. Unlike institutions in countries in transition, where political institutions are established or re-designed in line with new regimes, in internationally administered countries political institutions are products of national and international coordination. As such, they do not fully fit into the conventional paradigm of the origins and development of political institutions in democratic transition studies. Institutions developed under international administration in post-conflict contexts are different in that they evolve through a fundamentally different process, a less organic and a more calculated one. They do not emerge from traditional patterns of collective or elite decision making in a given society in transition, nor are they products of a continuum of political institutions that transformed from one political system into another. These institutions are in essence *ex-novo* bodies where either previous institutions did not exist or the new institutional set-up did not take any of the previous structural and functional designs into account.

As these political institutions start to mature, they struggle for more transfers of power from the international administration in their pursuit for more authority and the fulfilment of their representative powers. At the core of this struggle are the legislatures, as they embody the power of representation with greater bargaining power and political leverage. As they evolve and institutionalize, they demand more authority from international administrators in controlling the process. This stage – the transition from full international administration to partial and then full independence – presents a great opportunity to analyze the factors that contribute to the maturity and institutionalization of political institutions in a context of international administration.

There is a delineation that needs to be addressed in analyzing political institutions in the context of international administration as it related to the makeup of the international

administration. While political institutions in the post-cold war period under international administration have exclusively promoted democratic institutions, there have been two types of international administrations. The most common one, that this case study follows, is the United Nations sanctioned administrations such as the United Nations Mission in Kosovo or the United Nations Transitional Administration in East Timor. The other less common cases, such as the Federal Republic of Germany from 1949 to 1990, Japan from 1947 to 1952 or the more recent case of the Coalitional Provisional Authority in Iraq will not be analyzed here as these institutions evolve under fundamentally different processes from those sanctioned by the United Nations. These latter cases are countries where one or more countries administer another country or province without the approval of the Security Council. In this respect they are considered occupied territories and as such, political institutions that evolve under these conditions are different in that the national and international coordination of post-conflict institution building is specific to the nature of the occupation and the policies of the occupiers. In fact the policies evolve according to the situation on the ground and are not limited to following established international standards or approval from the UN Security Council. As such, these international, yet unilateral, undertakings aim to establish democratic transitions but do so without international consent, and so lack legitimation through United Nations authorisation.

The reality and challenges of political institutions in post-conflict democratization processes involving international administration are thus significantly different from those confronting political institutions in democratizing sovereign countries. While external influence is prevalent in both instances, political institutions in countries under international administration are subject to power sharing between national and international actors, and more importantly, they are established and developed under the guidance of international administrations.

1.3. Institutional design and institutionalization

Within the broader frame of democratization under international administration, the thesis examines major theories of legislative institutionalization and their utility for understanding the institutional development of the Kosovo Assembly. Samuel Huntington's (1965) *Political Development and Political Decay* has played a central role

in the examination of institutionalization of political institutions. This study's theoretical framework is based on theories and methods derived from Huntington's main theory (described in detail in chapter 3). The two most significant studies in this respect, are those on legislative institutionalization as developed initially by Polsby (1968) and later by Kopecky (2001). Polsby's method is essential in tailoring the research as it provides an approach through which legislative institutionalization can be studied, whereas Kopecky's study is important in that it provides not only a more recent examination on legislative institutionalization but one that is undertaken in the context of regime transition which is somewhat similar to the case of the Kosovo Assembly. Both studies are explained in detail in chapter 3.

1.4. Research Objective and Research Questions

The theories and perspectives of democratization (examined in chapter 2) and institutionalization (examined in chapter 3) help to define the basic objective of this thesis and to provide the analytical stimulus for the formulation of specific research questions.

Research objective

The main objective of this thesis is to answer the macro-question: do democratization and institutionalization theories provide an appropriate framework for studying the evolution and development of political institutions in the context of international administration?

Research Questions

The subsequent, related questions that stem from this macro-question are:

- How does a legislature institutionalize in the context of an international administration?
- How effective is the legislature's role in processes of democratic consolidation given that its powers, at least in the initial formative stages, are limited and its decisions are subject to the approval of international administrators?
- Is such a legislature confined to dependence on the international administration?

Or does it have the ability to differentiate and become a political actor in its own right?

In seeking to understand the general impact of external actors in the institutional design and development of the Kosovo Assembly, a series of specific questions arise in relation to institutional design and internal institutionalization:

- Who were the key actors in designing the Kosovo Assembly?
- How were decisions reached in relation to the design of the Constitutional Framework?
- What were the decisive factors influencing the final outcome of the Constitutional Framework?
- Where did the inspiration for the institutional design come from?
- What were the basic principles underpinning the design?
- How far did the Provisional Institutions of Self-Government (PISG) reflect these principles of institutional design?
- How did internal house rules evolve?
- What is the power of the Assembly vis-à-vis the Executive?
- How responsive is the government to the Assembly?
- How significant is the government in influencing the decisions of Assembly Members belonging to opposition parties?

1.5. Research Design and Methodology

The main objective of this study, as mentioned above, is to examine the appropriateness of current democratization and institutionalization theories in the study of political institutions in the context of an international administration. Democratization under international administration is a relatively new experience and therefore Kosovo provides a novel case, but nested within that case the Kosovo Assembly also provides a rare opportunity to study an institution from its design stage through its initial trajectory of institutionalization. In doing so, this research will, as noted above, operate at two levels of analysis: first, at the institutional level of the Kosovo Assembly, and, second, at the polity

level and the inter-institutional interactions in a democratization process framed by international administration.

1.5.1. Rationale for the Choice of Approach

When the nature of the issues being studied requires exploration because little literature exists, then qualitative approaches are best (Rubin and Rubin, 2004). This study follows the qualitative case study approach as a research strategy that focuses on understanding the dynamics present within a single setting (Eisenhardt 1995:68). The case study method is an effective tool for in-depth exploration of new political phenomena, especially when a holistic, in-depth investigation is needed (Feagin, et al. 1991). Moreover, it provides the researcher with the ability to do justice to the inherent complexity of social interaction, its contextual and often contradictory nature (Glesne and Peshkin 1992:7, Whitmore 2004:18). Broadly defined, the case study method ‘investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomena and context are not clearly evident’ (Yin 2009:13). More specifically, the case study approach provides the opportunity for the researcher to cope ‘with the technically distinctive situations in which there will be many more variables of interest than data points, and as one result relies on multiple sources of evidence, with data needing to converge in a triangulation fashion, and as another result benefits from the prior development of theoretical propositions to guide data collection and analysis’ (Yin 2009:18). This process begins by acknowledging that a problem exists and forming an educated guess or hypothesis. Upon gathering information from observation, the hypothesis will likely need revision and must take the form of a story (Breslin and Buchanan 2008). In this process the case study ‘excels at bringing us to an understanding of a complex issue or object and can extend experience or add strength to what is already known through previous research’ (Yin 1984:23). More specifically, this research follows the single-case study approach which is suitable when an inquiry is undertaken to either confirm or challenge a theory or to study a unique or special case that falls outside of the theoretical framework (Yin 1994).

There are essentially three main reasons why this research follows the case study method, all three raised by Bradshaw and Wallace (1991:154-155) in their seminal contribution in integrating case studies into the comparative method: (1) researchers do not have sufficient knowledge of a case to place it in a theoretical perspective or a case does not fit any extant

theory (a more common occurrence than often admitted); (2) a case partially supports (or deviates from) existing theories; and (3) a case represents a special (perhaps unique) set of circumstances or phenomena that warrant intensive study, even if theoretical discovery is not their primary objective. As noted above, democratization and institutionalization in Kosovo can only partially be explained by current theories in the field of both democratization and institutionalization studies. In large part this reflects the special circumstances under which these processes took place in Kosovo.

Critics of the case study method have long argued that the case study is limited as far as reliability and generality of findings are concerned as well as the potential for subjective bias by the researcher and the overgeneralization of results (see, for instance, Flyvbjerg 2006:219-234). While any research that utilizes the case study method should be aware of these potential shortcomings, the choice of the case study method ‘allows an investigation to retain the holistic and meaningful characteristics of real-life events’ Yin (1984: 14). A statistical survey of constitutional powers of parliaments in emerging democracies may conclude that the more powerful the parliament the more stable the new democratic regime, but it falls short of explaining why. The difference between statistical and analytical generalization is that in ‘analytic generalization, previously developed theory is used as a template against which to compare the empirical results of the case study’ (Yin 1984). Moreover, a standard survey will limit the inquiry only to the set analytical targets whereas the case study method:

prepares the investigator to deal with the unexpected findings and, indeed, requires him to reorient his study in light of such developments. It forces him to reconsider, however crudely, the multiple interrelations of the particular phenomena he observes. And it saves him from making assumptions that may turn out to be incorrect about matters that are relevant, though tangential, to his main concern. This is because a case study will nearly always provide some fact to guide those assumptions, while studies with more limited data gathering procedures are forced to assume what the observer making a case study can check on. (Becker 1970:76)

One of the major strengths of the case study method, therefore, is the flexibility the method provides to investigate beyond the initial hypothesis (Feagin et al. 1991, Sayer 1992, Stake 1995, Simon 2009, Yin 1984, 2009). With that in mind, the following section looks at the operationalization of the research questions.

1.6. Research Operationalization and Design

The research design used to assess the level of institutionalization of the Kosovo Assembly is primarily based on the method developed initially by Huntington (1965), then utilized by Polsby to analyze the institutionalization of the U.S. House of Representatives (1968), and then further revised and utilized by Kopecky (2001) to analyse the institutionalization of the Czech and Slovak Parliaments (see chapter 3). Following Pye's (1963:16) suggestion that 'the multi-function character of politics ... means that no single scale can be used for measuring the degree of political development,' additional variables will be added to these methods to accommodate the international or external factors in the institutionalization of the Kosovo Assembly.

While Huntington's work on institutionalization forms the theoretical core of this research, he did not provide a method through which institutionalization could be assessed or more importantly explain how institutionalization processes evolve. In an attempt to operationalize Huntington's concept of institutionalization, Polsby developed a model of assessing institutionalization through three of the four indicators (adaptability, complexity, autonomy and coherence) of institutionalization specified by Huntington: differentiation, complexity and universalism.

Although Polsby operationalized Huntington's concept of institutionalization and concluded that what caused institutionalization was volume and density, he failed to elaborate on the actual mode of institutionalization of the U.S. House of Representatives. Polsby describes internal processes of institutionalization triggered by external factors, yet he does little to explore the external factors in detail. Kopecky seeks to remedy this deficiency in his analysis of institutionalization in the context of democratization.

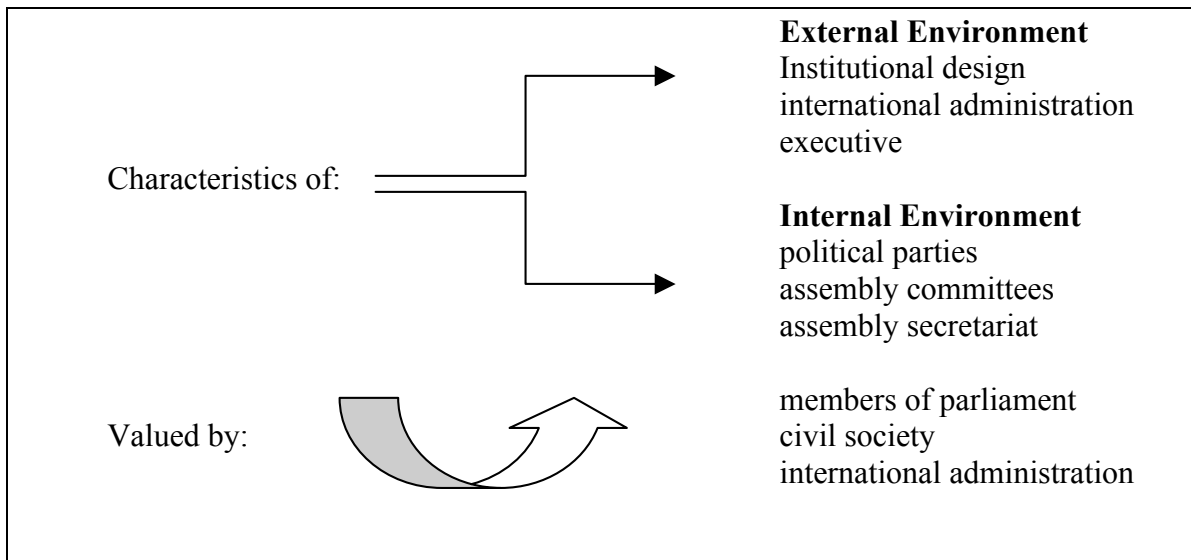
Indeed, Kopecky's (2001) work is central in the design of this PhD research in that the departure point of his analysis is the role of both external and internal factors within the context of democratization. Similarly, this research explores from these two angles the institutionalization of the Kosovo Assembly during the process of democratization. However, in contrast to Kopecky's study which, in line with democratic transition theories, is based on elite perceptions; this study also takes into account civil society. In

the case of democratization in Kosovo, civil society played a considerable role in relations between domestic and international actors.

In addition, where Kopecky considers external actors or external environment to encompass the constitutional structure, electoral system, executive structures and parties outside parliament (2001:15), this study includes international actors given their presence and participation in the establishment and development of governing institutions in Kosovo. Further, this research looks at the implication of the post-conflict environment on the institutional configuration in post-war Kosovo. Unlike the Czech and Slovak republics where the transition to democracy and the dissolution of the Czechoslovak Republic was peaceful, the breakup of Yugoslavia was accompanied by ethnic conflicts. In post-conflict environments that resulted in international observance and/or international administration, the institutional arrangements were influenced by the nature of the environment. In most cases these institutional arrangements were primarily designed to transform conflicts and accommodate peace and reconciliation.

Hence, although this study will remain embedded within these broader analytical approaches to institutionalization, the variables have been amended to accommodate the environment of the institutionalization of the Kosovo Assembly (see Table 1). In a nutshell, this research design follows Hibbing's suggestion, who applied Polsby's method to the British House of Commons, that: the important point is that measures of 'institutionalization must be selected carefully and tailed to the distinctive features of the specific legislature while remaining consistent with the broad themes of institutionalization' (Hibbing 1988:695). In addition, while theory guides the research, it can be modified and interpreted within the context of each case (Bradshaw and Wallace 1991:162).

Table 1: Primary focus of analyses for the Kosovo Assembly



Accordingly, there will be two main sets of variables that account for legislative institutionalization: external and internal determinants. To analyze the role of internal determinants, this research will analyze the role of political parties, assembly committees and assembly secretariat to explore their effect on the internal institutionalization of the Kosovo Assembly.

To understand the change and development of the Assembly from the perspective of external determinants, this research will focus on the role of the institutional design, executive structures, and the international administration. The thesis seeks to understand the impact of external actors in the institutional design and development of the Assembly, and upon it its boundedness, internal complexity and the use of universalistic criteria.

Internal factors of change will be assessed through the assessment of the establishment and development processes of the Assembly committees, the administration, the rules of procedure and the role of political parties in the decision-making processes. This will mean analyzing the initial stages of internal development, through interviews and documents, from the primary stages of ad-hoc operating procedures as well as the factors that contributed toward more permanent rules of procedure, the evolution of assembly

committees and patterns of membership in the committee, the service of members in the Assembly and their political party affiliations (see Appendix 1 for details of the Interview Questions).

The selection of specific candidates was grounded in the process tracing method which is more concerned with key political actors in case studies as opposed to representative samples of a political body (George and Bennett 2005). Thus, the primary objective of the process tracing method is:

to obtain information about well defined and specific events and processes, and the most appropriate sampling procedures are thus those that identify the key political actors that have had most involvement with the processes of interest. The aim with process tracing is not to draw a representative sample of a larger population of political actors that can be used as the basis to make generalisation about the full population, but to draw a sample that includes the most important political players that have participated in the political events being studied. Consequently, random sampling runs against the logic of the process tracing method, as it creates a risk of excluding important respondents from the sample purely by chance. When sampling interviewees in the context of a process tracing study, the goal will ultimately be to reduce randomness as much as possible, and thus non-probability sampling approaches are the most appropriate. (Tansey 2007:2)

The reason for this choice was guided by two considerations, one that relates to the position of Assembly members who have served in both the first and the second term of the legislature and would therefore have more information on the process covering both consecutive terms as this is crucial for the study of institutionalization of a political process. To understand the transition from one legislative term to another especially as it pertains to the context of both internal and external influences, the process tracing method of selection provides the possibility for ‘a close examination of the intervening processes that link the variables outlined in a hypothesised causal relationship’ (Mahoney 2000). The second consideration has to do with reconstruction of the events that marked the first and second legislative terms through triangulation of interviews and documentary analysis. As Tansey notes (2007:7):

the usage that is arguably most relevant to process tracing entails the conduct of elite interviews in order to establish the decisions and actions that lay behind an event or series of events. Through direct and focused questioning, researchers can reconstruct political episodes on the basis of the testimony of respondents, stitching together various accounts to form a

broader picture of a complex phenomenon, and gather detailed information about the process in question. Elite interviews can shed light on the hidden elements of political action that are not clear from analysis of political outcomes, or of other primary sources. By interviewing key participants in the political process, analysts can gain data about the political debates and deliberations that preceded decision making and action taking, and supplement official accounts with first-hand testimony.

One of the most considerable challenges in using the process tracing method is gaining access to those key political actors. While at the Assembly level this was not a problem, gaining access and interviews from key members who worked with the international administration was difficult. This difficulty in gaining more proportional access to key members in the international administration has affected the outcome of this research in that the comparison of information provided by the local administration and the international one is not always proportional. It is important to note here that the international administration had considerably more documentary and archival sources available than the local administration, which is evident throughout the thesis.

Another considerable drawback, which is not only limited to the process tracing method but also to broader issues of elite interviews, is the political calculations of the interviewee in the context of the research questions. All Assembly members interviewed for this research continue to be active in the Kosovar political arena which may influence their interpretation of past events in the context of contemporary political considerations. In this context, I was guided by George and Bennett's (2005:99) suggestion that the researcher must be aware of:

- who is speaking
- who are they speaking to
- for what purpose are they speaking
- and under what circumstances?

Additional limitations include geographical distance coupled with limitations of time and resources that has also had an impact of interviewing all subjects of interest. Here too is important to note that the process tracing method is more appropriate for this research, as Tansey (2007:15) notes:

The goal when applying the process tracing method, however, will not be to draw a representative sample in order to use interviews to make generalisations about the characteristics, beliefs or actions of the full

population of relevant actors, but rather to obtain the testimony of individuals who were most closely involved in the process of interest.

Finally, while these limitations could not be addressed in full by the methods chosen for this research, they do provide an opportunity for further advancement of these issues in furthering research methods in similar context. One considerable suggestion would be to make a detailed assessment of selected subjects for the research to assure their participation during the research design phase. This will provide the researcher with the opportunity to look for alternative approaches to gaining access to information that cannot be gained via interviews. With that in mind, the following section explains the data gathering process.

1.7. Data gathering

There are various sources of evidence and data gathering in the case study method, six of which are identified by Yin (1994): interviews, documentation, archival records, direct observation, participation observation, and physical artefacts (see, also, Tellis 1997). This study has utilized the first four approaches of gathering data. I conducted fieldwork for the study during two periods, the first one from June to August 2009 and a second one from March to May 2010. Having worked in Kosovo from 2000 to 2004, I had the benefit of being familiarized with the environment and local languages. More importantly, working directly in the Assembly from 2001-2004 gave me an ‘insider’ knowledge on where to look for information and documents, which can be very useful when doing research in environments that have not fully developed a standardized approach to information management.

1.7.1. Interviews

In cross-cultural and multi-lingual research settings, interviews are the most appropriate method of gathering information, especially since ‘a formal questionnaire, once constructed, limits opportunities for empathetic understanding, an in-depth interview gives the interviewer a chance to probe, to clarify, to search for deeper meanings, to explore unanticipated responses, and to assess intangibles such as mood and opinion intensity’ (Johnson and Reynolds 2008:338).

I used the semi-structured interview as it allowed me to guide and manage interviews more freely, yet remain within the boundaries of the list of questions prepared for all interviewees. Semi-structured interviews are also best for elite interviews (Peabody et al. 1990, Rossman and Rallis 2003) Over 50 face-to-face interviews were conducted with Assembly Members, civil servants in the Assembly, executive officials, members of the civil society that follow the work of the Kosovo Assembly as well as international staff working or having worked in Kosovo during the time period concerning this study.

The Assembly of Kosovo has 120 seats, 100 of these seats are designated for directly voted political subjects, 10 seats are set aside for the representatives of the Serb Community and 10 seats are set aside for the representatives of other communities allocated as follows: 4 seats for Roma, Ashkali and Egyptian communities, 3 seats for the Bosniak community, 2 seats for the Turkish community and 1 seat for the Goran community. The criterion used to select candidates for interviews is based on both proportionality and the process tracing method (noted above). In terms of proportionality, the research looks at both the political affiliation of the interviewees as well as the reserved seats for the minorities in two consecutive legislative terms. Out of 36 interviewed members of parliament (see Appendix II), 12 were members of the LDK which held a majority in the first two terms, 12 members of PDK which was the second largest political party in the Assembly, 3 members of the AAK the third largest political party, 2 members of the LDD and 7 members of the reserved seats for the communities.

The average length of the actual interview lasted from 45-60 minutes; however, due to different perceptions of time and commitment, on average one interview took a day to complete from beginning to end. I learned early in the process that scheduling was not the best approach to interviewing Assembly Members as appointments were rarely honoured. This resulted in subsequent delays of previously scheduled interviews and as a result, I was not able to conduct any interviews in the first week in Kosovo. In addition, almost all of the Assembly Members have a second job, some a third, which proved challenging in terms of time management. An additional problem stemmed from the numerous international and local organizations that monitor the work of the Assembly and are always seeking interviews with Assembly Members (not to mention the media) – this made interviewing them a competitive process. I found that the best approach to interviewing Assembly Members, at least in the Kosovo context, was to approach them

before or after Assembly plenary sessions or committee meetings and conduct the interview right there and then. The transcription of the interviews was done immediately following the interview, this helped me make note of certain parts of the interview that I could have otherwise overlooked.

The research was conducted in compliance with the University of Strathclyde Research Ethics regulations. The Department of Government Ethics Committee was presented with a standard Ethics Application for this research. The application form consists of information on the nature of the research, information on the researcher, information on the location and participants in the research, timeframe, funding, objective of the research and research methods. Upon the receipt of the Ethics Application, the Ethics Committee approved the research proposal. Everyone interviewed for this research was presented with the confidentiality terms of University of Strathclyde. Those who signed the form and wished to speak on terms of confidentiality are identified with initials, the rest are identified by their actual names.

1.7.2. Observation

In addition to interviews, observation plays an important role in understanding the various developmental processes in legislatures. Polsby's favoured approach to understanding political institutions and phenomena, especially legislatures, was 'the going and hanging out' (Polsby 2002). What Polsby (2002) means by 'going and hanging out' is being present during the work of the legislature, showing up for plenary sessions, observing the work of the committees but also hanging out with assembly members during breaks and after meetings:

There is a very large array of possible ways of going about social science. My particular way of doing it is to talk to people, listen to people, watch people, and then write down what I've learned. It's quasi-anthropological in the sense that I am not, in fact, an anthropologist, but I do have a good deal of regard for the people who are doing the acting. I attempt to find out, as best I can, what their perspective is on things, because then it helps you, quite frequently, to understand what they're going to do next ... The idea is to find out what's going on, and attempt to talk about it in some way that is easily storable and compact, and understandable and communicable to other people.

This was a very helpful approach in understanding the inner dynamics of the institution and its members that the interviews cannot provide for. Similarly, in her study of the

Ukrainian Parliament, Whitmore (2004:18) notes that observing the daily routines of the parliament provide rich and personal understanding of the context which results in invaluable insight for the structured analysis. Observing the daily work of the Kosovo Assembly provided me with an insider's knowledge of the relationship between the Assembly members and the executive, the level of compliance with the rules of procedure and the relationship between domestic and international actors beyond official stances.

Observation of the Assembly in the committees and during plenary sessions was essential not only because it provided me with the overall dynamics of how the work was being done and who influenced the decision-making process, but because it helped me compare the change in the work of the Assembly from the time that I worked there from 2001-2004 to the time of the field trips in 2009-2010. This was essential in forming my initial premise on the level of institutionalization of the Kosovo Assembly as I was able to note both positive and negative aspects of the change in working practices.

More importantly, observation was also important because it helped me acknowledge the problem of how to 'reconcile attitudes expressed in an interview and behaviour' (Whitmore 2004:19). On two occasions, two interviewees voiced their unhappiness with the government's responsiveness towards the Assembly, yet supported the government in committee meetings when it was attacked by opposition members. Writing on a similar experience while doing research at the Ukrainian Parliament, Sarah Whitmore suggests that: 'only an exploration of the informal practices and context of a case can explain why this occurred' (Whitmore 2004:19-20). Observing the informal practices outside the Assembly floor and session during breaks was essential in establishing general knowledge of not only who is who, but also who influences whom.

1.7.3. Written sources (documentation and archival records)

Documentary material was gathered throughout the whole research period. The main sources of documentary material were the UN online archives, the Office of Public Information of the Kosovo Assembly, UNMIK online, various online sources with reports on the Kosovo Assembly as well as the New York City Public Library Wertheim Study and the Kosovo National Library.

The period under examination is well documented by both domestic and international actors; therefore there was little or no problem in obtaining copies of reports, laws, regulations, decisions and in some cases even correspondence between domestic and international actors. The only challenge was sorting out the volume of documents as in most cases archiving was only done in chronological order without catalogues. A major difficulty was obtaining copies of correspondence between UNMIK and the Kosovo Assembly as they are neither classified as confidential nor are part of the Kosovo Assembly archival documents. Requests to receive copies of official communiqués with both UNMIK and the Kosovo Assembly were not acknowledged. As a result, I relied on interviews and secondary documentary sources of the content of the official exchanges between the SRSG and the Kosovo Assembly.

1.7.4. Epistemic and Ethical Considerations

While this research follows a rational epistemic approach, based on ideas of universalism (as it pertains to institutionalization) some cultural epistemological considerations that emerged while doing research in Kosovo need to be addressed. While institutionalization processes may be universal from a structural and developmental point of view, gathering information on the process through interviews and observation may not be. The way knowledge is used and shared is related to culture, consequently, information obtained from interviews and observation in Kosovo needs to be interpreted in the context of that environment. This involves translation of interviews conducted in Albanian and Serbian which involves the interpretation of the meaning from Albanian and Serbian into English while at the same time ‘considering the individual situation and the overall cultural context’ (Esposito 2001:570). Samovar and Mills (1998) *Oral Communication: Speaking Across Cultures* became an essential component of guiding my interviews as it helped me to contextualize my approach to interviewing, especially in understanding the various cultural nuances and ceremonies needed in establishing trust and credibility in the eyes of the interviewee before sharing information. The majority of interviews involved an hour of socialization accompanied by coffee and food before the actual interview. While initially I found this time consuming, these interviews turned out to be the more valuable ones. Moreover, the socializing time allowed for a familiarization with the interviewee which proved very useful in providing perspective during the data analysis in following up with questions over email and telephone.

One issue that needs to be noted here is the perception of time in the context of Kosovo. Exact dating is rarely used in both formal and informal conversations and interviews during the research period. Most interviewers gave very broad definitions of time, such as ‘earlier last year’ or ‘beginning of 2002’ for specific events. Hence, before making reference to these dates in the text, I generally researched the data to confirm or find the exact timeframe of the events so as to avoid confusion, which at times proved onerous and time consuming.

Finally, most Kosovo Assembly members still lack personal office space and while initial interviews were conducted in the office space allocated for their political party groups, I avoided this practice after a few interviews for two reasons: almost always there was another party member in the room which made the communication somewhat limited and the environment itself seemed to constrain the level of openness of the interviewee. Following notable change in the level of engagement of interviewees outside their political parties offices, the rest of the interviews were conducted in the Assembly cafeteria and/or restaurants.

1.7.5. Reliability and Validity

In a classical sense reliability in research means ‘the extent to which an experiment, test, or any measuring procedure yields the same results on repeated trials ... The more consistent the results given by repeated measurement, the higher the reliability of the measuring procedure; conversely, the less consistent the results, the lower the reliability’ (Carmines and Zeller 1979:12).

The main approach used in this research is the test-re-test method, a method which ‘involves applying the same “test” to the same observations after a period of time and then comparing the results of the different measurements’ (Johnson and Reynolds 2008:95). In the context of this research, identical interview questions relating to the relationship of the Assembly with the International Administration were asked twice over a period of one year to Assembly Members who had served in the first and second legislative terms. Although the replies were consistent with the initial reply in terms of substance, there was considerable inconsistency in terms of dating events or incidents that interviewees identified during the first and second rounds of interviews. This posed a considerable

challenge in locating the exact timeline of the events they were referring to, an issue I have also discussed under Epistemic and Ethical Considerations.

Validity on the other hand is essentially the validation of the focus and application of the research concept to be measured, or ‘a valid measure is one that measures what it is supposed to measure’ (Johnson and Reynolds 2008:97). This also includes the consistency and discipline with which the study was undertaken and the consideration of alternative methods of approaching the research by the research designed (Huitt, 1998). This type of validity is also known as internal validity, which means that ‘the research procedure demonstrated a true cause-and-effect relationship that was not created by spurious factors’ (Johnson and Reynolds 2008:133). Yin (1994) suggests that the best approach in ensuring internal validity is using multiple sources of evidence, which this research has done in combining interviews, documentary analyses and observation. Moreover, case studies can generally achieve an ‘excellent internal validity by providing a profound understanding of a case’ the more challenging achievement is external validity (De Vaus 2001:237).

External validity on the other hand is a little more difficult to ensure, especially in case studies since its aim is to ensure ‘the extent to which the results of an experiment can be generalized across populations, times, and settings’ (Johnson and Reynolds 2008:135). However, this case study does not attempt to suggest that the Kosovo experience in democratization and institution building can be generalized to similar instances of democratization and institution building in the context of international administration. While aspects of this study can be generalized to similar cases, the purpose of this study is theoretical generalization or ‘generalizing from a study to a *theory*’ which aims at finding out ‘what does this study tell us about specific theory (or theoretical position)?’ (De Vaus 2001:237 italics in the original). From this perspective, this research attempts to establish theoretical generalizations in both democratization and institutionalization theories by using a research design based on the framework of these theories to arrive at an understanding of the applicability of these theories in instances where democratization and institutionalization processes involve external (international) actors. Having said that, the findings in this research have been interpreted with awareness to context and transferability of the content so that they can be utilized in future comparative research. This project follows Guba’s (1981) suggestion that findings should be context-relevant

and use purposive sampling to provide a situation that can be evaluated and used for further research or comparison.

1.7.6. Data Analysis

Data analysis is probably the most complex of all aspects of doing case study research. In case studies that involve field research and interviews, data analysis starts during the field work itself, where the researcher starts to interpret the meanings of the interviews in the context of the existing knowledge of the subject matter in the field. Note-keeping in this instance is imperative in recording initial impressions of the responses that can later be cross-checked or analysed in the context of the overall findings. Once all data was gathered, all interviews were transcribed and translated into English. The transcripts were then read several times in both English and Albanian or Serbian. As most of these were translations from Albanian or Serbian into English, whenever the text did not read clearly, the original audio was replayed to re-familiarise the researcher with the discussion and the context.

One of the main difficulties during the initial stages of analysing the data was in identifying themes and categories. This was a problem that had to do with the overwhelming amount of information provided in the interviews that did not always relate directly to the interview question. One way of overcoming the intensity and amount of data was through “weeding out” the information in the interviews and organizing a preliminary analysis based on emerging common themes. Following the preliminary organization of data, the analysis followed two strategies proposed by Robert Yin (2009:131-141) *relying on theoretical propositions* and *examining rival explanations*.

Relying on theoretical propositions, as Yin (2009:131) suggests, is ‘to follow the theoretical propositions that led to your case study. The original objectives and design of the case study presumably were based on such propositions, which in turn reflected a set of research questions, reviews of the literature, and new hypotheses or propositions’. From this point of view, the research material was organized into preliminary themes structured around premises, and subsequent hypotheses, derived from the review of the existing literature. As the goal of the research was to understand the dynamics of democratization and institutionalization in the context of international administration, the focus of attention

was upon data that revealed new or relevant information on the process of institutionalization and democratization.

Examining rival explanations was critical in understanding data that rivalled the theoretical framework of this research and the field data. One such example is the theoretical assumption that the role of international administrations under the *imposition of authority* thesis provides ‘international administrations with the ability to bypass domestic actors entirely and enforce measures they deem necessary’ (Tansey 2009:42). While the imposition of authority did in many instances bypass domestic actors in enforcing measures they found necessary, the majority of interviews suggested that such ‘bypass’ was always closely calculated by the international administration, and at times even negotiated with the local administration. While this may not be evident in the documentary analysis, as the negotiations were not always carried out through official communications, the majority of interviews revealed that there was a negotiation of power (for details, see page 44 and pages 225-226).

The construction of a narrative reflected the analysis of the data from note taking, which then resulted in chapters that were guided by theoretical implications. Following Yin’s (2009:141) suggestion that in ‘most existing case studies, explanation building has occurred in narrative form. Because such narratives cannot be precise, the better case studies are the ones in which the explanations have reflected some theoretically significant propositions’. In explaining the findings, theoretical frameworks were crucial to both stay focused in constructing a narrative with a central argument but also in maintaining a balanced approach to how the data was being interpreted. With that in mind, the following section looks at the structure and outline of the thesis.

1.8. Thesis Structure and Outline

This thesis is divided into three parts. Part I, chapters 1, 2 and 3, explores the research framework, questions, methods and theoretical underpinnings of this research. Chapter 1 provides a broad contextual frame by locating the evolution of international administrations within the current literature. Additionally, chapter 1, identifies the research objective and research questions, the research design and methodology, and provides an

account of the data gathering process used in this research. Overall, chapter 1 provides an outline of the thesis by identifying key questions and structuring the discussion around those questions.

Chapters 2 and 3 develop from the first chapter by providing a detailed account of the two main theories that have guided this research. Chapter 2 is a review of democratization literature, from its early theoretical stages to its application in regime transition studies and processes around the world. The chapter starts with an overview of the dominant theories, their critics and their transformation over time. Moreover, the chapter challenges the normative approach to democratization by looking at recent problems that relate to the context in which democratization occurs and is studied. In so doing the chapter provides an analytical account of democratization beyond definitional terms by looking at the subaltern approach, the role of external actors and democratization in the context of the United Nations. The final theme of the chapter explores the relationship between legislatures and democratization, and how legislative institutionalization affects broader democratization processes. Chapter 3 provides an overview of institutionalization theory by exploring the various approaches in the field and has a specific focus on legislative institutionalization. This chapter covers several seminal studies in the field of legislative institutionalization that have been very important in the establishment of a method and various assessment tools to understand legislative institutionalization. In short, chapters 2 and 3, complete the theoretical discussions by mapping the questions and providing the framework for the research.

Part II of the thesis, which includes chapters 4 and 5, explores the historical context of Kosovo in modern times. This part provides a background for the discussion and presentation of the research findings. Chapter 4 traces the roots of the Kosovo conflict by looking at its political history starting with a brief history at the end of the Ottoman Empire and exploring in more detail the conflict of 1999. The first part of the chapter outlines the chronological evolution of the institutional arrangements that emerged during the conflict and which would later influence the institutional design of post-conflict Kosovo, most notably the Rambouillet Accords and the Peace Plan. The second half of the chapter looks at the first attempts by the international administration to utilize these institutional designs by setting up unified governing structures to prevent parallelization of governance. Chapter 5 starts by exploring the emergence of the first joint governing

structures between locals and internationals and provides an account of the experience by looking at its achievements and shortcomings. The second half of the chapter looks at the post-conflict institutional design that resulted in the first free and fair elections in Kosovo and the establishment of the Provisional Institutions of Self Government. Together chapters 4 and 5 provide the context for the research findings addressed in part III.

Part III of this thesis, which includes chapters 6 and 7, provides a discussion on legislative institutionalization raised in chapter 1 and is structured around the findings from interviews, documentary analyses and observation of the work of the Kosovo Assembly. Chapter 6 explores the relations of the Kosovo Assembly with the international administration in its first term from 2001-2004. This chapter traces the evolution of institutional independence of the Kosovo Assembly by looking at the external factors that contributed to its institutionalization. In other words, this chapter looks at the dynamics of shared authority between the local and international administration and their effect on the institutionalization and democratization of these institutions. Chapter 7 explores the internal institutionalization of the Kosovo Assembly. Based on the methods set out in chapters 1 and 2, the chapter assesses the evolution of institutional adaptability, complexity, autonomy and coherence – all indicators of legislative institutionalization. In the process, it also looks at the position of the Kosovo Assembly in broader democratization processes by analyzing its ability to shape not only its internal structure but become a political actor in its own right.

1.9. Conclusion

The theoretical framework utilised to explore the evolution of the Kosovo Assembly while under international administration is based on theories of institutionalization and democratization. Utilizing legislative institutionalization theories in explaining young parliaments in the context of broader political changes, poses a challenge. The Kosovo Assembly was an *ex-novo* institution established in 1999 and, if Polsby's view is accepted that institutionalization takes 'decades, even generations' (Polsby cited in Wise and Brown 1996:217), it cannot be considered an institutionalized body. Indeed, in her study of the Verkhovna Rada (the Ukrainian Parliament), Whitmore (2004:16-17) notes that although the parliament faced:

lack of professionalism, experience and parliamentary norms needed to face the challenges of state-building and democratization. In practice, this meant that the Verkhovna Rada had to deal with constitutional questions about the form of the new state and its own prerogatives, with limited institutional capacity to manage such issues.

In other words, young legislatures in young democracies cannot be compared directly to institutionalized legislatures in established Western democracies. Utilizing legislative institutionalization theory that was mainly developed on studies based on Western legislative institutionalization processes to young parliaments poses a challenge in that the focus is not necessarily the institutionalization of young parliaments but rather the ‘positive foundations’ for such process to further evolve (Wise and Brown 1996:17). This study has followed this approach, while at the same time being aware and acknowledging the criticism that this approach implicitly imposes a normative conception of how parliaments should institutionalize in emerging democracies (Whitmore 2004:17). With that in mind, the following chapter looks at theories of democratization, their evolution and applicability in non-traditional democratization processes.

Chapter 2

Democratization

2.1. Introduction

This chapter explores definitions and theories of democratization, what they entail and how they explain recent democratization processes. Understanding democratization is essential for this study as democratization and its consolidation are closely related to the institutionalization of parliaments. Indeed, one of the most comprehensive ways of assessing democratization is through ‘institutional consolidation’ or the proper functioning of the established political institutions and [when] their interactions can be assessed’ (Stein and Trent 2007:37, see also Linz and Stepan 1996). The first five sections of this chapter look at the dominant theories of democracy coupled with development theories and practices that have given birth to democratization theory. These sections explore the dominant approaches and their lasting impact on the contemporary view of democratization theory.

In addition, this chapter also explores democratization in the post-conflict and international context. The post-conflict context of democratization is relevant to this study for two reasons: the more obvious reason is that democratization processes in Kosovo developed in a post-conflict environment. The other aim is to understand the position of parliaments in post-conflict democratizing societies as parliaments ‘come to the fore as uniquely designed forums to address contentious issues and relationships in conflict-affected societies. Parliaments institutionalize conflict’ (O’Brien et al. 2008:20).

The international context of democratization is relevant to this study as democratic governing institutions in Kosovo were established by international actors. The entire democratization process in Kosovo, that in most emerging democracies is undertaken by local actors, was the work of an international administration with an estimated presence of over 40,000 civilian and peacekeeping personnel (UN DPKO 2010). In this sense, Kosovo

presents a new challenge of explaining democratization beyond the established paradigms which are mostly concerned with the actions of internal actors.

The second half of this chapter looks at recent developments that have challenged the dominant approaches in democratization theory and have opened a path for a broader understanding and interpretation of democratization processes, both in theory and practice. In addition, the last section of this chapter explores the link between parliaments and democratization.

Scholars of legislatures have for long lamented the decline of parliaments in Western democracies, arguing that, in conditions of stability, parliament has become ‘just [a] site among many others in political decision-making; even more, its activities become ‘BORING’ because of their routinization and formalization’ (Liebert 1989:4). While parliaments in established democracies have become ‘boring’ - in emerging democracies they have taken centre stage in democratization and consolidating democratic regimes. In this respect, Ulrike Liebert notes:

Parliament here is potentially central in so far as it manages to incentivate - more than any other institution, be it an elected president, a hegemonic party or a representative governmental body - a fundamental consensus/compromise between a maximum of political and social forces on the principles of the new order. Parliament may be central even before its formation and institutionalization in the sense that it may motivate the political actors to concur in a common project of democratization parliament contributes to the legitimation of a new regime. Not only as a symbol of principles of political democracy as popular representation, participation or sovereignty, but also as a material incentive for the integration of political forces and the development of a fundamental consensus on a broader or narrower range of principles of the political, social and economic order. (Liebert 1989:4)

The relationship between parliaments and democratization is twofold. On the one hand, parliaments are at the heart of the democratic process as they embody the representative authority delegated directly by the people. This concept forms the core of modern democratic governance. On the other hand, in establishing new regimes, parliaments become the central bodies of transformation as they take on tasks of not only legitimizing the new democratic regime but also providing the legislative grounds through legislating, establishing new institutions and ‘act as the main site for elite recruitment and

socialization’ (Weinbaum 1975:32, see also O’Brien 2002). Simultaneously, parliaments have to shape themselves as democratic institutions:

Parliaments are not only agents in democratization. At the same time, they are also subjects of this process as far as increasing parliamentary capacity to perform certain functions central to the operation of a modern democratic state (e.g. law-making, oversight of the executive) is also central concern in state-building and thus wider democratization. (Whitmore 2002:5)

This process of the internal development of parliaments is called legislative institutionalization or the process of institutionalization (Chapter 3). The institutionalization of legislatures in emerging democracies evolves hand-in-hand with the broader democratization processes. Thus, the ability of a parliament to adapt to a new regime and facilitate the establishment of the new regime is at the centre of this study. While theories of institutionalization will guide the empirical part of this research, broader democratization approaches are important in identifying key factors that contribute to institutionalization. Similarly, the study of political institutions, their development and institutionalization, is closely tied to democratization as their level of institutionalization is a reliable indicator of their democratic consolidation.

Finally, the conclusion of this chapter, drawing on democratization theory, raises questions that relate to this study and similar democratization processes that do not fit into the conventional explanatory power of the democratization theory.

2.2. Democratization: Definitions and Theories

Democratization is difficult to define or pin-down to one interpretation, partly because the initial studies on democratization considered the process to be self-evident (Grugel 2002:3) and partly because ‘a quarter-century into the “third wave”¹ of democratization and the renaissance it brought in comparative democratic studies—we are still far from consensus on what constitutes “democracy”’ (Diamond 2002:20). Definitions of

¹ The Third Wave is a democratization theory developed by Samuel Huntington in (1991) *Democratization in the Late Twentieth Century*. Huntington suggests that democratization in the twentieth century has happened in three major waves: the first wave starting in the early nineteenth century, the second wave following World War II, and the third wave began in 1974 through to the democratization of post-communist countries.

democracy in democratization studies are dominated by various re-evaluations of the procedural minimal definition originally identified by Schumpeter in (1942) *Capitalism, Socialism, and Democracy*. Schumpeter suggests that:

The democratic method is that institutional arrangement for arriving at political decisions which realizes the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will. (Schumpeter 2006:250)

Schumpeter's primary contribution is in providing a descriptive theory and the possibility of making a distinction between what is and is not a democracy. Essentially, he moved the debate over the definition of democracy from an idealistic one to a more descriptive approach. In addition, the procedural approach lacks normative attachments unlike the philosophical interpretations of democracy, for instance:

The liberal conception of democracy is based on the negative conception of freedom and a corresponding conception of human rights. In other words, on a conception of freedom as the absence of restraint ('freedom from') rather than on a positive conception as the ability to engage in self-development or participate in the government of one's society ('freedom to'). This liberal conception is adopted not just by liberals but also by, individualistic anarchists and libertarians, whereas the positive conception has always been adopted by communists and anarcho-communists. (Fotopoulos 2005:181, Berlin 1969)

Critics have argued that Schumpeter's definition is essentially too elitist and negates the real competitive nature of democracy (see, for example, Truman 1951, Dahl 1956). In an attempt to broaden and provide a more comprehensive definition of democracy, Schmitter and Karl in *What Democracy Is ... and Is Not* have identified three approaches to defining democracy: the conceptual approach that defines 'democracy and the generic *concepts* that distinguish it as a unique system for organizing relations between rulers and the ruled'; the *procedural* approach, that defines democracy as 'the rules and arrangements that are needed if democracy is to endure' and the 'operative *principles* that make democracy work' (Schmitter and Karl 1991:76 italics in the original).

The most broadly used definition in democratization studies is the Schumpeterian 'procedural' approach as redefined by Robert Dahl (Schmitter and Karl 1991:81, Anderson et al. 2001:4, Whitehead 2002:10, Gill 2002: 2-3, Levitsky and Way 2002:54-

55). Remaining true to Schumpeter's descriptive approach, Robert Dahl suggests a framework for exploring democracy through competition and participation which he termed polyarchy. Dahl believed that *democracy* is too idealistic a concept as it suggests that the government is or needs to be responsive to all its citizens at all times which is impossible, hence the reason he refers to contemporary democracies as *polyarchies* initially in *A Preface to Democratic Theory* 1956, and later developed in *Polyarchy: Participation and Opposition* 1971 (see also *Democracy and its Critics*, 1989). Essentially, Dahl suggests seven defining features or conditions for democracy:

1. Control over governmental decisions about policy is constitutionally vested in elected officials.
2. Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon.
3. Practically all adults have the right to vote in the election of officials.
4. Practically all adults have the right to run for elective offices in the government...
5. Citizens have the right to express themselves without the danger of severe punishment on political matters ...
6. Citizens have a right to seek out alternative sources of information.
7. Citizens also have the right to form relatively independent associations or organizations, including independent political parties and interest groups. (Dahl 1982:11)

These conditions, with various alterations depending on the specific study, have formed the core assessment of democratization processes by both scholars and democratizers. However critics of the Schumpeterian definition have suggested that the minimal-procedural definition of democracy 'is both insufficient, and too demanding, at the same time ... insufficient, because it excludes the inescapably teleological component of democracy' and 'too demanding, because "really existing" democracies cannot be expected consistently to conform to the minimum standard that it stipulates' (Whitehead 2002:10). The important conceptual contribution that Whitehead brings to the debate on the use of the minimal-procedural definition is to suggest that a definition of democracy needs to be contextual as democracy itself is 'essentially contestable' (2002:18, 25). Whitehead's suggestion is closely tied to how the development of democracy or democratization is assessed in relation to the definition of democracy. This contemporary comparative approach to the definition of democracy has also affected the understanding of democratization.

Democratization has been defined as ‘a conventionally loose term to describe what is happening, although it is acknowledged the outcome is the establishment of a liberal or constitutional democracy familiar to students of Western Europe’ (Pridham and Vanhanen 1994:2). The multiple definitions and terms associated with democratization relate to the time-frame of the actual processes that is being explored. Thus, *democratic transition* or *transition* is the term used by many (interchangeably) to describe the beginning of regime change or transition from non-democracy toward democratization or ‘the interval between one political regime and another’ (O’Donnell and Schmitter 1986:6). The time frame of the transition process ‘runs from the point at which the previous authoritarian system begins to dismantle, through the constituent phase of the new democracy to its inauguration and early operation’ (Pridham 1994:17). On the other hand, *Democratic Consolidation* or *Consolidation* is the phase that follows the end of the transition process, and begins when democracy ‘becomes the only game in town’ (Linz and Stepan, 1996:5). Everything between *transition* and *democratic consolidation* is considered *democratization*. In a nutshell, a consolidated democracy is one where the process of transition from one regime into another has ended and so has the democratization process (Di Palma 1990; Valensuela 1992; Diamond 1994, 1999, Pridham and Vanhanen 1994:2).

The importance of the timeframe during which the object of study is being explored is related to the analytical approach. Analyzing the causes and effects of transition from one regime into another may tell us very little of the overall democratization process that will follow. Dankward Rustow for instance argued that ‘the factors that keep a democracy stable may not be the same ones that brought it into existence; explanations of democracy must distinguish between function and genesis’ (Rustow 1970:339). This distinction opens the way for studies related to the time-frame of regime-change or transition and those of post-transition processes of democratization and democratic consolidation. Having said that, this study follows the Pridham and Vanhanen approach which considers democratization to entail ‘the overall process of regime change from beginning to end, including both stages of what are generally called in comparative literature “transition” to a liberal democracy and its subsequent “consolidation”’ (Pridham and Vanhanen 1994:2).

2.3. Democratization Theory

As mentioned above, democratization theory attempts to understand what accounts for regime transition from non-democracy to democracy, what factors contribute to this transition and more importantly what guarantees the successful consolidation of a democracy? There is a broad agreement in the field that the initial analytical approaches and theorizing on democratization processes were divided into three broader theories attached to pre-existing theories of social change: the modernization approach, the structural approach and the transition approach (Grugel, 2002: 47-67; Pridham, 2000; Potter et al. 1997:10). All these theoretical approaches have contributed in framing the democratization debate and structuring the way democratic transition, democratization and consolidation are studied today. In a nutshell, modernization theory attempts to predict democratization as a consequence of economic development, the structural approach attempts to explain and understand democratization from a historical and sociological perspective whereas the transition approach is a more dynamic approach that explores the contemporary democratization processes where actors engaged in the process are aware of the process and their actions. These two approaches are also known as the ‘macro- and micro-oriented’ schools.

The macro-oriented approach ‘gives paramount attention to structural or environmental – notably, economic and social – determinants of political system change; and it views regime change as a precondition by particular conditions like economic development or cultural patterns or simply democratization’ (Pridham 1994:16). This approach is generally linked with theories of modernization. In contrast, the micro-oriented school ‘gives priority to conjectural and volitional variables and especially political determinants of regime-change, and has therefore emphasized the importance of political choice and strategy by actors during the transition phase.’ This approach is generally linked with the transition theory (Pridham 1994:16).

2.3.1. Modernization Theory

The earliest attempt to explain the causes of democratization was S.M. Lipset’s (1959) *Some Social Requisites of Democracy: Economic Development and Political Legitimacy*. Lipset argued that ‘the more well-to-do nation, the greater the chances it will sustain

democracy' (Lipset 1959:56). For Lipset democracy is the result of modernization and modernization is a product of economic development. Democratization through modernization is an assumption that was largely constructed on the belief that economic development would lead nations through a similar, if not identical, process as those experiences in the West:

Increased wealth is not only related causally to the development of democracy by changing the social conditions of the workers but it also affects the political role of the middle class through changing the shape of the stratification structure so that it shifts from an elongated pyramid with a large lower-class base, to a diamond with a growing middle class. (Lipset 1959: 78)

The assumption that what had happened largely in Western Europe and North America with the emergence of the middle classes, could and would replicate in the developing world was the core understanding of democratization in accordance with modernization theory. In essence, Lipset assumed that the rise of a middle class would inevitably push any system towards democratic transition. While he may have been wrong in that economic development does not always result in democratic transition, democracy is more likely to survive in an economically developed country:

wealthy countries tend to be more democratic not because democracies emerge as a consequence of economic development under dictatorships but because, however they emerge, democracies are much more likely to survive in affluent societies. (Przeworski et al. 2000:137)

The oldest critique of the explanatory power of the modernization approach is Huntington's pioneering work (1965) *Political Development and Political Decay*. Huntington suggests 'that the identification of political development with modernization or with factors usually associated with modernization drastically limits the applicability of the concept in both time and space' (Huntington 1965:389). By bringing time and space into the democratization debate as a way of understanding the process of democratization, not as *tabula rasa* but as a process that cannot be explored independent of time and space, Huntington opened the way for a more sociological and historical explanation of why democratization occurs in some societies and not in others. Because of its emphasis on structure and history this approach is termed structuralism. This approach that 'liberates development from modernization ... can be applied to the analysis of political systems of

any sort' and more crucially 'can be defined in reasonably precise ways which are at least theoretically capable of measurement' (Huntington, 1965:393). More details on the method suggested by Huntington will be provided in Chapter 3.

Contemporary democratization studies and democratizers continue to be influenced by the link between economic development and democratization (see, for example, Leftwich 1996, Diamond 1992). In a survey of studies linking economic development and democratization, Diamond concludes:

it is not economic development per se and certainly not mere economic growth that is the most important developmental factor in promoting democracy. Rather, it is the dense cluster of social changes and improvements, broadly distributed among the population, that are vaguely summarized in the term 'socioeconomic development.' (Diamond 1992: 486)

Two decades of socioeconomic development in Russia and China however have failed to advance democratization processes. Scholars of the structural approach would argue that the modernization approach fails to take into account historic, sociological and cultural factors that play a role in democratization. The structural approach engages history and sociology to explain why democracy evolved in some societies and not in others.

2.3.2. The Structural Approach

While the modernization theory predicts how democracy could evolve according to patterns deriving from already established democracies, the structural approach looks at historical and sociological factors that contribute to democratization (Grugel 2002:51). In a pioneering work on the *Social Origins of Dictatorship and Democracy*, Barrington Moore (1966) explored the evolution of governing systems in the United States, China, Russia, Japan, India, France, Germany and England. In assessing the historic and socio-economic conditions that resulted in democracies in some but not in others, Moore considered the central ingredient to be the role of the bourgeois: 'No bourgeois, no democracy!' (Moore 1966:418). Thus concluding that democracy was a result of the: (i) 'development of a balance to avoid too strong a crown or too independent a landed aristocracy' (ii) 'an appropriate form of commercial agriculture' (iii) a 'weakening of the

landed aristocracy’; (iv) ‘prevention of an aristocratic-bourgeois coalition against the peasants and workers’; and (v) ‘revolutionary break with the past’ (Moore, 1966:430-431). The structural approach combines the dynamics of class and their relationship with the state to explain democratization.

Similarly, Rueschemeyer et al. (1992) suggest that capitalist development produces a strong middle-class which, when cooperating with the working classes, has a better chance to push for democratization. However, Rueschemeyer et al. also stress the importance of the social structure and the relationship between class and state – the key player in maintaining a balance, according to them, is the development of a middle class (1992:40-67).

One of the reasons structuralists have overlooked democratization processes in non-state entities is that they ‘focus on historically constituted structures of power within and between state and society provided a context in which political change occurred’ (Putzel in Potter et al. 2005:260). Structuralism considers the centrality and sovereignty of the state as a prerequisite for democratization (Linz and Stepan 1996:7-14) However, if democratization processes have not been limited to territorial jurisdictions that are universally recognized as ‘states’ ‘there is no reason why these cases should not be the focus of analyses’ (Whitehead 2005:4-5). This case-study attempts to bridge that gap by exploring democratization processes that have taken place yet fall outside of the theoretical paradigm.

2.3.3. The Transition Approach

In contrast to modernization and the structuralist approach, transition studies are less concerned with the actual pre-conditions for democratization and concentrate mainly on the ‘interval between one political regime and another’ (O’Donnell and Schmitter 1986:6). The emphases of the transition approach are concentrated in the three stages that follow the breakdown of an authoritarian regime: liberalization, transition and consolidation (O’Donnell and Schmitter 1986). O’Donnell and Schmitter were largely influenced by Rustow’s seminal critique of both the Modernization and Structuralist approaches in ‘Transition to Democracy: Toward a Dynamic Model’ which explained democratization in

four developmental stages: background condition, preparatory, decision phase and habituation phase (Rustow, 1970:339-342).

What sets the transition approach apart from the rest of the dominant theories, at least as suggested by Rustow, is the *dynamism* with which it approaches democratization. Unlike the modernization approach that ignores the socio-cultural and historical context proposing a one-model fits all approach, Rustow argues that ‘we need not assume that transition to democracy is a world-wide uniform process, that it always involves the same social classes, the same types of political issues, or even the same methods of solution’ (Rustow 1970:345). Further, he suggests that ‘a country is likely to attain democracy not by copying the constitutional laws or parliamentary practices of some previous democracy, but rather by honestly facing up to its particular conflicts and by devising or adapting effective procedures for their accommodation’ (Rustow 1970:354). Although subsequent transition studies have all been largely influenced by Rustow (see, for example, O’Donnell and Schmitter 1986; Linz and Stepan 1996; Schmitter and Guilhot 2000; Colomer 2000), in their pursuit of identifying a standard transition explanation, they have failed to follow Rustow’s suggestion that transition to democracy is not a uniform world-wide process.

The one pre-condition that Rustow stipulates, that of the nation-state, is taken for granted in subsequent transition studies. The role of the state in transition takes centre stage and, as Linz and Stepan argue, ‘without a state there can be no citizenship; without citizenship there can be no democracy’ (Linz and Stepan 1996:28). The nation and the state have thus become a *sine qua non* in transition studies, yet the universality of this assumption has been challenged continuously in the twenty-first century.

2.4. The Dominant Theories and the Changing Nature of Democratization

The challenges of democratization theories, both old and new, are many. A most notable one is the inability of contemporary democratization studies to move beyond the initial theoretical frameworks which are no longer relevant for the following reasons:

First, whereas comparative theory continues to be formulated with primary reference to domestic politics, democratization in the 1980s and 1990s represents an international phenomenon. Second, an extraordinarily wide variety of conjectural conditions, socioeconomic structures, patterns of state-society relationships, transitional paths, and historical traditions has been associated with recent transitions to political democracy, invalidating old theory and complicating efforts at synthesis and generalization. Third, in most regions of the world, political democracy has displaced authoritarianism under conditions of severe economic decline. Given established disciplinary traditions as well as entrenched modes of thinking about political democracy, each of these features of the democratization process has posed a significant challenge to comparative theory. (Remmer 1995:105)

Following Huntington's suggestion that 'to be analytically useful, a concept must be precise and relevant' (1965:389), theoretical approaches on democratization need to be reflective of actual democratization processes and the changing nature of the factors that contribute to regime transition. While Modernization fails to take into account the importance of the historical and cultural context of democratization processes, the transition approach of phases has resulted in misinterpreting authoritarian regimes as emerging or democratizing regimes (Levitsky and Way 2002:52-53). In other words, whenever a regime-change has occurred (especially in the post-Soviet context) the proceeding processes of transformation have been explored as democratizing processes moving towards consolidation (Bunce 1995, Brown 2002). This has not always been the case. Russia's initial regime-change may have been towards greater democratization but the processes thereafter have not been towards consolidation, rather, the transition process has evolved into a hybrid regime with features of both democracy and authoritarianism. In *Searching for Transitologists*, Jordan Gans-Morse concludes that:

it must be recognized that a theory of post-communist transition will not be a theory of democratization. It will be a theory of transition *from* state-socialism to many regime types, including novel forms of authoritarianism, enduring hybrid regimes, unstable forms of poor capitalism and low-quality democracy, and a handful of regimes that successfully develop sustainable liberal democracies. (Gans-Morse 2004:343 italics in the original)

In contrast, structuralists have traditionally considered the centrality and sovereignty of the state as a prerequisite for democratic transition, which is why democratization processes in

non-state entities have been overlooked. For instance Linz and Stepan consider democratization to have consolidated:

when sufficient agreement has been reached about political procedures to produce an elected government, when a government comes to power that is the direct result of a free and popular vote, when this government *de facto* has the authority to generate new policies, and when the executive, legislative and judicial power generated by the new democracy does not have to share power with other bodies *de jure*. (1996:1 italics in the original)

This approach stems from the fact that, in their assessment of the factors and causes that lead to transition, democratization and democratic consolidation, all three dominant theoretical approaches consider domestic factors to have had the central role. The table below identifies the focus, method and issues tackled by the three dominant theoretical approaches on democratization, all of them being domestic or internal (Premfors 2003:5).

Table 2: Dominant approaches in democratization theory (Premfors 2003:5)

	<i>Modernization Approach</i>	<i>Structural Approach</i>	<i>Transition Approach</i>
<i>Key text</i>	Lipset 1959	Moore 1966	Rustow 1970
<i>Explanatory focus</i>	Socioeconomic conditions	Changing Structure of class power	Elite agency in political conflict
<i>Method</i>	Variable-orientated	Case-orientated	Case-orientated
<i>Issues within approach</i>	-Economic versus other variables -Emergence versus survival	-Role of transnational power - Which class?	- Historic versus proximate causes - Role of civil society

2.5. The Subaltern Context

The discourse in democratization studies based on the modernization theory, both past and present, is largely contingent on economic development and democratization as promoted by external factors (Cammack, 1994). External factors that engage in democratic promotion are, and have traditionally been, exclusively Western. An example of a modernizing discourse on democratization is Leftwich's take on the role of the West:

the West should ... support only those dedicated and determined developmental elites which are seriously bent on promoting economic growth, *whether democratic or not*. For by helping them to raise the level of economic development it will help them also to establish or consolidate the real internal conditions for lasting democracy. (Leftwich quoted in Grugel 2002:50 italics in the original)

Democratization debates that rely on modernization theories take a normative approach on the role of the West in the promotion and shaping of democratization. The main problem with this approach is not a conceptual dilemma with the democratic promotion policies or agenda of Western nations, but a procedural one. In *Aiding Democracies Abroad*, Carothers notes that external democratizers:

compare the major sociopolitical institutions of the transitional country with those of their own society, identifying the main discrepancies. They then propose projects to bring the various institutions into line with the model. They focus, in other words, on endpoints rather than process. (Carothers 1992:92)

Correspondingly, democratization scholars engage in a similar discourse whereby studies of democratization in emerging democracies are assessed against Western democracies. Largely ignored in the early studies of democratization and political development in post-communist Europe, the issue of Eurocentrism in comparative politics and especially democratization, has only recently surfaced. The question if democracy as developed in Western Europe and the United States is universally applicable elsewhere and if the non-Western societies will or should reproduce the same features, is still contested (see, for example, Zakaria 1997, Nagle and Mahr 1999, Koelble and Lipuma 2008). In a study on post-communist democratization, Nagle and Mahr (1999:5) have noted that 'East

European scholars have warned that Western European ideals and democratic values are being inappropriately assumed for the post-communist East'. Similarly, post-colonial analyses of ways in which democratization processes are still both studied and undertaken, criticize the nature of the field. Koelble and Lipuman suggest that:

the sociohistorical and economic conditions of governance are different and across the postcolony, its citizens are necessarily developing their own forms and contents to democratic governance. The habits of governance bequeathed by colonialism, coupled with the ways the newly democratized countries are inserted within the globalizing political economy, guarantees that the circumstances of democracy-making are different. Accordingly, they will produce inflected forms of democracy that may bear a certain family resemblance to EuroAmerican versions and yet have their own character too. What this means is that the real measure of a democracy, the true gauge of effective governance, is the extent to which democratic governance meets the critical values and visions of the electorate. We can thus say that Zimbabwe is undemocratic and becoming increasingly so not because it fails to meet EuroAmerican standards, but because it fails miserably to meet the standards of the Zimbabwean citizenry. (Koelble and Lipuma, 2008: 22)

Consequently, the current approach to studying democratization processes in non-Western settings are measured against a Western standard of democracy. Following the various outcomes of democratization processes of the third wave, there has been more effort in analyzing democratization in the historical, cultural, geographical and social context that it occurs. In *Democratization: Theory and Experience*, Laurence Whitehead notes:

(i) If theory is to be examined in light of contemporary experience, it is necessary to work with a moderately 'constructivist' approach to 'democracy'; (ii) put differently, context matters when attempting to pin down the applicability of this term in very wide range of historical, cultural, and social contexts where it is currently being employed. (Whitehead 2002:7)

Similarly, in *Prospects of Democratic Consolidation in East-Central Europe*, Pridham suggests that democratization studies need to look at broader concerns that need to:

- take into account an historical dimension as not merely passive background but as an active component of regime-change;
- embrace the democratization process as a whole from pre-transition liberalization under authoritarian regimes through transition and the consolidation out to regime outcome;

- embrace the multiple transformation (whether dual or triple) that is perhaps the greatest particular challenge; and
- above all, accommodate different levels of this process while focusing on its dynamic qualities, including bottom-up as well as top-down pressures. (Pridham 2001:10)

Further, the new age of globalization has increased the role of external factors in internal political processes, including democratization. State sovereignty has also diminished due to the emergence and rise of super-national bodies such as the EU or WTO (see, for example, Bhagwati 1997, Remmer 1995:105). In addition, the rise of undemocratic China and the establishment of a stable hybrid regime in Russia have all had an effect on the normative dominance that democracy enjoyed in the early years following the collapse of the Soviet Union (see, for example, Levitsky and Way 2002). All of these factors have played a role in the emergence of new approaches of democratization that will be discussed below.

Finally, in an attempt to establish a standardized theory of democratization, a prevailing attitude in democratization studies has failed to engage the multidimensional factors and multilayered actors that are part of any democratization processes. Subsequently democratization studies, especially transition studies, have simplified the analytical framework from which complex processes are explored: ‘Transitology has become a near-orthodoxy as its proponents tell us, the “standard fare” the prevailing “organizing theme”, the “way of posing questions”’ (Cohen 2000:21). Similarly, in *Democratization: Theory and Practice*, Whitehead warns that ‘the global upsurge of democratization has not yet exhausted its capacity to surprise, and that the emerging scholarship remains vulnerable to the further unfolding of its object of study’ (Whitehead 2003:2). The next section explores recent theoretical approaches and empirical studies that reflect contemporary democratization processes and fall outside the dominant paradigms.

2.6. Beyond the Dominant Democratization Theories: Emerging Concepts

2.6.1. The External Factors Context: From Promoters to Enforcers

As mentioned above, most of the dominant democratization theories are concerned with the interaction of internal actors in regime-change and democratization; be it between the

elites, the elites and the working class or the emergence of the middle class and their demand for more political power. In a nutshell, internal actors dominate the debate on democratization. The transnational nature of post-communist democratizations increased the interest in the external factor in democratization. Huntington (1991:85), most notably, engages the relevance of the external actors in exploring democratization processes in the *Third Wave*: ‘Democratization in a country may be influenced, perhaps decisively, by the actions of governments and institutions external to that country’. Similarly, Rustow (1970:348) suggests that ‘foreign influences are almost always present’ in democratization. Yet, both Huntington and Rustow, while acknowledging the role of external factors as influential or central, in their deeper examinations of cases, do not see them as actual participants in the process itself. The external factor is explored from a ‘democratic promotion’ or ‘encouraging democracy’ perspective (see, for example, Pridham 1991, Grabendorff 1992, Whitehead 1991, Schmitter 1996). In explaining the means by which the United States promoted democratization abroad, Huntington identifies three forms:

1. statements by presidents, secretaries of state, and other officials endorsing democratization in general and in particular countries; the annual ratings by the State Department on human rights in other countries; advocacy of democracy by the U.S. Information Agency, Voice of America, Radio Free Europe, and Radio Liberty.
2. economic pressure and sanctions, including congressional limitations on or prohibition of U.S. assistance, trade or investment in fifteen countries; executive suspension of aid in other cases ...
3. diplomatic actions, including promotion of democratization by a new activist breed ‘freedom pusher.’ (1991:93)

All of the above were forms of exerting influencing without direct intervention. The European Community used similar forms of influence during the Europeanization of Central and East Europe through the PHARE programme. Established in 1989 as the Poland and Hungary: Assistance for Reconstructing their Economies (PHARE), the programme became the driving force of conditional democratic promotion in aspiring applicant countries who wanted to join the European Union (Grugel 2002, Demi 2009). In promoting democratization, both the US and the EU, relied on the snowballing effect and the diffusion of democratic values from one country into another which would result in regional sub-waves of democratization.

In *The International Dimensions of Democratization: Europe and the Americas*, Laurence Whitehead groups external influences in three categories. First, contagion: the diffusion of experiences through neutral, i.e. non-coercive, and often unintentional channels from one country to another, which he considers the most common form of external influence in democratization processes. Second, control: the promotion of democracy by one country in another through explicit policies backed by positive or negative sanctions. Third, consent: the process by which international and national actors engage in interactions that lead to expectations on one hand and incentives on the other, and eventually lead to democratization (Whitehead, 2001:4-8). Having said that, Whitehead does not suggest that external actors play the larger role in democratization processes – those who fundamentally drive the democratization process are still the domestic actors (see also, O'Donnell, et al. 1986, Rueschemeyer et al. 1991).

Further studies on the effect of Europeanization on democratization in Eastern and Central European countries result in similar forms of external influence, with the European Union having more contractual leverage in demanding democratization as a condition of membership (see, for example, Youngs 2001, Schmitter 2001, Grugel 2002, Jora 2006, Pridham 2005, Demi 2009). The external factor is not only recognized but is slowly becoming a primary object of study in democratization processes, as indeed Pridham notes:

international factors in democratization are now more clearly recognized – a recognition initially prompted by the historical events of 1989. Indeed, it can be claimed that democratization itself is an international phenomena. Thus, the issue at stake here is not *whether* but rather how far and in what ways international factors influence and drive democratization. (Pridham 2008:54)

Table 2.1 illustrates the typology of external factors in democratic promotion based on the original grouping by Whitehead, with Schmitter's (2001) addition of conditionality as a promotion tool and Grugel's (2002) addition of civil society as an independent promoter of democratization.

Table 2.1: A Typology of Democratic Promotion

<i>Type</i>	<i>Actors</i>	<i>Example</i>
Contagion	Domestic Elites	Spain/Portugal 1974-6; South America 1978-89; East-Central Europe 1989; Southern Africa 1990-4
Control	US; Western Europe	Dominican Republic 1965; Grenada 1983; El-Salvador 1982-9;
Consent	Western states/elites/ Institutions; domestic elites	Spain/Portugal 1974-6; Latin America 1990s; South Africa 1994-; Czech Republic/Hungary/ Poland 1989
Conditionality	Global governance institutions; Western states	Sub-Saharan Africa 1982
Citizenship	Transnational NGOs Environmental indigenous rights campaigns, global civil society	Brazil and Nigeria; international support for EZLN in Mexico

Source: Grugel 2002:122

In short, cases where external factors not only influenced the democratization processes but drove it – were left out of democratization literature for a considerable time. As a result international multilateral administrations such as the United Nations Mission in Kosovo and the United Nations Mission in East Timor and their direct participation in democratization processes therein are still largely unexplored. This study attempts to include external factors as participating or guiding actors in democratization processes (See Table 2.2).

Table: 2.2: Addition to the Typology on Democratic Promotion by External Factors

<i>Type</i>	<i>Actors</i>	<i>Example</i>
Participate/Guide	UN/Multinational Alliances/	Kosovo 1999-; Bosnia 1995-; East Timor Iraq 2003-2005, Haiti 2004; Afghanistan 2002.

The first study that fills the theoretical and empirical gap on the role of international administrations in democratization processes is Oisín Tansey’s *Regime Building: Democratization and International Administration* (2009). Tansey argues that ‘the presence of international administration operations ... suggests that there are different ranges of possible modes of transition ... and that international administrators play a central role in shaping transition politics’ (2009:48). Moreover, he explores ‘how the context of international administration can provide a unique environment for regime transition, in which international authorities assume political positions conventionally held by domestic actors and thus systematically shape the politics of regime change’ (2009:8).

The principal contribution Tansey makes to democratization literature is the introduction of a new theoretical approach in assessing the effect of international administrators in democratization processes. In using a model on the modes of transition to either democracy or dictatorship, developed by Michael McFaul (see Table 2.3), Tansey introduces the international administrators who hold political power conventionally identified with domestic actors (Table 2.4).

Table 2.3: McFaul’s Model of modes of transition involving domestic actors

Balance of Power → and Ideology	Mode →	Regime Type
Democrats in position of authority	Imposed democracy	Stable democracy
Dictators in position of authority	Imposed autocracy	Stable dictatorship
Evenly balanced	Stalemated transition	Unstable liberal democracy or dictatorship

Table 2.4 Tansey’s Model of transition in the context of international administration

Balance of Power → and Ideology	Mode →	Regime Type
Democrats in position of authority	Joint International Domestic Pact	Stable democratic regime
Dictators in position of authority	International Imposition	Fragile democratic regime
Evenly balanced	Joint Pact with Imposition	Fragile democratic regime

Source (Table 2.3 and Table 2.4): Tansey, 2009:47

There are two important assumptions suggested in the model that Tansey uses to draw broader conclusions on democratization in the context of international administration. The most important one is that democratization in the context of international administration will not revert to dictatorship (Table 2.3). The other assumption is that the imposition of democracy by external actors, without the cooperation of domestic actors, can result in a fragile democratic regime (Table 2.4).

The methodological importance is in the identification of mechanisms through which international administrations influence democratization:

The existing literature on democratic transition has already highlighted many ways in which international actors and environments can affect the politics of democratization, but I argue here that the extensive powers of international administrations provide these missions with a greater range of mechanisms through which to influence domestic politics during the transition phase than is available to other forms of international intervention. (Tansey 2009:37)

Exploring the nature of international administrations in Kosovo, East Timor and Bosnia, Tansey identifies the following mechanisms through which international administrators can exert influence over domestic actors in democratization processes:

- *agenda setting powers*, which can enable transitional administration to influence which issues are subject to discussion;

- *veto powers*, which can include the ability to strike down laws that are proposed by domestic actors, and remove domestic officials from their positions of authority or prevent them from gaining positions of power in the first place
- *drafting powers*, where international actors can involve themselves in drafting basic legislation or more significant institutional provisions for the entity in questions
- *imposition of authority*, which proves international administrations with the ability to bypass domestic actors entirely and enforce measures they deem necessary. (Tansey 2009:42)

All of the above mechanisms were used by the United Nations Mission in Kosovo to not only influence the democratization process in Kosovo but frame it and drive it, which is partly where Tansey draws his conclusions from.

While Tansey's work explores the interaction of both domestic and international actors at elite level during regime-change, this study looks at the institutionalization of political institutions established through those same interactions. In a nutshell, Tansey's work has paved the way for further analyses of interactions between domestic and international actors during democratization processes as his work 'represent[s] a set of conditional conclusions that will form part of the foundations upon which further and extended studies can be developed' (Tansey, 2009:53).

Finally, the presence of external actors actively engaged in democratization processes can mean two things: conflict prevention or conflict resolution. In most cases, the presence of an international administration is mandated to provide both in situations where a violent conflict has already taken place (Kosovo, Bosnia, Mozambique, Iraq, Afghanistan, etc). Thus, in addition to external factors the post-conflict context suggests that democratization and political institutionalization in post-conflict settings may be different from those in peaceful transition. Having said that, international actors that engage in democratization and peacekeeping do not always have a universal approach to democracy promotion or unified democratization strategy. Democratization policies of the Coalition Forces in Iraq were different from those in Afghanistan and Kosovo due to the involvement of different actors. This study looks at the democratic promotion strategies as applied by the United Nations.

2.7. Democratization and the UN

The debate on the role of the UN in promoting democratic institutions is not necessarily related to the authority of the UN to promote democracy per se but on the way in which the UN has been engaged in democracy promotion (see, for example, Newman and Schnabel 2002, Newman and Rich 2004, Chesterman 2004, Krasno 2004, Paris 2004). UN international administrators vested with executive, legislative and judicial powers are in charge of promoting democratic institutions while their own structure is in essence undemocratic. They are not elected by the people they govern but consist of civil servants hired by the UN or delegated to the UN by member states. In addition:

everything that international administrators do to reinforce their rule in actuality perpetuates their political weakness. Their legitimacy waning, the state-building agenda comes to be seen as progressively more exogenous, reinforcing the delegitimization process. (Lemay-Hebert, 2009:66)

In *Democracy through Benevolent Autocracy*, exploring UN administrations in Kosovo, Bosnia, Slavonia and East Timor, Chesterman notes that:

The resistance to comparisons between recent transnational administrations and the trusteeship system or military occupation, is suggestive of a broader uncertainty as to the appropriateness of imposing good governance by force of arms. And yet most such operations are properly seen as the extension of a military intervention by outside powers precisely to over-throw malevolent or non-existent governance. Reconciling this tension between the means and the ends of transnational administration is the most delicate political task of any such operation; how this takes place may also have the most lasting effect on the development of political culture in the territory under benevolent autocracy. (Chesterman 2004:108)

Chesterman raises important issues with the United Nations method of imposing rather than promoting democratic institutions, which according to Tansey can result in fragile democracy (Table 1.2 2009:47). UN missions vested with executive and legislative power are essentially undemocratic as they are not elected by the people and domestic actors have no channels of power to challenge their decision-making apparatus (Lemay-Hebert 2009). In an analysis of the UN's Transitional Authority in East Timor (UNTAET), Jarat Chopra, a former UNTAET official himself points out:

The UN's sovereign government in East Timor has mimicked monarchical power. But even if conducted under the banner of peace, humanitarianism and human rights, and with all the accompanying good intentions, the international assumption of domestic rule requires built-in restraint. (Chopra 2000:35)

The lack of a system of checks and balances in the work of the international administration of the UN runs the danger of creating an aversion with the local population, especially if they are not engaged in the political and decision making process early on (see, for example, Chesterman 2004).

Previous experiences of international administration are important to this research as this study seeks to explore the complex environment where state-building and democratization were undertaken by international actors. From establishing legislative grounds for the regulation of courts and public services, to promoting post-conflict reconciliation, and providing basic administrative and security services – all this while trying to build a viable and democratic state-infrastructure together with domestic actors – the international administration needs to be explored in a multi-level and multi-tasking context. To make matters more complicated, UN international administrations are never unitary actors, they are multi-national consortiums put together through both political and professional appointments with different experiences and different problem-solving approaches. Further, the overall democratization processes are undertaken in the post-conflict context, which is essentially different from democratization in non-violent transitions.

2.8. The Post-Conflict Context: Institutionalization before Democratization

Why are post-conflict democratization processes different from democratic transitions that are not accompanied by conflict? For one, political actors are generally former combatants, post-conflict elections and government composition is bound to be fragile with a considerable risk of always slipping back into conflict (Kumar ed. 1998:1-3, Snyder 2000:40-41, Manning 2002:4). Thus engaging former combatants in post-war competitive elections and democratization processes runs the danger of politicizing and legitimizing war-time identities (Marjanovic 2005:2).

In a study of 14 peace-building missions from 1989 to 1999, Roland Paris argues that the post-1990s peacebuilding strategies have been largely driven by the idea that, in the political realm in the immediate post-war period, ‘liberalization means democratization, or the promotion of period and genuine elections, constitutional limitations on the exercise of government power, and respect for basic civil liberties, including freedom of speech, assembly and conscience’ (Paris 2004:5). Promoting institutionalization before democratization, according to Paris, could have better chances for lasting peace in a post-conflict society. Consequently, Paris suggests:

a new peacebuilding strategy called ‘Institutionalization Before Liberalization,’ which begins from the premise that democratization and marketization are inherently tumultuous transformations that have the potential to undermine a fragile peace. The new strategy would seek to minimize the destabilizing effects of liberalization in many ways. First, peace builders should delay democratic and market-oriented reforms until a rudimentary network of domestic institutions, capable of managing the strains of liberalization, have been established. Second, once these institutions are in place, peace builders should manage the democratization and marketization process as a series of incremental and deliberate steps, rather than immediately unleashing political and economic competition ... What is needed in the immediate post-conflict period is not quick elections, democratic ferment or economic ‘shock therapy’ but a more controlled and gradual approach to liberalization, combined with the immediate building of governmental institutions that can manage these political and economic reforms. (Paris 2004:7-8)

Thus, according to Paris, building the state infrastructure is essential for democratization processes to take place as they provide non-violent channels through which divided groups can play out their interests. The return to violence in internationally administered entities is highly unlikely due to the large presence of international security forces combined with civilian administration (see, for example, Tansey 2009). In these instances state-building and democratization are not mutually exclusive and state-building is part of the larger democratization efforts.

The democratization of state institutions in democratization processes is something democratization literature has explored extensively (Cox 2001, Grugel 2002, Chesterman 2004, Jeffrey 2006, Rubin 2006). State-building became the central concern of both scholars and democratizers. The importance of the state derived from its ability to accommodate and channel political demands within the state infrastructure and, through

democratic and transparent decision-making processes, ‘immediate building of governmental institutions that can manage these political and economic reforms’ (Paris 2004:8). The lack of efficient government institutions to act as transformers of new regimes is linked to slow and extended transitions. In a study of state-building in Ukraine, Sarah Whitmore notes:

organs of state lacked the capacity to carry out basic functions of governance and therefore urgently required measures to (re)create, institutionalize and maintain institutions able to perform key state functions such as taking and implementing decisions on behalf of the citizens. (Whitmore 2004:3)

The democratization of the state is a key element of overall democratization, for as noted above, state institutions not only need to be able to provide basic services to citizens but be able to engage in transparent decision-making. The transformation of the state from non-democratic institutional infrastructure to a democratic one, on a broad level, involves:

institutional change (the form of the state), *representative change* (who has influence over policies? and to whom is the state responsible?) and *functional transformation* (what the state does or the range of state responsibilities). (Grugel 2002:69-70 italics in the original)

Central to all these changes is the legislative branch. Because of their representative legitimacy, authority to legislate, define state responsibilities, appoint and oversee the executive as well as the judiciary, parliaments are synonymous with state building and democratization.

2.9. Democratization and Legislatures

The importance of legislatures in new democracies has been studied extensively (see, for example, Loewenberg and Patterson 1979, Liebert 1989, Liebert and Cotta 1990, Mishler and Rose 1993, Ágh et al. 1994, Ágh 1995, Olson and Norton 2001, 2007). Legislatures in emerging democracies are praised as hard-working and multitasking institutions. As new political regimes shape themselves, legislatures are at the centre of this transformation, not only by providing legitimacy for the new regime but acting as arenas for integration, articulation of political differences and ‘parliamentarisation of conflicts’ (Judge 1993:27). Indeed, ‘pervasive institutions’ and ‘central sites’ in democratic transition have become

the defining features of parliaments in young democracies (Liebert 1990, Ágh 1995, Norton and Olson 2001, Whitmore 2004). Legislatures in emerging democracies are tasked with establishing subsequent institutions as legislative grounding for the new regime while performing their representational duties (Whitmore 2004). They are omnipresent as they symbolize the ultimate legitimacy of the government and the governed and take a central role in reproducing democratic consent (Liebert 1990). In short, their role in young democracies is not only relevant but essential. However, the degree to which legislatures have been effective in fostering change, institutionalizing and democratizing, continues to receive ambiguous answers.

The debate on the role of legislatures in democratic transition and consolidation dates back to the democratic transition of the southern European democracies, the frontrunners of the *third wave* of democratization. Comparative studies were carried out on the roles of the Spanish, Greek, Portuguese and Turkish parliaments in the democratization processes that began in the 1970s (Liebert and Cotta 1990). The majority of these studies looked at parliaments as political players in the overall democratic transition and consolidation phase, their relationship with the executive, the constitutional design and the overall political structure of the system. The institutionalization of legislatures in these cases was addressed only modestly. Indeed, proponents of the study of parliaments in democratic consolidation through institutionalization were considered minimalists (DiPalma 1990: 42-43). This separation grew further with the study of the ‘newer’ democracies in Eastern and Central Europe.

2.10. Democratization and Legislative Institutionalization

The early 1990s saw an increase in the study of virtually all Eastern and Central European parliaments, by both Western and local students of parliament. There is now a body of literature on almost all the parliaments of Eastern and Central Europe². The most evident aspect of all of these studies is that there is no overarching approach to the study of new parliaments in democratic transition and consolidation. While some studies are concerned

² Hungary (Ágh 1993, 1994, 1995, Ilonszki 2007), Poland (Simon 1994, Olson et al. 1998, Nalewajo and Wesolowski 2007), Romania, Moldova (Crowther and Roper 1996, Crowther 2007), Bulgaria (Karasimeonov 1996), Croatia (Zakosek 1994), Slovakia (Malova and Sivakova 1996), Ukraine (Bach 1994, Whitmore 2004), the Czech Republic (Reschova 1994, Reschova and Syllova 1994, Kopecky 2001, Linek and Mansfeldova 2007), Slovenia (Zajc 1994, 2007), Estonia (Kask 1996) etc.,.

with the role of parliaments in state-building and democratic transition, others are interested in party development or institutional design. In other words, ‘despite a growing body of research on the democratic legislatures of the region, comparative studies are still rare’ (Chiva 2007:187).

In what has now become a notable comparative study of new parliaments in Eastern and Central Europe, Olson and Norton set out to explore ‘the primary influences in parliament-building in new democracies’ and ‘what determines the effect legislatures have in policy making’ (Olson and Norton 2001:13). They identified three variables to structure their analysis: External Environment, Internal Characteristics and Attributes of Policy. Although, in essence, they were interested in the institutionalization of the new legislatures of Eastern and Central Europe, ‘there was little attempt to utilize the variables identified by Polsby to collect systematic data...or to relate internal organizational characteristics to external variables’ (Judge 2003:510). Although Judge goes on to suggest that this may have been a result of the nascent stage of the parliaments at the time of the study, their return to re-examine these parliaments a decade later, *Post-Communist and Post-Soviet Legislatures: Beyond Transition* 2007, suffers from similar shortcomings. Regardless of the parliaments’ role and level of power in new democracies, Olson and Norton’s study does come to one important conclusion: that of parliaments’ centrality in policymaking and legislative drafting. ‘This is a result of the gigantic tasks of changing the old system and [...] the desire of parliament to keep its primordial role as the major policy maker’ (Olson and Norton 2001:240). The 2007 edition looked at the same legislatures a decade later, partly to test previous predictions and see their evolution in the ‘adjustment phase.’ The second study was mainly concerned with electoral and government systems at the macro level and internal rules, committees and relationships between different actors within the system on the micro level. This later study, too, mainly looks at the power of legislatures’ vis-à-vis the executive, not so much at their institutionalization. The problem with this approach is that it overemphasizes the constitutional powers of legislatures. However,

for a body to institutionalize, it is not necessary for it to be a supreme political body in its system; instead, it is only necessary for it to have reasonable degree of autonomy, to be able to make its own rules, and to establish itself as a relatively permanent and viable part of the whole, not necessarily the master of all. (Hibbings 1988:696)

Hibbings's point relates to an ongoing debate between two different approaches to research on the role of parliaments in democratic transition: one that focuses on legislative strength and the other on legislative institutionalization. In *Stronger Legislatures, Stronger Democracies* Steven Fish proposes a 'new and arguably more fruitful way of thinking about how political institutions influence democratization.' Fish's Parliamentary Power Index (PPI) is based on 32 variables, both internal and external. These variables are used to measure the strength of legislatures in both established and young democracies. He then goes on to compare the findings of the PPI with the corresponding Freedom House scores from the Freedom of the World Survey in order to assess the relationship between the power of a legislature and the level of democratization in a given country. The results are overwhelmingly on the side of parliaments, showing that highly regarded democracies have strong legislatures. Consequently, Fish concludes that 'the presence of a powerful legislature is an unmixed blessing for democratization' (Fish 2006:5).

While the above formula seems effective in assessing both formal and informal power dynamics between legislatures and external actors, it is difficult to say if these findings alone can define the role of parliaments in democratization. Indeed, Chiva writes:

irrespective of its constitutionally mandated powers, a poorly institutionalized legislature is likely to have very little impact on democratic consolidation. Additionally, an emphasis on institutionalization can lead us towards a more persuasive explanation of why democratic consolidation has occurred in cases that scholars typically encounter difficulty in accounting for. (2007:186)

The second approach, as Chiva notes, is focused on finding the role of parliaments in democratic transition and consolidation through the assessment of legislative institutionalization in young democracies as it relates to the influence *of*, *to*, and *from* external determinants. Kopecky (2001) on the other hand employed Sisson's advice that 'any analysis of this process [institutionalization] must address the relationship and the character of the interaction between the relevant institution and its environment as well as the relevance and implications of this interaction to the internal structure of the institution' (Sisson 1973:24). Following this model, Kopecky's assessment of the institutionalization of the Czech and Slovak Parliaments (see chapter 3 for a more detailed account on Kopecky's method) looks simultaneously at the interaction between external determinants

(constitutional structures, electoral systems, executive structures and parties outside parliament) and internal determinants (individual members, parliamentary parties, parliamentary committees and rules of procedure). In exploring both legislatures, he analyzes:

the direction and the degree of institutionalization, the first looks at the form or type that these legislatures have evolved into through internal formal and informal mechanisms whereas the second looks at the evolution of 'cultural attributes' and elite's conformity to parliamentary rules. (Kopecky 2001:207)

The above differences illustrate that research on the role of legislatures in democratic transition and consolidation has evolved along two different avenues, one that measures the role of legislatures in democratization through the institutionalization of parliaments and another that looks at formal and informal factors to determine the power of legislatures in democratization. Kopecky follows the first avenue; Fish, the second. Both are concerned with the role of legislatures in democratization, but through different venues. Kopecky's approach is more comprehensive, as it engages internal and external variables simultaneously as indicators of the level of institutionalization and democratization (Kopecky 2001: 241, Table 7.1). Fish's Parliamentary Power Index is a good indicator of where parliaments are located in the overall constitutional power structure of the political system and the ways in which legislatures utilize these powers 'on movement toward greater democracy' (Fish 2006:7). The fact that constitutional designs favouring parliamentary systems are more likely to become consolidated democracies does not tell us whether this is the result of the power or role of the parliament, unless we study the parliament itself and 'the relationship and the character of the interaction between the relevant institution and its environment as well as the relevance and implications of this interaction to the internal structure of the institution' (Sisson 1973:24). In his conclusion, Kopecky makes the important point that 'institutions cannot properly be understood without the context in which they are crafted and put into work' (Kopecky 2001:240), suggesting that the process of institutional design, the give and take involved in this process, and the factors that shaped it are just as important to parliaments' institutionalization and finding their role in democratization (see Institutional Design in Chapter 2).

If there is one conclusion we can draw about the importance of institutionalization in democratic consolidation, it is that highly institutionalized political institutions in democracies make the process more stable and predictable. O'Donnell (1993) makes the following distinction between institutionalized democracies and new democracies: 'In the last two decades, the breakdown of various kinds of authoritarian systems has led to the emergence of a number of democracies. These *are* democracies: they are political democracies or, more precisely, following the classic formulation of Robert Dahl (see Dahl, 1971), they are polyarchies.' When comparing the newly emerged democracies with the long established ones, he notes 'most of the newly democratized countries are not moving toward a representative, institutionalized democratic regime nor seem likely to do so in the foreseeable future' (O'Donnell 1993:1355-1356 italics in the original).

2.11. Conclusion

As mentioned in the introduction, the purpose of this chapter is to identify key literature in democratization that will guide this research in the following chapters. To be able to utilize the explanatory power of recent approaches in democratization theory, an understanding of how democratization theory evolved is necessary as these approaches still form the core of democratization theory at large. Despite the theoretical incompatibility of democratization theories with recent democratization processes, established theoretical approaches still dominate the field. Although some features of the Modernization, Structural and Transition approaches mentioned in this chapter continue to be relevant in explaining certain aspects of democratization, their applicability to recent democratization processes is limited.

Considerable criticism of transition studies (see e.g., Bunce 1995, Brown 2002, Levitsky and Way 2002, Whitehead 2002, Gans-Morse 2004) has resulted in the broadening of the conceptual framework of democratization theories and has freed it from the constraints of the traditional dominant theories. On the one hand, this is a consequence of the criticism to the transition approach for providing 'standard fares' of democratization, but more so from the apparent gap between democratization theory and practice. While democratization processes have occurred under new and alternative circumstances, theory has lagged

behind in attempting to explore or explain the new factors that have contributed to recent changes in democratization processes.

One of the defining features of the new democratization processes is the dominant role of the external factors in the overall process. If, in the context of democratization in Spain, Portugal, and Greece as well as post-communist democratizations, domestic actors played the central role; in recent democratization processes in Kosovo, Bosnia, Iraq, Haiti, Sierra Leone, and Afghanistan, external actors have played the leading role. In addition to peacekeeping, external actors in all of the aforementioned cases have engaged in reconciliation and democratization in divided societies. This change of trajectory alters the way democratization processes take place and consequently the hypotheses developed from empirical studies of democratization of the second or the third wave are no longer relevant in explaining current processes. Except for Tansey's (2009) study of democratization in the context of international administration, there are virtually no other studies of democratization processes that fall outside the traditional models involving domestic actors as determining variables.

Accordingly, this chapter looked at new theoretical venues and empirical studies to answer the questions of this research that fall outside of the established theoretical frameworks of democratization. In this respect, there are four such issues: (i) the assumption that a pre-requisite for democratization is a unified national-identity, (ii) the level of engagement of external actors in democratization processes, (iii) democratization and the UN, and (iv) the post-conflict context of democratization. In addition, the subaltern section in this chapter underpins the conscious effort to take into account the historical and cultural specifics when analyzing the Kosovo case.

More specifically, from the literature review, this chapter raises the question of the nation and the state. Why is the state crucial to democratization? Is the unified national-identity a pre-requisite for democratization? If this is the case, then how can we account for democratic transition in Kosovo, Bosnia and East Timor? Kosovo lacks a unified national identity and is far from the ideal nation-state model that Rustow had in mind, yet it did manage to engage in democratization processes. These questions are addressed in more detail in chapter 6 and in the conclusion.

Further, how do external actors that not only influence but drive democratization processes affect democratization itself? What are the benefits or consequences of such actions? As described in Table 2.2 in this chapter, this study incorporates participating multinational actors in the established typology of democratic promotion. The following chapter looks at institutionalism and institutionalization.

Chapter 3

Institutionalism

3.1. Introduction

The central focus of this study is the institutionalization of political institutions in the context of international administration. Studying institutions is central to understanding how new political and social spaces are constructed, take shape and develop (Sweet Stone et al. 2001). In addition, ‘institutional theories of democratization examine how institutions can sustain political equilibrium in a dynamic framework’ (Norgaard 2001:17). Kosovo provides an apt setting to engage the topic as the establishment of political institutions there was done ex-novo by international actors. How these institutions matured and what role they played in the overall democratization processes is the central concern of this study.

This chapter looks at theories of institutionalism and institutionalisation as a directional guide for the empirical part of this research. The first part, sections 3.2. through 3.8., look at the origins of institutionalism and the transformation of the theory in what is now known as new institutionalism. In essence, this section tries to explore; (i) what institutions are from various theoretical perspectives; (ii) what constitutes institutionalization and how it can be assessed; and (iii) why institutions and institutionalization matter. More importantly, with regards to this research, this section also looks at legislative institutionalization and the methods of assessing legislative institutionalization which form the roadmap for the methods of this research (see Chapter 1 for more details on the Methodology).

The second part, sections 3.9. and 3.10. look at theories of Institutional Design and Consociationalism. The importance of these two approaches for this research stems from the need to answer questions of how institutions are designed and what impact, if any, does the initial design have on the development of political institutions and political stability. From this point of view, this section looks at the main premises of consociationalism as the leading post-conflict democratization model to understand some of the institutional arrangements made in post-war Kosovo.

3.2. Why Institutionalism?

The study of institutions, how they come into existence, their various organizational forms, and their functions and relationships with individuals, collectives and each other, has occupied a central position in the evolution of political science. With the emergence of behavioural and rational choice theories in the 1950s and 1960s this interest declined, as the new theories *en vogue* placed the individual at the centre of analyses. It was not until the late 1960s that institutionalism reemerged, largely as a critique of behavioral and rational choice theories. New Institutionalism insisted ‘on a more autonomous role for political institutions ... as they are political actors in their own rights’ where ‘preferences and meaning develop ... through a combination of education, indoctrination and experience’ (March and Olsen 1984: 738-739). Institutional theory reemerged as ‘a way of thinking about formal organization structures and the nature of the historically grounded social processes through which these structures develop’ (Dillard et al. 2004:508). Old institutionalism was descriptive in nature and was mainly concerned with the formal and legal arrangements of institutions; more importantly, it was not cumulative in terms of establishing theoretical frameworks that could be applied comparatively (Thelen and Steinmo 1992, Ersson and Lane 1999, Peters 1999, 2005, Lecours 2005). New Institutionalism was set on changing this.

The reaffirmation of institutions came in the form of opposition to the view that institutions were ‘little more than means to aggregate the preferences of the individuals who comprise them as they do possess some reality and some influence over the participants’ (Peters 2005:15). This rational choice perspective on institutionalism does not necessarily ignore institutions entirely but rather considers their role secondary to that of the individual. This is not to say that old or new institutionalism lays claim exclusively to institutions shaping individual behaviour or individual behaviour shaping institutions: ‘institutionalism, old and new, argues that causation can go in both directions,’ however, New Institutionalism argues that institutions are more than just ‘aggregates of preferences of the individuals’ (Peters 2005:15).

March and Olsen, who were critical in ‘bringing back’ institutionalism, argued that ‘institutions seem to be neither neutral reflections of exogenous environmental forces nor neutral arenas for the performance of individuals driven by exogenous preferences and

expectations.’ By this they were suggesting that a new institutional theory should engage methods of studying the various forms of order beyond the conventional order of laws, morals and rules, to add ‘two other kinds of order: order imposed by reason and the order imposed by competition and coercion’ (March and Olsen 1984: 742-743). By suggesting this, they added new perspectives to the study of institutions and a more comprehensive understanding of the meaning of institutions themselves:

‘The new institutionalism’ offers a perspective on how political life is organized, functions and changes in contemporary democracies. The term includes a set of theoretical ideas, assumptions and hypotheses concerning the relations among institutional characteristics, political agency, performance, and institutional change, and the wider social context of politics. In contrast with an older institutionalism that used formal-legal rules as proxies for political action, the new institutionalism is behavioral. Theoretical ideas are required to be consistent with empirical observations. The institutional approach supplements and competes with two other interpretations of democratic politics and government. First, a rational actor perspective which sees political life as organized by exchange among calculating, self-interested actors maximizing their expected utility. Second, a society-centered perspective that sees political institutions and behavior as arising from societal forces, rather than society being governed by politics. One version gives primacy to macro economic, technological, and social change. Another interprets politics as organized by shared world-views in a community of culture, history and fate. (Olsen 2007:2)

The above elaboration is based on March and Olsen’s pioneering work (1984) ‘The New Institutionalism: Organizational Factors in Political Life.’ Although March and Olsen considered new institutionalism a singular approach, they did not suggest it was a unified theory (1984:747). Thus, new institutionalism is not ‘a unified body of thought. Instead, at least three different analytical approaches, each of which calls itself a ‘new institutionalism’, have appeared over the past fifteen years ... historical institutionalism, rational choice institutionalism, and sociological institutionalism’ (Hall and Taylor 1996:936). The three schools of thought in recent years have expanded into ‘several ‘branches’ or ‘streams’ which developed in relative isolation to each other’ (Lecours 2005:16). Guy Peters for instance in (1999) *Institutional Theory in Political Science: The ‘New Institutionalism’* identifies seven such branches: historical, normative, rational choice, sociological, empirical, interest representation and international. In addition to Peters’ seven branches of the new institutionalism, recently, there has been an additional

approach termed ‘constructivist institutionalism’ (Hay in Rhodes et al. 2006:56) or ‘discursive institutionalism’ (Schmidt 2008).

The diversity of approaches in new institutionalism has prompted ‘theoretical inconsistencies’ and empirical problems have stagnated efforts to ‘utilize institutionalism as an organizing theory for political science’ (Peters 2008:1-2). Is there then, as Peters (1999) asks, one new institutionalism or are there many? In essence all the various approaches stemming out of new institutionalism ‘see institutions as the single most important variable in explaining politics’ (Lecours 2005:18). While differences in their theoretical assumptions, methodologies and perceptions of institutions and institutional change continue to vary, they have all proved pertinent in explaining politics from an institutional perspective – be it, historical, normative, constructivist or empirical. The following section discusses the four dominant approaches of new institutionalism: rational choice, historical, normative and empirical institutionalism.

3.3. The New Institutionalism Approaches

Essentially, new institutionalism raises three questions: (i) ‘What are the mechanisms through which institutions shape actions?’ (ii) ‘What is the extent of the weight of institutions on agents?’ and (iii) ‘What is the depth of institutional influence on political processes, or put in other words, is the weight of institutions felt only on strategies or also in preferences’ (Lecours 2005:9). What distinguishes the various approaches in new institutionalism is the way they approach these questions and the centrality of institutions vis-à-vis actors.

Rational choice institutionalism takes the view that ‘institutions are arrangements of rules and incentives, and the members of the institutions behave in response to those basic components of institutional structure’; in addition ‘individuals who interact within the institution have their own well-ordered sets of preferences that remain largely unchanged by any institutional involvement they may have’ (Peters 2008:3). In essence, rational choice institutionalism employs the behavioural approach where actors not only have set preferences but ‘behave entirely instrumentally so as to maximize the attainment of these preferences’ (Hall and Taylor 1996:944-945). In other words, institutions may shape the

ways and means in which preferences can be maximized but cannot change the actual preferences (Ostrom 1991). In this context, rational choice institutionalism assumes that actors within institutions will act strategically to maximize their interest, however their strategies are not shaped by preferences alone but by the strategies used by others in that same institution. This results in cooperation with the intention to maximize interests, which is how rational choice institutionalism explains the origins of institutions.

Historical institutionalism on the other hand attempts to explain political transformations through an historical overview of institutional change and development. In essence, historical institutionalism assumes that:

it is more enlightening to study human political interactions: (a) in the context of rule structures that are themselves human creations; and (b) sequentially, as life is lived, rather than to take a snapshot of those interactions at one point in time, and in isolation from the rule structures (institutions) in which they occur. (Sanders 2008:39)

Thus, the primary difference from all other approaches is in the historical understanding of institutions: why, how and who got them where they are? As well as how that in turn shapes their contemporary nature. Consequently, historical institutionalism assumes that contemporary choices are dependent on previous choices i.e. ‘policy and structural choices made during the formative period of the institution will have a persistent influence over its behavior for the remainder of its existence’ (Peters 2008:3).

The historical approach has become prominent in democratization studies as most scholars have found it appropriate in exploring post-communist institutional development given that its core assumptions are geared towards answering how past experiences will characterize the nature of the new institutions. As indeed Elster notes (Elster et al. 1998:60) ‘the past can shape values, beliefs, habits, and frames ... past regime choices can serve as a constraint on political actors’ behavior’ and more importantly ‘past regimes may serve as models or focal points in the search for new economic and political institutions.’ Barrington Moore’s study (1966) on the origins of dictatorship and democracy (explained in more detail in Chapter 2) is one of the finest examples of historical-interpretive institutionalism. Moore looks at political struggle through both formal and informal institutions over time to interpret the origins of democracy and dictatorship. Because of

the emphasis on structure, both the institutionalist approach and the democratization approach are referred to as structuralist approaches. More importantly, in regard to this study, historical institutionalism has proved to be an appropriate analytical framework in exploring political institutions in democratization processes, especially parliaments. This is because the historical approach 'sees institutions central to analyses, bringing in multiple variables, features that seem appropriate for the study of parliamentary institutions during regime transition' (Whitmore 2004:12).

While historical institutionalism provides an appropriate avenue for the explanation of the historical evolution of a given institution, it lacks explanatory powers in approaching institutional change or institutionalization. The main theoretical challenge in explaining institutional change comes from the fact that:

The entire analytical framework appears premised upon the enduring effects of institutional and policy choices made at the initiation of a structure. Thus, the approach appears much better suited to explain the persistence of patterns than to explain how those patterns might change. (Peters 1999:68)

While on the face of it, this seems to pose a challenge in assessing change in established or institutionalized structures, Peters' argument may not be entirely valid. Historical institutionalism provides an explanation of the origins of established or persisting patterns in a given institution. At the same time however these original choices will inevitably influence any change that may occur at a later stage. This is not to say that historical institutionalism assumes that all changes will be linked to the original choices but rather all changes will have a chronological pattern that has evolved as a consequence of the original choices. In essence, historical institutionalism does look beyond the 'persistence of patterns' as it looks how established patterns influence and shape new ones.

Table 3: Theoretical Approaches and Assumptions

<i>Theoretical Approach</i>	<i>Assumptions</i>
<i>Rational Choice Institutionalism</i>	Institutions are both rules and incentives where members have set preferences (Hall and Taylor 2005, Peters 1999, 2005);
<i>Historical Institutionalism</i>	‘Path Dependency’ Choices are limited by choices made during the formative stage of institutions (Rose 1991, Steinmo et al. 1992, Peters 2008)
<i>Normative Institutionalism</i>	‘Logic of Appropriateness’ Members choices are made based on acquired institutional norms (March and Olsen 1984, Hall and Taylor 1996, March and Olsen in Rhodes et al. 2006)
<i>Empirical Institutionalism</i>	‘individual behavior will change in response to the assortment of opportunities and constraints presented by the structure’ (Peters 2008:5).

The *Normative* institutionalist approach is at the heart of the new institutionalism developed by March and Olsen (1984, 1989) and follows the ‘logic of appropriateness’ whereby:

action is often based more on discovering the normatively appropriate behavior than on calculating the return expected from alternative choices. As a result, political behavior, like other behavior, can be described in terms of duties, obligations, roles, and rules. (1984:744)

Following this assumption, the normative approach suggests that it is fundamentally norms and culture that influence the outcome of institutions, not a rational approach of maximized interests. Similarly, actors’ involvement with institutions and their role within them is moulded by institutional norms. This is not to say that actors are not rational or do not act in accordance and towards their goal, it just means that strategies of attaining those goals are shaped by institutional norms (Hall and Taylor 1996:949). Thus, in contrast to

the rational choice approach, the normative approach assumes that aside from shaping the strategies, institutions can shape preferences and thereby ‘define the ends and shape the means by which interests are determined and pursued’ (Scott 1987:508).

The importance of normative institutionalism in exploring institutions in democratization processes has to do with the assumption that institutions become embedded in their norms at the same time as being the carrier or disseminator of those norms. The most challenging aspect of democratization processes is the process of having institutions acquire and disseminate democratic norms:

It is through membership of an institution defined by certain codes of conduct (logic of appropriateness) that the individual acquires civic identity. This in turn has implications for strategies of democratization. When a community approach is applied based on the formation of individual preferences, the problem of democratizing institutions becomes one of changing individual preferences and values (political culture). When normative institutionalism is applied, the problem becomes group (or institutional) identities hostile to democracy and democratic values, for example allegiances to religious, class, or national identities. In this version, the solution is not to change individual values, but to change instead individual identities associated with ruled-based actions that are incompatible with democracy and democratization Hence, an institution is both norms and actions that reinforce each other in a dialectical and self-reinforcing relationship. (Norgaard 2001:21)

Normative institutionalism then provides an angle from which the acquisition of democratic norms by institutions in emerging democracies can be explored as well as their reinforcement and dissemination. Having said that, weak institutions can neither acquire nor disseminate democratic norms, to be able to do this, they have to be institutionalized i.e. ‘a process by which organizations and procedures acquire value’ (Huntington 1965:394). Indeed, a great deal of the institutionalization is the process of acquiring as well as developing norms and rules. It is in this respect that normative institutionalism is necessary in explaining not only how institutions acquire norms but why they acquire some and not others – a question critical to understanding the institutional design and the subsequent institutionalization. This does not explain though, where do norms originate from? Do they evolve as part of routine interaction between actors? In this context normative institutionalism lacks an explanatory power on the origins of institutions. Peters (1999:32) suggests that in normative institutionalism, the origins of norms as well

as their change are a result of two processes: ‘First, there must be some conscious decision to create an organization or institution for a specific purpose. The second stage appears to be then to fashion the institution over time, and to imbue it with certain values.’ The first part of the process – i.e. the explanation of the origins of norms through the ‘conscious decision’ to create an institution – is closely related to concepts of institutional design (see sections 3.9 and 3.10. of this chapter). The second part of the process is closely related to Huntington’s (1965) explanation of institutionalization through the acquisition of norms and values.

Empirical institutionalism in its theoretical form is similar to the rational choice approach in that while it assumes that individual preferences will not be changed with involvement in an institution, ‘individual behavior will change in response to the assortment of opportunities and constraints presented by the structure’ (Peters 2008:5) or ‘the political system assimilates new social forces and new personnel without sacrificing its institutional integrity’ (Huntington 1965:403). Having said that, unlike rational choice and all of the approaches above, empirical institutionalism does provide ‘very clear ideas about the empirical indicators that can be used to measure its concepts’ (Peters 2005:94). These ideas on empirical indicators are closely associated with Samuel Huntington’s pioneering work (1965) ‘Political Development and Political Decay’ whose primary argument was ‘to distinguish political development from modernization and to identify political development with the institutionalization of political organizations and procedures’ (1965:386). This argument was revolutionary in that it suggested that it is not modernization, be it economic, political or cultural that matters in political development and political stability, but rather the institutionalization of political institutions. Drawing on examples of failed modernization approaches, Huntington argued that, while modernization has transformed developing countries, they have not developed into lasting democratic regimes. Most of the emerging democracies, following a period of modernization, reverted to dictatorship or authoritarian regimes. This, according to Huntington, was the result of weak political institutions (1965:392). The following section looks at institutionalization in more detail, both as a conceptual framework and a methodological approach for this research.

3.4. Institutionalization

How institutions emerge, develop and even disintegrate, a process known as institutionalization, has become synonymous with the assessment of change and development in political science. Institutionalization means ‘that institutions must *become* institutions: being an institution is a variable not a constant, and not all are as fully institutionalized as others’ (Peters 2008:5, 2008:9 italics in the original). What does it mean to *become* an institution or institutionalize has various interpretations in various studies ranging from formal and bureaucratic institutionalization to value infusion and autonomy (see, for example, Selznick 1957, Eisenstadt 1964, Huntington 1965, Wellhofer 1972, Levitsky 1998, Tsebelis 1991, Peters 1999, 2005, 2008). One way of understanding when institutions become institutionalized is when ‘organizations and procedures acquire value and stability’ (Huntington 1965:394) or institutions are ‘infused with value beyond the technical requirement of the task at hand’ (Selznick, 1957: 17). In other words, once an institution has circumscribed itself in its own values, has acquired a certain independence from external influence and routinely preserves its values and practices. A good example, used by Peters (2008:9), is the contrast between the civil service system in established western democracies and in emerging democracies. In the first instance, the civil service system is highly institutionalized and less prone to political influences as it is bounded in its own values and has thus acquired operational autonomy. In contrast, civil service systems in new democracies are weak in that they are continuously prone to external influence as they lack both values and autonomy. An important point that Peters raises is to also address ‘de-institutionalization’ which is to say that, although the US civil service system was highly institutionalized by the time President G. W. Bush took office, his attempts to influence civil service employment practices on political grounds started a process of de-institutionalization of the US civil service (Peters 2003:199-200, 2008:9).

Thus institutionalization is the process of change that can go in both directions towards greater institutionalization or towards de-institutionalization; however its most significant feature is change. Indeed, Eisenstadt argued that ‘institutionalization of any social system – be it political, economic or a system of social stratification or of any collectivity or role – creates in its wake the possibilities for change.’ In other words, change, especially within the social sciences, is best explored through the process of institutionalization and ‘change in any system ... to a large degree is set by the very process of institutionalization.’

Accordingly, he went on to define the process of institutionalization as the ‘organization of a societally prescribed system of differentiated behavior oriented to the solution of certain problems inherent in a major area or social life’ (Eisenstadt 1964: 235-236).

Huntington argued, in the same vein, that ‘political development is best defined as the institutionalization of political organizations and procedures’ and further pointed out that ‘the strength of political organizations and procedures varies with their ... level of institutionalization’ (Huntington 1965:393-394). Both Eisenstadt and Huntington contributed to the utilization of institutionalism in political inquiry, Eisenstadt by using institutionalism as a vehicle in merging structural analyses and analyses of change, and Huntington by analyzing institutionalization independent of modernization. The latter is important, as there had been a tendency to merge institutionalization and modernization, an approach that Huntington believed was not value-neutral. As a matter of fact, as mentioned above, Huntington’s main point was to not only distinguish between modernization and institutionalization but to suggest that institutionalization, not modernization, was a better indicator of political stability.

Another contribution that Huntington made was the idea that highly institutionalized institutions are more predictable and therefore less prone to conflict. While Huntington suggested that highly institutionalized institutions were more likely to restrain conflict, recent studies have considered the process of institutionalization as a transformative process whereby the construction and evolution of institutions are undertaken with the conscious effort to withstand and avoid future conflict:

Institutionalization as a way of *ameliorative conflict transformation* – that is, not conflict regulation and problem solving related to single cases but a path to improved general capacity to cope with conflict. This capacity includes a common understanding of conflict, common ideas of conflict regulation along with practical procedures and trained willingness to compromise. (Siedschlag 2001:5)

Hence, aside from its analytical role, institutionalization has become synonymous with stability, predictability and democratic consolidation. The higher the level of institutionalization the more politically important, strong and stable an institution is — or, as Polsby argued, ‘for a political system to be viable, for it to succeed in performing tasks of authoritative resource allocation, problem solving, conflict settlement ... on behalf of a

population of any substantial size, it must be institutionalized' (Polsby 1968:144). Richard Sisson further developed this concept by adding that institutionalization is also 'the creation and persistence of valued rules, procedures and patterns of behavior that enable the successful accommodation of new configurations of political claimants and/or demands within a given organization whether by a party, legislature or a state' (Sisson 1973:19). Here we see the first correlation between the processes of institutionalization and democratization, as both aim at creating channels of political participation through prescribed practices and routines agreed upon by all; or to quote Linz and Stepan, where 'democracy is the only game in town' (1996:5). Hence, institutionalization is key for this to occur. In fact, Di Palma argues that democratic consolidation precedes institutionalization, implying that besides their identical aims, they are dependent on each other (Di Palma 1990:38-39). Having said that, 'there can be different types of institutionalization, not necessarily at odds with minimal behavioral definition of consolidation of democracy' (Kopecky 2001:11). In other words, institutionalization and democratization are compatible so long as the political system in which institutionalization takes place is an established or an aspiring democracy, both normatively and literally.

In 'Political Institutions and the Democratization of Post-Communist Eastern Europe,' Svetlozar Andreev notes that 'one of the principal motives of studying political institutions in a contemporary context is to determine to what extent they influence the process of consolidation of democracy' (2008:38). Consequently, studying political institutions and their process of institutionalization during democratization processes may give us a better understanding of their role in consolidating democratic regimes. The contemporary question then on institutionalism and institutionalization is no longer if they matter, 'rather, the aim of contemporary institutionalism is to guide inquiry into which of many more-or-less stable features of collective choice settings are essential to understanding collective choice behavior and outcomes' (Diermeier and Krehbiel 2003:124). If we then know that the characteristics of a highly institutionalized political institution are value and stability (Huntington 1965, Sisson 1973, Levitsky 1998, Lindberg 2007), how do we assess the process of institutionalization of a political institution? The following section explores the various empirical indicators used to assess institutionalization.

3.5. Assessing Institutionalization

It is safe to assume that assessing institutionalization, or the level of institutionalization of a given political institution, will give us additional indicators about the state of democracy and democratization (Linz and Stepan 1996). Or, to use Huntington's proposition, who was the first to suggest an actual method of assessment, 'only by measuring institutionalization will we be able to buttress or disapprove hypotheses about the relations between social, economic, and demographic changes on the one hand, and variations in political structure, on the other' (1965:405).

While there is very little agreement on the measures and method through which institutionalization can be assessed, most of the debate is essentially conceptual as all of the ambiguity relates to the interpretation and adjustment of the four indicators forwarded by Huntington: 'adaptability, complexity, autonomy, and coherence of its organizations and procedures,' (1965:394). Although there have been numerous studies based on Huntington's conceptualization of institutionalization, the 'comparative potential of the concept of institutionalization has been limited by a failure to use common criteria and measures of institutionalization' (Judge, 2003:118). The following section explores the initial conceptualization of the measures by Huntington and the subsequent adjustments and critiques.

The first measure, *adaptability*, can be assessed by three main indicators: (i) chronological: the length of the existence of a given institution, (ii) generational age: the peaceful transition of leadership, and (iii) functionality: the institution's ability to fulfill its prescribed functions (Huntington 1965: 394). In contrast to contemporary studies on political development and democratization in emerging democracies, Huntington recognizes the process and significance of age. Unlike democratization studies, institutionalization makes no assumptions that institutionalization can be achieved in a short time span. As Di Palma notes 'Institutionalization is, almost by definition, a process that takes its time and cannot be cut short – irrespective of how other aspects of democratization process are going' (1990:38). Thus, the idea that democratization in the Western Balkans and Eastern Europe is considered prolonged by some democratization scholars (see, for example, Potter ed. 1997, Pridham 2008, Alexander 2008) suggests an accelerated understanding of processes that took centuries to evolve in the established

western liberal democracies (for a more detailed account on the assessment of democratization see the *subaltern factors* section in Chapter 2). The other two indicators, that of peaceful transfer of leadership and the ability for an institution to fulfil its functions indicate that an institution has not only become efficient and ‘does what it is meant to do’ but that it has acquired considerable stability where the transition from one leadership to the next is not accompanied by disorder. In addition, highly institutionalized political institutions are characterized by their *complex structures*. A complex structure within an institution is the equivalent of checks and balances in a democracy. By developing internal sub-structures and division of labour, institutions acquire stability and make themselves less prone to corruption or abuse of power (Huntington 1965:399).

Another indicator of institutionalization is the degree of *autonomy* an institution achieves vis-à-vis external ‘social groupings and methods of behavior’ (Huntington 1965:401). How is autonomy manifested in an institution? And more importantly, what are the indicators that suggest an institution is autonomous? While Huntington suggests that a good indicator is the ability of institutions to assimilate new social forces without having to compromise its autonomy or institutional integrity (1965:402-403), this is still difficult to assess, especially in new democracies. Acquiring institutional autonomy in new democracies poses a challenge in that institutions are being moulded along with new political forces. A better indicator of autonomy in new institutions would be the respect of institutional norms that all members have agreed to, regardless of external pressure or interests.

The fourth indicator, *coherence*, which in essence is group unity, closely relates to autonomy. Huntington suggests that autonomy can protect group unity from external influences, which can also result in enforcing group unity. In contrast to autonomy, coherence is more easily measured as it can be assessed from different aspects, such as ‘ratio of contested successions ... incidents of overt alienation and dissent within the organization, and, conceivably, by opinion surveys of the loyalties and preferences of organization members’ (1965:405).

While Huntington indicates the measures for institutionalization, he fails to explain what makes members participate and support this process and what are the external determinants in this process as institutions do not exist in a vacuum. More importantly,

Huntington does not identify a chronological order in which these processes evolve: do they all happen at the same time or some precede others? The importance of the chronology of the process is essentially tied to the establishment of an institution i.e. when is an institution comes to being and distinguishes itself from other institutions? Judge (2003, 2008) argues that boundedness is the most important indicator and precedes all other indicators as only when an institution is bounded can the other processes of internal development start to take place. In this regard, this study considers boundedness as the most noteworthy aspect of institutionalization, as in the context of this study, identifying the moment in which an institution has become bounded will be able to guide the research into the subsequent institutionalization processes.

3.6. Legislative Institutionalization

The development of legislative studies owes much to, or is intertwined with institutionalization. As noted by Peters ‘the concept has been influential in the development of legislative studies’ (2005:94). The first study of a legislature from an institutional perspective based on Huntington’s theory was that of the US House of Representatives carried out by Nelson Polsby (1968). Polsby’s study was a pioneering effort in that it established a number of general criteria for the empirical assessment of the institutionalization of legislatures. He assessed the level of institutionalization of the US House of Representatives by the levels of its differentiation, complexity and universalistic decision-making processes.

Before looking at the method Polsby developed to assess the institutionalization of the US Congress based on Huntington’s theory, a few issues related to definitions and measurement need to be addressed. The first issue relates to Polsby’s adaption of only three of the measures identified by Huntington. Namely, Huntington’s theory suggested four institutionalization indicators i.e. adaptability, complexity, autonomy and coherence, whereas Polsby used only three of these indicators. One possible explanation for this could be the fact that he believed adaptability was not necessary to assess given that the generational, chronological and functional aspects of the U.S. House of Representatives could be assessed through the process of differentiation. Indeed, although not explicitly acknowledged, the adaptability of the U.S. House of Representatives as defined by

Huntington is present or merged with differentiation. For instance, when looking at both the recruitment of leaders (1968:149) and the emergence of specialized careers (1968:150), Polsby's analysis includes the generational, chronological and functional aspects of differentiation. Moreover Huntington's explanation of adaptability and autonomy are very similar as both indicate an acquisition of autonomy through separation from the environment.

In assessing its *differentiation* or *boundedness*³, the process by which the legislature differentiates itself from the external environment and becomes an independent institution, Polsby assessed this process through membership. He suggested that as membership becomes increasingly selective and leadership is generally elected from within institutional structures, i.e. the turnover of membership in Congress can give indicators of the differentiation of the House. He measured the increase of continuity and longevity of members' service in the House over time as an indicator of institutionalization, to find that Congress had indeed institutionalized since its establishment. The turnover of membership had decreased over time, meaning that members were making a 'profession' of their service in Congress. While in the early years of Congress leadership was elected from both within and outside institutional membership, it was now exclusively chosen from within the institution based on seniority. Thus, from the perspective of differentiation, the US House of Representatives had institutionalized, or had become a more significant political institution, over time.

Assessing the boundedness of an established legislature such as Congress and an emerging one presents a problem. Polsby had the priority of observing what had caused the differentiation of Congress from an end point of view. Assessing differentiation in a legislature where the process is still ongoing requires additional indicators. These indicators would suggest if an emerging institution, that has not yet fully institutionalized, is becoming an increasingly independent institution and 'an indispensable social entity with a unique way of conducting business and a life of its own' (Ragsdale and Theis 1997:1283).

³ Differentiation and Boundedness will be used interchangeably.

The financial differentiation is also crucial in understanding boundedness. While constitutionally most legislatures in a parliamentary governing system are in charge of the management of public finances, which includes their own budget, informally this authority can be usurped by external actors, especially the executive. Consequently, assessing the formal as well as informal financial differentiation of the legislature as well as the ability to make independent financial decisions can be another indicator of differentiation.

Another essential component in exploring boundedness is the relationship between members of the legislature and their collective observation of the institutional norms. Adherence of institutional norms means institutional loyalty. Thus, the level to which these norms are being observed by members, especially when pressed to behave otherwise by external actors, indicate the level of boundedness the institution has achieved. Do members consider that their principal loyalty lies with the legislature, their political party or their constituents? In this context, how can boundedness be assessed in constitutional settings where the executive is derived from the parliament?

In terms of its *complexity*, Polsby looked at the evolution of the US Congress from ad-hoc operating procedures towards more complex rules and regulations that reflected the internal working nature of the legislature. He looked at the specialization of its committees, party discipline and the availability of resources, in both financial and administrative terms. He suggested that:

the growth of internal complexity can be shown in three ways: in the growth in the autonomy and importance of committees, in the growth of specialized agencies of party leadership, and in the general increase in the provision of various emoluments and auxiliary aids to members in the form of office space, salaries, allowances, staff aid, and committee staffs.
(Polsby 1968:153)

Polsby found that while the number of committees had decreased over time, the nature of committees had become more specialized. Party discipline and conformity had also increased, along with expenditures and support staff. It is difficult to say if the increase of resources was the direct consequence of the internal growth of the House in complexity, i.e. institutionalization, or the fact that Congress's workload had increased over time. Polsby himself acknowledged that this was a 'low indicator' but was 'nevertheless pointing in the expected direction,' meaning that Congress had grown more efficient as an

institution. An important factor that Polsby did not give any attention to, beyond simple acknowledgment, was to the analysis of external determinants. Polsby acknowledged that internal development and complexity of Congress was a result of 'increased business.' He did not however go on to analyze the relationship between internal and external factors or how external determinants specifically shapes internal complexity and what effect this had on the overall differentiation of Congress from other governing institutions.

The assessment of internal complexity has also largely to do with professionalization and specialization. Squire (1992:1028) notes that:

Legislatures deemed professional are those which meet in unlimited sessions, pay their members well and provide superior staff resources and facilities. Essentially, such a body offers potential and current members incentives sufficient to consider service as a career.

While the professionalization of the secretariat, services and salaries is one indicator of institutionalization it does not say much about the internal development of the institution in terms of the evolution of the secretariat or rules of procedure and changes on the overall political spectrum that affect, or could affect, the internal development of the legislature. How was the secretariat established and who established it? Has it changed (and how) from its initial design? Has the support staff increased or decreased? Has the number of committees increased? Have they become more specialized? Who accounts for these changes? How have external factors influenced these changes? Which external factors?

Finally, his assessment of the evolution of *universalistic and automated decision making* in Congress was based on the rules of seniority. Violations of the norms of seniority in Congress were frequent in the initial stages of its development, especially since the Speaker could appoint a chairman at his own discretion; this was no longer the practice as norms of seniority, although still informal, had become more automated. Overall, Polsby concluded, 'one of the main long-run changes in the US House of Representatives has been toward greater institutionalization' (Polsby 1968:160-164).

Two important conclusions from Polsby's study can be applied to institutionalization in general: they are concerned with why institutionalization happens and what its consequences are. Drawing on Durkheim's theory on social development, density and

growth, Polsby concludes that an increase in Congress's workload triggered higher levels of institutionalization. Having said that, he did not elaborate further on what factors may have influenced the increase of workload or other actors involved in the process. As to its consequences, Polsby maintained that higher levels of institutionalization meant in effect that Congress had become more significant, more efficient and decentralized:

The House of Representatives has become more institutionalized over time' means then, that over the life span of this institution, it has become predictably more bounded, more complex, and more universalistic and automatic in its internal decision making. (Polsby 1968:145)

Polsby suggested that institutionalization is a process without an end result. In other words, institutionalization is a process theory where levels of institutionalization can be measured by criteria that indicate greater autonomy, internal complexity and coherence not vis-à-vis an ideal prototype but against the context in which institutionalization occurs. Although Polsby's study has been essential in providing avenues and tools for empirical research in legislative institutionalization, it stops short of explaining, for instance, how a higher degree of institutionalization affects relations between the legislative and the executive branches, or what is the overall role of legislatures in the development of political regimes. More importantly, as mentioned above, Polsby gives little attention to 'external determinants' over internal institutionalization (Cooper and Brady 1981: 997-998, Judge 2003). One reason for this may be that he was only concerned with internal changes within Congress and less concerned with change as a consequence of external factors; the latter would have distanced him greatly from Congress, as it would have required him to look at the institutionalization of the US presidency and of its political parties.

3.7. Polsby's Method and its Applicability

A number of studies based on Polsby's method have been undertaken to assess the level of institutionalization elsewhere, taking into account the limits that Polsby's model may have in legislatures operating under different constitutions or existing in different political settings. Polsby himself delineated the difference between arena legislatures and transformative legislatures. The British House of Commons is an example of an arena

legislature, where the role of legislators involves facilitating ‘debate,’ whereas the US House of Representatives hews closer to the transformative model, where the role of the legislators is concentrated on transforming policy into laws. When Hibbing applied Polsby’s model to assessing the British House of Commons, he took this into account. In addition, he pointed out that:

the important point is that measures of institutionalization must be selected carefully and tailored to the distinctive features of the specific legislature while remaining consistent with the broad themes of institutionalization. (Hibbing 1985:695)

All considerations taken into account, Hibbing thought that Polsby’s model lacked universality. He concluded that the British House of Commons ‘is not very institutionalized,’ although the evidence certainly seems to point in the opposite direction. This conclusion led Hibbing to the realization that while Polsby’s approach can provide certain measures for assessment, it cannot be applied fully. This is in part because it was developed specifically for the US House of Representatives, a legislature too unique to be useful in guiding comparative legislative studies. Polsby made this clear from the point that he reduced Huntington’s four indicators of institutionalization into three, stating: ‘For the purpose of this study, let us say that an institutionalized organization has three major characteristics’ (Polsby 1968:145). The first point is that Polsby did not suggest a new theoretical framework on institutionalization but rather borrowed only elements of what Huntington had built on. Consequently, any subsequent studies based on Polsby’s study will be limited to his choice of indicators which he believed to be more suited in analyzing the U.S. House of Representatives but that may otherwise not be suitable to explore legislative institutionalization in different settings.

Thus, Hibbing goes on to conclude that ‘legislative bodies institutionalize in different ways and at different rates’ (Hibbing 1985:707). On the face of it, Hibbing’s conclusion seems discouraging for those interested in the comparative analysis of legislatures from an institutionalization perspective; however, his model was not far from the truth. Despite his conscious effort to custom-tailor Polsby’s method to the House of Commons, Hibbing actually followed Polsby’s model too closely and with very few adjustments.

An interesting point that Hibbing does bring up is the issue of deinstitutionalization or the reverse process of institutionalization, as he notes:

What if the various components of institutionalization are moving in contradictory directions? No comment. If the entire trend, or portions of it, is likely to reverse or stop at any time, is there really anything here that may serve as a general model of legislative change? No comment. (Hibbing 1988:685)

While Hibbing accurately points out that Polsby's study falls short of explaining deinstitutionalization, it would be wrong to assume that he did not address it all together. Polsby does note periods in Congress where institutionalization moved in a reverse direction and gives the following explanation:

First, as to its [institutionalization] reversibility. Many of our indicators show a substantial decay in the institutional structure of the House in the period surrounding the Civil War. In sheer numbers, the House declined from 237 members in the Congress of 1859 to 178 in the Congress of 1861; not until a decade later did the House regain its former strength. Frivolous contests for seats reached a height in this period, and our rank-and-file boundary measures reflect decay as well. It may be true, and it is certainly amusing, that the strength of the British Admiralty grows as the number of ships declines; but that this illustrates an inflexibly narcissistic law of institutional growth may be doubted. As institutions grow, our expectations about the displacement of resources inward do give us warrant to predict that they will resist decay, but the indications of curve-linearity in our present findings give us ample warning that institutions are also continuously subject to environmental influence and their power to modify and channel that influence is bound to be less than all encompassing. (Polsby 1968:26)

Clearly Polsby does not offer a concise explanation as to what may cause deinstitutionalization or what deinstitutionalization entails but this could stem from the fact that his study was concerned with the institutionalization of Congress undertaken from a point in time where Congress had overcome the reversibility of institutionalization during the Civil War period. Whatever the reasons, the process of deinstitutionalization remains a contested issue in institutionalization studies. A logical understanding of deinstitutionalization of a political institution would be the process by which acquired rules, norms and values begin to be sidelined and/or overlooked in achieving political goals. An example of this process is the de-institutionalization of the US civil service

during the Bush presidency whereby institutionalized rules of appointment were overlooked in appointing people favoured by the president (Peters 2003:199-200, 2008:9).

Moreover, some critics have called on organizational theories to address the 'lack' of explanatory power of institutionalization in regards to deinstitutionalization (see, for example, Cooper and Brady 1981). However, scholars in organizational theory lament the same problem. For instance, in a recent review on organizational institutionalism, Dacin and Dacin note:

While a few studies examine institutional decline within the framework or boundaries of studying institutional change (Dacin et al. 2002), efforts to unpack the strategies and dynamics associated with extinction are lacking. Scott defined deinstitutionalization as the 'process by which institutions weaken and disappear' (Scott 2001:182). Important theorizing on deinstitutionalization was put forth by Oliver (1992). Oliver's framework was the first to pay explicit attention to the erosion and extinction of institutionalized practices. The framework proposed that the dissipation or rejection of an institutionalized practice was a result of a series of political, functional, and social pressures. This dissipation or rejection then leads to the deinstitutionalization, which, in turn, leads to erosion and/or extinction. For Oliver, deinstitutionalization is the process by which the legitimacy of an established or institutionalized organizational practice erodes or discontinues (1992:564). (Dacin and Dacin 2008:327)

It appears then that organizational theory has not gone much further than institutionalization in explaining deinstitutionalization. Further, there is one more issue that needs to be addressed here, the specifics of legislative institutionalization. It would be difficult to explain a political body such as a legislature through the prism of organizational theory – especially as it pertains to deinstitutionalization. If deinstitutionalization in organizational theory is the result of loss of legitimacy – this would not simply mean deinstitutionalization in the political sense but a regime change or regime collapse. The Federal Assembly of Yugoslavia did not go through a process of deinstitutionalization; it simply collapsed or ceased to exist together with the Yugoslav Federation and the Yugoslav Communist Party.

The other critique of Polsby's method had to do with the relationship between legislative institutionalization and the role of external determinants in the process (see, for example, Cooper and Brady 1981, Hibbing 1988, Squire 1992, Kopecky 2001, Judge 2003). While Polsby does casually refer to external determinants that may have explained some of the

changes in Congress (see for example his account of the Civil War and its effect of the institutionalization process Polsby, 1968:26), his method is mainly concerned with internal factors. The problem with this approach is that it can potentially leave out central aspects of external influence that may have been critical to institutionalization. As indeed, Sisson suggests, that ‘any analysis of this process [institutionalization] must address the relationship and the character of the interaction between the relevant institution and its environment as well as the relevance and implications of this interaction to the internal structure of the institution’ (Sisson 1973:24).

Although subsequent studies of legislative institutionalization that have utilized Polsby’s method have also engaged external determinants (see, for example, Kopecky 2001), there are still conceptual problems of how, and which, external factors to analyze. The list of environmental or external determinants that can affect legislative change can be infinite, how can we determine which external factors are more influential than others? As indeed, Hibbing notes that ‘Presenting long-term, reliable indicators of as amorphous a concept as environmental change is going to require imagination and hard work, but until those favoring it present such measures and relate them to indicators of legislative change, organizational theory will remain an unsatisfactory theory of legislative change’ (Hibbing 1988).

Similarly, Cooper and Brady suggested a more ‘diachronic’ approach, which ‘involves explaining change over time’ while ‘directing attention to the context as well as the unit, the exogenous as well as endogenous factors and the interaction between the two’ (Cooper and Brady 1981:988). Thus one general agreement is engaging external determinants or factors in the overall analysis of the institutionalization of legislatures. For instance, Congressional committees became more specialized to deal with a greater workload. This workload was a consequence of external factors such as the growth of the executive or of the economy; thus, the internal institutionalization was both an endogenous division of labour and an accommodation of change influenced by exogenous factors.

An additional approach was Michael Mezey’s suggestion to assess ‘the strength of policy making power’ in transformative legislatures and policy-review abilities in arena legislatures. If a highly institutionalized legislature is, indeed, defined by its problem-solving abilities and the ability to ‘protect its core when external change challenges it’

then effective policy-making or problem-solving capability cannot be explained by complexity alone (Mezey 1979). This approach goes beyond institutionalization to deal with the power of parliament vis-à-vis the executive, and as such, it does not say a great deal about the institutionalization of the legislature as an institution, but is more concerned with its constitutional powers. This problem reappears in several other studies (see, for example, the discussion of the Fish-Kroening Legislative Power Index in Chapter 2).

Polsby's operationalization of Huntington's criteria of institutionalization is not a definite method with a clear-cut set of variables. Nor does he suggest this at any stage, although he is aware that 'this one article on institutionalization [has had] to haul more freight than it was designed to carry' (1981:1011). Polsby developed a method which he believed could be utilized in assessing legislative institutionalization, as such, this method needs to be understood as a flexible framework with the possibilities of adjusting his initial framework to fit any given legislative body. Like Kopecky, this study finds Polsby's method 'a very useful starting point' while at the same time it chooses to move a 'step beyond' it (Kopecky 2001:12). The incorporation of external factors in this research is essential in understanding the institutionalization of the Kosovo Assembly. External factors established and supported the development of the Kosovo Assembly, and without an account of their impact on the institutionalization process this study would not be complete.

In addition, most of the studies mentioned above have dealt with legislatures in established democracies long after the initial stages of institutionalization have taken place. When Polsby carried out his study, as he himself noted, Congress had started its institutionalization process with the First Continental Congress. This was something of a disadvantage since historic sources are not always inclusive of the dynamics of institution-building, even though Polsby's command of the history of the US Congress was certainly remarkable. The third wave of democracies, especially in the East and Central European context, presented a unique opportunity for students of legislative institutionalization to observe at firsthand the establishment and development of institutions not only from the perspective of legislative institutionalization, but institutionalization as it relates to institutional design, constitutional arrangements and their overall impact on democratization processes. Indeed, one such scholar noted, 'the richest treasure trove of

data will lie with those legislatures that have most recently experienced democratic transition’ (Wilson 2002: 292).

3.8. Institutionalization and Democratization

One notable attempt to engage legislative institutionalization in the context of democratization in East and Central Europe is Kopecky’s operationalization of legislative institutionalization in analyzing the Czech and Slovak Republics (2002).

Table 3.1: Institutionalization of parliaments: key topics

<i>Characteristics of:</i>	<p>External Environment constitutional structures electoral system executive structures parties outside parliament</p> <p>Internal Environment individual members parliamentary parties parliamentary committees rules of procedure</p>
<i>Valued by:</i>	<p>members of parliament party political elites</p>

Source: Kopecky 2002:15

While previous legislative institutionalization studies had only gone as far as critiquing Polsby’s study for not engaging the external determinants, Kopecky incorporates external factors in his study, arguing that:

there are two broad analytical issues related to the institutionalization of parliament. One is parliament’s internal workings and the other is parliament’s external environment. Focusing exclusively on one of the two issues, as Polsby does with his concentration on the internal life of the US House of Representatives, seems justifiable only when each can be considered to be neutral with respect to the other – which is perhaps the case in an ‘established democracy’ or an ‘institutionalized parliament’. However, in a situation typical of the early phase of democratization – when constitutional rules affecting the status of parliaments can still be modified, and where political parties and interest groups rapidly change –

focusing only on internal processes, for instance, would miss the point completely. (Kopecky 2002:13)

This research too contextualizes the method to the regime under which the legislature operates. As is the case of the Czech and Slovak Parliaments, the Kosovo Assembly has to be examined in the context of broader democratization parameters given the dynamics of democratization where rules of the game are constantly changing, as mentioned by Kopecky above. Accordingly, the following section looks at theories of institutional design and consociationalism in the context of post-conflict democratization.

3.9. Designing Institutions

Broadly speaking, institutional design is the process of developing collective rules that act as blueprints to guide and regulate the behaviour of actors in a polity, involving ‘how institutions might be, and ought to be, constructed – how they adapt to human purposes in order to function well and create improvement’ (Simon 1970, quoted in Olson 1997:205). As such, ‘major institutional arrangements have major social consequences’ (Pierson 2000:492). Whether these consequences are foreseen or unintended, they ultimately relate to the motivation and foresight of their designers and the context and time in which they were designed, or ‘actors’ relative bargaining strength, electoral expectations, and attitudes to risk’ (Colomer 2008:21).

More importantly, the longevity of institutional designs is ultimately related to their flexibility and their ability to accommodate the environment for which they are designed. New Institutionalism explains the rationale behind institutional designs through a functionalist and a rational choice approach. The explanatory power of the functionalist approach stems from the idea that ‘institutions exist in the form that they do because they are functional for social actors’ (Pierson 2000:477). The rational choice approach, on the other hand, holds that institutional designers are individuals, and as such, they make their decision based on their self-interest; however, self-interest here is not limited to maximizing gains but considers social acceptance or appropriateness as well (Pettit 1996:62-66).

In democratic transition, and more specifically in the Eastern and Central European context, institutional designs were more the result of external borrowing than of an organic endogenous process. Barbara Geddes notes that ‘attempts to explain the emergence of concrete political institutions in Eastern Europe fail to fit well into conventional paradigms’ (Geddes 1996:17). This is because these institutions were not the result of long economic and historic processes, as they may have been in the West. Institutional designs during the first stages of democratic transition in the Eastern and Central European countries were part imported imitations from Western experiences, part primordial designs inherited from traditional institutions and part internal political negotiating. In fact, Clauss Offe, in *Designing Institutions for East European Transitions*, argues that institution building was carried out:

by means of a logic of ‘consequentiality’; that is, a logic of imitating, importing and transplanting – in the name of some posited ‘interest of society’ – economic and political institutions that have ‘worked elsewhere,’ regardless of whether they meet with the ideas, traditions and mentalities that prevail in these societies. (Offe 1993:17)

As most of these imported institutional designs failed to fulfil their missions, they were gradually amended or replaced to address the particularities of the countries in which they were being applied, and the problems associated with democratic transition (Andreev 2008:38). Eastern and Central European experiences prove that constitutional designs cannot be imported, and be expected to be functional, without adaptations. Yet, in most cases, actors involved in designing new institutions:

mimic what they perceive to be successful political models, borrowing elements that have proved useful in other institution-building projects ... Innovators take opportunities and mechanisms that are present in existing institutions and combine them, sometimes with elements from other institutional contexts, in new ways. They then provide new frames, or manipulate existing ones, in order to persuade others that the innovations suit their interests and are normatively appropriate. (Stone Sweet et al. 2001:19-20)

Designs that cannot be implemented because they do not fit the environment for which they were meant are more problematic than *ad hoc* procedures. If the experiences of Eastern and Central European countries and their choices of institutional designs tell us anything, it is that institutional design is a lengthy process that evolves as political processes take shape and civil society establishes channels of influence over the decision-

making process. Institutional designs have to be analogous with the evolution of institutions and vice versa in order to be able to reflect their nature and adapt to their practices. A desynchronized institutional design can weaken political institutions and open ways for political actors and civil society to circumvent them through ‘informal institutions.’ This is where corruption and the lack of rule of law come in, something that has become endemic in weak states.

Most studies of institutional design in the third wave of democratization, like democratization studies, are mainly concerned with the role of internal actors in designing new institutions to accommodate the new democratic regimes (see, for example, Pettit 1996). Having said that, the participation of external consultants or international constitutional experts in the design process has been taken into account extensively:

Constitution-making has become an international and comparative exercise ... ‘International’ in the sense that the involvement of experts and practitioners across state boundaries had been welcomed, indeed encouraged, to the point at which a new democracy that excluded foreigners entirely from its constitutional process might stamp itself as decidedly insular, even somewhat suspect. ‘Comparative’ in the sense that there have been attempts to learn from the experience of state and societies that are similarly situated. (Horowitz 2002:15)

However, external consultants and experiences in institutional designs in emerging democracies have rarely had a decisive impact. The interests of domestic actors combined with external restrictions have generally resulted in ‘idiosyncratic hybrids’ (Elster et al. 1998:80). In the context of new democracies, the opportunity to shape new institutions carries greater importance given that it provides a new opportunity for political transformation (see, for example, Teitel 1997). However, it is in divided and post-conflict societies that institutional arrangement has a greater impact (Belmont et al. 2002:3). Elster et al. (1998) have, most notably, acknowledged the difference between institutional design in peaceful transitions and transition accompanied with conflict. In contrast to peaceful transitions, they argue, transitions accompanied by conflict have three priorities:

First, in a peaceful regime change, the old elite is not discredited to the same extent that tends to be the case after a military defeat ... Second, in peaceful breakdowns, there is no occupation regime of allies or some other transnational agency that could impose by force a new institutional order ...

Finally, post-war conditions have often been the historical moment of vigorous political and institutional innovation. (Elster et al.1998:10-11).

In contrast to peaceful regime breakdowns, post-conflict environments provide a ‘brand new start’ in terms of institutional design and setup. Having said that, in practice, designing institutions for post-conflict societies is far more challenging than adopting old institutions to new regimes. However, indisputably, post-conflict constitution making provides a prospect for the first steps towards reconciliation:

Constitution-making after conflict is an opportunity to create a common vision of the future of a state and a road map on how to get there. The constitution can be partly a peace agreement and partly a framework setting up the rules by which the new democracy will operate. An ideal constitution-making process can accomplish several things. For example, it can drive the transformative process from conflict to peace, seek to transform the society from one that resorts to violence to one that resorts to political means to resolve conflict, and/or shape the governance framework that will regulate access to power and resources—all key reasons for conflict. It must also put in place mechanisms and institutions through which future conflict in the society can be managed without a return to violence. (Samuels 2005:2)

Recognizing the importance of the process of designing new post-conflict institutions, most UN peacekeeping operations in post-conflict societies have made constitution making a central practice in peace-building and reconciliation. Thus constitutional designs under the auspices of the UN are products of cooperation between domestic and international actors who in most instances act not only as participants but mediators of the overall process. A distinction between external consultants and external participants needs to be made here. Constitutional design studies that have engaged the participation of external actors, have acknowledged their limitations on the impact they can have in the actual outcome of the design due to their advisory role (see, for example, Elster et al. 1998, Reynolds 2002). While the actual deliberations on the institutional design may be made jointly between domestic and international actors, in sovereign entities domestic actors have always the final say. In independent countries, international actors in almost all instances, are ‘political entrepreneurs’ or notable academics of the field, but do not represent institutions with power to impose or condition the various institutional design. In contrast, constitutional design processes backed by the UN have joint domestic and international actors, both with voting rights. Such is the case of Kosovo where the UN established the ‘Working Group on the Legal Framework’ with 14 members, 7 domestic

and 7 international under the chairmanship of an international constitutional expert (UNMIK/FR/0040/01).

Beyond the processes of constitution-making, the character of constitutions in divided societies is pivotal to coexistence and peace. The overriding approach to post-conflict constitutional designs in divided societies has been consociationalism or a ‘government by elite cartel designed to turn a democracy with fragmented political culture into a stable democracy’ (Lijphart 2008:31), which ‘attempts to explain the relations between societal conflict and political consensus by means of institutionalized patterns of collective choice’ (Keman 1999:250). The following section looks at consociationalism as a constitutional model for divided societies.

3.10. Consociationalism

Consociationalism evolved as an alternative to centripetal and centrifugal democracies. Lijphart drew on Gabriel Almond’s classification of political systems in his seminal work on ‘Comparative Political Systems,’ and examples of Switzerland, the Netherlands and Belgium to arrive at a constitutional design that could potentially accommodate differences in government in divided societies (Lijphart 2008:20). The overriding principle was consensus, where no party can dominate the decision making process and majoritarianism is replaced by unanimity. Lijphart believed this model to ‘forge democratic culture, peace, tolerance and trust in divided societies,’ which he calls *glindningspolitik* a term deriving from the Danish model to mean ‘politics of smoothness.’

There are essentially four general requirements for consociationalism to work: (i) ‘Grand Coalition’ with participation of all subcultures, (ii) ‘Proportionality’ including but not limited to the electoral system, executive and legislative branch, education, the judiciary and civil service, (iii) ‘Mutual Veto,’ and (iv) ‘Cultural/Territorial Autonomy’ where each subculture has a designed authority over a specific subject or territory (Lijphart 2008: 4, 45-49). In addition to the above:

the elites have to have the ability to accommodate divergent interests and demands of subcultures which in turn requires that they have the ability to transcend cleavages and to join in a common effort with the elites of a rival

subculture all of which depends on their commitment to the maintenance of the system and to the improvement of its cohesion and stability. (Lijphart 2008:32)

The performance of consociational democratic regimes therefore depends fully on the elites. It essentially assumes that elites play the central role and that they are, or should be, willing to cooperate on both sides while successfully articulating the interests of the electorate to maintain legitimacy. Critics of consociationalism have argued that the controlling power of elites can result in political apathy at the mass level and absence of opposition due to the institutional setup (see, for example, Lustick 1979: 237-242, Rose 2000: 26-40, Andweg 2000:530). This ultimately relates to the collective choice of the electorate and the degree to which they are willing to exchange collective rights over individual rights. Although in consociational systems the two are not mutually exclusive, the decisions over the constitutional design is usually done at elite level and leaves little space for negotiation.

Existing consociational democracies such as the Netherlands, Switzerland and Austria evolved over a long period of time accommodating various power-sharing models along the way. Consociationalism was not a model that they deliberately designed; it was a product of manoeuvring power-sharing in changing institutions. The example of the Dutch consociational evolution is one such example, where socio-economic changes combined with political necessities produced a consensual form of government (Keman 1996:260). New attempts to establish consociational democracies in divided post-conflict societies are in principle coercive and evolve from firmly stipulated power-sharing arrangements agreed upon by adversaries in peace-agreements which then become the blue-prints for the establishment of new post-conflict political institutions. This was the case the Rambouille Peace Accords during the Kosovo Conflict. Although the peace agreement was rejected by the Serbian party, the United Nations Security Council endorsed them as the blue-print for the post-war Kosovo reconstruction and institutional set-up (UNSCR 1244, 1999).

Although upheld as a constitutional design that promotes peace, consociationalism does not necessarily mean integration in the normative sense; it simply provides an institutional framework for coexistence. In fact, Lijphart recognizes 'distinct lines of cleavage' - drawing on Easton and Dahl who find that frequent contact between subcultures raises the probability of conflict, 'greater success may be attained through steps that conduce to the

development of a deeper sense of mutual awareness and responsiveness among encapsulated cultural units' (Dahl et al. 2003:145). A distinction has to be made here on the effect of consociationalism in divided societies without recent violent past and post-conflict societies. In the first case, cross-cutting cleavages are more likely to evolve as ethnic divisions are not as strongly reinforced as they may be in post-conflict societies. Further, there is an extensive body of literature that considers consociationalist arrangement to institutionalize ethnic divisions and reinforce ethnic identities and deepen animosities between communities (See e.g., Belloni 2004:337, Biber 2002:215, Simonsen 2005: 299-303). These arguments are usually based on post-conflict studies that have traditionally stressed the importance of peace-building through inclusiveness, reconciliation and integration between divided ethnic minorities by reversing ethnic divisions (Simonsen 2005:315). Although consociationalism assumes that the distinct lines of cleavage are not permanent; they eventually cease to exist once divisions in society have mollified and society has developed cross-cutting cleavages beyond their ethnic identities. Indeed, the example of Northern Ireland has shown that 'institutional change can transform even an apparently entrenched cleavage system' (Tilley et al. 2008: 716). Consociationalism is therefore a constitutional design that serves the purpose of stability in divided societies until there is considerable progress towards integration where ethnic, religious or linguistic divisions will not dominate the politics of a given society.

The foundation of consociationalism therefore is in the institutional design, especially the electoral and constitutional design. The consociational electoral design does not encourage inter-ethnic voting but power-sharing at the elite level (Taylor 2005:437). This is not only a more realistic approach, since voting beyond ethnic cleavages (centripetal design) in post-conflict environments is improbable, but it assures the inclusion of all ethnic minorities at the elite level. A comparative study of electoral designs in 19 multi-ethnic countries in Central and Eastern Europe carried out by Daniel Bochsler, indicates that only the electoral designs of Kosovo and Bosnia (both based on the consociational model) have complete minority representation (Bochsler 2006:22). While the electoral designs can encourage consociational power-sharing governments, it 'is only one cog in the intricate constitutional machine, a misshapen cog may cause the whole structure to grind to a halt' (Reynolds, 1995:96 in Taylor 2005). Having said that, representation in the case of Kosovo does not mean participation; although the electoral and institutional setup was designed with the intention of minority over-representation, the 80 per cent control of

Assembly seats by Albanian parties makes it possible for Albanian parties to form a government without minority participation (Simonsen 2005:300).

Thus, institutional design alone has its limits, the success of consociationalism in divided societies depends on multiple factors of the relations between divided subcultures. In his study of six consociational democracies, Ulrich Schneckener sets out 11 favourable factors to consociationalism: (i) relative equilibrium – not dominated by a clear majority; (ii) no significant socio-economic differences; (iii) territorial segmentation; (iv) overarching loyalty; (v) cross-cutting cleavages; (vi) moderate pluralism vs. national fronts; (vii) dominant elites; (viii) respecting the status quo; (ix) traditions of compromise and mutual understanding; (x) comprehensive participation; and (xi) internal compromise vs. external pressure (Schneckener 2006:211-217). Schneckener finds that what really matters is elites changing their approach from confrontation to co-operation and in the process:

eliminating radical opponents and paramilitary groups, build formal and informal coalitions with moderate forces of the other side, stick to agreed status quo, assure full participation of all relevant groups and if possible retrieve positive traditions of mutual understanding from the past. (Schneckener 2006:224-225)

Most post-conflict politics in divided societies are more likely to reinforce the differences as ways of gaining more support on post-conflict nationalist sentiments. The post-conflict situation in the Former Republic of Macedonia is one such example, despite a peace agreement modelled on consociational principles (see Brunnbauer 2002). In contrast, the Northern Irish experience is an example of how actor oriented factors coupled with good choices of institutional design can result in a consociational democracy. In their study of the Northern Irish consociationalist arrangement, McGarry and O’Leary explain that:

the Good Friday Agreement of 1996, where eight Northern Irish political parties were able, largely voluntarily, to agree on a settlement with important consociationalism components and to win endorsement for that agreement in simultaneous referendum in both parts of Ireland, remains the most likely institutional equilibrium. (McGarry and O’Leary 2006:46-47)

While pointing out that the success of the Northern Irish stability depends on its consociational arrangement, they make a number of important additions to consociationalism or ‘classical consociationalism’ as they refer to the main model developed by Lijphart. They consider Lijphart’s model ‘too internalist, insufficiently

attuned to the salience of national self-determination disputes, too focused on executive and legislative institutions, and overly prescriptively committed to party-list proportional representation', and one that fails to understand that the role of one or multiple external benefactors, to observe or mediate the process is crucial to the success of consociationalism (McGarry and O'Leary 2006:63).

Although in post-conflict divided societies external factors have always played a major role as mediators, classical consociational theory is largely concerned with internal actors. Recent consociational arrangements in countries like Bosnia and Macedonia were sponsored and reached under external tutelage. Lijphart considers external factors in consociationalism only in that they mitigate differences between adversaries in the face of external threat (Lijphart 2008:32). On the other hand, McGarry and O'Leary point out that while this observation may have been accurate in observing small European countries like Belgium, the Netherlands and Austria in the face of threat from bigger neighbours, ongoing external influences are generally positive in that they use pressure and incentives to facilitate consociationalism (McGarry and O'Leary 2006:48).

Despite the need for external actors in the promotion and implementation of consociational politics, they can sometimes have an adverse effect in two aspects, 'they don't allow for local ownerships of the process' (Jarstad 2006:3-4) and intentionally destabilise the country through the unintentional support of one of the ethnic groups (See e.g. Mertus and Helsing 2006, Babbitt and Luz 2009). The case of the Serbs in Bosnia and Kosovo and the Serbian support for radical groups within the Serbs in Kosovo and Bosnia is one such example.

Consociationalism has been criticized for leaving other gaps, both conceptual and empirical. Most of the examples on which consociational scholars have built their theories are long-lasting, established, democratic regimes as Lijphart himself points 'it is easier to assess the probability of continued success of an already established consociational democracy than to predict the chance of success that a fragmented system would have if it were to attempt consociationalism' (Lijphart 2008:32). While consociational democracy works well in societies where fragmented subcultures are based on civic or interest groups, in societies where ethnic identity prevails over the national one prove problematic. Further, 'consociationalists fail to take into account how the special conditions of war-torn

societies affect the functioning of power sharing given that they exclude moderates by assuring warring party participation in post-conflict government structures' (Jarstad 2008:3). Similar to post-conflict democratization effort, this process runs the danger of reinforcing and institutionalizing war identities.

The most notable shortcoming of consociationalism however is that it prevents integration by institutionalizing divisions between ethnic minorities and by 'overplaying ethnicity' (Taylor 1992:9, Belloni 2004:337, Biber 2002:215, Simonsen 2005: 299-303). Having said that, empirical evidence shows that consociationalism appears to be the only viable institutional design that seems to be functioning in ethnically divided societies. While it may promote integration normatively, in the case of Northern Ireland, Lebanon and Bosnia, it has resulted in various forms of coexistence. In addition, consociationalism is an open-ended process that eventually produces cross-cutting cleavages beyond ethnic lines. Indeed, this has raised questions if 'consociationalism is only a transitional regime type where once societies develop cross-cutting cleavages they evolve towards more majoritarian regime types' (Andweg 2000). It is arguable for instance if Switzerland and the Netherlands can still be considered 'divided' given their multifaceted cross-cutting cleavages. In post-war Kosovo, consociational elements have been instituted in most governing structures yet because of demographics consociationalism has little chance of functioning beyond the assurance of minority participation. However, minority participation too may be unattainable because institutional design cannot regulate a ratio of 90 per cent majority to 10 per cent minority:

Kosovo provides a very clear illustration of the problem of permanent exclusion. Here, although Serbs and other minorities hold twice as many seats in the assembly as their share of population would suggest, Albanian parties (representing some 90% of the population) still control 80% of the seats and have no need to accommodate the minority parties. As long as voting follows ethnic lines, minorities may have representation but little or no real political influence. (Simonsen 2005:300)

In addition, the post-war electoral design in Kosovo institutionalized ethnic differences by making it a condition for parties to register their ethnic background to attain the over-representation reserved for ethnic minorities under the electoral design. The problems of an electoral design that institutionalizes ethnic differences results not only in permanent exclusion due to the small number of minorities in Kosovo (regardless of their over-representation) but it leaves no room for future integration and the development of 'cross-

cutting cleavages' that may evolve in the future. In many post-conflict divided societies, initial institutional arrangements are designed under the assumption that ethnic divisions and animosities are permanent. The paradox of the designers of these institutions, in this case the UN, is that while promoting multi-ethnic integration, they establish institutions that discourage it. Exploring the case of Bosnia, Florian Biber notes:

Multi-ethnic parties and candidates promoting a more inclusive conception of political processes are discouraged by the structures of the political institutions, but promoted by those who designed and defended them. (Biber 2002:215)

Although institutional design can play a key role in reconciliation and democratization in divided societies, some of the above mentioned studies have the tendency to overestimate the effect of institutional design on the outcome of the institutions in the long run. While there is a problem with the consociational approach, above all, in that it assumes ethnic differences and animosities to be permanent (see, for example, Simonsen 2005:298) institutional design is not permanent either. The Kosovo case provides one such example. Although initial post-war electoral and governing designs acknowledged ethnic differences, as these institutions matured, they were continuously amended and changed to suit the changing nature of ethnic politics. This study takes the approach that while institutional design is important in resolving immediate post-war animosities, it is the institutionalization and democratization of these institutions that matter most in the long term integration and reconciliation.

3.11. Conclusion

The purpose of this chapter has been to identify key literature in institutionalization theory that will guide the empirical part of this research. The evolution of legislative institutionalization is closely tied with the initial theoretical assumptions forwarded by Huntington and their subsequent adaptation by Polsby. Unlike democratization studies however, where considerable criticism has resulted in the broadening of the conceptual framework of democratization studies, legislative institutionalization continues to lag behind in providing a concise framework of analysis.

As discussed in this chapter, the problems with institutionalization theory derive mainly from misconceptions of Huntington's initial framework of what constitutes institutionalization. While Polsby's work was seminal in setting the groundwork of an approach for assessing legislative institutionalization, his utilization of Huntington's theory was not complete. Subsequently, studies of legislative institutionalization based on Polsby's approach have equally misconceptualized and sometimes misinterpreted Polsby's framework (see, for example, Mezey 1979, Cooper and Brady 1981, Hibbing 1985). These problems have resulted in an overall theoretical confusion which can be best described as a 'bent analytical arrow' (Judge 2003). Yet, the problem with legislative institutionalization is not the lack of common criteria or measures but a lack of agreement among scholars on the applicability of those common criteria and measures.

While this study takes into account the problems of institutionalization, it also recognizes that these problems are part of the theory still being in its formative stages. For instance, where critics have raised concerns, new studies have taken those issues into account. An example of this is Kopecky's study of the institutionalization of the Czech and Slovak Parliaments. Kopecky uses Polsby's framework only as a starting point and adds additional measures either suggested by subsequent studies (external determinants) or measures relevant to the context of his study (post-communist democratization). Consequently, it can be argued that legislative institutionalization does not lack common criteria and measures but it is still at the stage of developing them, with every study further consolidating the overall approach.

All problems aside, institutionalization remains attractive in studying the evolution and change of political institutions as 'only by measuring institutionalization will we be able to buttress or disapprove hypotheses about the relations between social, economic, and demographic changes on the one hand, and variations in political structure, on the other' (Huntington 1965:405) Accordingly, this chapter looked at new studies of how institutionalization affects democratization processes and how do these two processes relate to each other.

3.11.1. Moving Forward

The purpose of the extensive literature review in this chapter, and also that in chapter 2, has been to identify the theories and analytical perspectives of most utility in

understanding the institutional development of the Kosovo Assembly. In examining theories of democratization in chapter 2 the dominant role of external actors in processes of democratization and reconciliation in divided societies was identified. The move from the centrality of internal domestic actors in second or third wave democratization processes, to the primacy of external actors in post-conflict societies, led to a search for theories and analytical approaches beyond established frameworks for understanding democratization. In turn this search identified four major issues for examination in the case study of Kosovo:

- (i) the assumption that a pre-requisite for democratization is a unified national-identity
- (ii) the level of engagement of external actors in democratization processes
- (iii) democratization and the UN
- (iv) the post-conflict context of democratization.

These analytical pointers are followed in chapters 4 and 5. Chapter 4 provides a historical narrative of Kosovo, to reveal the absence of a unified national identity and to provide context for the analysis of post-conflict institutional building and development. Chapter 5 examines the level and method of engagement of the UN in the post-conflict reconstruction process. These chapters provide answers to the initial research questions identified in chapter 1:

- Who were the key actors in designing the Kosovo Assembly?
- How were decisions reached in relation to the design of the Constitutional Framework?
- What were the decisive factors influencing the final outcome of the Constitutional Framework?
- Where did the inspiration for the institutional design come from?
- What were the basic principles underpinning the design?
- How far did the Provisional Institutions of Self-Government (PISG) reflect these principles of institutional design?

Chapter 3 has reviewed theories of institutionalism and institutionalization in order to identify the key factors of most utility for the analysis of the institutional development of the Kosovo Assembly. Theories, definitions and measures of legislative institutionalization have been examined to identify the starting proposition that institutionalization is a series of interlinked processes: differentiation from the external environment, development of internal operating procedures and organizational complexity, and emergent internal normative systems and modes of decision-making. Of particular relevance for the study of institutionalization in the Kosovo Assembly is the identification, most notably in the work of Kopecky, of the importance of external variables in accounting for the trajectory of legislative institutionalization. The intersection of theories and perspectives on democratization in post-conflict environments with theories of institutional design provides the analytical space within which to map the institutional development of the Kosovo Assembly and its broader interactions with other domestic and external political institutions. At the point of intersection the importance of consociational theory, in influencing the practical design of electoral and constitutional arrangements in Kosovo, becomes manifest.

As a process, legislative institutionalization lends itself to a methodology capable of tracing (process tracing) the dynamic mechanisms underpinning that process. The case study of the institutional development of the Kosovo Assembly, from its inception through its formative first two sessions, is driven by the search for answers to the following questions derived from existing literature:

- How does a legislature institutionalize in the context of an international administration? And the related question: Does a legislature have the ability to differentiate and become a political actor in its own right?
- How effective is the legislature's role in processes of democratic consolidation given that its powers, at least in the initial formative stages, are limited and its decisions are subject to the approval of international administrators?
- In intrainstitutional terms: How do internal procedural rules evolve? What degree of organisational complexity develops in the legislature? What form does the division of labour take? What are the dynamics that shape executive-legislative relations in a period of democratisation and international administration?

These questions are addressed in chapters 6 and 7. In the first instance however it is essential to provide, in chapter 4, some historical context within which to frame the analysis of democratization and institutionalization in contemporary Kosovo.

Chapter 4

The Politics and History of Kosovo

4.1. Introduction

Most empirical studies of institutions and institutionalization in the context of regime change take the conditions that influenced the birth of institutions for granted (see, for example, Kopecky 2001, Whitmore 2002). In this context, the origins of a given institution are overlooked in favour of what accounts for change in a given institution. In other words, in an effort to analyze the transformation of these institutions, their actual birth is usually understated or overlooked. The importance of understanding the context in which institutions emerge has to do largely with a core theoretical debate in new institutionalism, that between structure and agency. Indeed, as Rothstein argues (1992:35):

If we can empirically identify such moments of institutional creation in history, then we will have moved much closer to understanding the agency – structure, micro-macro, problem in social science. The analysis of creation and destruction of political institutions, might thus serve as a bridge between ‘men who make history’ and the ‘circumstances’ under which they are able to do so.

Thus, by understanding the ‘moments of institutional creation in history’ we would be able to make broader conclusions on *who* and *what* contributes to the creation of institutions and *what* are the factors that contribute to their survival and institutionalization. With that in mind, chapter 5 looks at the origins of the institutional set-up in Kosovo.

The first part of this chapter looks at a brief modern history of Kosovo to explain the dynamics behind the conflict. More importantly, this section also looks at the various peace agreements that were drafted before and during the conflict of 1999 that would later form the core of every subsequent institutional arrangement in post-war Kosovo. This section tries to explore how the international community utilized lessons from Bosnia and applied them in Kosovo and the consequences of such actions.

The second part of this chapter looks at the first post-war governing institutions in Kosovo. The establishment of the United Nations Mission in Kosovo as the main administrative body with supreme executive, legislative and judicial powers and the UN’s

subsequent mission to engage the local political elite in establishing joint governing structures. In this context, this part looks at the first Kosovo Transitional Council, as a consultative body between locals and internationals that was later transformed into the first Joint Interim Administrative Structures that pre-date the Provisional Institutions of Self-Government.

4.2. A Brief History

To understand the Kosovo conflict and the political arrangements thereafter, it is necessary to briefly look at the modern history of Kosovo. Kosovo was a *vilayet* or a province in the Ottoman Empire until 1912. As the Ottoman Empire went into decline, former provinces which had gained independence in the region (Serbia, Montenegro, Bulgaria and Greece) signed treaties with each other dividing the remaining provinces in Rumelia or the European part of the Ottoman Empire (Malcom 1998:249-250). The newly established Kingdom of Serbia had signed an agreement with Bulgaria, that in the event of war with the Ottoman Empire, Kosovo would be taken by Serbia (for details of the agreement, see the *American Journal of International Law*, 1914). On October 18th, Serbia, Greece and Bulgaria declared war on the Ottoman Empire. Two days before the declaration of war, Serbia had begun the advance of its army into Kosovo (Malcom 1998:251). This is the beginning of a conflict that would span a century.



Source: *Endowment for International Peace (1914) Report of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars*. Washington: The Carnegie Endowment

The end of the First Balkan War was followed by the Second Balkan War (1913) and the First World War. The atrocities of the Serbian army in Kosovo, coupled with colonization policies that followed the conquest and which in turn generated Albanian resistance, were to form the core of a conflict that would continue for the rest of the twentieth century (See, for example, Vickers 1998, Clark 2000, Elise 2002, Perritt 2010). The end of WWI saw the establishment of the Kingdom of Serbs, Croats and Slovenes (later known as the Kingdom of Yugoslavia) with Kosovo becoming a province of Serbia. The collapse of the Kingdom of Yugoslavia and the end of WWII saw a transformation in the treatment of Kosovo as an autonomous province, albeit it was still a constitutive part of the Republic of

Serbia within the Socialist Federal Republic of Yugoslavia (SFRY) (Ramet, 1995:26). On the origins of the conflict, the International Independent Commission on Kosovo (IICK) (2000:34) notes:

After the Second World War, the new communist leadership of Yugoslavia declared Kosovo to be an autonomous ‘constituent part’ of Serbia. Under Tito’s rule, Kosovar Albanians experienced both harsh persecutions and glimpses of freedom. The effects of three decades of government-sponsored colonization by Serbs of almost half of Kosovo’s arable land were mitigated when Tito returned a third of the land to its Albanian owners after 1945. Also, some of the prewar measures employed to stifle the Albanian language were lifted.



Source: The Cartographic Section of the United Nations (CSUN), 2007.

4.3. The Nature of the Conflict

Following continuous demands for more self-government by the Albanian population in Kosovo, the SFRY Constitution of 1974 granted Kosovo an autonomous status within the Republic of Serbia under the Federal Republic of Yugoslavia (Perritt 2010:22). Through these constitutional reforms, Kosovo acquired a provincial assembly and provincial institutions of self-government with federal voting rights. The only difference between the two autonomous provinces (Kosovo and Vojvodina) and the other six republics (Serbia, Croatia, Bosnia and Hercegovina, Slovenia, Macedonia and Montenegro) was that the republics had the right of secession from the federation while autonomous provinces did not (Official Gazette of the SFRY 1974, IICK 2000:35). Thus, from 1974 to 1989 Kosovo had its own governing structures within the framework of the Republic of Serbia and SFRY.

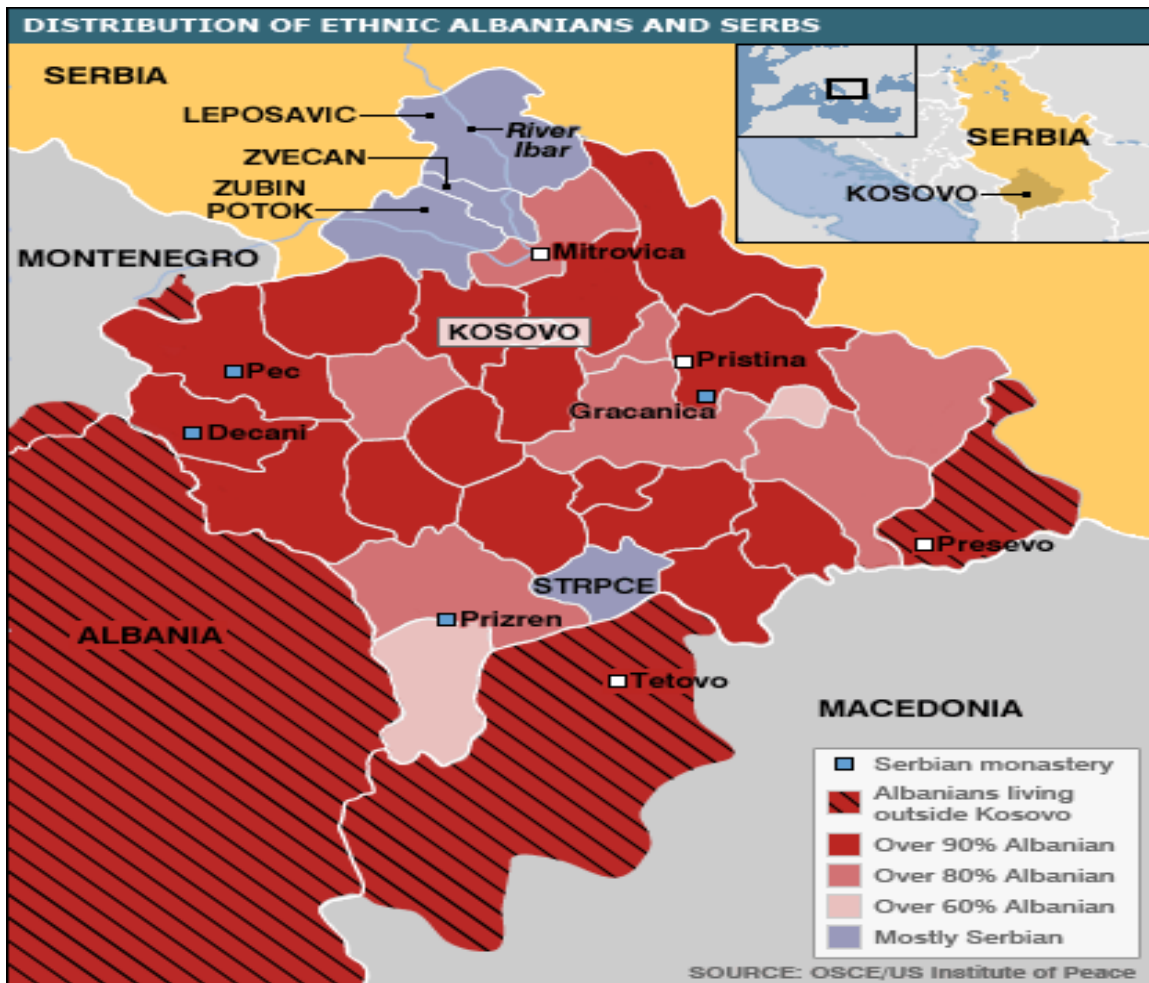
The Constitution of 1974 saw the establishment of the first Kosovo Assembly which symbolized the new self-governing era in Kosovo politics. It was the dissolution of the Kosovo Assembly in July of 1989 by the Parliament of the Republic of Serbia that started the crises in Kosovo. In retrospect, the IICK (2000:41) noted:

In July the Kosovo Assembly was dissolved, despite provisions in the 1974 Constitution requiring Assembly consent for its own dissolution. Arguably, this act signaled the end of the 1974 Constitution, and, according to some, the dissolution of Yugoslavia.

In this context, the crises in Kosovo need to be understood in the broader context of the beginning of the dissolution of Yugoslavia. Most of the provincial government administration was moved from Kosovo to Belgrade followed by an expulsion of Kosovo Albanians from their jobs in government structures on both provincial and municipal levels (see, for example, the International Helsinki Federation for Human Rights, 1999). Kosovo Albanians responded with mass demonstrations throughout Kosovo that continued sporadically from 1989 to the early 1990s. By September 1990, the Albanian members of the Kosovo Autonomous Assembly, which by this time had been dismissed, had declared Kosovo a republic within the Yugoslav Federation (Constitution of Kacanik 1990). In response, Serbia declared martial law in Kosovo and in addition to the dismissal of the provincial governing institutions, closed down all Albanian institutions of higher education and media (Humanitarian Law Center 1997:61).

From 1990 to 1991, following the wave of democratic transition through Eastern Europe, Yugoslavia underwent similar, alas, more violent changes. The Socialist Federation of Yugoslavia started to disintegrate with the declaration of independence first from Slovenia then followed by Croatia, Bosnia and Macedonia. As Yugoslavia was disintegrating rapidly, the Kosovars no longer saw themselves within the remains of the Yugoslav federation and although they had declared Kosovo a republic within the Yugoslav federation a year before, by September 1991, the Kosovo Democratic League (LDK) the largest political organization in Kosovo called a national referendum for an assembly and declared Kosovo independent (IICK 2000:44-46). While international recognition of the former Yugoslav republics followed suit, Kosovo did not receive any international recognition, apart from neighboring Albania.

Map of Distribution of Ethnic Albanians in Serbs in Kosovo in 1999



Without international support or recognition, Kosovo Albanians organized around the LDK and the underground government established by its leader Ibrahim Rugova. Rugova's strategy was that of peaceful resistance through boycotting of all Serbian authorities in the province. He believed that the international community would be more sympathetic to this strategy, and since Kosovo had no means to initiate a war of independence against the Yugoslav Army like Slovenia and Croatia, peaceful resistance seemed the only alternative (Clark 2000).

From 1991 to 1996 Kosovo Albanians built parallel governing structures for all public services, including education, civil service and health care. These institutions would survive the end of the war and through the establishment of the UN Administration in Kosovo. Although Rugova's strategy was seen as constructive, considering that the international community was not keen on another conflict in the Balkans, concern with the war in Bosnia and Croatia left Kosovo out of the international spotlight. Several attempts by the United States and the European Union called for the end of the Serbian pressure in Kosovo but remained vague and casual with little or no follow-up. In December 1992, U.S. President George Bush issued the first serious warning that came to be known as the 'Christmas Warning' calling on Serbia to stop human rights violations in Kosovo or face possible U.S. military action in the event that violence continued (Abrams 2001:29). The fact that Kosovo was sealed off under martial law made it difficult for international organizations to assess the gravity of the situation. Access to international media and journalists was tightened and rarely possible. The only international presence in Kosovo between 1992 and 1993 was that of the Conference for Security and Cooperation in Europe (CSCE) (later to be transformed into the Organization for Security and Cooperation in Europe - OSCE). The OSCE managed to keep a presence in Kosovo despite constant restrictions and hassle on visas and traveling passes for its staff by Belgrade, however, as Serbia was expelled from OSCE in 1993, it refused to allow its operations in Kosovo and the mission was closed that same year (OSCE 1999). As President Clinton took office, he followed up on the Christmas Warning with a new one issued in March 1993 and another one followed by the State Department, both without any concrete outcome (Clinton 2005). As a result, from 1993 to 1996 Kosovo underwent severe humanitarian crises with sporadic violence from Serb paramilitary troops stationed there (Troebst 1998, Rezun 2001, IICK 2000).

4.4. Kosovo Liberation Army and the Massacre of Recak

The general apathy from the international community resulted in a widespread disillusionment among Kosovo Albanians with the peaceful resistance lead by LDK and Rugova. By 1996 a new armed resistance group had emerged calling themselves the Kosovo Liberation Army (KLA). Unlike LDK's peaceful resistance, the Kosovo Liberation Army emerged claiming responsibility for four coordinated attacks carried out against Serbian military and police stations from January to April of 1996 (Perritt 2008). By 1998 the confrontation between the KLA and the Serbian paramilitary forces in Kosovo had escalated into a fully fledged armed conflict.

In June 1998 at the Contact Group meeting of foreign ministers, Canada and Japan raised concerns regarding the further deterioration of the situation in Kosovo as a serious threat to regional peace and security (Contact Group Joint Statement, June 1998). Beyond Kosovo itself, the Contact Group was also concerned with maintaining the fragile Dayton Peace Agreement that had ended the wars in Bosnia and Croatia. A joint statement was released calling for the end of the violence by both parties and return of all displaced persons to their homes. The statement called for further freeze of investments in Serbia by members of the Contact Group, re-establishment of the OSCE mission in Kosovo and called the International Criminal Tribunal for the former Yugoslavia (ICTY) to investigate human rights violations and take proper action. The statement also called for Kosovo Albanians to distance themselves from KLA (Contact Group Joint Statement, June 1998). The Contact Group statement was followed by NATO threats to use military force against Serbia unless it succumbed to international pressure and allowed for OSCE to carry out its mission in Kosovo (NATO Press Conference, Brussels, June 12, 1998).

In addition, the UN Security Council had issued Resolution 1160 in March and Resolution 1199 in September, both calling for a ceasefire and negotiations by both parties (UN SCR 1998/1160, UN SCR 1998/1199). Simultaneously, between May and October 1998, the US envoy Richard Holbrook had managed to arrange a ceasefire agreement with Serbian President Milosevic which was to be monitored by the OSCE (Parliamentary Assembly, 1999). Although Milosevic was initially reluctant to accept the proposed agreement, when Western nationals residing in Yugoslavia were advised to leave due to possible NATO air

strikes, Milosevic agreed. The October 1998 agreement was initially seen as a possible avenue for peace, however both parties continued fighting and having dealt with Milosevic before and during the war in Bosnia, the Contact Group was not convinced that he would uphold the terms of the agreement. Only two months later, in December 1998, Serbian authorities were reported to have killed 30 Kosovo Albanians during clashes with the KLA and finally in January 1999 Serbian forces killed another 45 Kosovo Albanian civilians in the village of Recak (Elise 2004:100, Totten et al. 2008:350). The OSCE verification mission that had been allowed re-entry in Kosovo as part of the October 1998 agreement, headed by Ambassador William Walker, described the killings as a massacre of civilians. The 'Recak Massacre' as it came to be known was the final confirmation to the international community that unless serious measures were taken, ethnic cleansing in Kosovo was unavoidable. The Recak massacre was condemned by the EU, OSCE, Council of Europe, NATO and the UN Security Council. A few days later, on January 22nd the Contact Group issued a statement where:

all members expressed their revulsion at this act of mass murder. No amount of provocation could justify it. The Contact Group condemns UCK [Kosovo Liberation Army] provocations which can only contribute to rising tensions and further violence [...] The Contact Group also condemns the decisions by the FRY authorities to refuse entry into Kosovo by ICTY Chief Prosecutor Judge Arbour. (Krieger 2001: 197)

While Kosovars pleaded with the international community for intervention, Milosevic maintained that the international community had no right to intervene in the country's internal affairs. The international community was faced with a dilemma of legality and intervention. According to international law interference in what was part of Serbia was illegal; on the other hand, allowing yet another ethnic cleansing taking place in Former Yugoslavia would mean validating such behaviour of states in the wake of the 21st century. Furthermore, the passivity of the international community in Rwanda, Bosnia and now Kosovo would have sent a signal to other oppressive regimes that they had nothing to fear in obliterating their minorities.

4.5. The Rambouillet Accords

By the end of January 1999, NATO had sent senior military officers to Belgrade to warn Milosevic that air strikes were eminent if the demands of the international community

were not met. As this too did not yield results, on January 30th, NATO authorized its Secretary General Javier Solana to order military action if the violence continued (Mertus 2000). Under new and more serious threats by the international community, Serbia agreed to participate in a peace conference organized by the EU with the U.S. and Russia acting as peace brokers. On February 6, 1999 President Chirac opened the peace conference at Rambouillet near Paris which later came to be known as the Rambouillet Conference (Weller 2009). Kosovo Albanians were represented by the political arm of the Kosovo Liberation Army, the LDK as well as members of the Kosovo civil society while the Serbian side was represented by envoys appointed by the Serbian Parliament (Weller 1999, 2009). Beyond the Kosovo Albanians and Serbs, an agreement between the powers brokering the peace talks was just as important. Russia, a traditional ally of Serbia, was against military intervention in Yugoslavia even in the event that Serbia rejected the peace agreement. The US and most of the EU members were adamant that this was the last chance that was being extended to Serbia (Weller 1999, 2009).

The Rambouillet peace brokers produced an agreement that was meant to give Kosovo substantial autonomy under the pre-1989 terms before Milosevic revoked its status as an Autonomous Province in the Yugoslav Federation in 1989. The agreement was to be monitored by an Implementation Mission constituted by EU and OSCE representatives with NATO troops forming a Kosovo security force (KFOR). In addition, the agreement set forth a step-by-step roadmap that foresaw the immediate end of the conflict including the administrative and political institutions that would be established following the end of the conflict (see Rambouillet Accords).

The Accords were drafted under the assumption that following the peaceful resolution of the conflict, Kosovo would continue to be part of the Federal Republic of Yugoslavia. Consequently, the status of Kosovo within the federation would change in that Kosovo would have its own democratic self-government with minimal interference from the federal level. As such, Kosovo would have its own Constitution, Parliament, President, Government and Judiciary, including a Constitutional and Supreme Court (Rambouillet Accords 1999 Article I-V). The federal authorities would have competence in:

- (a) territorial integrity, (b) maintaining a common market within the Federal Republic of Yugoslavia, which power shall be exercised in a manner that

does not discriminate against Kosovo, (c) monetary policy, (d) defense, (e) foreign policy, (f) customs services, (g) federal taxation, (h) federal elections, and (i) other areas specified in this Agreement. (Rambouillet Accords 1999 Article 1.3)

In addition, the following principles formed the core of the Rambouillet proposal by the international peace brokers, the United States, European Union and Russia to the Kosovar and Serbian delegations (Rambouillet Accords 1999):

General Elements

- necessity of immediate end of violence and respect of ceasefire;
- peaceful solution through dialogue;
- interim agreement: a mechanism for a final settlement after an interim period of three years;
- no unilateral change of interim status;
- territorial integrity of FRY and neighboring countries;
- protection of rights of the members of all national communities (preservation of identity, language and education,; special protection for their religious institutions);
- free and fair elections in Kosovo (municipal and Kosovo-wide) under the supervision of OSCE;
- neither party shall prosecute anyone for crimes related to the Kosovo conflict (exceptions: crimes against humanity, war crimes, and other serious violations of international law);
- amnesty and release of political prisoners;
- international involvement and full cooperation by the parties on implementation.

Governance in Kosovo

- people of Kosovo to be self-governed by democratically accountable Kosovo institutions;
- high degree of self-governance realized through own legislative, executive and judiciary bodies (with authority over, *inter alia*, taxes, financing, police, economic development, judicial system, health care, education and culture (subject to the rights of the members of national communities), communications, roads and transport, protection of the environment);
- legislative: assembly; executive: President of Kosovo, government, administrative bodies judiciary: Kosovo court system;
- clear definition of competencies at communal level;
- members of all national communities to be fairly represented at all levels of administration and elected government;
- local police representative of ethnic make-up with coordination on Kosovo level;
- harmonization of Serbian and federal legal frameworks with Kosovo interim agreement;
- Kosovo consent required *inter alia* for changes to borders and declaration of martial law;

Human Rights

- judicial protection of human rights enshrined in international conventions and rights of members of national communities;
- ombudsman selected under international auspices;

- role of OSCE and other relevant international organizations;

Implementation

- dispute resolution mechanism
- establishment of a joint commission to supervise implementation;
- participation of OSCE and other international bodies as necessary.

The above principles were non-negotiable. As Serbia had not respected previous commitments to peace, including Security Council Resolutions 1203, Western powers demanded that any peace agreement signed at Rambouillet would have to be monitored by an international mission – including NATO security forces (Wippman 2001:132-134).

While Kosovo Albanians had hoped for an intermediate peace agreement to be followed by a referendum on self-determination, the agreement made clear that Kosovo would remain part of the FRY with enhanced rights as it related to rights of Kosovo to appeal directly to international bodies and maintain autonomous governing bodies within Yugoslavia. Further, the Agreement foresaw an independent judiciary with a Constitutional Court and a Supreme Court that would regulate on the grounds of legislation passed by the Kosovo Assembly, except for matters which fell under the federal authority. A Police Academy was also foreseen for Kosovo police officers to be trained by the Implementation Mission in cooperation with the OSCE and KFOR (U.S. Department of State, 1999).

The Kosovar delegation was reluctant to sign an agreement that merely gave back its autonomous status which had been revoked in 1989:

the biggest issue was that they didn't want to sign anything that would bring them back to autonomy again, that was the biggest point of contention. The reason they did not want to have the autonomy is because that was not a step forward. I remember someone saying 'there's no way. Why should we? They're killing us anyway.' (Aferdita Rakipi Interview 2009)

On February 17th Milosevic declared that NATO troops would not be allowed in Kosovo, a statement that was followed by President Yeltsin's warning that NATO should not use military force against Serbia even in the event that a peace agreement is not reached (Crawford 2003:185). The Rambouillet Conference closed its first session with a partial

deal having been reached between the two parties by February 23rd on the autonomy of Kosovo with an agreement for another meeting in March. Before the March meetings however, the Yugoslav Army moved 4,500 troops and 60 tanks close to the Kosovo border sensing that NATO threats were serious this time (Weller 1999). This in turn created new crises as Kosovo Albanians started fleeing under threat towards neighbouring Macedonia and Albania to find refuge. A final attempt to get Serbia to sign the peace agreement by US envoy Richard Holbrooke failed while the international community continued to receive reports of Serbian forces engaging in ethnic cleansing in Kosovo. Finally by March 23rd, 1999 NATO Secretary General Javier Solana ordered air strikes against Yugoslavia (NATO 1999). NATO started bombing Serbian military targets and the Kosovo Liberation Army launched coordinated attacks on the ground. Less than three months after the first air attack on Serbia the Milosevic regime surrendered to international ultimatum, and by June 3rd 1999 40,000 NATO troops entered Kosovo (BBC Timeline: Kosovo).

4.6. The Peace Plan

On 7 June 1999 the FRY government had finally agreed to a peace plan, following an agreement to end the war. It is important to quote the main points of the peace plan as it constituted the turning point in the Kosovo conflict and a substantial indication of what would follow the end of the war. Apart from the end of the conflict, the peace plan constituted of, inter alia, the following:

3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing

institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.

6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:

- Liaison with the international civil mission and the international security presence;
- Marking/clearing minefields;
- Maintaining a presence at Serb patrimonial sites;
- Maintaining a presence at key border crossings.

7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.

8. A political process towards the establishment of an interim political framework agreement providing for 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, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions. (Peace Plan 1999)

All of the above terms of the peace plan depended on their approval and adaptation of the Security Council. In the meantime, the actual end of the war i.e. technical and military arrangements, were being negotiated in the Former Yugoslav Republic of Macedonia between NATO and FRY.

4.7. The Kumanovo Agreement

The NATO military campaign that followed from March 22 to June 11, 1999 was terminated with the Military Technical Agreement (MTA). The MTA or the Kumanovo Agreement as it is known, ended the conflict under provisions that would later be stipulated in the UN SCR 1244. Although the provisions of the Rambouillet Accords would be used to design new self-governing institutions in Kosovo, those provisions relating to the relationship between Kosovo and FRY would only reaffirm the principle of sovereignty of FRY. In short, the withdrawal of all FRY forces from Kosovo meant that FRY was no longer competent of defence and as the Kumanovo Agreement stipulated:

The Parties to this Agreement reaffirm the document presented by President Ahtisaari to President Milosevic and approved by the Serb Parliament and the Federal Government on June 3, 1999, to include deployment in Kosovo

under UN auspices of effective international civil and security presences. The Parties further note that the UN Security Council is prepared to adopt a resolution, which has been introduced, regarding these presences. (2) The State Governmental authorities of the Federal Republic of Yugoslavia and the Republic of Serbia understand and agree that the international security force ('KFOR') will deploy following the adoption of the UNSCR referred to in paragraph 1 and operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission. They further agree to comply with all of the obligations of this Agreement and to facilitate the deployment and operation of this force. (Military Technical Agreement 1999)

The competences of FRY stipulated in the Rambouillet Accords were to be replaced with an international military and civilian force. While KFOR would be in charge of security and defence, as noted above, the civilian international administration was left to the UN Security Council. All parties involved were faced with the problem of sovereignty and the principle of non-intervention.

The Kumanovo Agreement that ended the war had larger consequences beyond Kosovo. The United Nations Charter (Article 2.4) makes it clear that 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.' If in the past, humanitarian intervention was blocked by the principle of non-intervention in the internal affairs of a given country, the case of Kosovo suggested that this might no longer be the case in the future. The implications of sovereignty and the undefined status of Kosovo vis-à-vis FRY would have a large influence on the future arrangements of the Kosovo institutions. This task was left to the UN Security Council.

4.8. Security Council Resolution 1244

On 10 June 1999, the United Nations Security Council, endorsing the Peace Plan and the Military Technical Agreement, passed Resolution 1244 (UNSCR 1244), establishing the United Nations Interim Administration Mission for Kosovo (UN SCR 4011). By virtue of this resolution, the Special Representative of the Secretary General of the UN (SRSG) was vested with legislative and executive powers for the administration of Kosovo. The UN administration in Kosovo was thus to become formally the executive government in Kosovo. The resolution was in many ways what had been suggested to the Serbian authorities in Rambouillet before the war, their rejection of the Rambouillet Accords

significantly decreased their role in the new post-war reality in Kosovo. Indeed, on the occasion of the passing of the resolution, the US Ambassador to the UN remarked that the adoption of the resolution ‘comes much later than it should have. Months of death, destruction and forced displacement of Kosovars could have been avoided if, in Paris last March, the Belgrade authorities have joined the Kosovar Albanians in saying yes to peace and no to war.’ (UN SC Meeting 4011:14). This meant that the competences assigned to Serbia on a republic level and FRY on federal level were no longer obtainable. The resolution made it clear that the implementation of the civilian mission would be undertaken under the sole authority of the United Nations, whereby UNMIK would:

establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo. (UNSCR 1244/10)

The resolution was built primarily on the institutional set-up foreseen in the Rambouillet Accords. As such, Kosovo was still, at least legally, considered part of FRY. However, while on the one hand the FRY sovereignty over Kosovo was acknowledged, the same document stipulated that the UN Mission will also be in charge of:

- Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);
- In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement. (UNSCR 1244)

Kosovo was only part of FRY until the final status was to be decided, and even during such time the actual sovereignty was to be practiced by the UN while FRY was sovereign on paper only. In a nutshell, Kosovo became a UN protectorate.

4.9. Establishing the UN Civilian Mission in Kosovo

The challenge that the Security Council faced was multilayered and not necessarily similar to the challenges faced by political elites in emerging democracies. Kosovo's institutional design was not being undertaken by Kosovo's political elite, rather, it was an international undertaking debated at the UN Security Council. Having said that, most recent institutional designs are international undertakings, 'International' in the sense that the involvement of experts and practitioners across state boundaries had been welcomed, indeed encouraged, to the point at which a new democracy that excluded foreigners entirely from its constitutional process might stamp itself as decidedly insular, even somewhat suspect (Horowitz 2002:15). The 'international' aspect of Kosovo's institutional design lacked the domestic component of the processes. In other words, political or ideological interests that shape institutions in a conventional setting had no influence in this case. Fundamentally, this related to Kosovo's status. Legally, Kosovo was a province of Serbia. Full-fledged independence and recognition was therefore not a viable option. Unlike Slovenia, Croatia, Bosnia and Macedonia which seceded from Former Yugoslavia and achieved independence, Kosovo had not been a constitutive republic within the Yugoslav federation and as such, under international law, could not claim independence.

The Security Council was divided along similar lines that defined the entire conflict. Russia and China condemned the NATO campaign throughout the conflict and considered it 'an illegal military action' (UN SC Meeting 1999: 4011). On the other hand, NATO countries considered the campaign, in the words of then French President Jacques Chirac, a move to preserve peace in Europe (BBC 1999). These differences on the resolution of the conflict would play out in the Security Council too. The terms of the peace agreement that produced UN SCR 1244 were the result of long negotiations between the United States, the European Union and Russia. UN SCR 1244 was adopted under the assumption that it would provide 'the legal, political and practical means to restore peace' in Kosovo (UN SC Meeting 1999: 4011: 12). The ambiguous language of the Resolution reflects the tenuous agreement between the parties involved, this would have consequences in the implementation of the UN Mission in Kosovo, especially as it relates to the establishment of local self-governing institutions.

In this context, institution building in post-war Kosovo involved two parallel processes, the building of *ex novo* state infrastructure, both in terms of capacity (i.e. streamlining)

and consolidating political processes after the conflict (which involved the facilitation of inter-party and inter-ethnic dialogue while generating the governing polity). While the third wave of democratizations in the Post-communist Central and Eastern European context was undertaken by national actors; in Kosovo this process was initiated and overseen by international actors.

4.10. The First Post-war Institutions

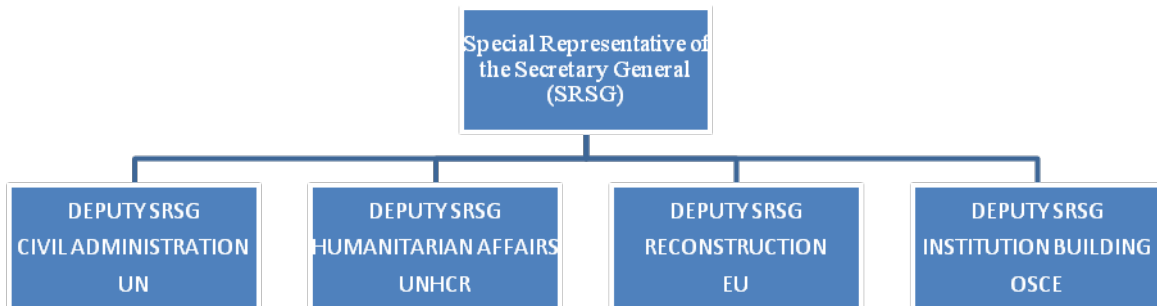
In their seminal work on new institutionalism, March and Olsen (1989:18) noted that the main purpose of studying formal or government institutions is to understand ‘how these institutions function, how they affect political life, how they change, and how they might be improved.’ Further, they suggest that these analyses are conducted in the context of a democratic ideology, as such the following exploration of the first governing institutions established by the UN in Kosovo looks not only at their structure but also their legitimacy or popular sovereignty.

The task of UNMIK was complex, while mandated to establish democratic and self-governing institutions, it was restricted by UN SCR 1244 to maintain sovereignty over Kosovo. The contradiction of the UN Mission in Kosovo was plain: if UNMIK was to establish institutions that the people of Kosovo wanted, i.e. democratic, it would have inevitably acted in contrast to its mandate. The people of Kosovo wanted independent governing institutions, which meant independence from the Federal Republic of Yugoslavia. At the same time, UNMIK had no authority under UN SCR 1244 to make any decisions that would compromise ‘the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia’ (UN SCR 1244:6).

In the first six months UNMIK tried to establish itself along with basic administrative services in the judiciary as well as public services that had been missing or had been operating underground in Kosovo for years. UNMIK was constituted with four pillars, each one headed by a Deputy Special Representative of the Secretary General (DSRSG) reporting to the SRSG. Pillar I was in charge of Emergency Relief and Humanitarian Affairs and was administered by the United Nations High Commission for Refugees, its main task being the return of Kosovar refugees as well as the return of internally displaced people. Pillar I functioned for six months during the transitional post-war phase of

emergency relief, it was dissolved as a UNMIK pillar on December 15, 1999 when UNMIK signed an agreement with local political parties for joint administration, which is also considered the end of the post-war emergency phase. From there on Pillar I was not instituted again until 2001 when it took over Police and Justice. Pillar II was in charge of Civil Administration and was headed by UNMIK itself. Pillar III in charge of Institution Building was headed by the OSCE and pillar IV which covered economic reconstruction was headed by the European Union and the European Agency for Reconstruction (Reka 2003:139-141). The pillars were designed as uber-ministries with several departments within the field of their competencies.

Figure 4.1: UNMIK Organizational Hierarchy



The institutional design of the UN Mission in Kosovo was a result of applying lessons from previous UN Mission to the design of the Kosovo Mission as well as developing new structures to serve Kosovo’s particularities:

Innovators take opportunities and mechanisms that are present in existing institutions and combine them, sometimes with elements from other of institutional contexts, in new ways. They then provide new frames, or manipulate existing ones, in order to persuade others that the innovations suit their interests and are normatively appropriate. (Stone Sweet et al. 2001:19-20)

The lessons from the UN Mission in Bosnia proved particularly important in designing the institutional set-up of the UN Mission in Kosovo. This in turn played a role in the effectiveness of UNMIK to establish the local self-governing institutions. As indeed, UNMIK SRSG Michael Steiner would note:

In Bosnia although the High Representative is clearly the most senior international official, the various international organizations have been quasi-autonomous. I remember all too well how much we suffered from the fact that in the beginning there was no coordinated decision-making process. This structure made it difficult for the international community to coordinate its own efforts, much less anyone else's. In Kosovo, at the insistence of Kofi Annan, UNMIK acted on the lessons learned in Bosnia and built a new kind of structure. It created the four pillars I've mentioned, each with a well-defined mandate and all of them subordinate to the overall authority of the Special Representative of the Secretary General. Although still imperfect, I think all observers agree that, thanks to Kofi Annan, this structure has resulted in a dramatically improved level of coordination among international actors. (Steiner Speech 2003)

The important point that Steiner makes is to suggest that both institutions and choices matter in the outcome of a political process. Although in essence the pillar structure seemed functional, coordination between pillars still proved complex. While UNMIK was the umbrella of all agencies operating in Kosovo under its auspices, staff at non-UN pillars were not directly under the SRSG's command. As a result, coordination between pillars was minimal and only occurred at the DSRSG level. The European Union which headed the economic reconstruction front was almost fully detached from UNMIK in terms of operational rules and procedures and to a large degree so was the OSCE, although UN regulations, which had the power of laws in Kosovo, were processed strictly through the SRSG's Legal Office. The shortcomings of multiple governing actors would become more evident later in the process during the transfer of powers from multiple international actors to one elected Kosovo government. In the meantime, UNMIK was faced with the problem of pre-existing governing structures that resumed activity with the end of the war.

4.11. Parallel Governing Structures

In addition to the UNMIK, there were three more parallel structures that claimed governing legitimacy in Kosovo. The most significant threat to UNMIK's province-wide administrative cohesion was that of the Serbian administrative structures in the Serbian enclaves. Most of the public services in these municipalities were carried out by Serbian authorities. Serbian teachers in public schools received their salaries from Belgrade; birth certificates were also issued under Republic of Serbia domicile while the rest of the Kosovo population was being issued UNMIK documents. More importantly, the judiciary in the Serbian enclaves operated under Serbian law. This:

Hamper[ed] everyday decisions, as well as the pursuit of justice on a larger scale. For the people of Kosovo, these parallel systems create legal uncertainty and conflict on a basic, day-to-day level. Judgements from one system are not recognized by the other, nor do the two systems share court files, cadastral records of title to land, or records of births, deaths, marriages and divorce. This presents a confusing, costly, and complex proposition that gives rise to conflicting judgments and to speculation and arbitrage. (Baylis 2007:3)

The reluctance of the Serbian minority in Kosovo to accept UNMIK's authority, and later that of the Kosovo institutions, was to prove a considerable challenge to Kosovo's governing institutions. Parallel structures make integration at any level impossible. Current literature suggests that post-conflict institutions have advantage in that, in contrast to:

peaceful regime change, the old elite is not discredited to the same extent that tends to be the case after a military defeat ... Second, in peaceful breakdowns, there is no occupation regime of allies or some other transnational agency that could impose by force a new institutional order ... Finally, post-war conditions have often been the historical moment of vigorous political and institutional innovation. (Elster et al. 1998:10-11)

This may indeed be the case, if we assume that all sides would accept the new institutions. Although post-conflict institutions are supposed to have the priority of starting new and discrediting the old elites that were part of the conflict, the case of Kosovo proves that post-conflict institution building is a far more complex undertaking. Alliance to old institutions, be it on ethnic, religious, linguistic or political affiliation, will inevitably have an effect on the acceptance of new institutions. In the case of Kosovo, this was even more complex given that in addition to the Serbian parallel structures, the Kosovar Albanians had their own parallel structures that had been operating underground since the revocation of the autonomy in 1989 (see Figure 4.2).

Figure 4.2: Kosovo Parallel Governing Structures in 1999



The Kosovar Albanian parallel structures were divided along party lines. On the one hand there were the pre-war parallel authorities of the LDK i.e. the Republic of Kosovo government headed by Ibrahim Rugova and Prime Minister Bujar Bukoshi. These institutions, ranging from health care to education and social services, had gone underground when Belgrade authorities abolished Kosovo's autonomous status:

After the Kosovo Assembly was dissolved in June 1990, an attempt was made by 114 of its 180 deputies on 2 July to declare Kosovo independent from Serbia and a full republic within the SFRY. This move was declared illegal by both Serbia and the SFRY, so on 7 September 111 of the deputies, meeting secretly in Kacanik/Kacanik, proclaimed an independent Republic of Kosovo. (OSCE 1999:4)

Although these institutions and the proclaimed independence were never internationally recognized, they have functioned continuously since their establishment. In the meantime, during the war, the KLA had formed a rival provisional government. The provisional government was headed by Hashim Thaci, who had now formed the Party for the Democratic Progress of Kosovo (PPDK) later renamed as the Democratic Party of Kosovo (PDK) (See OSCE 1999, UNHCR 2000).

The role of multiple actors in building political institutions made the process more complicated. In addition to parallel authorities, UNMIK was faced with parallel structures. Although this may seem unique to Kosovo, in as much as the actors involved are not conventional state actors in a sovereign country, the engagement of multiple interests in institution building is not isolated. In fact, March and Olsen (1989: 65-66) note:

Understanding the transformation of political institutions requires recognizing that there are frequently multiple, not necessarily consistent, intentions, that intentions are often ambiguous, that intentions are part of a system of values, goals and attitudes that embeds intention in a structure of other beliefs and aspirations, and that this structure of values and intentions is shaped, interpreted and created during the course of the change in the institutions.

Thus, institutional development is never a clear-cut process with only one set of goals. In the case of Kosovo, in the first instance UNMIK was faced with relinquishing existing institutions. This process was considered essential for several reasons. The primary reason was that all the parallel structures challenged UNMIK legitimacy at some level which made it difficult for UNMIK to assert its authority throughout Kosovo. In addition, the interests of all three parallel structures were challenging each other, which was a considerable cause for instability in a post-conflict environment. More importantly, UNMIK was also tasked with building Kosovo-wide self-governing institutions, something that was not possible in the face of three additional governing structures.

In order to disband parallel structures, consolidate UNMIK's sole authority in Kosovo and create a channel for the local political demands, UNMIK created the Kosovo Transitional Council (KTC). This was UNMIK's first attempt to establish a governmental structure in Kosovo as part of a larger state-building project foreseen with the Rambouillet Accords and the UNSCR 1244.

4.12. The Kosovo Transitional Council

UNMIK was aware that governing institutions in post-conflict situations work 'only if the population concerned is ready for such development, endorses it and had the opportunity to participate in it' (Wolfrum 2005:654). Although legally UNMIK was the sole authority in Kosovo, the existence of parallel structures suggested that locally, the Kosovars seemed

to continue to depend on their pre-war institutions. The KTC was thus designed to consolidate all rival institutions and work towards the establishment of a joint governing structure.

As such, the KTC was effectively the first body of national and international co-optation in Kosovo, consisting of Kosovo representatives from a broad range of political parties as well as members of civil society, including representatives from all ethnic minorities. The purpose of the KTC was clear, it was less clear how it would function and to what extent it would enable local participants to have their say. On the one hand, UNMIK claimed the KCT would 'offer the main political parties and ethnic communities in Kosovo an opportunity for direct input into the decision-making process.' The same press release goes on to imply that KTC 'will serve as a forum where the parties can work together towards achieving consensus on a broad range of issues relating to civil administration, institution building, reconstruction and essential services' (UNMIK Press Release 16/07/1999).

In effect, the KTC had no real powers to influence any decision-making within UNMIK and conflict between locals and internationals defined the KTC from the first days of its operation. While the Secretary General in New York reported progress in Kosovo and considered the KTC 'an opportunity to have direct input into the UNMIK decision-making process' the KTC had become a political battleground for Kosovar political parties, Serb minorities and UNMIK officials (Secretary-General's Report on UNMIK, September 1999).

This KTC was very interesting, alas very sad and bizarre at times. Kosovars were merely observers in the process and many of their suggestions were not taken into consideration ... The agenda was generally prepared and imposed by the UN administrative structures...having said that, Kosovar political party representatives were not very active either ... UNMIK decision making was quite autocratic, the most important role of this structure was to read the translations of regulations. Even those regulations were generally delayed. (Interview Ferdie Rushiti, Member of the KTC, 2009)

UNMIK's uncompromising approach to assert itself as the sole authority in Kosovo resulted in political tensions between local and international representatives. The reduction of domestic political and civil society representatives to mere observers left them discontent with the set-up of the KTC. This is also one of the main reasons why the KTC

was continuously disabled by members who did not participate, or who contested its powers, and eventually only used it as a venue for political statements. Both the LDK and PDK heads threatened to leave the KTC on several occasions, the Serbian representatives on the other hand refused to participate on the grounds that violence against their community continued (Brand 2003:11-12).

4.13. Moving Beyond the Kosovo Transitional Council

The KTC demonstrated that whatever illusions the local political establishment may have had about the post-war power-sharing structures with the international administration, UNMIK was now in charge. The International Crisis Group (ICG Balkans Report N° 83) reported that ‘many Kosovars’ frustration has been aggravated by the feeling that they are not being sufficiently consulted by the international community and that, after a decade of disenfranchisement and apartheid instituted by the Serbs, they are again being shut out of the process of rebuilding their homeland’ further suggesting that the international administration ‘must consult more broadly with Kosovars on a wide range of issues and incorporate Kosovar professionals into all decision-making and implementation processes....[and] remain mindful that their mission is not to establish a colonial administration but rather to help the people of Kosovo get what they need to run their own territory.’ Disappointed, Kosovars pressed for genuine power-sharing administration calling on UNSCR 1244, which designed UNMIK to ‘provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions’ (UNSCR 1244, Sec. 10).

The UN understood the importance of cooperation between UNMIK and the local political elite as key to stability in post-war Kosovo. The KTC was not fulfilling the ambitions of the local political establishment or those of the Kosovo society who demanded a share of the governing responsibilities. In addition, Bernard Kouchner, who was the first SRSG to serve a full term, acknowledged that UN SCR 1244 meant that UNMIK was there to administer the province temporarily while ‘establishing and overseeing the development of provisional democratic self-governing institutions’ (SCR 1244). In addition, once the Kosovar political parties had noticed that substantial power-sharing between them and the international administration under the KTC umbrella was not satisfactory for them, they maintained their parallel governing structures. As a result, Kouchner invited all political

actors to dissolve their parallel structures and join a Kosovo-UNMIK Joint Interim Administrative Structure (JIAS).

The termination of parallel structures proved problematic, especially with the Serbian structures which considered the establishment of JIAS a breach of UN Resolution 1244 (Brand 2003). The Kosovo Albanian parallel structures were promised integration into JIAS in return for the dissolution of all their claims of authority which was agreed on December 15th 1999. The deadline for the suspension of all parallel structures was January 31st 2000, after which date the SRSG would promulgate a regulation on the formal establishment of JIAS (Lorenz 2000:131). The LDK, headed by Rugova and Bukoshi initially agreed, when they called the Parliament of the Republic of Kosovo on 31 January 2000, they did not suspend the parliament or the governing structures, but merely closed the session and gave participants time to review the proposal of the government and meet again in 10 days. Following a strong reaction from both UNMIK and the rest of the local political establishment that was party to the JIAS agreement, Rugova issued a statement dissolving the government, assembly and presidency of the Republic of Kosovo (UNMIK Press Briefing Transcript, 2 February 2000).

4.14. Lessons and Consequences from Bosnia

The international community had learned from Bosnia that intricate governing structures can prove problematic in the long run. The General Framework Agreement for Peace in Bosnia and Herzegovina, or the Dayton Agreement, divided Bosnia into cantons (The Dayton Peace Accords 1995). As a matter of fact, the United States had opposed cantonization since Bosnia, fearing of 'setting a dangerous precedent of accommodating aggression' (*Time Magazine* 1992). This meant that any viable solution for the future institutional design of Kosovo had to be established under one constitutive central government. In addition, the Dayton Agreement had two other consequences on the future of Kosovo. Firstly, the fact that Kosovo was left out of the peace agreement, signalled to the Kosovo political elite that peaceful resistance was not producing any results. The Kosovars had begun peaceful resistance since the beginning of the breakup of Yugoslavia, it was only after their demands were not met through peaceful resistance that the conflict erupted into a civil war (Clark 2000). The second consequence of the Dayton Agreement was the intention of Serbian President Slobadan Milosevic to resettle 140,000 Serb

refugees from Bosnia and Croatia in Kosovo, which worried Western powers as they feared ‘that he may well clear room for them by ‘ethnic cleansing’ of the province’s majority Albanians’ (*Time Magazine* 1992).

Thus, in the process, the institutional set-up of the Rambouillet accords was a combination of lessons learned of what had and had not worked in previous similar situations and applying them in the context of Kosovo. A process, that in many ways is similar to most institutional design processes. As indeed, Stone Sweet et al. (2001:19-20) suggest that actors involved in the institutional design process ‘mimic what they perceive to be successful political models, borrowing elements that have proved useful in other institution-building projects.’ In this context, although the process itself may well resemble most institutional design processes, the actors involved do not. While both parties to the agreement had a say on the framework, their input in the actual design was limited by the conditions of the international community (Interview A.R. 2008). Further, as Weller notes in his study of the Rambouillet process:

Proposals which had been put forward by the negotiators, perhaps in deference to certain political necessities and without fully thinking through their practical implications, were now being considered by those who would have to live with the end results, and who would be held accountable for these results by their domestic constituents. (Weller 1999:230)

The Kosovar members of the delegation understood that the ‘documents under discussion [Rambouillet Accords] represented the future constitution of their own country, at least for an interim of three years,’ yet they had very little ownership over them (Weller 1999:230). Although the initial purpose of the Rambouillet Accords was an interim arrangement to end the conflict and establish self-governing institutions, the core of the institutional set-up would accompany Kosovo way into its independence.

4.15. Conclusion

There are two main conclusions to be drawn from the initial post-conflict political arrangements in Kosovo. One that relates to democratization in the context of post-conflict international administration and the other that relates to institution building in the context of international administration. If in the third wave of democratizations, international actors played an influencing role; in the case of Kosovo they take central stage. Political

developments that followed thereafter are therefore different from those in regime-change involving domestic actors alone. For one, the presence of an international administration with executive and legislative powers gave the domestic actors very little, if any, room to manoeuvre and shape the future political spectrum of Kosovo. In turn, the international administration realised that without the engagement of domestic actors, stability is fragile and is impossible to speak of democratic governance. Thus, the acknowledgement of co-dependence between domestic and international actors plays a key role in the stability of a new regime involving international administration.

The second conclusion is that democratic institutions cannot be developed without the participation of domestic actors. As Lemay-Heber notes, this can run the danger that ‘the state-building agenda comes to be seen as progressively more exogenous, reinforcing the delegitimization process’ (Lemay-Hebert, 2009:66). The UN had had previous similar experience in Bosnia but only through a UN High Commissioner with powers to interfere in domestic affairs, not shape them. In this context, the international administration in Kosovo was engaging in something that the UN had no previous experience of, which helps explain some of its initial mistakes in dealing with domestic actors. The lesson from this experience, as Michal Steiner the UNMIK SRSG would later conclude, is that ‘International missions need to be “learning organizations”. Critical to this is admitting we’ve made mistakes. You can’t learn if you don’t admit that you didn’t do it right in the first place.’ More importantly, Steiner notes that:

To be effective, missions must study the environment – its political rivalries and alliances, how people make a living and the stories they tell one another. The mission needs to conduct public opinion surveys and consultations with the public in order to understand how people view their situation. (Steiner Speech 2003)

Studying the *environment* or an understanding of the environment is essential to democratization. Democratization is not a universal model that can be applied unvaryingly to every country with the anticipation of producing the same results it has produced Western societies. In this context, in its formative stages, the UN Mission was not led by what the people of Kosovo wanted but rather what the Security Council wanted.

With that in mind, the following chapter looks at the first institutions that emerged in Kosovo after the war. While some may consider the establishment of the Kosovo

Transitional Council as the first institution that emerged as a national and international co-governance body, this research takes a different view. The KTC was a forum of deliberation of ideas between the political elite and the UN international administration. It is therefore difficult to treat it as a formal government institution as it essentially lacked administration, rules of conduct, statute and all the other capacities and state infrastructure that constitute formal institutions. More importantly, it lacked infrastructure to carry out its decisions i.e. govern. In this context, the first formal governing institutions were the Joint Interim Administrative Structures (JIAS) established as co-governing institutions between national and international participation. JIAS institutions will be explored to understand their role in the establishment of the first Provisional Institutions of Self-government (PISG). In addition, JIAS is crucial to understanding the institutional design, function and competencies of the PISG as JIAS was instituted as a method of 'preparing the ground' for self-governing institutions.

Chapter 5

Organizing Representation: From Joint Interim Administrative Structures to Provisional Institutions of Self-Government

5.1. Introduction

This chapter looks at the initial post-conflict attempts by UNMIK to engage Kosovars in the governing process. Specifically, it focuses on the initial institutional arrangement, the dynamics between Kosovar and international staff and the effect these institutions played in the promulgation of the Constitutional Framework and the establishment of the Provisional Institutions of Self-Government. The period between the Joint Interim Administrative Structures and the establishment of the Provisional Institutions of Self-Government is critical in understanding the institutional arrangement and origins of the Kosovo Assembly. The first part of this chapter looks at the initial co-governance arrangement between internationals and Kosovars to understand the effects of external actors in democratization processes. The second half looks at the process of constitutional drafting and the establishment of the first provisional institutions of self-government after the 2001 elections.

From a broader democratization perspective, this chapter looks at the level and method of engagement of the UN in post-conflict reconstruction processes. By the end of the 1990s the UN had engaged in several similar missions, starting with the organization of elections in Nicaragua in 1990 and the Transitional Authority in Cambodia (see, for example, Pinto-Duschinsky 1997). During this period, the UN underwent a transformation to address the challenges of the post-cold war era peacekeeping operations. In contrast to cold-war peacekeeping, new peacekeeping was characterised by active approach on behalf of the UN to build sustainable institutions and engage in conflict resolution. Although in previous missions regime-change and democratization were not explicitly part of the UN peacekeeping missions, their efforts to organize free and fair elections and democratic governing had become part of the new peacekeeping agenda. While there had been several missions of similar character from which the UN had accumulated experiences, Kosovo proved challenging in that it had an unresolved final status. Consequently, all decisions made by UNMIK in the formative stages of its mission and throughout its operation there until 2007, reflect the challenges of acting as a transitional authority while simultaneously

trying to engage the local population in the transitional governing structure while building new institutions of self-government.

5.2. The Joint Interim Administrative Structures (JIAS)

On January 14 2000, six months after the UN had established its Mission in Kosovo, the SRSG promulgated Regulation 2000/1 on the Kosovo Joint Interim Administration (UNMIK/REG/2000/1). The Kosovo Transitional Council (KTC) would continue to function but would be enlarged and act as a shadow-assembly to the Interim Administrative Council (IAC) which was a new body established to make policy recommendations to the SRSG and propose policy guidelines to JIAS departments as the highest political body within JIAS.

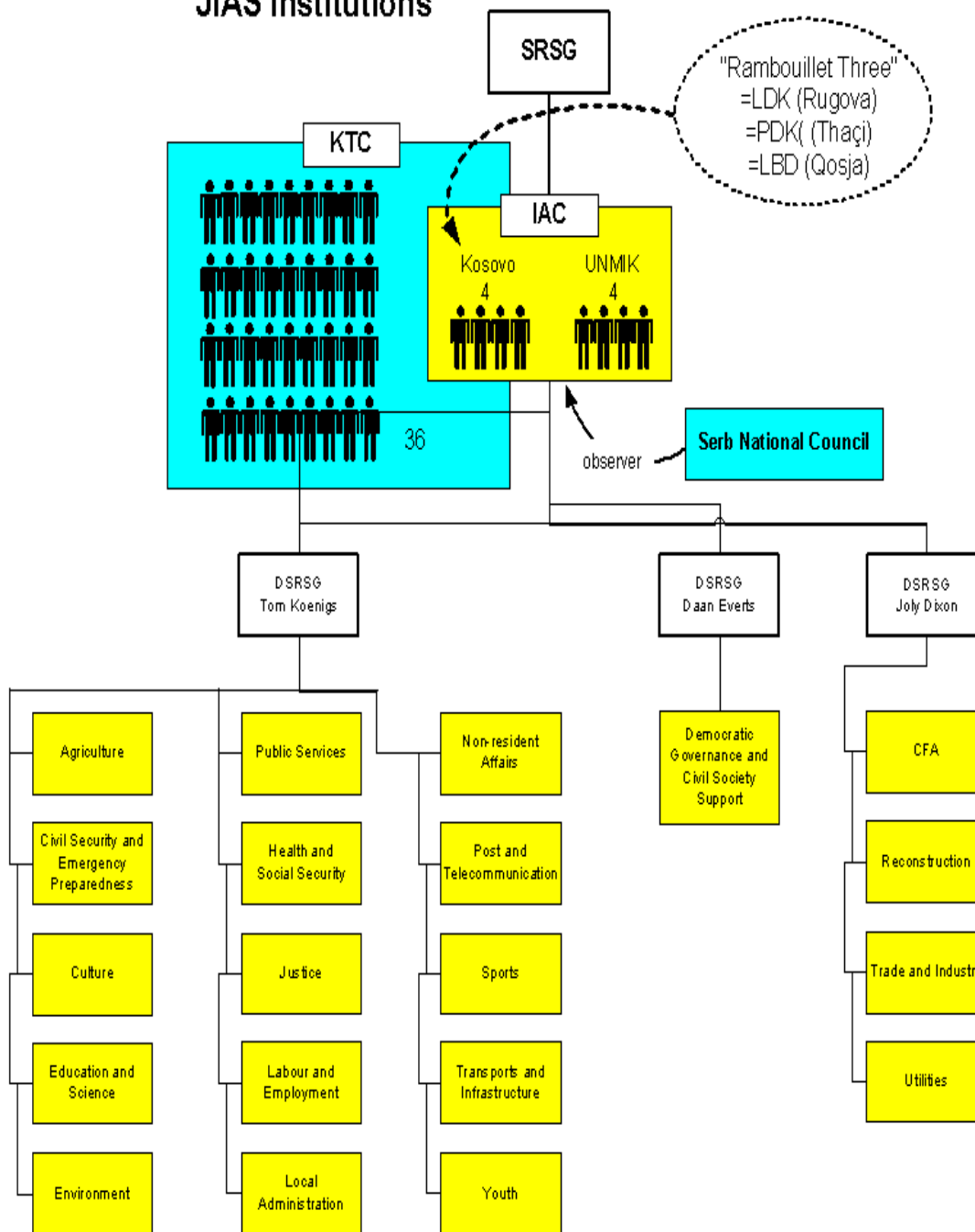
The IAC would have eight members, four Kosovar (three Kosovar Albanians and one Serb) and four international members with two external observers from civil society (UNMIK/REG/2000/1). In this aspect, the IAC was smaller but not necessarily different from the Kosovo Transition Council. The local members ended up having three seats for the three main political parties, the LDK, PDK and the United Democratic Movement (LDB) which was a coalition of several political parties, as opposed to four - as the Serbs did not fill their reserved seat immediately in opposition to JIAS (Brand 2003). It was only four months later, in April 2000, that the Serbs would send an observer to the IAS meetings (for more on this issue, see, Covey et al. 2005:110-113). To balance this initial disproportion, UNMIK was also represented by three pillar heads who were also deputies to the SRSG, the head of OSCE pillar, UN pillar and EU pillar. The head of pillar I or UNHCR, would attend the meetings in an observer capacity. Participation in observer capacity was also extended to one representative from the Kosovo civil society which was selected by an OSCE-founded NGO council, the head of UNMIK Police and the Commander of KFOR.

The institutional arrangements under JIAS were meant to create embryonic or latent governing institutions that UNMIK would then transfer to an elected Kosovo government. In this context, UNMIK had tried to establish some form of separation of powers as a way of providing a due process for the local political elites in cases where they would be dissatisfied with decisions taken by the IAC. This was clear in funding Regulation 2000/1/2.5:

If a majority of members of the Kosovo Transitional Council disagree with the position or decision taken by the Interim Administrative Council, it can propose a different solution to the Special Representative of the Secretary General who shall take the final decision.

Although the KTC had the authority to challenge IAC decisions, both bodies' decisions were limited and subject to the approval of the SRSG, thus the whole process was under the authority of the SRSG. JIAS Departments followed a similar pattern, where decision making was subject to international approval. All of the departments were established in accordance with UNSCR 1244 and as such they only regulated areas in economy and finance, education, health, culture, civil affairs, transport and communications, agriculture, environment, democratization, local administration etc. Sectors that could imply sovereignty such as defence and foreign relations were considered reserved powers of the SRSG and were not included in the JIAS departments. Departments were headed by national and international co-heads. Local authorities consisted of Regional Administrations with five International Regional Administrators for Prishtina, Peja, Mitrovica, Prizren and Gjilan and 30 Municipal Administrators. The Regional Administration was not subject to JIAS and remained entirely international as its main functions were to assure all local authorities were acting in compliance with UNMIK regulations and UNSC Resolution 1244 by all municipal administrations while International Municipal Administrators were suppose to incorporate existing municipal structures within JIAS.

JIAS Institutions



Source: www.unmikonline.org

Although the institutional set-up in Regulation 2000/1 reflected a balanced representation, the limited participation of members of the Serb minority challenged its legitimacy. Kosovo Serbs initially rejected JIAS fully, however by April 2000, Kosovo Serbs who were organized around the Serb National Council (SNC) decided to participate in JIAS by appointing two department co-heads on the central level and three representatives for the KTC, while the IAC seat would be filled by an observer as they refused to take part in any decision-taking at the IAC level (Brand 2003). In May 2000, the Serb representative, Rada Trajkovic who had been appointed as an observer by the SNC, left the IAC in protest of further violence directed at the Serbian community, however following extensive negotiations with the SRSG, she rejoined again in June. In between these periods, the SRSG's main priority had become the Serbian integration into JIAS (2003). This frustrated Kosovo Albanian politicians who considered the political actions of the Serbian minority in Kosovo an orchestrated attempt by the government in Belgrade to destabilise Kosovo (see, for example, Reka 2005).

The international and local representatives were driven by two different agendas. While the international community was concentrated on getting the Serbs to participate, which characterized most of the existence of JIAS, it alienated the Kosovo Albanians who were eager to establish the initial institutions which to them were the pathway to more authority that would eventually result in independence. This was the beginning of a long struggle for priority and power between locals and internationals.

Albanians thought that UNMIK was only working on the minority rights agenda and not doing enough to deal with the situation on the ground which was getting progressively worse ... while they (Kosovo Albanians) demanded UNMIK to start focusing on broader issues they did very little and some would say nothing to stop the violence that was directed towards Serbs and other minorities. (Interview E. W. 2010)

Julie Mertus (2010) who studied the UN Human Rights approach in Kosovo also notes that 'One of the international community's greatest mistakes with respect to human rights was the immediate championing of and perceived privileging of the rights of the Serbs in Kosovo, with little attention to the rights of the Albanians,' she quotes a Kosovo Albanian student '[The international community] came in saying 'the Serbs, the Serbs, you must protect the Serb's human rights' but all the time I wondered, what about our human

rights?’ This approach only solidified the strong division between Kosovo Albanians and Serb while undermining the operation of JIAS.

5.3. Institutional Arrangements and Decision-Making

On the central level the IAC did not make any policy recommendations as suggested in the founding regulation. While the SRSG sought IAC’s approval on almost all regulations, it never stopped short of promulgating regulations that were opposed by IAC members. The KTC on the other hand was designated to review legislation adopted by the IAC, the IAC adopted this practice itself since the actual drafting and policymaking came from the SRSG’s Legal Office. In essence there was no genuine process of decision making by consensus as stipulated in the JIAS Regulation.

With the establishment of JIAS however, UNMIK did manage to consolidate its powers in Kosovo as the only legitimate governing authority with the exception of Serbian enclaves which continued to remain under Serbian rule with sporadic participation in the KTC in an observer capacity. The situation aggravated the local political elite with the international community and further deepened animosities and distrust between locals and internationals. In addition, while the highest bodies of JIAS had been established and running, administrative departments that were meant to carry out the actual work were being established slower than anticipated. The initial deadline of April 2000 for all of the departments to be constituted was not met as UNMIK delayed the regulations and in some cases failed to issue one. This was also due to the UN internal processing of legislation, which required every regulation to pass through the UN HQ Legal Office in New York and thereby considerably delaying the process. Without proper legal framework the appointment of heads and co-heads was ineffective as the responsibilities in Regulation 2000/1 were too vague to be functional. Kosovars blamed UNMIK for slowing down the process arguing that this was a result of UNMIK’s constant preoccupation with the Serbian minority but in reality it was a combination of factors (Mertus 2000).

Those public services such as health, education and communal services in most cases were staffed with Kosovars who returned to their pre-1989 jobs and resumed working, before JIAS came along, in some cases without salaries. These departments were placed under JIAS administration. In the meantime, departments that had been established by UNMIK

incorporated local co-heads to their administrative structures. The results were mixed, overall relationships were tense and communication between local and internationals limited. Appointments had been made on political considerations more so than expertise in the field of work which added incompetence to lack of communication. The international co-heads were the decision makers in the event of disagreement which left local co-heads with no room for recourse. This would become a recurring problem when looking at the institutional set-up in Kosovo throughout UNMIK's presence there. The international overriding powers were somewhat arbitrary given that there was no due process or institutions for locals to appeal to if and when they felt that their rights or interests were being undermined. The regular chain of command would have led them to the IAC as the highest body within JIAS but the IAC's decisions were subject to SRSG's approval and thus the circle would come to an end. Despite all the shortcomings, at a departmental level JIAS managed to establish an administrative infrastructure that, administratively at least, operated under unified practices. Furthermore, recruitment and training of Kosovar staff did result in some capacity building that would later be transferred to the elected government. Another important contribution of JIAS at the departmental level was the establishment of channels for civil society to influence policymaking as the OSCE assured their access to most JIAS bodies, including the IAC as mentioned above.

Local administration was even more chaotic and varied from municipality to municipality. UNMIK had fallen behind in appointing international municipal officers in all 30 municipalities, international staff was scarce and most of them commuted between Prishtina and their assigned municipalities. In addition to UNMIK's lagging behind, Thaci's provisional government had already established fully running municipal administrations in the first weeks following the end of the war. These municipal administrations had been in operation for months before UNMIK arrived, most of them were not only providing basic public services but were also issuing documents and allocating municipal property, both powers reserved for UNMIK under the UNSCR 1244. Besides a lack of legitimacy, the provisional government-led municipal administrations had made no effort to include minorities or representatives from other political parties, the administrations were run fully by members of Thaci's PDK. In the Serbian municipalities, administration had simply resumed work after the war and was fully detached from the new UNMIK reality as they continued with the pre-existing structural set-up. According to the JIAS agreement however, these structures were to be absorbed by UNMIK.

Consequently, when International Administrators arrived, in those municipalities where there was no resistance, they took over as Municipal heads with overriding powers over regulations and executive orders while the administration continued to function with more or less the same staff except for cases where there had been grave violations of human rights. This was an attempt by UNMIK to unify the operations of all 30 municipalities in Kosovo. Locals were engaged in Municipal Boards (which was the local version of the IAC) and city councils the (local version of the KTC), all of which – as at the central level – were, appointed by the international administrator. In essence, some of the city councils never fully formed as local elections were called for October 2000 and they were replaced with Municipal Assemblies. The international community believed that Kosovo was too tense for general elections and the results of the local elections would give UNMIK a good estimate of the actual political environment, which is why local elections were called for first.

5.4. Local Elections and Local Institutions

Similar to the department level, national and international cooperation on the local level bordered on constant conflict of power. Where the provisional government had established itself, UNMIK found it difficult to impose its authority. Most of the municipal functions were being carried out by the local administration as the international administrators were left with a vacuum of direction as the head of pillar II who was in charge of the civil administration had resigned unexpectedly. Experiences varied from municipality to municipality, the international administrators in the Municipality of Suhareke (now called Therranda) had to remove the local mayor from the municipal building by force, in Peja the international administrators chose to accept the local administration and work within the established structures setting an example that Kouchner wanted to replicate throughout Kosovo. Peja was a stronghold of the KLA and following the war, the KLA had established an efficient local administration before UNMIK arrived. Prior to the JIAS agreement, UNMIK administration in Peja found it difficult to persuade the established administration to fully relinquish power to the UN and instead of creating a conflict with the local administration, UNMIK decided to cooperate with the local administration. In the process of cooperation, UNMIK managed to improve those sectors of the municipal administration that were of concern to the international community, such as inclusion of minorities, diversity of political and gender representation and compliance with the UN

Regulations and Resolution 1244. Following the JIAS agreement, UNMIK made an effort to apply the example of Peja to the rest of the municipalities throughout Kosovo and appointed Ram Buja, who had been the provisional government's Minister of Local Administration, a JIAS co-head of the Department for Local Administration. By this time however, where relations with UNMIK and local administrations had deteriorated, they were irreparable, in cases where there were possibilities for improvement, there was lack of coordination from UNMIK central authority on the specifics of the Peja example. In addition, local elections were scheduled for October and they were due to rearrange the power-sharing arrangements set out in the JIAS regulation.

The formation of JIAS was crucial to establishing governing structures in post-war Kosovo as it created an administrative infrastructure which was then engaged with elected representatives. Despite its shortcomings, JIAS managed to initiate a process that was crucial to the post-war fragile stability and it managed, at least partially, to apply a unified administration in all of Kosovo. While the coordination between UNMIK and locals at this stage could have been better, JIAS was never a democratic body nor was it meant to be one from its conception. All of the local appointments made by the international administration were done on assumptions of popular support that locals enjoyed in post-war Kosovo. While in the case of the LDK and PDK these assumptions turned out to be somewhat realistic, in the case of the LBD Coalition, local elections resulted in less than one per cent support Kosovo-wide, at the same time that the LBD had held the same number of posts as the LDK and PDK.

While the institutional design for JIAS was based on the idea of transitional power-sharing institutions between locals and internationals, the results were mixed and rarely resembled the actual institutional design set out in the JIAS Regulation. The tensions between national and international administrators were creating a standstill on many critical issues to post-war reconstruction, the cost of which conflict was borne by Kosovars who were not receiving regular basic public services. This was further complicated by the absence of an arbitration body that could rule on these impasses. As the only arbitration was that of the prevailing powers of the SRSG, widespread resentment of the UN grew further. Communications between international and locals reached an all point low in mid-2000. Finally UNMIK decided to organize local elections as a way of channelling the local discontent.

5.5. The First Kosovo wide Elections

The first elections after the war were also the first free and fair elections in the history of Kosovo. They were a test of general political stability, both for the Kosovar political establishment as well as for the UNMIK administration. The work of organizing the elections was undertaken by UNMIK pillar III which was run by the OSCE. By this stage, UNMIK had issued several regulations that addressed political party registration, civil registry, the establishment of a central electoral committee and a regulation on municipal elections. The Regulation on Municipal Elections 2000/39 provided the electoral design which comprised of open lists and a proportional representation system; in addition, 30 per cent of the first 15 candidates submitted by Political Parties were required to be women. Given that there was still a considerable number of Kosovar refugees outside Kosovo, the International Organization for Migration (IOM) had undertaken the organization of polling sites outside Kosovo. Elections were held on 28 October 2000 with a turnout of 79 per cent and to the surprise of most international observers, the voting was peaceful and without incidents. LDK won the elections with 58 per cent of the vote with PDK taking 27 per cent of the vote. The United Democratic Movement, which held one post at IAC level and five on JIAS departmental level, received less than 1 per cent, and as a result they resigned from all their posts in JIAS. A new party which had not been included in the local-international power-sharing arrangements emerged, the Alliance for the Future of Kosovo (AAK). The AAK won 8 per cent of the vote and its leader Ramush Haradinaj, a former KLA guerrilla commander, had become increasingly influential on the Kosovo political scene. After a persistent call by UNMIK for Serbs not to boycott elections, the Serbian minority did not participate in the elections, instead, just weeks earlier Kosovo Serbs had voted in the Yugoslav Presidential elections. The more concerning fact was that over 50 per cent of Kosovo Serbs had voted for the Serbian Ultra Radical Party headed by Sheshelj and President Milosevic's Socialist Party, their post-war persecution by Kosovo Albanians had drawn them closer to the Serbian nationalists, a fact that made reconciliation in Kosovo even more challenging. The SRSG appointed all members of the Municipal Assemblies and administration in all three Serbian municipalities.

Local elections established the first democratic institutions on the local government level in Kosovo. By the end of the 2000, 27 out of 30 Kosovo Municipalities had constituted their Assemblies and had appointed Municipal Presidents; the Municipal Presidents had

then appointed the CEOs. As stipulated in the Regulation on Municipal Self-Government in Kosovo, the elected municipal administrations were in charge of powers that were not clearly predetermined in Resolution 1244 to be reserved for the UNMIK administration. While the initial interpretation by most observers at the time was that the role of the UN Municipal Administrators would transform from administration and supervision to that of observation and supervision, this proved complicated. The change from the JIAS local administration to the new elected officials gave UNMIK an open window to fully consolidate its power in the municipal structures. The elected municipal governments found that the new power-sharing arrangements were in essence not different from the previous experience, except that now they were democratically elected and legitimate local representatives.

A year after the conflict, Kosovars felt sidelined in the governing of Kosovo and JIAS had failed to accommodate their aspirations for shared governing responsibilities. In a survey conducted by the Kosovo Institute for Euro-Atlantic Integration in January (KIEAI) of 2002, when asked if Kosovo needed a constitution 90 per cent of the surveyed individuals responded with 'yes' when asked if this constitution should be in compliance with UNSCR 1244, only 30 per cent replied with 'yes' while 60 per cent said 'no' (for a detailed account, see KIEAI 2002:63-70). The mood of the survey is reflective of the Kosovars' dissatisfaction with their engagement in the governing process. Most decisions on Kosovo continued to be made behind closed doors and Kosovars were only aware of them after they were made effective. While the OSCE helped local civil society to thrive, their role in assuring a balance was ineffective as they had no elected officials to address. The unresolved issue of the final status added to the tensions. While return to Serbia for 90 per cent of the Kosovars was out of the question, independence at this stage was not a viable option either. Whatever the final status, the international community was keen on building democratic self-governing institutions that the Kosovars could inherit once the mandate of UNMIK had expired. Bernard Kouchner, the SRSG, was aware that if the situation continued the tension between UNMIK and Kosovars would destabilise Kosovo.

The unease with the concentration of powers and the lack of accountability had been felt by many inside UNMIK from the outset. SRSG Bernard Kouchner and others, including many Kosovar political analysts, had been urging for the promulgation of an interim constitution, providing a clear legal framework for the governance of Kosovo. (Brand 2003:30)

Trying to close this gap, Kouchner called for a ‘pact’ between Kosovars and the UN. While initially it was not very clear what the pact consisted of, as only later would it become clear, Kouchner had in mind a ‘legal framework’. Despite Kosovo’s unresolved status, this document would serve as a constitution for the establishment of the central Kosovo government through free elections, whilst not prejudging the final status. As Kouchner’s mandate was coming close to an end, he called for the establishment of the Joint Working Group on the Legal Framework. The Joint Working Group had 14 equally divided members between the representatives from the international community and local representatives. The purpose of the working group was to establish a legal framework that would guide the formation of local governing institutions, clearly divide powers between locals and internationals, provide a broad institutional design and electoral design and regulate the judiciary.

5.6. The Constitutional Framework

The purpose of the working group was to establish a legal framework that would guide the formation of local governing institutions, clearly divide powers between locals and internationals, provide a broad institutional design and electoral design and regulate the judiciary. In addition, having learned from the mistakes of the vague and broad language in the JIAS regulation, the Legal Framework would be clearer and more specific. While the international members were careful not to indicate anything relating to referendum, constitution or independence as final status was out of their competencies, the local members found this an opportune time to negotiate for more powers and especially institutions that resembled those of a sovereign state. The Constitutional Framework would effectively establish the new institutions in Kosovo and served as a roadmap for their development of Kosovo governing institutions under UNMIK. This was a landmark in fulfilling the obligations UNMIK had as a transitional administrative body in:

Organising and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections; Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions and other peacebuilding activities; Facilitating a political process designed to determine Kosovo’s future status, taking into account the Rambouillet accords; In a final stage, overseeing the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement. (UNSCR 1244)

The main challenges with designing a constitution for Kosovo were not the traditional give-and-takes of constitutional debates on governing systems, electoral designs and balance of power. What defined the constitutional drafting process in Kosovo was the sovereignty factor coupled with the international administration. If Kosovo was to be considered 'democratic' then it needed democratically elected institutions with legitimacy to govern the people of Kosovo. The question was how to achieve a democratic government while under international administration and restrictions set out by UNSCR 1244? If the institutions that come out of the Constitutional Framework would govern the people of Kosovo then it seemed in line with democratic practices that the people of Kosovo had to be consulted. In the early stages of the discussions for a constitutional document or a 'legal framework' as it was initially called, the 'Kosovar public and political elites were promised to be properly consulted on the developments, but the public meetings that took place were few and superficial⁴' (Brand 2003:31, see also Reka 2003:231).

The negotiating in the Joint Working Group produced the same dynamics as in the KTC. While there were many points of conflict between the local and international experts in the process, three issues illustrate the dynamics of the group better than any: the debate on the name of the document, the final status to be decided by the will of the people and the problem of a constitutional adjudicating body.

The international experts wanted the document to be called a 'legal framework' as calling it a 'constitution' would imply sovereignty and this would be in contradiction of the UNSCR 1244. The local members of the working group however argued that Kosovo as well as Vojvodina had not been sovereign countries before 1989 yet they had their own constitutions, in addition, Blerim Reka, one of the local members of the working group would note:

⁴ Brand (2003:31) for instance explains how in contrast to Kosovo, 'during June and July 2001 more than 38,000 East Timorese turned out at 212 constitutional public hearings that solicited the views of the population on what should be considered by the country's Constituent Assembly when drafting East Timor's first Constitution. The SRSG presented the reports to the Constituent Assembly on 18 September. Among the prevalent issues discussed at the Constitutional public hearings were the political system, currency, and flag East Timor should adopt; punishments for serious crimes; the educational system; laws for foreign investors; how the revenue from the Timor Sea Arrangement should be distributed; and the official language.'

Germany, immediately after World War II was not sovereign but it was divided and militarily administered by international forces; it did not have a parliament but it did have the so-called 'Parliamentary Council' however, this did not present an obstacle for this Council to approve the 'Basic Law' with constitutional power in 1949. (Reka 2003:233)

Although Kosovar members of the working group managed to change the name from 'Legal Framework' to 'Constitutional Framework' the other two, arguably more substantial, issues were left out of the document. The problem of an adjudicating constitutional body had brought the negotiations to a standstill when the Kosovar members demanded a Constitutional Court vested with powers to adjudicate on disputes arising from the Constitutional Framework, whilst the UNMIK was against a body that could potentially supersede its authority in Kosovo.⁵ Local actors who had been engaged in the initial stages of decision-making process with UNMIK had gained an understanding that conflicts were always resolved in favour of UNMIK because there was no higher adjudicating body to resolve disputes that arose between locals and internationals. The view below was reflected by majority of locals who were engaged in the early stages of the decision-making process with UNMIK:

As members of the IAC we could not appeal anything formally, we could only complain and this we did frequently but without an adjudicator institution and formal complaint procedures, our complaints remained just that. If UNMIK decided that they did not want to deal with an issue, it was the end of that issue. We hoped that the Constitutional Framework would also establish a Constitutional court to which both the new institutions and UNMIK would be subject to disputes in interpreting the Constitution. This would have prevented a majority of the problems that the PISG faced through its existence in struggling to pin-point what was reserved and was transferred. Although a Supreme Court was established for constitutional disputes, UNMIK was not subject of its jurisdiction – which meant the same problems all over again. (Interview Gj.S. 2009)

Finally, in relation to the third issue, the local Kosovar Albanian members of the working group proposed an article providing for 'the will of the people' to determine the legal instruments through which the final status of Kosovo was to be decided. This was rejected by the internationals as well as the Serb member of the working group (Reka 2003:239).

⁵ The tension and contrasting views between the local and international members of the Joint Working Group are evident in a joint press conference made on April 13, 2001. See UNMIK DPI JWG on the Legal Framework Press Briefing: 13 April 2001.

As the negotiations came to a standstill, the SRSG used the last agreed draft and on 15 May 2001 promulgated Regulation No. 2001/9 on a ‘Constitutional Framework for Provisional Self-Government in Kosovo.’ According to its preamble, and in line with the mandate established in UNSCR 1244, the purpose of the Constitutional Framework was ‘to develop meaningful self-government in Kosovo pending a final settlement, and to establish provisional institutions of self-government in the legislative, executive and judicial fields through the participation of the people of Kosovo in free and fair elections.’

The Constitutional Framework established a semi-consociational parliamentary system effectively making the Assembly the highest governing body within the Provisional Institutions of Self-Government. The governing powers that were transferred to the PISG were carefully crafted so as not to pre-judge Kosovo’s final status, the PISG would be in charge of the following areas:

(a) Economic and financial policy; (b) Fiscal and budgetary issues; (c) Administrative and operational customs activities; (d) Domestic and foreign trade, industry and investments; (e) Education, science and technology; (f) Youth and sport; (g) Culture; (h) Health; (i) Environmental protection; (j) Labour and social welfare; (k) Family, gender and minors; (l) Transport, post, telecommunications and information technologies; (m) Public administration services; (n) Agriculture, forestry and rural development; (o) Statistics; (p) Spatial planning; (q) Tourism; (r) Good governance, human rights and equal opportunity; and (s) Non-resident affairs.

Most of the transferred powers were ‘soft’ powers including responsibilities in the field of local administration:

(a) Supporting inter-municipal cooperation; (b) Promoting the development of a professional municipal civil service; (c) Assisting the municipalities in the development of their own budgets and financial management systems; (d) Monitoring the quality of municipal services; (e) Identifying ways and means for training activities for the municipalities; (f) Assisting the municipalities in making their activities transparent to the public; (g) Providing legal guidance and advice to the municipalities; (h) Coordinating the activities of international agencies and non-governmental organizations pertaining to municipalities; and (i) Overseeing compliance with responsibilities and powers delegated to municipalities based on the organizational structures that emerged from the municipal elections in October 2000, as well as responsibilities and powers transferred in the meantime. It is understood that additional powers will be progressively transferred in an orderly manner.

UNMIK still maintained the highest legislative, executive and judicial powers, including powers to dissolve parliament and any subsequent governing bodies.

5.7. The Electoral Design

The electoral engineering in Kosovo was a process of several layers. Although political parties and associations existed, they were organized through internal political party regulations. There was no legislation on the registration, operation or funding of political parties. In addition, there was no electoral commission or electoral laws. As UNMIK began its administration, there were a chain of events that required legislation. Central to all this process was the registration of the population. The more considerable problem was that of the civil registration of the population. During the preparation for the first elections, the municipal elections of 2001, UNMIK had issued legislation and organized a registration of the population and political parties, established a central electoral commission and a specific law on the municipal election process (see, for example, UNMIK Regulations: 2000/13, 2000/16, 2000/29, 2000/39).

While the first elections in Kosovo have been criticised for being delayed or not well organized (see, for example, ICG 2000), UNMIK (in addition to starting the electoral process from zero) was faced with additional problems common to post-conflict environments. The registration of voters posed a real problem. Civil documentation of previous authorities in Kosovo was rare given that during the expulsion Serbs border officials had collected all forms of identification (for more on this, see US Department of State Report 1999). Considerable numbers of Kosovo refugees were still abroad and the Serb community in Kosovo refused to participate (IFES 2000:8). With all this in mind, the first municipal elections of November 2000 are important as they established the first legislative ground as well as electoral infrastructure in Kosovo. These formative stages are important in understanding how the electoral design was shaped and how the first links between politicians and the electorate emerged. In addition, these elections were to give an indication of the key political actors in post-war Kosovo. Prior to the election, UNMIK had engaged domestic political actors in the transitional consultative bodied based on their prominence before and during the conflict.

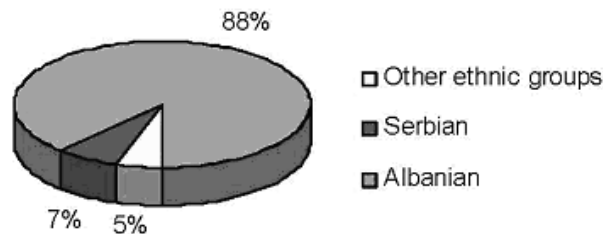
By early 2001 UNMIK had started the preparations for the general elections. The electoral system made Kosovo one electoral zone with closed lists ballots. In addition, 20 seats of

the envisaged 120 member assembly would be allocated to candidates representing minorities (UNMIK Regulation 2001/1/9):

9.1.3 Kosovo shall, for the purposes of election of the Assembly, be considered a single, multi-member electoral district. (a) One hundred (100) of 120 seats of the Assembly shall be 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. (b) Twenty (20) of the 120 seats shall be reserved for the additional representation of non-Albanian Kosovo Communities as follows: Ten (10) seats shall be allocated to parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community. These seats shall be 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; and; Ten (10) seats shall be allocated to other Communities as follows: the Roma, Ashkali and Egyptian Communities four (4), the Bosniak Community three (3), the Turkish Community two (2) and the Gorani Community one (1). The seats for each such Community or group of Communities shall be distributed to parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing each such Community in proportion to the number of valid votes received by them in the election to the Assembly.

The majority of the local political parties were not happy with the closed list ballot since it would strengthen the already powerful political elites at the top of the political parties. This would turn out to be true, especially in the context of voting conformity later in the Assembly and instituting party discipline through the exclusion of candidates' names on the party list or ranking them low on the party list. The reserved seats were adopted for two reasons, one was to persuade the Serb minority to take part in the elections as they had boycotted the municipal elections and the more significant factor was to provide a broader representation for a minority that was at disadvantage in terms of proportionality to the majority. In reality, the numbers would not change any aspect of the voting spectrum since even with 20 seats, the majority of the Albanian parties were large enough to pass any legislation and appoint a government.

Figure 5.2: Ethnic Composition of Kosovo



Source: Living Standard Measurement Survey (LSMS) 2000

Other ethnic groups consist according to LSMS mainly of Muslims/Bosniaks (1.9 per cent), Romas (1.7 per cent), and Turkish (1 per cent).

Source: Statistical Office of Kosovo (SOK).

Another considerable problem with the electoral system was making Kosovo one electoral district. This meant that there would be no links between candidates and a given constituency. The following quote reflects some MPs in the second legislature who argued that, in addition to the closed list ballots, this further empowered the political party elite as MPs lacked the direct link and mutual support of their constituents:

The politics of drawing the lists are very silent, if for instance you have proposed amendments to legislation submitted by a minister of your party, it may not become evident until the elections come up that you have actually been reprimanded for it by being placed lower on the list or removed from a leadership position in the assembly committees. I believe that political parties should coordinate their work and voting should be consistent with party objectives but how can we know what position we are to take on certain issues if we don't know who our constituents are? What may be advantageous for someone in Prishtina may not be so in Ferizaj even though they may be members of the same political party. (Interview N.D. 2009)

A multi-district electoral design in the initial stages was not possible as there were still inconsistencies in the population data throughout Kosovo. In addition, the single electoral district approach had two more benefits for post-conflict settings:

Some observers see it as an advantage that the adopted system will limit the possibilities for regional fiefdoms. The system also makes it very difficult

for any single party to dominate the Assembly, so that negotiations over power-sharing are likely to become a feature of Kosovo politics. Given the provision of set-aside seats for minorities, mainstream parties would need to gain 61 out of 100 seats to secure an Assembly majority. (ICG 2001)

While the set-aside seats system did result in parties having to form coalitions to gain a majority to form government, it had no impact on the role of the minorities in parliament since Albanian parties sought out coalitions with other Albanian parties. To address this, UNMIK made it a requirement under Chapter 4 on the Protection of Rights of Communities and Their Members, that ‘The Provisional Institutions also shall ensure fair representation of Communities in employment in public bodies at all levels’ (UNMIK REG/2001/9/4.5). This practice was followed by all subsequent governments; in practice the government would reserve one ministry for a member of the Serb community and one for a member of non-Serb communities.

5.8. The Provisional Institutions of Self-Government

Our biggest handicap is the lack of experience, but our big advantage is that we have started from zero; we don’t have to go back to transform any bureaucratic system. (Prime Minister Bajram Rexhepi 2002)

The institutionalization of the Kosovo Assembly is highly influenced by the decisions made during the first legislature from 2001-2004. Unlike the executive and judiciary branches, where JIAS had established the basic state infrastructure, including offices, staff, procedures and budget, the Assembly had no significant predecessor. While the Kosovo Transitional Council was designated to be a ‘shadow parliament’ it never organized into a formal institution. In addition, most of the members of the Kosovo Transitional Council were not elected in the new Assembly. Out of 120 newly elected members, only eight had had previous experience as MPs in the governing structures of FRY. ICG’s (2002:7) assessment of the Assembly in its first years of existence suggests the multiple issues the Assembly was faced with:

Unlike the ministries, which evolved from established JIAS departments, the Assembly had to be created and staffed from scratch, and rules and regulations put in place for its operation. UNMIK set up an Assembly Service Secretariat that was responsible for initial staffing, outlined budget requirements and drew up interim Provisional Rules of Procedure for the Assembly. This is the first time that a democratically elected Assembly has functioned in Kosovo, and it is the first time that most members have sat in

such a legislative body. It will, therefore, take time for the Assembly to run smoothly, and for Assembly members to settle into their role. Their accountability to the electorate is somewhat hampered by the single, province-wide list system of proportional representation, which means that there is no direct responsibility to regional constituencies. The OSCE and the National Democratic Institute (NDI) are providing training to Assembly, which will continue into the near future. This training will focus on four issues: caucus development, transparency, ethics, and legislative procedures. While it is too early to assess the impact of such training and the functioning of the Assembly, its importance cannot be overstated.

The establishment of all administrative, logistical and functional aspects of the Assembly were undertaken by the international experts. While the Constitutional Framework was the result of joint cooperation between local and international experts, the actual Assembly infrastructure lacked the local component:

Mr. Kabel and three other experts have been setting up an administrative structure that resembles those of Western European parliaments. Of course, Mr. Koenigs pointed out, the new Assembly may want to change the structure at some later date. But members will need extensive administrative support for the first weeks and months. The same group of experts is working on the Assembly rules of procedure which will be introduced to the IAC next week. (UNMIK/PR/656 2001)

This would prove problematic as local actors would be engaged very late in the process and the IAC would only review the administrative structure of the Assembly and its rules of procedure once the core elements had been designed. The Kosovar members of the IAC had requested that the participation of locals was necessary as they would have to learn from ongoing experiences (UNMIK/PR/656 2001). Although the international administration continuously stressed the fact that the initial rules adopted for the Assembly were transitional and that once the Assembly had established itself it would be able to change these rules by a vote (see, for example, UNMIK/PR/656, UNMIK/PR/667), decisions taken at this stage still formed the core of the working of the Assembly.

On December 10, 2001 the Assembly held its first inaugural session and elected the Speaker, Nexhat Daci (LDK) and five other members of the Assembly Presidency: Fatmir Sejdiu (LDK), Rada Trajkovic, Oliver Ivanovic and Gojko Savic (Serb Coalition Povratak) and Haxhizulfi Merdza (non-Serb minorities). The initial challenges however were operational.

Table 5.1: 2001 Kosovo Elections Results 2001

Parties and coalitions	Votes	%	Seats	Minority
LDK - Democratic League of Kosovo (Lidhja Demokratike e Kosoves)	359,851	45.65	47	-
PDK - Democratic Party of Kosovo (Partia Demokratike e Kosoves)	202,622	25.7	26	-
Coalition 'Return' (Koalicija 'Povratok')	89,388	11.34	12	+10
AAK - Alliance for the Future of Kosovo (Aleanca për Ardhmerine e Kosoves)	61,688	7.83	8	-
Coalition Vakati (Koalicija Vakati)	9,030	1.15	2	+2
National Movement for the Liberation of Kosovo	8,725	0.14	1	-
KDTP - Turkish Democratic Party of Kosovo (Kosova Demokratik Turk Partisi)	7,879	1.14	1	+2
Albanian Democratic Party of Kosovo	7,701	1.11	1	-
Party of Justice - PD (Partia e Drejtësisë)	4,504	0.98	1	-
People's Movement of Kosovo	4,404	0.56	1	-
IRDK (Iniciativa e re Demokratike e Kosoves)	3,976	0.5	0	+2
PDAK - Democratic Ashkali Party of Kosovo	3,411	0.43	0	+2
SDA - Party of Democratic Action (Stranka Demokratske Akcije)	2,906	0.37	0	+1
United Roma Party of Kosovo (Partia Rome e Bashkuar e Kosoves)	2,717	0.34	0	+1
Total		100.0	100	+20

Source: OSCE Kosovo Assembly Elections 2001 - Certified Results

The Assembly knew it had to elect a government but the practical processes of going about business were unclear for most members. The rules of procedure were undecided, MPs had no offices or support staff, this was further complicated by the language barrier between locals and internationals:

Everyone complained about translation. Translation became the beginning and the end of every misunderstanding. In reality translation had very little to do with most of the 'misunderstandings' between locals and internationals. A great deal of the problem was concepts. I mean, a lot of the MPs had no previous experience in government, let alone a democratic government, they used to find everything strange from the way the regulations were being worded to the design of the administrative structures – this was not about language – this was a huge misunderstanding of

concepts. You can translate from one language to another that $1+1=2$ but translating a whole new way of work takes much more than interpreting from one language into another. Moreover, there was no such thing as professional interpreters, most of the people who were translating had little or no qualifications and the terminologies you would come across in the early stages of the PISG were sometimes beyond bizarre. (Interview with Kreshnik Kurtishi 2010)

Because of the difficulties in understanding the broader conceptual implications on policies that were initially drafted in English and then translated into Albanian, Serbian and Turkish, most MPs as well as government officials concentrated more time on the language than on the subject-matter.

The first Kosovo wide elections of November 17, 2001 did not produce a clear majority in the Assembly. While LDK had taken 45 percent of the vote, it lacked the required two-thirds majority to form a government. The following plenary sessions (13.12.2001 and 10.01.2002) failed to elect a government and president. In order to gain the support of the PDK, LDK offered PDK five ministerial seats. PDK rejected the offer on both occasions, requesting the post of Prime Minister to be filled by a PDK member. Three months after the election, the first Kosovo Assembly had failed to elect an executive. The debates in the Assembly were limited as the actual negotiations between LDK, PDK and international mediators happened behind closed doors:

PDK, having won 26 seats, believed that one of the three key positions belonged to them, specifically that of the prime minister. They feared that if they accepted ministerial posts, PDK ministers could be dismissed by an LDK prime minister and would lack real power and input into government decision making. The LDK feared that if it agreed to a PDK prime minister, particularly if that Prime Minister was Hashim Thaci, they would see a repeat of the excesses of the Provisional Government in the summer of 1999. With no agreement, and despite frenetic efforts at mediation by international representatives, the transfer of responsibility to the new institutions was deadlocked. (ICG 2002:6)

In February, LDK and PDK reached an agreement and the Assembly elected Rugova (LDK) as the President and Bajram Rexhepi (PDK) as a Prime Minister. This combination resulted in a broad coalition government. The government was not fully constituted until June when one Serbian minority minister and one non-Serb minority minister took their positions in the new government in June 2002. The broad spectrum of political views, especially in the a post-conflict context, created difficulties and various decision-making

impasses in the process. The ministers that were not from the PDK would avoid government meetings or delay proceedings. This in turn made the Assembly the battle ground for decisions that would ordinarily be taken at government level.

5.9. Conclusion

Institutional design, both constitutional and electoral, in a post-conflict context has been studied extensively as it is considered central to peace-building and democratic consolidation, especially in divided societies. Institutional theory has for long assumed that the lower the level of institutionalization the more challenging it is to consolidate democratic regimes and prevent future conflicts (Goodin 1996, Lijphart and Waidman 1996). Having said that, many institutionalists also agree that institutional design and institutionalization alone are not enough to promote democratic consolidation. A good institutional design results from ‘circumstances in which no actor has sufficient influence to impose its own project and diverse ambitions counterweight each other’ (Colomer 2008: 3).

The design of the constitutional framework was the first instance where a genuine power-struggle between the international administration and the local political elite started to take place. Although UNMIK had been able to take the lead in JIAS and all interim post-war governing structures without considerable dissent from the local political elite, the design of the institutions of self-government proved a more challenging task. The local political elite had learned a hard lesson from their participation in the Kosovo Transitional Council and JIAS and demanded more authority and power in the new institutions, the alternative was their boycott of the whole process. At a time when the international administration was trying to get the Serbian minority on board with the new legal framework, it could not afford the boycott of Kosovar Albanians who constituted 90 percent of the population.

Bernard Kouchner, the SRSG, called for a ‘pact’ between Kosovars and the UN which would be stipulated in a new ‘legal framework’ that despite Kosovo’s unresolved status, would serve as a constitution for the establishment of the central Kosovo government through free elections, whilst not prejudging the final status. He appointed a Joint Working Group with 14 equally divided members between the representatives from the

international community and local representatives, Kosovo Albanians representatives from the three main political parties (LDK, PDK and AAK), one constitutional expert, one member of the civil society, one representative from the Kosovo Serb community and one Bosniak member representing the non-Serb minorities in Kosovo. If the legal status of Kosovo made the process of designing a legal framework for provisional institutions of self-government difficult, the composition of the working group seemed set on failing to agree on any given issue.

As mentioned above, Kosovo did not inherit any governing institutions, structures or a civil administration, at least not in the way that the rest of the Eastern European states did after the collapse of Communism. For most of these states, institutional design was mainly an internal affair and a gradual process of changing and modifying institutional arrangements to suite new arising needs of the new democratic regime and market-economy. Constitutions were re-written or amended but in essence, the civil administration passed on the institutional knowledge. In Kosovo these institutions were to be brand new, with no previous history, yet their design was subject to elaborate problem solving and external pressure on local actors. As a result, the institutional design and the actual establishment of the Kosovo Assembly was a result of entirely exogenous factors insofar that there was no internal process of institutionalization to taken note of until the first elected Assembly in 2001. As this chapter looked at the role of the exogenous factors in the institutional design and establishment of the Assembly, the following chapter looks at the relationship that evolved thereafter between the international administration and the new local institutions of self-government.

Chapter 6

Assembly Relations with the International Administration 2001-2004

6.1. Introduction

This chapter looks at the role of the international administration as an external determinant in the institutionalization of the Kosovo Assembly. It explores the factors that contributed to the shaping of the Assembly, the initial organizational forms and practices and locate the external determinants in this process. More importantly, since this study is concerned with the institutionalization of the Kosovo Assembly, it tries to understand the point in time where the Assembly became an independent political actor in its own right – detached from the international administration and able to fend off external influence, in other words, the moment where the Assembly started to *institutionalize*.

The process of institutionalization in new political institutions is best observed by the adherence to collectively agreed norms by all members and the struggle to maintain the agreed norms vis-à-vis external pressure or influence that an institution may face. Never is this more critical than at the beginning of institutional practices where the practices set precedents for the future institutional practices. Moreover, as discussed in chapter 2, the case of the Kosovo Assembly provides an opportunity to address some of the most pertinent questions in the field of legislative institutionalization, as Hibbing (1988) appropriately asks: ‘Is it possible to nurse a legislature from infancy to stability, or do stable legislatures develop by caprice? Is there a common pattern to legislative change or do legislatures tend to adopt their own peculiar and idiosyncratic developmental courses?’ This analysis is guided by Huntington’s (1965) theoretical framework which looks at the institutions ability to establish: adaptability, complexity, autonomy and coherence utilizing Polsby’s (1968) adaptation of Huntington’s theory and his method of assessing this process detailed in chapter 2.

In this context, this chapter looks at the formal practices established for the operation of the new Kosovo Assembly and their interpretation by the international administration once the institutions were in place. Kopecky (2001:145) notes for instance that ‘the newness of institutional structures means that the roles of the two executives are as yet undefined in

political practice. The formal institutional framework is thus likely to become a battlefield on which presidents and governments will struggle to define their influence and opposition’.

The ‘battlefield’ that Kopecky addressed in the Czech and Slovak Parliaments, in the case of Kosovo happened between the Kosovo Assembly and the international administration. This battlefield was characterized by a struggle for more authority between the Assembly and the international administration on the interpretation of powers in the Constitutional Framework. The formal rules remained largely vague as to what fields and to what degree the Assembly had the right to legislate and what powers were reserved for the international administration. Because the formal rules were not subject to change, as this would have required the authorization of the Security Council, the struggle is best observed by political and legislative practices of the Assembly and their approval of the international administration as the SRSG who had the final authority to promulgate legislation passed by the Assembly.

The establishment of the Assembly in 2001 owed much to the efforts of both local and international actors, both from a constitutional and infrastructural perspective. UNMIK was responsible for the establishment of the overall state infrastructure which included setting up the secretariat of the Assembly, the civil service, administrative infrastructure, logistical support and expert support for the Assembly. More importantly, the Assembly needed to adopt rules of procedure. This process was new to everyone. Relationships and power-dynamics that were established at this stage would define the development of the Assembly. Thus, this chapter looks at the role the international administration in the institutionalization of the Kosovo Assembly. How did the international administration influence this process? How was the Kosovo Assembly differentiated from the International Administration? What role did the international administration play in the internal development of the Assembly? How unified was the Assembly in dealing with the international administration?

The only study to-date that has explored the relationship between international administration and the local institutions in the context of democratization through power-sharing is Tansey’s research on Kosovo, East Timor and Bosnia. In looking at ways in which the international administration influences domestic institutions, Tansey (2009:42)

suggests influence takes place through four avenues: agenda setting powers, veto powers, drafting powers, and imposition of authority:

- *agenda setting powers*, which can enable transitional administration to influence which issues are subject to discussion;
- *veto powers*, which can include the ability to strike down laws that are proposed by domestic actors, and remove domestic officials from their positions of authority or prevent them from gaining positions of power in the first place
- *drafting powers*, where international actors can involve themselves in drafting basic legislation or more significant institutional provisions for the entity in questions
- *imposition of authority*, which proves international administrations with the ability to bypass domestic actors entirely and enforce measures they deem necessary.

These four categories will be used to explore the *formal* relationship between UNMIK and the Kosovo Assembly.

6.2. The Assembly and the International Administration 2001-2004

6.2.1. Agenda Setting Powers

The separation of powers by the Constitutional Framework was an explicit form of influencing the agenda of the PISG. In this regard, the Assembly had prescribed authorities in which it had the right to legislate under Chapter V of the Constitutional Framework:

(a) Economic and financial policy; (b) Fiscal and budgetary issues; (c) Administrative and operational customs activities; (d) Domestic and foreign trade, industry and investments; (e) Education, science and technology; (f) Youth and sport; (g) Culture; (h) Health; (i) Environmental protection; (j) Labour and social welfare; (k) Family, gender and minors; (l) Transport, post, telecommunications and information technologies; (m) Public administration services; (n) Agriculture, forestry and rural development; (o) Statistics; (p) Spatial planning; (q) Tourism; (r) Good governance, human rights and equal opportunity; and (s) Non-resident affairs.

All of the authorities granted above gave authority to the Assembly and the PISG to govern Kosovo-wide. There were two problems here that caused the first point of confrontation between UNMIK and the Assembly. The scope of authority and the level of authority:

After the first plenary session and after the ceremonies were over we found ourselves at odds about what is it that we are suppose to legislate in. We were trying to translate the constitution into practice and very soon we realized that any field of the constitution we legislate in, regardless if powers were transferred to us or reserved for the SRSG, we would end up in a compromising situation – this because you can't legislate on customs without legislating on foreign affairs. (Interview Nerxhivane Dauti, MP 2009)

In the beginning the problem was sorting out the complex arrangements of who is responsible for what. No one, I think, had a very good idea of how this was going to play out. The most confusing part was the division of responsibilities which from the Constitutional Framework seemed very well divided but when you looked closer it was a mess. We started to realise that this would mean one of three things, working closer with the international administration, asking them to transfer more powers to us as we face conflict of who does what or the international administration taking over the responsibility ... the latter was what actually ended up happening as the SCR 1244 had already designated. (Interview Nekible Kelmendi, MP 2009)

It is not clear if the framers of the Constitutional Framework had foreseen this problem as the negotiating team was mainly concerned with what powers could be interpreted as prejudging Kosovo's final status per Resolution 1244 as opposed to the practical nature of the power-sharing arrangements coming out of the Constitutional Framework would function in practice.

When the Constitutional Framework was being drafted, we were all under the assumption that the international administration and the new national institutions would work like one unit of government so to speak. Some members had raised this issue drawing examples from the JIAS and their failure to integrate international and local administration but this was not something we could afford to tackle at this stage. The stakes during the drafting of the Constitutional Framework were much higher because they had to be in line with 1244 and whatever practical arrangement came out of it, the government would have had to make the best of it. It was very difficult for us to foresee the actual practical nature of the institutions at that stage – the main point was to get as many powers transferred to us from the internationals...we now hear all sorts of criticism about how we could have gotten a lot more from the internationals but what these people don't understand is that our space to negotiate what powers could be transferred and what powers could not be transferred was very limited, everything that was negotiated during the drafting process of the Constitutional Framework had already been stipulated in the Rambouillet Annex of Resolution 1244. The resolution left very little room and we utilized these gaps as much as we could, the Constitutional Framework was like an administrative instruction of the resolution. I think that we got the maximum we could have gotten at that stage. After all the UN was the

supreme authority in Kosovo at this stage despite the fact that the majority of us wanted more...the important thing to consider here also is the fact that we needed government institutions and once they were in place we could then argue our cases through these institutions and it would be up to the people who get elected and populate these institutions to take the next step. (Interview Feride Rushiti 2009)

The problem with this approach however was that anything that fell outside the powers transferred to the PISG was to be handled by UNMIK. Furthermore, the provision on the powers and authorities of the SRSG (UNMIK/REG/2001/19/12) stipulated that:

The exercise of the responsibilities of the Provisional Institutions of Self-Government under this Constitutional Framework shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244(1999), including overseeing the Provisional Institutions of Self-Government, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244(1999) or this Constitutional Framework.

The process through which UNMIK monitored and supervised the compliance of the new institutions with the UNSCR 1244 and the Constitutional Framework remained unclear and was not addressed in the document itself. This role was to be undertaken by the establishment of a new position, that of the Principal International Officer. The PIO position was established through UNMIK Regulation 2001/36 on the Kosovo Civil Service: “PIO” means a Principal International Officer assigned by the Special Representative of the Secretary General to the Provisional Institutions of Self-Government to serve for a transitional period.’ The PIOs were to act as permanent secretaries in all the newly established provisional institutions, including the Assembly, ‘until the permanent secretaries are appointed.’ (UNMIK REG 2001/26/20.2)

In the formative stages of the Kosovo Assembly, the role of the PIO was essential as he/she was to be in charge of establishing the initial Assembly infrastructure. These responsibilities included, *inter alia*, the design and development of the internal administration and organizational structure of the Kosovo Assembly (the Secretariat), policies and rules of procedure, budgeting, staffing, regulating facilities, equipment and supporting day to day operations of the assembly. The PIO and the international support staff assigned with these tasks were parliamentary experts and civil servants from parliaments in Western democracies. The PIO of the Kosovo Assembly was Franck Boulin, a senior servant in the French National Assembly and a parliamentary expert. A

report by the East-West Parliamentary Practice Project who visited the newly established Assembly at the time notes:

The Acting Secretary-General of the Assembly, Mr Franck Boulin, noted that the Assembly of Kosovo intends to work in accordance with the standards of Western democracies, as set forth in the Constitutional Framework, which is why the work carried out in support of the new Assembly is of extreme importance. He added that some of the most pressing needs included the clarification of the relation between the Government and the Assembly, as well as the committee work with respect to receiving, drafting and amending laws. (EWPPP 2002)

Thus the initial stages of establishing the Assembly was under international supervision, at least from the infrastructural perspective but also to monitor their compliance with the UN Resolution 1244 and the Constitutional Framework ('CF'). In this respect, the agenda of the Provisional Institutions of Self-Government was set out by internationals both in the UNSCR 1244 and the CF.

6.2.2. Veto Powers

The Constitutional Framework stipulated, albeit in vague language, the powers that were reserved for the SRSG and those transferred to the Provisional Institutions of Self-Government. In the powers reserved by the SRSG, the right to regulate was UNMIK's responsibility, which it now had to share with the Kosovo Assembly. The main problem with the decision-making process was the lack of an independent arbitration body that could decide the resolution of cases where both sides claimed responsibility on any given sphere of government. One MP noted:

We were under the impression that the system would work as it made perfect sense when we were drafting the framework [Constitutional Framework], we legislate under these powers and you legislate under those. We did not see the problem this would create in the long run since none of the parties could legislate in anything without overstepping the other parties' powers. It is striking now that I think about it how we did not foresee it, I mean anything you think of, anything, even education could be interpreted as both reserved and transferred. The other main problem was that we were passing laws and the SRSG would sometimes promulgate them sometimes leave them sleeping for months but our laws were never being implemented. We kept working on all these laws but most of the state infrastructure continued to work on either outdated legislation from pre-1989 or UNMIK Regulations. There came a point when legislative drafting and arguing became redundant even cynical. There was no motivation since none of this work was being implemented ...

UNMIK did not care. Why would they, they were not elected by anyone and were not responsible to the people here – we were and when people complained why the Assembly isn't doing this or that – try to explain them this mess. (Interview Haki Shatri, MP 2010)

This was a view held by 20 (59 per cent) Assembly Members interviewed on this subject. The problem with the separation of powers was their interpretation. The vague language of the Constitutional Framework coupled with the supreme authority of the SRSG to have the last say, made the process of interaction slow and created animosities between UNMIK and the Assembly. These problems of interaction were meant to be resolved at an earlier stage in the legislative process, before the law was submitted to the SRSG for promulgation. In this process of filtering before delivery, the International Officer would follow the work of the Assembly and the Office of Legal Affairs of UNMIK would review legislation before submission to the SRSG.

6.3. The First Confrontation

During a Balkan Summit in Skopje on February of 2001, the Presidents of FRY and Macedonia signed an agreement on border demarcation that had been pending since Macedonia had declared its independence from Yugoslavia in 1991. The problem that the border agreement between FRY and Macedonia posed for the UNMIK administration was the fact that under UNSCR 1244, Kosovo was under the administration of the UN and part of the border line agreed upon by the FRY and Macedonia was the border line between Kosovo and Macedonia. The UN was in a particularly volatile situation given that the acceptance of the border agreement between FRY and Macedonia would be in contradiction with the UNSCR 1244 as Kosovo was under UN administration. In addition, this would further UNMIK's already damaged reputation among Kosovars. Farhan Haq, United Nations Spokesman in New York described the UN position as follows: 'Regardless of the agreements signed by between the two countries, the UN cannot change those parameters until the Security Council authorizes a political solution for Kosovo...[W]e cannot change the resolution without a prior decision by the Security Council.' (UNMIK DPI 22 February 2002)



Source: UNMIK (www.unmikonline.org)

On the ground UNMIK awaited a decision by the UN HQ in New York before it addressed the issue in Kosovo. Finally, the UN General Assembly adopted Resolution 57/52 on the ‘Maintenance of international security – goodneighbourliness, stability and development in South-Eastern Europe’ where *inter alia* it stipulated that the resolution ‘Reaffirm[s] the validity of the Agreement for the delineation of the borderline between the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia, signed in Skopje on 23 February 2001’ (UN/GA 57/52 author’s emphasis). The UN reaffirmation of the agreement between FRY and Macedonia and the SRSG’s declaration that the agreement therefore ‘must be respected’ (UNMIK/PR/707) left the Kosovo Assembly outside the process. In an article on ‘Legitimacy and the UN Administration of Territory’ Bernard Knoll (2007:8) notes:

UNMIK’s decision to support the validity of the border demarcation agreement had severe consequences for its ability to generate domestic legitimacy as it openly demonstrated to the wider public that the administration did not wholeheartedly perform Kosovo’s interests on the international stage. It instead became clear that, in its second identity as a subsidiary organ of the U.N., UNMIK would have to also pursue the legal interests of the organized international community, directing it to respect the territorial integrity of the FRY. These observations serve to highlight that the fiercest challenges to the political legitimacy of an international agent’s governorship emerge as the agent is perceived to breach the trust established between itself and the people it governs, the cornerstone of the international intervention project.

The first confrontation between the Assembly and UNMIK happened when, in response to UNMIK’s reaffirmation of the border agreement between FRY and Macedonia, the

Kosovo Assembly adopted the ‘Resolution on Territorial Integrity’ on May 23, 2002 (Kosovo Assembly Archives - Plenary Transcripts 2002). The Resolution reaffirmed the territorial integrity of Kosovo and found unacceptable the agreement that concerned Kosovo borders without the consultation of the people of Kosovo. The Assembly called on UNMIK to protect the territorial integrity of Kosovo. The SRSG who had been advised of the debate in the Assembly addressed a letter to the Kosovo Assembly instructing Assembly Members to avoid adoption of the declaration as the matter being discussed was a reserved power of the UNMIK. On the same day, the SRSG abrogated the resolution: ‘By the powers vested in me by Security Council Resolution 1244 (1999) and the Constitutional Framework I hereby declare null and void the ‘resolution on the protection of the territorial integrity of Kosovo’ adopted by the Assembly of Kosovo today.’ (UNMIK/PR/740)

The confrontation between UNMIK and the Kosovo Assembly illustrated the difficulty that lay ahead in the institutional set-up under the Constitutional Framework for UNMIK and the PISG. On the one hand this confrontation signifies the institutionalization of conflict between UNMIK and the Assembly. If the local political elite had no previous channels of influencing policy, as it was the case with the passing of the resolution, or object to decisions about Kosovo that they were not part of, the Assembly created this medium. Consequently, the Assembly became the central site of political debates that were not limited to the UNSCR1244, even when warned by UNMIK that decisions that fell outside the powers granted to the PISG would not be approved by the SRSG. Fatmir Limaj who at the time was the leader of the PDK parliamentary group recalls:

[W]e were aware that some of the issues we debated were not going to be liked or even approved by UNMIK but we were not elected there by UNMIK but by the people of Kosovo whom we had responsibility to serve. UNMIK’s attitude towards us, at least in the first legislature, was ‘we have created you so you must abide by what we say.’ The contradiction in this approach was clear to everyone, us, them, the international community and everyone who had the most basic knowledge of what is democracy! How was UNMIK building democratic institutions and organizing free and fair elections but then not allowing those institutions elected by the people to legislate and govern? (Interview Fatmir Limaj 2009)

From an institutional perspective, this conflict between the Assembly and UNMIK served the institutionalization of the Kosovo Assembly. In the first instance of the Kosovo Assembly confronting UNMIK we notice the beginning of *differentiation* of the

Assembly. Moreover, in the process there was a sense of boundedness as 85 members of the 120 Member Assembly voted for the resolution, no one voted against whereas the Serb Coalition 'Return' left the Assembly hall during the voting (BBC 2002).

The first confrontation would characterize the dynamics between UNMIK and the Assembly as they would increasingly govern as parallel structures in different sectors of government. By abrogating the Assembly resolution, the SRSG made a clear signal that he would not allow the Kosovo Assembly to challenge the authority of the UN in Kosovo. Yet the determination of the Assembly to still go ahead with the resolution contrary to the SRSG's advice created a new reality whereby UNMIK realized the limitations of its power in governing the province now that the people had elected their representatives. The SRSG had the legal right, if necessary and under clearly stipulated provisions in the Constitutional Framework to abolish the Kosovo Assembly, however such an act would have further deteriorated the relations between the local political elite and the international administration and more importantly would have further diminished UNMIK's legitimacy in Kosovo. In avoiding confrontation that would become public, UNMIK adopted an alternative approach to stymie Assembly legislation that it considered outside Assembly's transferred powers.

6.4. Vetoing without the Veto

As there were no clear adopted instructions on the cooperation between UNMIK and the Assembly on the legislative process, beyond the provisions stipulated in the Constitutional Framework, the process would prove to be another challenge. While the SRSG was in charge of promulgating all laws passed by the Kosovo Assembly, there were no clear instructions on the process of rejecting or using the veto in legislation that the SRSG deemed to have gone beyond the authorities transferred to the PISG (see, for instance, De Vrieze 2003:5, Rexhepi 2003:6). The initial laws were processed through official communiqués between the Kosovo Assembly, the Executive and the international administration and left considerable room for interpretation and disagreement between both parties. The head of legal services in the Kosovo Assembly notes:

We had no instructions on how we were to coordinate our work with the Office of Legal Affairs at UNMIK. They were in charge of reviewing all laws passed by us to make sure that they are in compliance with 1244 and

whatever other norms they deemed appropriate since they were the ones advising the SRSG if he should promulgate a law or not. Daci (the first speaker of the Assembly) send several letters to the SRSG asking for clarification and we received a reply that the Office of Legal Affairs would work with the executive during the legislative drafting to make sure that all laws are in compliance with [UNSCR] 1244. (Interview Daut Beqiri 2009)

The problem with this approach was that all draft laws that were submitted to the Assembly by the government for approval were subject to changes during the legislative review processes in the committees and during their readings in the Assembly. This created problems between the executive and the Assembly. In an effort to ensure swift passage of laws, government representatives would argue against modification of their draft-laws in the assembly as they had been agreed to by UNMIK. The following recollection by one MP reflects the sentiment of the majority of MPs who were interviewed that served in the first term:

When we were reviewing draft laws in the committees, a government representative would continuously remind us that if we made any changes, the SRSG may not promulgate the law. This rendered our function as MPs irrelevant to the entire process. We started to wonder what was the purpose of having a legislative branch if it cannot fully carry out legislative duties, which includes amending draft-legislation submitted by the government as we see fit. After all we were the elected officials. (Interview Besa Gashi 2009)

After the local reactions to the use of the veto power by the SRSG to abrogate the Assembly Resolution on Territorial Integrity, UNMIK decided to avoid using the veto and, either keep laws forwarded by the Assembly for approval to the SRSG in consideration indefinitely, or return them with an accompanied letter of where the Assembly needed to adjust the laws so that they did not interfere with the reserved powers of the SRSG. This problem would further contribute to deterioration in the relations between UNMIK and the Assembly:

Instead of wasting ink, time and effort, why doesn't UNMIK make the adjustments it wants and promulgate the laws? Why do they return the law back to the Assembly, after the Assembly has passed the law and forwarded to the SRSG for promulgation. What is the purpose of this elaborate process of back and forth? You can't ask us to vote something that we did not vote in the first round just so that you can check your own box of legitimization of the process. This was a stark reminder of how things were done in socialist times. Here it is what you need to vote on,

now vote on it – which part of this process involves democratic decision-making? Whatever ways you look at this problem from, you are faced with one and one reality alone: lack of consideration for the democratic process by the international administration. (Interview Mahmut Bakalli 2003)

The promulgation of laws and the lack of clarity on what powers are reserved for the SRSG and what powers were transferred to the PISG became a critical issue in 2003 and 2004. Kosovo's economic reconstruction depended on new legislation that would pave the way for improvements in the private and public sector economies. This required the adoption of legislation on immovable property, mortgage, bankruptcy, external trade and numerous other legislation that was inevitably going to touch on both transferred and reserved powers. The established mode of legislating separately in the reserved and transferred powers was proving a major handicap to the overall progress in Kosovo. The following section looks at the drafting powers of the international community and the beginning of cooperation in drafting legislation.

6.5. Drafting Powers

In all spheres of government, except for those delineated in the Constitutional Framework, UNMIK maintained full authority. In the early days of the mission, UNMIK issued Regulation 1999/24, which stated that:

The law applicable in Kosovo shall be: (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and (b) The law in force in Kosovo on 22 March 1989. In case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence. (UNMIK REG 1999/24)

In this context, UNMIK legislated in the field of these spheres and had full legislative authority. While during JIAS, UNMIK had asked for local participation in all legislative drafting initiative, after the establishment of the PISG this practice stopped. This environment where UNMIK and PISG legislated in their separate domains and without any coordination between the two resulted in another parallel system. The lack of engagement of the Assembly in the drafting of UNMIK Regulations would affect the ability of the Assembly to legislate in the reserved spheres that UNMIK was legislating. In most cases, information on what UNMIK was doing depended on the interest of individual MPs to keep themselves informed on the legislation that UNMIK was passing in their field

of expertise. The following view by Nekibe Kelmendi reflects the opinion of most interviewed Assembly Members on the subject (for example Haki Shatri, Nerxhivane Dauti, Zylfije Hundozi and Gani Koci):

We legislated in the sectors that were transferred to us through the Constitutional Framework, anything that was considered a reserved power was legislated by UNMIK. We acted like two governing bodies without much coordination except for the Constitutional Framework – the interpretation of which was always challenged by both us and them. I would find out about what UNMIK was doing just like any other citizen, through newspapers or the TV. The SRSG felt that he did not have to report to the Assembly on the nature of UNMIK's work so when they came to the Assembly, it was usually to give a speech on multi-ethnic cooperation and integration. Anything beyond that was anyone's guess. When all the powers were transferred over to us, we were faced with an entire government structure, departments, issues and a body of regulations that had been generated and run by UNMIK but for which we had very little or no knowledge at all. (Interview Nekibe Kelmendi 2009)

UNMIK's legislative drafting was conducted by international staff and was fully detached from the parallel legislative process going on in the Assembly. This not only furthered the division between the Assembly and UNMIK but created two different parallel legislative structures that were not coordinating efforts. While in the initial stages, elected officials were under the assumption that although UNMIK had reserved powers that it could legislate in, they would take part in the legislative process in a consultation capacity. An interview of the time with the Deputy Leader of the LDK parliamentary, Alush Gashi explains the expectations of the newly elected MPs vis-à-vis UNMIK: 'elected Kosovan officials would have to work together now with the Office of the SRSG and not as 'parallel institutions'' and that the SRSG 'should open the door for us and for that process.' (Mustafa 2003:6) This strict division of legislative drafting responsibilities between UNMIK and the Assembly would force the Assembly to develop and strengthen its own internal capacity in terms of legislative drafting and consideration.

6.6. Imposition of Authority

During the first legislative period, with the exception of the initial veto of the SRSG, UNMIK's presence in the Assembly was minimal. The approach that UNMIK took in imposing its authority on the legislative branch was through official communication and away from the public domain. Letters exchanged between the President of the Assembly and the SRSG were labelled confidential and were the subject of interpretation by the

President of the Assembly or the Presidency. Unless otherwise indicated, the letters would be dispatched to the entire Assembly. The relationship became increasingly strained and both the Assembly and UNMIK started to acknowledge the power of the emerging free media and the role it played in how the Kosovar people viewed both authorities. Members of the Assembly increasingly made the point that they were the elected representatives of the people and that UNMIK's imposition of authority in their decisions was an imposition on the will of the people of Kosovo. This created a competition between UNMIK and the PISG in gaining positive coverage in the media and on the international arena. One such example is noted in an ICG Report on Kosovo (2003:3):

UNMIK's effort to dominate the media spotlight within Kosovo carried over to the international arena. Speeches by UNMIK officials do not reflect any partnership with the PISG nor the accomplishments of the government. Instead, they focus almost exclusively on the role of UNMIK. Before the EU Summit in Thessaloniki in June 2003, Steiner [the SRSG] stated, 'The UN administers Kosovo, the EU and others bankrolled its reconstruction and development, and KFOR provides a safe and secure environment'. There was no mention of the PISG's accomplishments. Its delegation was introduced but its work was not acknowledged.

Moreover UNMIK was responsible for the return of the Serb minority that had left Kosovo after the conflict in 1999. The ownership of reserved issues by UNMIK left local authorities out of the process and this created additional problems, especially in regards to the return and integration of the Serb minority. Not engaging the Assembly in the process resulted in the Assembly's lack of expertise on how to approach the issue, knowledge of the intricate problems faced with the return and integration of the Serb minority and added to the animosities that had existed before and during the conflict. The fact that UNMIK had taken full ownership of the returns process created further divisions in the little cooperation that the Albanian and Serb members of the Assembly had started to create in the first year of the Assembly:

Steiner's presence could be overwhelming and undermine the ability of Kosovo politicians to deliver key messages. A March 2003 trip to promote returns to the Zhupa Valley, Prizren region, was a media circus. The heads of key diplomatic offices flew with UNMIK officials, representatives from multilateral agencies, and PISG officials. The cameras were all on Steiner as he delivered a message of support to Serbs who had returned to Zhupa. The headline read, 'UN seeks to encourage Serbs to return to Kosovo'. The participation of Kosovo's politicians – newsworthy by itself – was relegated to a side issue. Briefings were

tightly controlled, with UNMIK reluctant to take questions on the details of the returns process. The briefing package provided only cursory information on that process – no project proposals were presented, and no concrete data was provided on who was willing to return and when. It was, in short, a photo opportunity for the SRSG. UNMIK's desire to take centre stage in the returns process extended to a recent presentation before the Assembly itself. Despite the fact that the Office of Returns and Communities (ORC) has two PISG members working with it – the Special Advisor to the SRSG on Returns, Nenad Radosavlejevic, and Dr. Milorad Todorovic, the Inter-Ministerial Coordinator on Returns – its international director, Peggy Hicks, made the presentation, and Radosavlejevic and Todorovic were not present. This was a missed opportunity to demonstrate to the Assembly that it shared the responsibility for planning returns. (ICG 2003:3)

By the end of 2003, relations between the international administration and the Assembly had evolved into repetitive conflicts. The Assembly, as well as the Government of the PISG, demanded more powers to be transferred over as they were increasingly finding that any legislation passed would inevitably infringe the reserved powers of the SRSG, especially since the SRSG had the last authority to interpret the Constitutional Framework. To address the problem, in March of 2003, the SRSG and the Office of the Prime Minister established the 'Transfer Council' (UNMIK/PR/944). The Transfer Council would be an ongoing body of coordination between UNMIK and the executive branch of the PISG on transferring more powers to the local authorities. While there was considerable progress, especially in contrast to the previous year, 'it gradually became apparent that the absence of an agreed standard for assessment and reporting was a weakness in the system' (UNMIK/StratCo 070420). This absence of agreed standards, led to the first roadmap designed by UNMIK on the way forward: the 'Standards before Status' and the ensuing 'Kosovo Standards Implementation Plan' (KSIP).

6.7. Standards before Status

Standards before Status was the first strategic approach on behalf of UNMIK to define clear measurable goals for the PISG before UNMIK started to transfer powers. This had a direct effect in the internal development of the Assembly. As discussed above, during the first term from 2001 to 2004, the Assembly was multitasking with establishing itself as a representative institution but also providing a new legislative basis for the new polity, appointing a government and in the process continually trying to gain more reserved powers from UNMIK. While this process had set the initial differentiation of the

Assembly from the external political environment and had transformed it into an autonomous political actor in its own right, there was very little internal accountability of the Assembly's own actions. The 'blame game' between the Assembly and UNMIK had provided the Assembly with an easy target. UNMIK's unpopularity among Kosovars made it possible for the Assembly to locate all the electorate's discontent with the resistant international administration to give more authority to the Assembly. A UNDP survey found UNMIK's ratings had hit an all time low of 23 per cent support among the people of Kosovo (Robinson 2007). Standards before Status combined with an emerging local civil society that was increasingly becoming impatient with the Assembly's performance added pressure to the Assembly to look inwards:

Prior to Standards before Status, the Assembly had spent most of its time and efforts in getting more powers transferred from the international administration. This had somehow derailed the attention of all parties in the Assembly from assessing their own work and effectiveness. The fact that there was no opposition to speak of in the first term since almost all political parties were part of the government created a front that always tried to locate its shortcomings outside the Assembly. The 2004 elections changed the political composition of the Assembly and brought in a strong opposition in the Assembly, which started to improve parliamentary democracy. (Interview Rinor Beka 2009)

Standards before Status, combined with a new political opposition in the Assembly resulted in an internal soul-searching. If in the first legislature internal problems were pushed aside to provide a common front in dealing with the international administration, in the second term the Assembly had to face its own shortcomings. If the blame game between UNMIK and the Assembly was a result of a vaguely defined Constitutional Framework, the Standards were detailed measurable goals with very little room for interpretation. On the broad level, they identified eight primary goals:

1. Functioning Democratic Institutions;
2. Rule of Law;
3. Freedom of Movement;
4. Sustainable Return and the Rights of Communities and Their Members;
5. Economy;
6. Property Rights;
7. Dialogue;
8. Kosovo Protection Corp.

Following the initial policy document that set out the main priorities, UNMIK drafted the Kosovo Standards Implementation Plan (KSIP) which was adopted by the UN Security

Council in November 2003. Unlike previous efforts to engage local participation, the drafting of KSIP left out Assembly representatives. Most Assembly Members were not aware of the Standards beyond what the SRSG discussed in the media:

All we knew of the Standards was what we learned from the media. No one, to my knowledge, had approached the Assembly for coordination of these standards. How were they going to be assessed, who was going to assess them...how was UNMIK going to assess the work of the Assembly when it had no idea how the Assembly functioned, the problems it faced or ignored the fact that some of the problems were not just related to the our government but to how the PISG and UNMIK interpreted their powers and if this document was to improve this relationship or even the work of the Assembly, how was this going to happen without our participation? (Interview Besa Gashi 2009)

In a rare account of the process, UNMIK too acknowledges that the Standards for Kosovo were a UNMIK undertaking:

Attempts to include the Kosovo institutions in drafting the KSIP had revealed little capacity for a planning exercise of this magnitude, so the result was in effect an UNMIK draft. Attempts to engage Serb community leaders in the drafting failed, nor did they participate in the implementation mechanisms later... The draft KSIP was then discussed at ministerial level in a series of Working Groups. Although the final result could be claimed to be agreed between UNMIK and the PISG, there was in fact a widespread perception that it was an imposition of UNMIK's will upon the PISG. (UNMIK/StratCo 070420)

Despite the engagement of the executive branch of the PISG, the Assembly was sidelined from the Standards process. UNMIK engaged the executive branch because the tasks designed to be fulfilled were related mostly to the executive branch and that the executive branch would in turn report to the Assembly. This resulted in internal debate in the Assembly on the responsibility of the government to keep the Assembly up to date with its task at hand beyond the legislative agenda. The executive had not established regular patterns of communication with the Assembly. In the first legislature, the President addressed the Assembly three times in four years and the Prime Minister addressed the Assembly four times. Various Ministers would appear in the Assembly to present draft laws but did not always have representatives in the Assembly Committees when these laws were debated. In short, Standards before Status had, indirectly, made the Assembly look internally for some solutions for the problems encountered the first legislature.

6.8. Conclusion

If, as Loewenberg and Patterson note (1979:20-1), institutionalization is the process by which a body acquires a definite way of performing its functions and sets it apart from its environment, the relationship between the Assembly and the international administration in the first legislative term was crucial in differentiating the Assembly from the external environment and creating a sense of camaraderie or boundedness within the Assembly. Polsby (1968) tried to explain this phenomenon by looking at the years of service, seniority in appointments and resistance to external pressures. While these indicators are easier to track in established legislatures with a considerable length of institutional continuity, in new legislatures this assessment is best observed by identifying the beginning of differentiation of the legislature from external pressure. While the Assembly itself was established by the international administration, its initiative to confront the international administration as a unified political body suggests the beginning of the process of institutionalization through its resistance to external determinants and its internal boundedness. This process of institutionalization of the Assembly was a manifestation of broader democratization in Kosovo while under international administration.

Moreover, if as Przeworski (1986:58) notes, ‘democracy is a form of institutionalization of continual conflicts ... [and] of uncertainty, of subjecting all interests to uncertainty’ then, by creating the first institutions of self-government in Kosovo, UNMIK had institutionalized conflict. The first confrontation between UNMIK and the Kosovo Assembly illustrates an *institutional confrontation* where both parties opposed each other’s actions; yet this was done through institutional channels. Democracy however is also defined as a ‘system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives’ (Schmitter and Karl 1991:76). In this context, the elected officials saw their position as elected representatives of the people consistent with their actions. This created tensions between them as representatives of the people of Kosovo and UNMIK as an international administration appointed by the UN.

Inadvertently, the parallel operation of both the national and international administration in Kosovo during the first legislative term strengthened the Kosovo Assembly and set it on a path to institutionalization and turned it into a political body in its own right. Further, as the Assembly asserted itself vis-à-vis the international community, it provided the people with an institutional channel of expressing their discontent. The Assembly utilized this conferment of popular legitimacy as political leverage in dealing with the international community. While these were impressive developments given the nascent stages of the first freely elected Assembly in Kosovo, the internal operations of the Assembly suffered from numerous problems that related to organizational inefficiency and observance of collectively agreed rules.

With the introduction of the Standards before Status strategy and the transfer of reserved powers from the international to the national administration at the end of the first and the beginning of the second legislative term, the Assembly's responsibilities increased. Increased responsibilities coupled with an emerging civil society forced the Assembly to look internally in dealing with the increased workload which required more efficient internal organization. While the first legislative term from 2001-2004 manifested the differentiation and boundedness of the Kosovo Assembly from the external environment, the second legislative term from 2004-2008 was characterized with internal institutionalization. With that in mind, the following chapter looks at the internal institutionalization of the Kosovo Assembly by looking at the internal growth of complexity, coherency and universalistic decision making.

Chapter 7

Internal Institutionalization of the Kosovo Assembly 2001-2008

7.1. Introduction

While the previous chapter looked at the external determinants that dominated the outcome of the first Kosovo Assembly during the first legislative term, this chapter will look at the internal changes that took place focusing on the changes occurring between the first and the second legislative terms from 2001-2008. As argued in the previous chapter, the institutionalization of the Kosovo Assembly begins during the first legislative term by establishing the first boundaries and creating a sense of boundedness as a political institution in its own right. This process of institutionalization continues well into the second legislature with an internal process of institutionalization and organizational development. The second term was not only critical for the entire Kosovo political environment as it constitutes the years of acquiring independence but more so for Kosovo's political institutions which had to prove their maturity and efficiency to the international community before the final status. Facing external international pressure, as well as pressure from external national actors (the executive branch and civil society), the second legislative term of the Kosovo Assembly was characterized by 'putting the house in order' (Rinor Beka 2009). Thus, if the first legislative term (2001-2004) was defined by the Assembly's relations with external actors and characterized by differentiation, in the second term we notice more efforts on internal development.

From a theoretical perspective, the goal of this chapter is to identify whether institutionalization can explain whether legislatures follow a certain pattern of development or institutionalization? In his study of the British House of Commons Hibbing (1988) asks: 'Is it possible to nurse a legislature from infancy to stability, or do stable legislatures develop by caprice? Is there a common pattern to legislative change or do legislatures tend to adopt their own peculiar and idiosyncratic developmental courses?' This chapter provides a fitting opportunity as it follows the institutionalization of the Kosovo Assembly from its infancy to relative stability. With that in mind, this chapter is organized around the four features of institutionalization as first set out by Huntington

(1965): adaptability, complexity, autonomy and coherence. While Polsby's (1968) method based on Huntington's theory remains central to this research, this chapter follows Huntington's criteria as it applies all four features of institutionalization (see chapter 3 for more details).

The first section looks at the process of adaptability of the Kosovo Assembly from three perspectives: chronological age, generational age and functionality. The second section looks at the growth of the internal complexity of the Assembly. Here an attempt is made to understand the internal developments and organization of the Assembly from the perspective of Assembly Committees, Political Parties and the Assembly Administration. What patterns of discipline were being established in the first and second legislatures? What was the importance of Assembly Committees within the Assembly? Has the administration institutionalized to aid the elected body in its function? These are the main questions addressed in the second section, followed by the evolution of Autonomy and Coherence. They are closely related to each other as both features are indicators of internal unity vis-à-vis external pressure. While Huntington suggests that they are not necessarily dependent on each other i.e. an institution can be autonomous without being coherent and can be coherent without being autonomous (1968), this study arrives at a different conclusion that suggests that there is a chronological order to the institutionalization process, that coherence cannot take place before an institution is autonomous and that even when an institution achieves a considerable degree of autonomy, coherence remains a challenging feature in the overall institutionalization process. Finally, the last section of this chapter looks at the role that early legislative-executive relations played in the internal institutionalization of the Kosovo Assembly.

7.2. Adaptability

As mentioned in chapter 2, Huntington suggests three main indicators to assess adaptability in the institutionalization process: (i) chronological: the length of the existence of a given institution, (ii) generational age: the peaceful transition of leadership, and (iii) functionality: the institution's ability to fulfil its prescribed functions (Huntington 1965: 394). In terms of the first indicator, the chronological existence of an institution, the case of the Kosovo Assembly is somewhat different from the rest of the political institutions in transitions in post-communist Eastern-Europe. Kosovo did not inherit

institutional structures from the previous regime, all of the political institutions in Kosovo were established *ex-novo* in 2001 and from Huntington's point of view; this would suggest the beginning of the institutionalization process. In this context, there is very little discussion: the Assembly was institutionalized or not at this stage, as the institutionalization process was at its genesis. There is however one aspect of historical institutionalism that has to be addressed in this regard. As mentioned in Chapter 3, while the present Kosovo Assembly established by national and international cooperation in 2001 has no legitimate institutional predecessors, the argument can be made that there are several institutions that predate the Kosovo Assembly that may have had an influence in the institutionalization of the current one. The first Kosovo Assembly (The Assembly of the Socialist Autonomous Province of Kosovo) was established with the FRY Constitution of 1974 and operated continuously until 1989. Following the dissolution of the Autonomous Assembly in July of 1989, there had been several efforts to maintain institutional continuity by the Kosovar Albanians from 1989 to 1999, however all of these institutional formations were established *ad-hoc*, had no permanent organizational structures and therefore had no institutional norms or practices that could influence the outcome of the present Kosovo Assembly (see, for instance, Bajrami 2005: 291-293).

In terms of the second indicator, that of generational age or the peaceful transition of power from one leadership to another, the issue is somewhat more complex. Since the parliamentary elections of 2010, the Kosovo Assembly is in its fourth legislative term. There have been three consecutive speakers of the Assembly: Nexhat Daci (2001-2006), Kole Berisha (2006-2007) and Jakup Krasniqi (2007-present). While on the face of it transition from one leadership to another was peaceful, the first leadership transition from Nexhat Daci to Kole Berisha was accompanied by considerable political turmoil within LDK (the political party that both the former and the later presidents belonged to) yet the Assembly managed the transition according to its rules and peacefully. The broad coalition government, that ruled from 2001-2004, had designated the President of the Assembly position to the LDK. Following findings on financial mismanagement associated with Daci in the annual report of the Kosovo General Auditor in 2005, the LDK moved to replace Daci with Kole Berisha. This transition was accompanied with considerable fragmentation within LDK, which was at the time the largest party, and it coincided with the death of President Rugova and an inner party power struggle which is addressed in more detail in the second half of this chapter. As far as the Assembly is concerned, the

process of transition from one speaker to another showed a considerable degree of commitment to the collectively agreed rules of procedure:

During the first part of the 10 March plenary session, the Assembly reviewed the LDK proposal to replace Mr. Nexhat Daci and Mr. Fatmir Sejdiu, respectively, as President of the Assembly and Member of the Presidency, with Mr. Kolë Berisha and Mr. Sabri Hamiti. Mr. Alush Gashi (LDK) introduced the proposal, stating that Mr. Sejdiu had withdrawn from the Assembly when he was elected President of Kosovo and that the proposal to replace Mr. Daci and Mr. Sejdiu had the ‘unanimous support’ of the LDK parliamentary group. Mr. Jakup Krasniqi (PDK) read aloud Rules 5.3 and 5.5 and asked whether the Assembly should respect the Rules or disregard them ... The LDK proposal was endorsed with a majority of votes in favor, two votes in opposition, and four abstentions. Upon being named President of the Assembly, Mr. Berisha delivered a brief acceptance speech, in which he thanked Mr. Daci for his work until now and stressed the importance of non-partisan cooperation in the Assembly... *the ‘dismissal’ or ‘replacement’ of President of the Assembly and/or a Member of the Presidency is proposed by the corresponding group and formally endorsed by a simple majority of Assembly members present and voting. It likewise follows that the dismissal or replacement of more than one Member of the Presidency – or, more specifically, in this case, the President of the Assembly and one additional Member of the Presidency – may be endorsed in one single vote. The voting on the replacement of the President of the Assembly and Member of the Presidency at the 10 March was carried out in compliance with the Rules.* (OSCE Report 01/2006 italics in the original)

The importance of adherence to rules of procedure in established institutions may not be an indicator of institutionalization, in young institutions, like the Kosovo Assembly, commitment to rules of procedure suggests internal respect for collectively agreed rules and for the institution itself. The second leadership transition, like the first one was peaceful and in compliance with the Assembly rules of procedure.

Finally, the third indicator of adaptability according to Huntington, i.e. functionality or the institution’s ability to fulfil its prescribed functions, is more complex to assess. The first and second legislative terms were accompanied by power struggles between the Assembly and the international administration on the one hand and the executive on the other. Chapter 5 discussed in more detail the challenges the Assembly faced in fulfilling its functions as a result of limited competencies prescribed by the Constitutional Framework. From an internal perspective, the challenges for the Assembly to fulfil its function were limited by several factors. The most considerable factor was lack of opposition. The first

government appointed by the Assembly (2001-2004) was a broad coalition government which left the Assembly without a genuine opposition. In addition, Assembly members were not experienced as far as their responsibility to supervise the government was concerned. The representative responsibility was also limited given the one electoral zone system, which left Assembly Members unfamiliar with their constituents. Civil society remained the only channel between the electorate and the Assembly and it maintained a bleak view at that:

The Assembly is not representative of all areas of Kosovo. Members are placed on a list by Political Parties and the electorate votes not on the person but on the party. As far as supervision of the Government by the Assembly is concerned, the Government at the time was 'unity government' so parliamentary supervision was not very strong. The period between 2001 to 2004 was a very confusing period. It was not until 2004 that the MPs started to understand the role of the Assembly and the Parliamentary Committees. (Valmir Ismaili Interview 2010 – Kosovo Democratic Institute).

The second legislative term (2004-2008) was marked by considerable improvement due to increased transfer of powers from the international administration to the Assembly, the change in the political composition of the Assembly, change in leadership and accumulated experience from the first term. The elections in 2004 (see table below) provided an opportunity for LDK to form a coalition with AAK without the need to include PDK in the government. This left the PDK (the second largest party in Kosovo at the time) in opposition. In addition, a new political party, ORA Citizens Initiative, managed to gain seven seats in the elections despite being a newcomer in the Kosovo political scene. Both PDK and ORA created a strong opposition in the Assembly which resulted in the Assembly gaining a central role in Assembly-Executive relations, unlike the first term where Assembly-Executive relations were mainly dealt with through party elite coordination.

Table 7.1: Kosovo General Election Results 2004

Party	Assembly Seats
Kosovo Democratic League (LDK) Coalition Government	47
Kosovo Democratic Party (PDK) Opposition	30
Alliance for the Future of Kosovo (AAK) Coalition Government	9
ORA Opposition	7
Albanian Christian Democratic Party of Kosovo (PSHDK) Coalition Government	2
Turkish Democratic Party of Kosovo (KDTP) Coalition Government	1
Party of Justice (PD) Opposition	1
Coalition Vakaf (KV) Coalition Government	1
Kosovo Popular Movement (LPK) Opposition	1
Liberal Party of Kosovo (PLK) Opposition	1

PDK and ORA engaged in utilizing their powers through petitions, requests for interpellations of executive members as well as using procedural powers to call on extraordinary sessions to discuss the work of the executive. This stimulation of the opposition in the Assembly was initially met with procedural blocks by the majority. The requests of the opposition were usually left out of the plenary agenda under the pretext that they were submitted late to the presidency for consideration to include them in the plenary agenda. An example of the procedural challenges faced by the opposition in bringing the government to account in the Assembly is the request by ORA made on October 25, 2005 for an extraordinary session to discuss the crisis in education in Kosovo. On the same date, PDK had submitted a motion for interpellation of the Minister of Public Services on allegations of violations of the Law on Management of Public Finances, which was not placed on the plenary agenda and was not distributed to Members of the Assembly (OSCE 09/2005). Although the justification by the Assembly Secretary was that both requests were not submitted in time (OSCE 09/2005:3-4):

The Rules of Procedure do not specify a deadline for submitting materials for consideration at a Presidency meeting, nor has such a deadline been

stipulated in any supplementary decision or instruction. Pillar III (OSCE) and Members of the Presidency have been told on different occasions that documents intended for consideration at a Presidency meeting should be submitted at least two or three working days prior to the Presidency meeting, in order to allow time for the documents to be distributed to Members of the Presidency and be included in the agenda of the meeting. There is, however, no precise deadline that is universally recognized by Members of the Presidency and the administration. Both the proposal for a plenary debate and the interpellation motion were submitted five working days before the meeting, well in advance of any two or three-day deadline that has been cited in the past. The assertion that the documents were submitted after the other materials for the meeting had been distributed to the Members of the Presidency is not a valid justification for excluding items from the agenda and is tantamount to an arbitrary and unannounced change in the deadline. In order for the agenda-setting procedure to be more transparent, there needs to be a precise and consistent deadline, of which all Members are duly informed. Rule 25 stipulates that the Presidency shall forward the interpellation motion to the Government 'as soon as the text of the interpellation is received'. Not only was the interpellation motion excluded from the agenda of the 1 November Presidency meeting, but no regular meeting of the Presidency was called during the remainder of the reporting period, resulting in substantial delay in the interpellation.

Following similar and continuous pressure by the opposition, work in the Assembly started to improve. The role of a more assertive opposition did not only result in making the Assembly the central political actor but it also increased the pressure on the Assembly Secretariat as well as the Assembly Presidency to be consistent in the observation of the house rules. Subsequent motions for interpellation of government ministers were followed up in timely manner (see for instance OSCE 02/2006 and OSCE 03/2006). Moreover, there was an improvement in the coordination of parliamentary group leaders in planning the agenda and dividing the time for debate during government reports in the Assembly (OSCE 05/2006). By early 2006 the Assembly was working on a comprehensive reform of the working of the Assembly to accommodate a more consistent approach in dealing with the government. This resulted in the Assembly Standards Plan that established a standardized approach to government oversight through questions and interpellations (OSCE 04/2006). The introduction of these reforms increased Assembly oversight of the government. Rebecca Kilhefner, who was the OSCE Officer in charge of monitoring the Assembly, notes that 'since the introduction of the reform package on 1 June 2006, Assembly members have posed more than twenty written questions to the Government.'

and that ‘the Prime Minister has answered almost all of them, including the two posed by the opposition almost two years ago and were still awaiting answers’ (Gaon 2006).

The above-mentioned changes, coupled with more transfer of powers from the international administration in 2004 and 2005, gave the Assembly the opportunity to assert itself. Despite this opportunity, in the first year of transition from the first to the second legislative term (2004-2005) the Assembly was faced with the investigation by the Kosovo Auditor General report which indicated financial mismanagement by the President of the Assembly and the administration (Kosovo General Auditor Report 2005). The approval ratings of the Assembly fell from 73 per cent in the period between January and March 2005 to 59 per cent by August 2005 (UNDP 2005). The ability of the Assembly at this stage to remove its President, who was a senior ranking member of LDK, the leading coalition partner in government, was an indicator of the ability of the Assembly to use institutional channels and procedures to address internal problems:

The ability of the Assembly to put together its own investigative committee to deal with the implications of the Office of the Auditor General was significant in that it showed that there was some internal democracy and due process within the Assembly itself. When the President of the Assembly was removed, everyone saw that the Assembly was able to remove its own president who happened to be a senior LDK member. This was a considerable turning point. (Interview Rinor Beka 2009)

While this shows a considerable internal transparency for a young institution, especially in a post-conflict and a post-communist context, the Assembly continued to face difficulties in fulfilling its mission. Additional challenges ranged from professional and administrative support to office space and technology:

Shortage of professional supports to us [MPs] or no support at all. The administrative staff had very little professional training. This problem was connected to three reasons: the first reason was the inadequacy of the recruitment process, the second reason was the lack of adequate capacity building programs and the third reason was inadequate personnel management. Professional staff on legislation being reviewed was almost non-existent – for this we depended on international agencies. These were all problems we faced in fulfilling our legislative functions, as far as our representative functions were concerned, we had no offices where our constituents could come and meet us. A very small number of us, with the help of NDI [National Democratization Institute] opened small offices in

municipalities for constituent relations – but when I say a small number of us, I mean four or maybe five. (Interview G. S. 2010)

This view was shared by 30 (88 per cent) interviewed Assembly Members. What can be noted when comparing the two terms is that, during the second legislative term, there was a considerable improvement in terms of adherence to institutional norms, awareness of legislative and representative responsibilities on behalf of Assembly Members and increased internal transparency within the Assembly. The determining factors that contributed to this improvement are both internal and external. From an internal perspective, the Assembly became more adaptable during the second term as it had now accumulated some, albeit short, institutional practices and experiences. Externally, the change in the political spectrum that resulted in an opposition in the Assembly made the Assembly more assertive in fulfilling its supervisory role over the executive. Moreover, all these changes contributed to the institutional growth of the Assembly in terms of authority, functions as well as procedures. With that in mind, the following section looks at the second indicator that Huntington suggests to assess institutionalization i.e. internal complexity.

7.3. Complexity

In contrast to *adaptability*, complexity is a more straightforward indicator. Huntington (1965:399) suggests that highly institutionalized political institutions are characterized by their *complex structures* that serve as checks and balances in a democracy. Further, through the development of internal sub-structures and division of labour, institutions acquire stability and make themselves less prone to corruption or abuse of power. Polsby (1968:53) used the following three ways to assess growth of complexity:

growth of internal complexity can be shown in three ways: in the growth in the autonomy and importance of committees, in the growth of specialized agencies of party leadership, and in the general increase in the provision of various emoluments and auxiliary aids to members in the form of office space, salaries, allowances, staff aid, and committee staffs.

The growth of internal complexity of the Kosovo Assembly can be assessed in three directions: growth and importance of committees, specialized parliamentary party leadership and administrative structures. An important issue that needs to be addressed

here is emergence rather than growth. While we can assess the emergence of parliamentary party leadership it will be difficult to generalise on the specialization of parliamentary party leadership in the context of the Kosovo Assembly since this study focuses on the first two terms of its existence. Hence, identifying the emergence of the party leadership approaches in the Assembly would be a good indicator of internal complexity. The following sections look at the three directions of growth in the Kosovo Assembly: Assembly Committees, Party Leadership and Assembly Administration.

7.3.1. Assembly Committees

There were two main committees set out in the Constitutional Framework, the Committee on Budget and the Committee on Rights and Interests of Minorities. In addition, the Constitutional Framework (UNMIK/REG/2001/9) set out the basic provisions for the functional committees:

9.1.18 The Assembly may establish such Functional Committees as it deems necessary and appropriate to carry out its responsibilities.

9.1.19 The Assembly shall decide on the number of members of each functional committee. The membership of all Functional Committees shall reflect the diversity of the membership of the Assembly.

9.1.20 If a party of coalition represented in the Assembly does not have a seat on a given Functional Committee, it shall have the right to send an Assembly member to all meetings of that Functional Committee in an observer capacity.

Within a year of its existence, by May 2003 the Assembly had established 19 committees which were meeting at least once a week. The number of committees, both standing and functional would fluctuate during both the first and second legislative terms. The initially sharp increase in the number of committees had to do mainly with the processing of streamlining and consolidation of duties within committees; that was followed by eventual consolidation of the committees towards the end of the second legislative term. The following is a list of the committees during the first legislative term:

1. Committee on Budget,
2. Committee on Rights and Interests of Communities and Return,
3. Committee on Finance and Economy,
4. Committee on Trade and Industry,
5. Committee on Education, Science and Technology,
6. Committee on Culture, Youth and Sports,
7. Committee on Health,

8. Committee on Environment and Spatial Planning,
9. Committee on Labor and Social Welfare,
10. Committee on Transport and Communications,
11. Committee on Public Services,
12. Committee on Agriculture, Forestry, Rural Development,
13. Committee on International Co-operation,
14. Committee on Emergency Preparedness,
15. Committee on Judicial, Legislative and Constitutional Framework,
16. Committee on Public Petitions,
17. Committee on Missing Persons,
18. Committee on Gender Equality,
19. Committee on Media

With the adaption and modification of the Rules of Procedure in 2005 as well as their amendment in 2006, the number of committees as well as their scope had been re-organized and streamlined:

1. Committee on Budget and Finance,
2. Committee on Rights and Interests of Communities and Return,
3. Committee on Judicial, Legislative and Constitutional Framework Matters, Gender Equality, Petitions and Public Claims
4. Committee on International Cooperation and Euro-Atlantic Integrations,
5. Committee on Education, Science, Technology, Culture, Youth and Sports,
6. Committee on Economy, Trade, Industry, Energy, Transport and Telecommunication,
7. Committee on Agriculture, Forestry, Rural Development and Spatial Planning,
8. Committee on Health, Labor and Social Welfare and Missing Persons,
9. Committee on Public Services, Local Administration and Media,
10. Committee on Emergency Preparedness,
11. Committee for mandates and immunities.

While the reorganization of committees indicated a certain degree of internal consolidation or streamlining of work in the Assembly, Polsby warns that this may not be the most appropriate approach to assess internal complexity (1968:153): ‘The temptation is great to measure internal differentiation by simply counting the number of standing committees in each Congress. This would produce a curiously curvilinear result, because in 1946 the number of standing committees was reduced from 48 to 19, and the number has since crept up only as far as 20.’ Looking at the factors that contributed to the reorganization of committees however is a good indicator of growth in internal complexity. These factors in the case of Kosovo had to do with two main determinants: time and funding. The lack of proper administrative support, lack of office space and conflicting schedules all posed

problems in the functioning of committees in the first legislature. An OSCE monitoring report from 2003, notes the following (OSCE 2003:7):

Assembly committees meet regularly, often once a week. Since a per diem for travel expenses was introduced attendance by Assembly members has somehow improved, although participation in Committee meetings is far from complete. One reason is that some members are scheduled to attend several Committees while other members have several occupations outside the Assembly. In principle committee meetings are open to the public but schedules for the committee meetings are not well publicised and attendance by members of the public or media is the exception rather than the rule. Administrative and legal support for Assembly members and committees remains sometimes insufficient and Secretariat staff to certain committees finds itself often not in a position to respond to requests that go beyond regular meetings.

In less than five years of its existence, the Assembly was trying to reorganize itself by addressing the shortcoming of the initial set-up. When the first committees were set up during the first and second year of the Assembly, they were mainly organized around issues which experts believed would be tackled in the respective committees. Thus, during the first term, internal restructuring and committee organization was less strategic and more responsive to what the Assembly was being faced with. There were two important lessons that the Assembly learned at this stage and these applied in the consequent legislatures. The most important one was extending the powers of the committees and reducing the number of committees, this approach would solve the problem of scheduling and overburdening members who were sitting in more than one committee. The second lesson, a consequence of the first, had to do with the introduction of subcommittees and committee annual work plans. This approach not only resulted in more autonomy but it addressed the very complex requirements for political composition of committees. These two features provide an alternative approach to understanding internal complexity in the institutionalization process (see, for example, Olson and Crowther 2002).

From the perspective of the party composition of committees, the Kosovo Assembly used a proportionality formula that reflected the composition of the overall Assembly (see Chapter 4 for more details). All committees had representatives from political parties at the percentage which they held in the Assembly and committee leadership was decided on the number of seats in the Assembly. In addition, in line with the Constitutional Framework and in compliance with the 20 reserved seats for minorities, the same

Assembly composition would reflect the composition in the committees. All committees had to have, regardless of their composition, at a minimum two members of the minority, one Serb and one from a non-Serb minority. In addition, two committees had to have one chairperson from the Serb minority and one from a non-Serb minority. In addition, committees had to have at a minimum 20 per cent female representation both in membership and committee leadership. This formula posed considerable difficulty logistically and proved onerous for female and minority Assembly Members as they were always assigned to more than one committee given that the number of committees in the first and second legislatures fluctuated between 11 and 19 (in addition to the ad-hoc committees that the Assembly started to establish during the second term which had to observe the same formula of composition).

The problem is not with the representation principle itself but with how that principle is being applied. The way we're applying this formula now, is not to find committees where members would find interest and be able to apply their skills to the job, but by saying 'this committee needs another female and another minority' and not 'this committee needs a member who is familiar with law or the environment.' I find this approach more insulting to both minorities and females because we are merely filling the quota without giving consideration to the professional skills and interests of minority members. If there are 5 Serbs that are good at environmental issues or budget, why not have all five of them there? As long as the quota is being met, does it really matter that the quota has to be part of every committee? This is a very utopian approach to democracy, like everything else UNMIK is doing here – too much form without any substance. (Interview J. R. 2009)

Of course I am in favour of having a quota for woman in the assembly but quota alone does not solve the problem. As you know, I have been an activist for women's rights all my life and welcome the increased participation of women in public life but we need to make sure that women take part in actual decision-making and are not just there to fulfil the quota requirement. (Interview Flora Brovina 2010)

As a result, during the first legislature there were constant logistical problems with scheduling, support and translation. The reduction of the number of committees in the second legislature combined with arrangements for sub-committees, improved their functioning considerably although lack of professionally trained support continued to be a problem. A considerable improvement that has to be noted is the requirement of committees during the second legislature to draft annual work plans (see, for example, the annual work plan of the Committee for Trade and Industry for 2007). While these

indicators suggest improvement of structural functioning of committees, it says little on the autonomy of committees.

One way of looking at the level of autonomy of committees inside the Assembly, is their ability to initiate legislation. According to Polsby (1975) arena legislatures, like the British Parliament, serve as arenas where legislation and policy initiatives submitted by the government are debated and adopted or rejected in the house. Transformative legislatures on the other hand, like the US Congress, are legislatures that, in addition to executive initiatives, initiate policy and legislation. It is important to note however that Polsby does not suggest that arena and transformative legislatures present pure types but that they form a continuum where a number of intermediate positions can be identified. The Kosovo Assembly has features of both the transformative and the arena legislature model. Because of the nascent stage of development of the Assembly during this period, it is difficult to locate the Kosovo Assembly exclusively in either one of these two legislature models. In the first term, the Assembly was engaged in multi-tasking as well as establishing itself and a basic state infrastructure with limited funds and support. As a result, it was slow to start with legislative and policy initiatives and drafting. The first draft law to have been initiated and prepared within the Assembly (Law on Gender Equality) was submitted for first reading in July of 2003 by the Committee on Gender Equality (ASI 2003:7). While this established the practice of legislative initiation and drafting, which the Assembly periodically undertakes, legislative strategy and drafting is predominantly left to the executive.

7.3.2. Committee-Executive Relations

In the first legislative term, committees lacked resources and expertise to engage in proper review of government-sponsored legislation. Relations between Kosovo Assembly committees and respective ministries reflect similar experiences in other post-communist Eastern European legislatures. Kopecky's (2001:122,125) study of the Czech and Slovak Parliaments suggests that:

The first obstacle to developing strong committees, and hence strong cross-party mode of interaction between ministers and MPs, can be detected in the institutional arrangements themselves. Although standing committees in both parliaments enjoy the right to invite ministers, experiences and civil servants for hearings, the professional support granted to them has been

quite weak ... Committees in both countries also suffered from the sheer volume of legislation that they had to process within a relative short period of time, which had the obvious effect of limiting their chance to make substantial changes to the proposed drafts.

In the case of Kosovo, this process had placed Assembly committees at a further disadvantage by the fact that external support provided by international organizations in the legislative process was almost exclusively assigned to support the executive. USAID, which was the largest external organization providing legislative and policy drafting support to the PISG at this time, had only one international expert assigned to the Kosovo Assembly out of eighteen international experts placed in executive institutions (USAID 2003:61). In the absence of expert support and resources in reviewing legislation, coupled with a high volume of government sponsored legislation, Assembly committees were faced with constant pressure by the executive to expedite the review and approval of legislation. The approval of the annual budget by the Kosovo Assembly was usually introduced and approved within one to two sessions. This left the Assembly outside of the debate on public spending (Hadergjonaj 2006):

In Kosovo the budget is usually submitted on a routine basis and is approved by the Assembly ... the [budget] review was one of 16 items in the agenda of the 15, 16 and 19 December 2005 session. The first review and its approval were made in the same session ... The Assembly needs to take its proper role in approving the budget and in overseeing the spending of public funds ... The line of communication with the Ministry of Economy and Finance (MEF) is not at a proper level. The CBF [Committee on Budget and Finance] invited the MEF on 11 October to discuss the budget priorities, however the minister did not respond to the invitation by the committee ... The minister of MEF has never reported to the standing committee regarding the implementation of the law at least once a year as obliged by rule 53.2 of the Assembly Rules of Procedure.

This weak position of Assembly committees *vis-à-vis* the executive in the budget process mirrors the views of interviewed MPs in their responses on the frequency of government reporting to the Assembly (Table 7.1), and the frequency of government presence during questioning in the Assembly (Table 7.2)

Table 7.2: Frequency of Government Report to the Assembly (2001-2004):

How frequently did the government report to the Assembly (2001-2004)?

Once a week:	3
Once a month:	6
Few times a year:	17
Once a year:	1
(N)	(27)

Table 7.3: Frequency of government representatives in committee meetings (2001-2004):

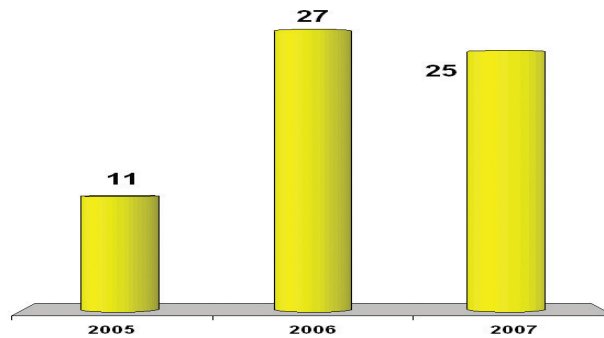
Presence of government ministers in committee meetings (2001-2004)?

Always:	2
Frequently:	6
Sometimes:	9
Rarely:	10
Never:	0
(N)	(27)

With the beginning of the second legislative term which, as explained earlier in this chapter, resulted in a stronger opposition in the Assembly, the relations between the executive and committees started to change. Initially this was reflected in the slower pace at which committees were reviewing legislation. During the first legislative term a bill became a law within one to two months of the first reading in the Assembly, in the second legislative term the average time frame expanded to four months (Assembly Legislative Matrix 2001-2004). By the second half of the second legislative term the extensive deliberation of laws in committees had become a serious hindrance to the work of the government, especially as the government was still being monitored on the Standards before Status platform introduced by UNMIK to assess the achievement of the government in fulfilling its mission that had a direct impact on the final status. Moreover, Assembly Rules of Procedure (35.6) clearly stipulated that ‘when a committee has been designated to review a draft law, it shall report its recommendations to the Assembly no later than two months after the first reading, unless an extension is approved by the Assembly.’ Although extensions were never requested from the Assembly, committees were not complying with the timeframe (see, for example, OSCE Report 04/2007). The opposition used this platform to demand more powers of oversight of committees over the executive. In the words of one MP, this ‘forced the government to come to the committees

and plenary sessions where their laws were being reviewed by us, if they showed no interest in coming to defend their sponsored laws, we did the same' (Interview G. S. 2010). In addition, committees increasingly utilized their power in rejecting, or returning, draft laws back to the government. There were only five such instances in the first legislative term, in the second however, the Assembly returned 31 draft laws to the government out of 151 sponsored laws (KDI 2007:12). These changes are also reflected in the overall increased work of the Assembly reflected in the plenary sessions below:

Figure 7.1: Number of Plenary Sessions during the Second Legislative Term by Year



Source: KDI (2007)

This change is reflected in the answers in Table 7.4 which suggests a considerable change in perceptions of government responsiveness to committee meetings from the first to the second legislature.

Table 7.4: Frequency of government representatives in committee meetings (2004-2007):

Presence of government ministers in committee meetings (2004-2007)?

Always:	19
Frequently:	6
Sometimes:	2
Rarely:	0
Never:	0
(N)	(27)

This change is also reflected in both the increased number of questions asked by MPs to government officials, and in the government's responsiveness. MPs asked 196 questions between 2004 and 2007, only 14 of which were unanswered (KDI 2007:15). Moreover, this resulted in an increased numbers of legislative initiatives by committees from three in the first legislative term to 129 (KDI 2007:17).

The change in relations between committees and the executive and the increased frequency of communication was not only a result of the end of the grand coalition government and the formation of a stronger opposition during the second term. While that may be the overriding factor that affected this change, there are two other factors that changed this relationship, the accumulated parliamentary experience of the MPs and the change in relations between the international administration and the Provisional Institutions of Self-Government:

In 2005 the international community started a process to find a final solution for the final status of Kosovo, this was reflected in changes here in that UNMIK started more serious transfer of powers to the local government and was less intrusive in the legislative process as it had been in the initial years. This left room for the government and the parliament to focus on their relationship. It helped that the new President of the Assembly was also transparent and open to reform. (Interview Rinor Beka 2009)

Moreover, if the first legislative term had only three members that had had previous parliamentary experience in the former Yugoslav governing structures, during the second term MPs had already accumulated parliamentary experience and had undergone training on parliamentarian work which resulted in a more comprehensive understanding of the responsibilities and functions of the committees. The increased presence of interest groups and civil society in committee meetings during the second legislature also added to the empowerment of the committees. The Kosovo Democratic Institute (KDI) for example was founded in 2005 with the purpose of regularly monitoring and reporting on the attendance, participation, and overall assessment of the work of each MP as well as of political parties.

The main factor accounting for this change however remains the new opposition during the second legislative term. This change is also a result of the changing roles of political parties in the Assembly. With that in mind, the next section looks at the evolution of party leadership and whip methods.

7.3.3. Party Leadership

Organization of party leadership and party caucuses began in early 2002 and symbolised the beginning of the work of the Assembly. Unlike other internal developments of the

Assembly, party leadership was swift, well organized and effective. The internal organization of political parties in the Assembly was pre-existing as the dynamics of intra-party politics were decided before the election. There was no party fragmentation in the first legislature which runs contrary to post-communist democratization processes throughout Eastern Europe. Studies of young democracies in post-communist political systems have shown high levels of party fragmentation or intra factionalism as a lack of ‘broadly organizational-based identity’ (Kopecky 2001:174, see also: Kopecky 1995, Waller 1995, 1996, Lewis and Gortat 1995). In Kosovo political parties were organized around similar goals that amounted to gaining independence from Serbia. The absence of political ideologies, or what Kopecky refers to as ‘broadly organization-based identities’, would become more apparent towards the end of the second legislature. As the declaration of independence became an attainable goal towards 2006, civil society and the electorate demanded more from political parties than just the post-conflict promises of independence from Serbia. Consequently, intra party fractions and fragmentation only became visible during the second legislature between 2006 and 2008. While it remains difficult to find the exact origins of party fragmentation, very few were the result of political ideological or organizational disputes.

Most fractions and fragmentations were closely tied to power struggles between senior members for leadership. The fragmentation of the oldest and largest political party in Kosovo, the LDK, is one such example. After the death of President Rugova, who had also been the founder and leader of LDK from 1989 to his death in 2006, inner party struggle for leadership resulted in the first split in 2007 during the sixth party electoral assembly. Nexhat Daci, who had served as the President of the Assembly from 2001 to 2005, lost the leadership rivalry to Fatmir Sejdiu and created his own political party the Democratic League of Dardania (LDD) (Isufi 2007). Having said that, not all party fragmentations were the result of inner party struggle for leadership. An earlier fragmentation of the LDK in 2004 by two senior ranking members Edita Tahiri and Edi Shukriu, who went on to establish the Democratic Alternative for Kosovo (ADK), was a result of the inner party members wanting to respond to new post-conflict demands of the electorate beyond the promises for independence.

Party fragmentation in the second legislature was also the result of strict party conformity during the first legislature. Given that Kosovo was a single electoral zone, political party

leaders would learn to use political party lists as a whip to assure party discipline. While in the first legislature, the enforcement of the whip was seen as a way of organizing representation in the Assembly, during the second legislature this proved to stifle constructive debate within political parties in the Assembly:

During the first term there was considerable democracy within PDK, all laws as well as voting decisions were discussed among all members. I personally felt comfortable expressing disagreement with stands of more senior ranking members. Of course we maintained a unified front in our demands especially since we were part of a coalition government and dissidence could have created larger problems for the party and the government. Here I would like to address the fact that party leadership was not necessarily enforced from the seniority but we were all somehow aware that we had to prove we are able to govern to the international community and our people – which is another reason why we stayed away from sometimes going against the tide inside the party. I would assume other parties in the Assembly observed the same silent rule. What I am trying to say is that it wasn't really very difficult or necessary at all to organize party representation in the first legislature because we all wanted to be 'responsible' representatives. Things changed towards the end of the first term when we started to notice that some kind of hierarchy of favourites was being established based on who was more obedient to the senior members and who showed or was seen to show dissent. (Interview N.D. 2010)

Many interviewed Assembly Members shared similar views; these included, for example, N.D., Ramadan Gashi, G.B and E.S. The manner in which this 'hierarchy of favourites' was manifested was through appointments in committees and voting lists:

those most in line with the party received senior appointments in committees and those appointments usually lead to government positions later on assuming one had proved a trusted member of the party. The more junior protégés who were not ready for senior posts in committees would be rewarded with trips abroad or similar parliamentary treats. But the more critical control that senior members had was the preparation of ballots for the next elections. If you were not considered in good standing with the senior ranking members, your name fell down the ballot which usually meant very little chance for re-election. (Interview N.D. 2010)

During the second legislature there was a more organized approach to whips inside the party. Given that the first legislative term from 2001-2004 was the beginning of parliamentary politics for political parties in Kosovo, party discipline was not organized as intra-party politics were still evolving. In the period between the first and the second

legislatures, senior party members used party lists to discipline and/or reward members. This combined with senior appointments in committees would become a standard in the second legislature: 'If during the first legislature party discipline was maintained only implicitly, in the second one you were explicitly warned' (Interview N.D. 2010).

One thing that has to be noted here is that the responses during interviews with Assembly Members on this topic were mixed. While a majority of interviewees believed that during the second and third term the party leadership in the Assembly had become more rigorous, there were those who accepted party discipline not as an enforcement of the will of the party seniority but rather as a regular parliamentary practice:

I don't think sanctions within the party are anywhere nearly as severe as they may be elsewhere, I'm thinking here of Western democracies. I myself have voted on several occasions outside party politics and have faced no sanctions – none that at least I am aware of. Of course there have been senior appointments of those closer to and more subservient to senior ranking members but they are also usually the more active and engaged members too. (Interview F. R. 2010)

In this sense, the responses were mixed and while a majority of members believed that party leadership has become more rigorous over the years, this has not been significant enough to affect democracy within the political party groups. While it remains difficult and too early to pin-point the effect of party leadership on the internal democratization of the political party groups, in as far as this research is concerned, patterns of political leadership in the Assembly are not only evident but were becoming more formalized. A typology of whips in the Kosovo Assembly can be summarized in the following:

If you vote against some insignificant law, then the party leadership may not even notice, given that they have a considerable majority in the session – consequently – there won't be any disciplining, formal or informal. If this becomes a habit, then you may not get on the next training trip abroad or receive the appointment in a committee you had hoped for. The more serious the vote against your party or absence or abstaining from voting all together when the party needs the support of all members, then this means either expulsion from the political party – although in such cases the MP would have already made the necessary calculations to change fronts - or if is not that critical the party leadership will make sure that you either don't appear on the next election ballot or you are so far down the list that even your most ardent supporters won't be able to find you. (Interview A.G. 2010)

While it remains too early to make any conclusions as to whether these whips would fully institutionalize, their implicit and judicious application suggests that a sanctioning process is in the making.

7.3.4 Assembly Administration

The challenges of establishing an efficient public administration in the case of the Kosovo Assembly are similar to those of other post-communist and post-conflict societies. Research on public administration in the post-communist context suggests that political actors ‘deliberately set up institutions with very limited enforcement powers that exist mainly on paper’ which then results in ‘enormous licence and opportunity to seek rent’ (Grzymala-Busse 2004:3). In a recent study of the civil service reform in the post-communist context, Kotchegura (2008:37) summarizes these problems into two groups:

One group is more technical – formation of a modern civil service as such, adoption of respective legal framework, introduction of principles of merit, enhancement of performance and efficiency of state bureaucracy, application of client oriented approaches, introduction of new IT technologies, etc. The other relates to more fundamental problems of the place, role, responsibility and relationship of the state bureaucracy to the society and politicians, as well as of prevailing within the bureaucracy informal rules, values and ethical standards. The second group in our opinion has greater significance in the case of post-communist countries as far as profound and sustainable reform of their civil services is concerned.

From 2001-2004 the Assembly Secretariat provided basic services that were divided into two departments: the Department of Administration and Department of Legal and Procedural Support. The entire administration was new and with few exceptions, such as the head of legal services Mr. Daut Beqiri, who had served in the Assembly of the Autonomous Socialist Province, the rest of the staff had very little previous experience. Most of the administrative work consisted in maintaining minutes during the committee meetings, translating and interpreting from Serbian into Albanian and vice-versa as well as transcribing plenary sessions. From 2001-2002, the international administration appointed Mr. Franck R. Boulon to serve as the General Secretary of the Kosovo Assembly while the recruitment process for a national Secretary of the Assembly was in the process. Once a national Secretary was appointed in 2002, Boulon continued to stay in the Assembly

administration as a principal international officer until 2003. During this period, the national staff that was being recruited or had been recruited in the Assembly administration was trained by various international organizations providing support to the newly established assembly. In the meantime, the international staff was mainly carrying out administrative support. By 2003, the administration, although limited in capacity and resources, had taken over most of the administrative tasks from the internationals. This transition would take a few more years, well into the second legislature as a considerable degree of services, especially translation from English into Albanian and Serbian and vice-versa and expert support in legislative drafting was still being offered by international organizations.

Despite improvement in the capacities of the staff in the second legislature, there are few indicators of institutionalization in terms of ‘general increase in the provision of various emoluments and auxiliary aids to members in the form of office space, salaries, allowances, staff aid, and committee staffs’ (Huntington 1968:53). Only political parties, parliamentary groups and their heads had office space by the end of the first legislature and during the second one as well. Assembly members continued to share general administrative staff and, with the exception of the President of the Assembly, no other Assembly member had staff or professional aid.

The only addition in terms of support staff are considerable improvements in the support we provide to the Assembly committees. As you know, support to individual members, including office space, equipment and budget is still not discussed. In our own building we had to make space for the executive, both the government and the president’s office until last year (2008). In other words, there has been virtually no change in the support that we as MPs receive from the first legislature to today. (Interview N.D. 2009).

All but three of the interviewed Assembly Members shared the above concerns. The second group of problems however that both Huntington and Polsby take as a given, is the development or institutionalization of an administration as an organizational structure in its own right. In young democracies, especially those in post-communist and post-conflict context, the more pressing challenge is the role of the administration and its impartiality. In the post-communist context institutional practice of the previous regime have an influence in the shaping of new institutions in the new regime. Russia’s first post-communist Prime Minister, Mr Chernomyrdin, famously noted that ‘Whatever

organisation we try to create, it always ends up looking like the Communist Party' (*Economist* 2010). While this was not a critical problem in the case of Kosovo as there was very little institutional legacy from the previous regime since all institutions were created *ex-novo*, certain practices – especially in regards to the role of the administration in political institutions – acted as hindrance to further institutionalization. Hesse for instance notes that '[t]he challenge with which public institutions are faced in Central and Eastern Europe, is to redefine their role in society, or, more concretely, their relationships with politics, the economy and the civil community' (Hesse 1998:5).

The Kosovo Auditors General Report at the beginning of the second legislature found a lack of financial transparency on behalf of the administration and non-compliance with procurement regulations (Kosovo Assembly Financial Statement 2005:3-5). The Kosovo Assembly responded by establishing an ad-hoc Investigative Committee to examine the findings of the Auditors General Report. The change of the President of the Assembly coupled with the initiative to investigate reported financial mismanagement in the Assembly resulted in a considerable internal reform:

The work of the [investigative] committee, its report and implementation of suggestions significantly improved the image of the Assembly. The process itself resulted in more awareness on behalf of Assembly Members keeping themselves, the presidency and especially the administration accountable. I would say that the administration of the Assembly has improved. However, the Assembly does not have sufficient administrative staff. It also does not have staff capable of conducting analysis and research and what I find interesting is that MPs constantly complain about lack of administrative and professional assistance, office space and working conditions throughout the year but when the budget is tabled in the Assembly all they complain about is their salaries, allowances and visits abroad and they do not even mention the administrative support. This in turn makes salaries in administration very low and people in the administration that gain some experience will leave for the first better paying opportunity. They are overworked, under-skilled and underpaid (Interview Valmir Ismajli 2009)

While there has been a considerable improvement in the administrative management and accountability within the Assembly, the administration shows small signs of institutionalization, especially as conceived by Huntington and Polsby. It is worth mentioning here, however, that internal institutionalization, as it pertains to administrations of legislatures in both Huntington's and Polsby's approaches, may not be

an appropriate measure. What matters most in legislatures in transition and democratization processes is not necessarily the ‘general increase in the provision of various emoluments and auxiliary aids to members in the form of office space, salaries, allowances, staff aid, and committee staffs’ (Huntington 1968:53) but rather the development of a transparent and impartial administrative competence to support the work of the Assembly. From this point of view, the administration of the Kosovo Assembly, from the first to the second legislative term, provides evidence of further institutionalization, yet continues to face challenges of budgetary constraint and priorities in spending for its own improvement. These challenges will be discussed further in the following section on internal autonomy.

7.4. Autonomy

Huntington (1965:402-403) suggests that an institution is considered autonomous when it gains the ability to resist external pressure and assimilate new social forces without having to compromise its autonomy or institutional integrity. Hibbing (1988:66), who drew upon both Huntington and Polsby, added that ‘for a body to institutionalize, it is not necessary for it to be the supreme political body in its system; instead, it is only necessary for it to have a reasonable degree of autonomy, to be able to make its own rules, and to establish itself as a relatively permanent and viable part of the whole, not necessarily the master of all.’ Hibbing’s approach is more relevant to institutions in young democracies and young institutions especially, since the ability to make their own rules would be the initial indicator of institutionalization. Assessing the ability of institutions to resist external pressure and assimilate new social forces in new institutions is challenging in that new institutions lack the generational age to produce any consistent indicators as to the patterns it is establishing, which can be more observable in older institutions. In younger institutions, like the Kosovo Assembly, the ability to make its own rules would be a good indicator of the level of autonomy the Assembly assumed in facing external pressure.

While in the Rambouillet Accords (Part II, Article 6), the authority of the Kosovo Assembly to decide ‘its own rules of procedure’ is clearly stipulated, the provision on the rules of procedure remained unclear under the Constitutional Framework that was adopted after the conflict. Article 9.1.26 (i) under the Responsibilities of the Assembly of the Constitutional Framework foresees the Assembly ‘Adopting the rules of procedure of the

Assembly and its committees.’ The approach that the Office of the Legal Advisor of UNMIK took on the wording was that the rules of procedure were to be drafted by the international administration and adopted by the Kosovo Assembly. During 2001, UNMIK recruited international legislative experts and practitioners who would engage in drafting the rules of procedure of the new Kosovo Assembly. In an attempt to bring experiences of successful legislatures in divided societies, UNMIK brought in experts who had either worked in the Northern Ireland Assembly or were part of the administration there. Reynolds, who was seconded by the Northern Ireland Assembly to help with the initial set up of the Kosovo Assembly, notes:

Firstly, in drawing up the provisional Rules of Procedure for the Assembly, international experts relied on the experience of Northern Ireland to help shape the procedures for the creation of committees to shadow the work of government ministries. Other rules which deal with questions to ministers, the making of statements in the Assembly or in the general conduct of plenary business, also draw heavily on the rules which govern parliamentary business in Northern Ireland. Secondly, I was seconded to the Kosovo Assembly from the Northern Ireland Assembly for three months to support the early formative developments. During this time in Pristina, I acted as Legal and Procedural Advisor and worked closely with the President of the Assembly and other members of the Presidency. It was also beneficial that someone with experience in the operation of a legislature was available to train the staff of the Assembly in Kosovo and, given the devolved status of the Northern Ireland Assembly, to offer advice on the role of the Assembly in dealing with transferred matters and in developing a relationship with the body responsible for exercising power in the reserved matters for which the Assembly has no legislative authority. (Reynolds 2002)

In the first formative stages, while the Assembly had not yet started to institutionalize, international advice and experience was welcomed and adopted without objections. Only once the Assembly started to forge its own identity as a political institution in its own right did it start to reassert itself against external influences, which in this case was the international administration. While the presence and support of the international support staff that had been seconded from Western parliamentary democracies to assist the Kosovo Assembly was welcomed by the newly elected members, a year into their first legislature, they wanted to change the rules of procedure:

It was not that we were not satisfied with the Rules of Procedure that were drafted by UNMIK, nor were we trying to somehow defy UNMIK as the

child that grows up and starts to challenge the parent as some have suggested – the dynamics were a little more complex for such simplifications. UNMIK had drafted the rules before the Assembly had even met and as such they were provisional rules that served their purpose. But once we started our work, the realities of the Assembly required amending these rules to adjust them to how the Assembly was developing as an institution. The problem with UNMIK was that they wanted to fanatically stick to the script on everything. That not only created conflict but it stifled developments that could have happened much earlier. (Interview D.D. 2009)

During 2002, with the help of the National Democratization Institute (NDI) and the Assembly Support Initiative (ASI) that had been set up by OSCE with the specific task of supporting the newly formed Assembly, the Assembly worked on revising and amending the provisional rules of procedure. The amendments to the provisional Rules of Procedure were mainly derived from the actual institutional practices that were being developed in the Assembly as work in the plenary session and Assembly committees was starting to develop its own patterns and approaches to decision-making, scheduling, floor rules and other internal business. By the end of 2002, the special committee on the revision of the provisional rules of procedure had provided a new draft to the floor for consideration. In the meantime, UNMIK had been informed of the new rules and had objected that they were in conflict with the Constitutional Framework. The International Administration was internally divided on the issue as well. While the Office of the Legal Advisor (OLA) at UNMIK had identified provisions in the rules that were in conflict with the Constitutional Framework, the OSCE (which was a constitutive part of UNMIK as the pillar in charge with building democratic institutions) Assembly Support Initiative Annual Report of the Assembly for 2003 suggested the new amendments had ‘the potential to strengthen the Assembly’s ability to be an effective PISG branch’ (ASI 2003: 10). Despite broad internal resistance that went across party lines, the Assembly presidency established a joint working group with Assembly members and OLA representatives who would consider the comments forwarded by the OLA. From February to October 2003, the working group tried to reach an agreement on the issues that were raised by UNMIK. During the negotiations process, Assembly representatives grew impatient with the demands that the OLA was making as they saw UNMIK’s interference into the internal rules of the house as an infringement into their internal affairs. An article on this problem, published in the Assembly news bulletin (Kosovo Assembly Bulletin 2003/3), published opinions of some of the members:

In fact, we have approved the Rules of Procedure of the Assembly of Kosovo since last year and I think that the procedure of adopting them has been dragged for no good reason. Meanwhile, the Office of the Legal Advisor of UNMIK has made some remarks, concluding that the rules have overstepped the powers of the Assembly and are in contradiction with the Constitutional Framework...We can't forget that the Rules of Procedure are not an act of law and it therefore does not have to undergo the legislative process. It does not proceed through three readings. It is an autonomous act of the Assembly of Kosovo, as we demand that, if the Assembly approves the draft Rules of Procedure that they enter into force immediately today. We demand from the Presidency to promulgate the Rules of Procedure without further delay (Arsim Bajrami 2003:20). I understand that the committee tried to reply somehow to the complaint made by the Office of the Legal Advisor UNMIK, but I believe that we should not accept the suggestions of the committee because we would be deforming our own Rules of Procedure that we have already approved ourselves and cannot retrospectively change it. In other words, we will not support these changes and request that others do not as well because they damage the Rules that we have approved a months ago. (Dugolli 2003:21)

In the Plenary Session of October 9, 2003 the Assembly approved and promulgated the Rules of Procedure. The Assembly made a stand of not forwarding the rules of the house to the SRSG for promulgation as it argued the Rules of Procedure were internal rules of the Assembly and they cannot be drafted or amended by actors who neither sit nor are elected to the Assembly. UNMIK did not recognize the rules as it argued that the Assembly was required to forward the rules for promulgation by the SRSG as was foreseen by the legislative process in compliance with the Constitutional Framework. Although UNMIK never recognized the amended Rules of Procedure, from October 9, 2003, the Assembly started working under the new rules. This was a blatant act of autonomy through which the Assembly not only asserted itself but preserved its integrity and legitimacy. What is more interesting is that under the Constitutional Framework the SRSG has the authority to disband the Assembly.

When the Standards before Status Implementation (UNMIK 2004) were released, the Rules of Procedure appeared again on the agenda as unfinished business. The Standards before Status Implementation plan was set up as a roadmap for the Provisional Institutions of Self-Government to fulfil certain standards required by the international community before the final status of Kosovo could be discussed. An excerpt of the implementation plan below sets out the action that needed to be taken in terms of the rules of procedure,

the PISG institution in charge of the action and the coordinating body for the action, in this case the Office of the Legal Advisor, followed by a deadline.

Table 7.5: Excerpt from the Standards before Status Implementation Plan (UNMIK 2004)

6.8 Rules of Procedure for the Conduct of Assembly business to be reviewed, well defined, notified and adhered to. The Rules should be in accordance with the Constitutional Framework and internationally accepted norms for legislatures.	Assembly	OLA	As soon as possible
6.9 Rules of Procedure for Assembly incorporate provision for consultative process (public hearing of draft laws, conformity with EU <i>aquis</i> etc.) in accordance with European practices, and there is no breach of such provisions.	Assembly, OPM	Assembly Support Initiative, OLA	As soon as possible
6.10 Rules of Procedure of the Assembly provide for debates/question time to review work of Ministries.	Assembly, OPM	Pillar II and Pillar III	As soon as possible

The Assembly continued to use its amended Rules of Procedure despite objections by UNMIK. When faced with pressure from UNMIK again the following year to change them in compliance with the Kosovo Standards Implementation Plan, the Assembly refused to give in. While it adopted standard practices that were in compliance with the European Union *aquis communautaire*, UNMIK suggestions were never fully adopted:

We had had many confrontations with OLA over legislation and some of the arguments they would put forward, albeit always with months of delay, were sometimes reasonable sometimes not. Their stand on the Rules of Procedure however were fully unjustifiable, I don't see how this stance was even legitimized within UNMIK? How can someone who does not sit in the Assembly day in day out, who is not elected to this house, who does not have the vote or legitimacy of the people and has no idea of the details of work of the Assembly - come in and say 'this is how you are going to conduct your sessions.' Had this been a political issue, like was the case with laws it would have been one thing, but this was pure procedure – not to mention that all parties that participated in the drafting process both national and international found nothing in the rules that was not in

compliance with the Constitutional Framework, EU or UN Regulations. Only when they reappeared in the Standards before Status plan did we realise that this was really not about the rules. This was about us defying the Office of the Legal Advisor (UNMIK). What most of us found in disbelief was that these were the standards that UNMIK suggested we were falling behind, yet these were the same issues that they had been blocking. (Interview Haki Shatri 2009)

All interviewed MPs and government officials involved in the process shared similar views. However the adoption of the Rules of Procedure by the Assembly did not turn into a consistent adherence or observance of them by the Assembly itself. Huntington suggests (1968:22) that autonomy becomes a means to coherence, enabling the organization to establish an esprit and style that become distinctive marks of its behaviour. In the case of the Kosovo Assembly, the process stopped with acquiring autonomy and this newly acquired autonomy did not necessarily result in internal coherence, at least not in the initial stages. With that in mind, the next section looks at coherence as the last of the four features of institutionalization according to Huntington.

7.5. Coherence

In suggesting coherence as the last feature of his theory on institutionalization, Huntington is not very clear if coherence proceeded in chronological order or was expected to occur in a set of given circumstances. He initially suggests (1968:22) that ‘an organization can be autonomous without being coherent and coherent without being autonomous. In actuality, however, the two are often closely linked together.’ This would then mean that autonomy and coherence are interrelated, yet he warns that ‘autonomy does not protect against disruption from internal sources’ and that ‘[r]apid or substantial expansions of the membership in an organization or in the participants in the system tend to weaken coherence.’ In explaining this, Huntington gives the example of the Ottoman Ruling Institutions that maintained coherence by assimilating new recruits into the norms, rules and practices (1968:22-23). This however suggests that the institution already has a set of established norms and practices that new recruits have to be integrated or assimilated into. Huntington is silent, at least explicitly, on the chronology of the features of institutionalization during the process, however, as mentioned above, some chronology is implied (see, for example, Judge 2003).

Young institutions that have not yet, or fully, accumulated such practices have to multi-task at the same time in both establishing norms and practices and creating coherence. This is especially challenging where there are no pre-existing norms and all members are new to the game. The Rules of Procedure of the Assembly of Kosovo illustrate this point. While there was a collective stand against external pressure for collectively agreed rules for the House, which helped both in creating boundedness and autonomy, it did not result in adherence and compliance to the rules. The process of compliance with its own rules proved more problematic than their approval. The factors that contributed to non-compliance can be divided into internal and external. Internal from the perspective that political forces and interests within the Assembly would engage in bending the rules to serve the interest of a particular group, be it within or outside the Assembly.

Lack of observance of rules and the processes however were not only of a political nature. An example of lack of respect for the rules and the process in the Assembly is the following excerpt of the ASI report (ASI 2005:5):

During the first reading of the Draft Law on Private Education and Training, Members of PDK and ORA proposed that the draft law should be returned to the Government for revision. When the debate was over, the Chairperson called the Assembly to prepare to vote. Noticing that the number of Members registered as present by the electronic equipment far exceeded the number of Members actually present at that time, the Chairperson asked Members to withdraw the cards of any Members not present in the hall at that time and asked the administrative support staff to carry out a physical count of the Members in the hall. The Chairperson announced that, according to the physical count, 72 Members were present. He then called on the Assembly to vote and he read aloud the voting results as registered on the electronic equipment: 41 in favor, 31 in opposition, and three abstentions. Several Members called attention to the discrepancy between the physical count (72) and the total number of votes and abstentions (75), and the Chairperson concluded that it was necessary to repeat the vote. Members of PDK and ORA then walked out of the plenary hall, leaving the session without a quorum. At that point, the President of the Assembly returned to the plenary session. Mr. Fatmir Rexhepi (LDK) informed the President of the Assembly that ‘41 voted in favor, 31 voted against, 72 were present, and three abstained, so I consider that the draft law has been approved.’ Mr. Alush Gashi (LDK) remarked that LDK had requested that when the President of the Assembly is absent, he should always be replaced by someone from the same parliamentary group, and if that principle had been followed, the Assembly would not be wrestling with the current procedural issue. Mr. Xhavit Haliti (PDK) responded that the manner in which plenary sessions are chaired has

nothing to do with parliamentary group affiliation. He stated that three Members *not present in the plenary hall* had voted and advised Members that they cannot delegate their votes to other Members when they leave the plenary hall. Mr. Haliti stressed that *he* was chairing the session when the incident occurred and under the Rules of Procedure, he had the *final authority* in interpreting the Rules at that time. The President of the Assembly thanked Mr. Haliti for assisting him in chairing the session, adding that Mr. Fatmir Sejdiu (LDK) and Mr. Naim Maloku (AAK) were both absent and could therefore not replace him as chairperson of the plenary session. The President of the Assembly acknowledged that the Rules of Procedure grant the Chairperson the authority to interpret the Rules during the plenary session. In the absence of a quorum, he called an end to proceedings for that day. The next day, the President of the Assembly remarked that the Chairperson had acted correctly in calling a revote on the previous day and called the Assembly to vote once more on the draft law, which was adopted with a majority of votes in favor and 23 votes in opposition (italics in the original).

Between 2005-2008, the Assembly Support Initiative reports had remarked upon such procedural violations over the rules in every plenary session. It is difficult to conclude what exactly caused such violations. The majority of them were apolitical and had to do with the fact that 86 per cent of the Assembly Members have another job in addition to being a Member of the Kosovo Assembly, 63 per cent of those are full time jobs and 20 per cent of Assembly members have more than one job. This posed a considerable problem for the work of the Assembly especially during the first and the second legislatures where on average the Assembly reviewed and passed three laws per plenary session. Between their second jobs, the work in the committees as well as their responsibilities with their constituents, political parties and government oversight, MPs are strained with very limited time which results in absences and lack of adherence to the house rules:

We are having to do everything and by everything I mean review 3-5 draft laws a week, discuss them in the political party group meetings, draft amendments to the laws, justify those amendments before the committees and the plenary sessions and this is just work related to the legislative process. Where is the time to keep the executive in check? Where is the time to get in touch with voters? The media and civil society groups here criticize us for not doing enough or that members of parliament in every country have to engage in the same exact tasks and yes, I would agree with that, but members of parliament in those countries have their own offices, computers and support staff. I have to meet with you here in the cafeteria because where else would we meet? I don't have an office, I don't have a secretary, I don't have a desk and I am expected to perform tasks as if all of these things are there. Under the circumstances I mentioned and the fact

that we are building the legislation of this country from scratch, I think we are doing a lot more than those members of parliament we always get compared to. (Interview Gjylnaze Sylaj 2009)

The constraints of time and lack of support staff resulted in low observance of house rules, both by the members and the presidency of the Assembly. While it is difficult to find an improvement in this context, when looking at the issues that were raised from members in the first and the second legislative terms, there is a clear division between what the source of the problem was in the first and the second legislature. In interviews with members who had served in both legislative terms, on the question of ‘were rules of procedure observed better in the first or the second legislative term’ 80 per cent of the responders said that rules were observed more in the second legislative term. The improvement can also be explained by a change of leadership:

In the period from 2001-2004 and even until 2006 you had clear instances where MPs were denied their right to take the floor and there was an arbitrary approach to the way the plenary sessions were conducted. The new President of the Assembly changed this as he increased transparency and explicitly made it clear that he was going to reform the way the Assembly was working. We had been monitoring the Assembly during both presidents of the Assembly and the difference, to us at least, was noticeable. The fact that the new president raised the standards of the Assembly, the parliament started to demand more of the executive too. Good examples of this are parliamentary questions by MPs to the executive. From 2001-2006 there only 20 questions from MPs to the executive, that is 20 questions in 5 years and only 9 of them were answered. The changes in the rules of procedure and new leadership changed this to over 200 MP questions to the government in the first six months after the new president of the assembly took over. (Interview Rinor Beka 2009)

What is observable in the case of the Kosovo Assembly is that, unlike adaptability, complexity and autonomy, establishing internal coherence takes longer and is more difficult to project. Although there was a considerable improvement from the first to the second legislature in terms of observance of rules of procedure, the roots that caused the problem, such as lack of administrative support, office space and multiple jobs had still not been dealt with in the second legislative term. According to Squire (1992:1028) this presents a problem since a professional legislature ‘pays its members well and provide superior staff resources and facilities. Essentially, such a body offers potential and current members incentives sufficient to consider service as a career.’

It is important to mention also that observance of the rules by both members and the presidency was also a result of constantly changing rules of procedure. During the first and second legislature, the Assembly was continuing to accumulate, learn and create meaning for new practices that were emerging out of the everyday work. The process of amending the rules to address new issues as they appeared was further complicated by the engagement of the international administration in the process. The Assembly members had to work under three different versions of the rules of procedure in two legislative terms. Moreover, not all members had the latest versions of the rules which created problems of communication between the chair and the members and the members and the administration. Interestingly, sometimes, the entire house would conduct business according to old rules without acknowledging that the procedure had changed under the new rules. The plenary session of December 14, 2006 is a good example (ASI 2006:5):

At the beginning of the 14 December plenary session, Mr. Hajredin Kuçi proposed on behalf of PDK that the first reading of the Draft Law on the Memorial of former President of Kosovo Ibrahim Rugova should be removed from the agenda with the justification that PDK was in favor of a more inclusive law on former presidents rather than case by case laws. The President of the Assembly called for a vote on the PDK parliamentary group's proposal, which was rejected with 35 votes in favor, 48 votes in opposition and six abstentions. *The new Rules 23.1-2 provide that '[t]he Presidency shall prepare a draft Agenda for the upcoming Assembly session and make it immediately available to the Members of the Assembly. At the beginning of the session the draft Agenda shall be deemed approved, unless one or more parliamentary groups or six (6) Members of the Assembly propose in writing to the President an amendment to the agenda, which should be put to a vote.'* The LDK and PDK parliamentary groups made verbal proposals, in accordance with the previous Rule 4 which is no longer in force, and which allowed amendments to the agenda to be proposed verbally. *Even after the revision of the agenda-setting provisions at the 1-2 June 2006 plenary session, Members of the Assembly continued to propose amendments to plenary session agendas in writing and verbally. New provisions, which require that the amendments to plenary session agendas are proposed in writing, should be consistently adhered to in order to avoid confusion or discontent among Members of the Assembly.* (italics in the original)

Despite constant complaints from observers of the Assembly, especially local civil society and the international administration, adherence to the rules of procedure has remained problematic. When asked about coherence in regards to observance of the house rules, one

Assembly member replied that ‘we are all coherent in our non-compliance with the rules’ (Interview Berim Ramosaj 2009).

7.6. Legislative Executive Relations

Legislative-executive relations are critical in emerging democracies as their modes of interaction carry significant consequences in the consolidation of democracy as well as the institutionalization of these relationships for the future. The development and institutionalization of this relationship in Kosovo is very similar to other emerging democracies in the region. Indeed, in the study of executive-legislative relations of the Czech and Slovak Republics respectively, Kopecky (2001:145) notes three elements of particular importance during this period:

Firstly, the newness of institutional structure means that the roles of the two executives are as yet undefined in political practice. The formal institutional framework is thus likely to become a battlefield on which presidents and governments will struggle to define their influence and position. Secondly, presidents in the new democracies in East Central Europe are or were persons who played an important role in the opposition against the old regime and in the dramatic period of transition to democracy. This gives them an additional source of legitimacy and can prove a political asset in shaping their institutions [...]. Thirdly, if other institutions are infirm and fragmented, even a constitutionally weak president may wield a decisive influence on the political process.

The dynamics that shape these relationships in the initial formative stages of democratic institutions are threefold, the relationship between the Assembly and the Government, the relationship between the Assembly and the President and the relationship between the Government and the President. While in most parliamentary democracies presidents have mere ceremonial powers, as Kopecky notes above, in the post-communist East Central Europe, presidents were more engaged in the process because of their roles in the opposition of the old regimes. In contrast, in Kosovo, the president played a ceremonial role and was not at all present in the governing process. This can be explained by both the fact that the presence of the Special Representative of the Secretary General conducted most of the ceremonial and functional duties of a conventional president and by the fact that the first President Ibrahim Rugova during this period was under underwent several

health problems that prevented him from carrying out certain functions. One of his former advisors notes:

The president had acquired somewhat of a mythical position in the political establishment in Kosovo. He stayed away from the daily operations of government, as a matter of fact, beyond the main issues he had no idea what the government was doing nor did he bother to find out. He maintained his personal home as the presidency through the entire term as this had been his headquarters before and during the war where he would receive foreign dignitaries. He did not take too seriously the initial governing institutions set out by UNMIK and despite several protests by the international administration to use the official symbols, he continued to use his flag and his own way of doing things. He may have visited the office that was allocated to him in the government building once or twice and made only one speech to the Kosovo Assembly...in many ways he was absent. (Interview A. F. 2009)

Thus, in the case of Kosovo, power sharing dynamics only occurred between the legislature and the government in the context of the Provisional Institutions of Self-Government. While a minimal aspect of this relationship was a result of the formal institutional arrangements stipulated in the Constitutional Framework, to a larger degree this relationship was moulded on *ad-hoc* precedents that evolved into rules of interaction.

7.6.1. The First Year 2001-2002

The importance of the first legislature cannot be overstated in how the Assembly later developed. The initial relationship between the government and the Assembly needs to be explored in the context of the Assembly being the only institutions before the formation of the government. As such, the Assembly predates the government and was the arena of political negotiations for the formation of government. While the debate was still dominated by political parties and most of the actual political give-and-takes were decided behind closed doors, the Assembly provided the public space for the expression of these new political arrangements. Although political parties were still the most relevant players in the executive branch:

A broad coalition government – with the LDK holding the Presidency and the PDK the position of Prime Minister – was seen as the only way to avoid conflict within Kosovo's institutions. The composition of the government reflected the priority of bridging the animosity between Albanian parties in 2001. The need for effective

governance came second to the need for stability. Therefore, parties, rather than institutions, remain at the centre of power in Kosovo's politics. Before the establishment of local and central level institutions, these parties had not worked together, and a high level of distrust characterized their early interactions. As seen below, this distrust has affected the work of the government, particularly on dialogue with Belgrade and minority issues generally, where the fear of being branded a traitor rendered the government almost useless for establishing firm and credible positions. However, the situation is slowly changing. An important by-product of the coalition government has been a marked reduction in inter-party tensions. (ICG 2003)

While the government took little over six months to form, in this period the Assembly had already established all committees, elected a president and a presidency as well as adopted provisional rules of procedure. During this process, most of the attention, both international and domestic was directed towards the Assembly. To support the work of the Assembly, OSCE had established the Assembly Support Initiative (ASI). ASI was a consortium of international government and non-governmental organizations that coordinated the various support projects to the newly established Assembly:

The Assembly was full of internationals, they were everywhere, I doubt most of us had any idea what they were doing. But they made themselves heard when we were failing to elect a government. We were being told to establish a broad coalition, in other words, to include everyone in the government. Many of us resisted since we felt that now that we were elected the internationals could not just come in and order us around to take our roles on stage. The majority resisted because they felt they could work something out that would give them better positions in the new government. I remember in end in one of our party meetings one of my colleagues made a plea that it was essential to first create the governing structures in Kosovo and later deal with politics. So it was more of a patriotic duty in the end. (Interview D.D. 2010)

Once the government was finally formed in June of 2002 the relationship with the Assembly was hectic. There was a lack of established channels of communication between the government and the legislative branch. In essence, there were no rules of procedures that prescribed the way in which this process would take place. Rules were being made by precedents.

After we elected the government we did not see them for an entire year. Now the government is present in almost every plenary session of the Assembly, in the first year, I can't remember any government ministers being present during plenary sessions... What is more interesting is that we shared the same building with the Prime Minister but we had no idea what they were doing and they probably had no idea what we were doing. This changed when they started sending their first draft laws. (Interview Haki Shatri 2009)

Along similar lines, an International Crisis Group Report (ICG 2003:6) notes that Assembly 'oversight of the government is virtually non-existent. Therefore, ministers are not held accountable for performance, and their actions are not scrutinized.' Part of the explanation of lack of communication between the legislative and executive branch was the fact that the government was still in formation. Although ministers had been elected to posts, there was an entire state infrastructure that was still being built. This was an extremely slow process as it involved hiring and training staff, finding space for the ministries to the smallest details of getting desks, computers and office supplies. Similarly, one year after the elections of November 2001, the Assembly was still working on provisional rules of procedures. Committees were established yet membership was not regular and lacked quorum most of the time. Relations did not resume until the middle of 2002.

The first term was characterised by an emergence of a pragmatic cooperation between the Assembly and the Executive as a result of the constant struggle between locals and internationals over governing powers. Moreover, senior officials in both the Executive and the Assembly understood that they were under constant observation by the international community, which was assessing their maturity in not only carrying out their functions but also their ability to foster a working relation together. As mentioned earlier, this cooperation, at least in its early stages, was aided by the fact that the executive consisted of a broad coalition with representatives from all the political parties in parliament, as one advisor to the Prime Minister notes:

I can't remember if we received any laws back in the first year, the only laws we would get back were those that the OLA (Office of the Legal Advisor, UNMIK) would not want to promulgate. They would send a letter to the President of the Assembly and then we would work together with the respective Assembly Committee to sort out whatever they thought was going beyond our powers. Our biggest problem at the time

was not the Assembly at all. The second term everything changed ... We received all the laws from the ministries, some of which we drafted here, we would then review them in the government and register them in the Assembly for reading. After the first year, we were taken back by the level of changes the Assembly made to them. In many instances the changes altered the draft laws so much that they were no longer compatible with the policies of the government. We would go to the committees to explain that some of the changes had to be reversed since the government had no capacity to implement these changes. I remember the law on the establishment of the Immovable Property Rights Register. This law had been submitted to us by the Kosovo Cadastral Agency and the provisions in the law stipulated how the register would function based on the practices that the Cadastral Agency was already using. The amendments of the Assembly members were incompatible with the practices of the agency, so we invited agency representatives in the committee meetings to explain to them that some of their amendments were not compatible with best practices. What made the process more chaotic was the fact that we had already cross-checked all laws with UNMIK at government level for compliance with the Constitutional Framework so that when the law would get to the SRSG desk for promulgation there wouldn't be any problems. What both us and UNMIK did not foresee is that once the laws were harmonized between us and UNMIK the Assembly had the power to amend them and then we had to go back again to revise them. In other words our work with UNMIK at government level was futile because they would change once they got into the Assembly. (Interview I.D. 2010)

This was a complex problem both from a procedural and political standpoint. The Prime Minister Bajram Rexhepi was from PDK whereas the President of the Assembly, Nexhat Daci was from LDK. In addition to the political tension between LDK and PDK that played out in the Assembly, procedurally the legislative route was not consistent with the levels of authority. Although the government worked closely with UNMIK at the government level to harmonize the laws so that they are in compliance with the Constitutional Framework, once the laws were submitted to the Assembly, they would re-open for further changes. In other words, UNMIK had decided to work with the government on the harmonization of laws whereas the Assembly had minimal channels of communication with the SRSG. This process sidelined the Assembly by choice of both the government and the international administration:

It was less complicated for the international assembly to work with the government by the simple fact that the government had a more unified approach to the political agenda than the assembly did. UNMIK understood early on that dealing with the assembly would be chaotic given that very nature of assemblies because everyone has a say and

anyone can submit an amendment. This did not mean though that they could forego the legislative process so it was not a very far sighted approach to minimize the intrusion of the assembly in the legislative process. Not only was this undemocratic but quite dim as a strategy. The only reason they thought it would work is because of the broad coalition, in other words, everyone in the government would pull strings with their respective party members in the assembly and this would provide for a smooth legislative process. This didn't turn out to be the case. In part this also explains the reasons for animosity between the Assembly and UNMIK...if the government was more forthcoming in negotiating with UNMIK just to get its laws past under pressure to appear successful, the assembly was in no rush which meant it had both the luxury of time and power to resist UNMIK's constant interpretation of the Constitutional Framework in their favour. (Interview T.S. 2010)

Part of the problem with the legislative process was also the fact that most of the draft laws were prepared in the government and it was not possible to engage Assembly Members in the drafting process. While UNMIK counted on the government to assert its influence over the Assembly to secure smooth passage of whatever agreement was reached between the executive and the international administration, the government found this balancing act difficult. Going against the conflict that the Assembly was undergoing with UNMIK on demanding more transfer of power would have meant political suicide for most government officials. By this stage the majority of Kosovars thought the international administration had overstayed its welcome and it was time for UNMIK to transfer whatever powers it still reserved for itself to the local governing institutions (see chapter 5 for more details). As a result, the government joined the Assembly in maintaining a unified front in dealing with UNMIK making the Assembly the central institution of political activity. Critics have argued that the constant blame-game between the local and international administration was an orchestration by both sides to justify their inability to find solutions for most of the problems Kosovar society was facing:

Very few local politicians really wanted more power from UNMIK or wanted to leave all together. UNMIK proved a perfect scapegoat for them to blame their inability to govern by pointing the finger at UNMIK and saying that they could do a lot more had UNMIK transferred more powers. UNMIK on the other hand played the same game by blaming the government. In other words there was no democratic process since everything revolved around this particular conflict. There was also lack of genuine civil society which could have played its role in pressing both the local and international government to focus more on issues of unemployment, internally displaced people, missing people, economic reconstruction and independence. The only civil society at the time was the

civil society that was founded, supported and structured by the internationals so it would have been out of character for them to criticize the international administration. They couldn't criticize the local government either since they needed access to local institutions for registration and operation. In other words that was no independent source which could have refocused the attention to more vital issues at the time. (Interview Valmir Ismajli 2009)

Although the conflict between the local and international administration would characterize both the first and the second legislative term, in the context of executive-legislative relations, the Assembly played a significant role not only in asserting its constitutional powers but also in acquiring more powers by the second term from the international administration. By the end of 2003, the Assembly had become the main stage for political debate in Kosovo. It is important to note here that in many instances in regime transitions legislatures are sometimes sidelined or become the tool of political parties and majority governments or presidents in asserting their authority over the entire governing process (see, for example, Whitmore 2004). The Kosovo Assembly overcame this role mainly by acting as a unified institution not only in dealing with the international administration but with all external influences, including political parties and the executive.

7.6.2. The Assembly Takes Centre Stage

There were three important rules that were established at this stage that form the beginning of the relationship between the Assembly and the government: (i) the Prime Minister's first address to the Assembly in May of 2002 presenting the government's programme and subsequent annual report in March of 2003; (ii) the submission of questions in writing by MPs to the government; and (iii) the amending of government-sponsored laws. Of all three new practices, the Assembly was to most notably show its power through amendment of laws. The following quote from one of the MPs reflects how most of the interviewed MPs viewed the subject:

The Constitutional Framework was very vague on how the relationship between the executive and the legislative branch would evolve, partly because it was drafted under the assumption that precedents could be established that would later become practices. We also had a very vague idea on how these relations need to be shaped, for instance, in the first year no one really called on the government to report. Many MPs assumed that since we had elected the government we had to show

support for the government and this they would interpret by defending government laws in the committees. This changed in the second year especially when political divisions started to emerge in the government between different ministries. For instance if a law came from a minister of LDK, LDK members in the committees would support the law and would try to prevent changes to it, similarly other parties did the same. The exception were laws that came from the Prime Ministers' Office, those laws would later become subject to amendments by all parties across the board although the PM was from PDK he was not spared from his own party too. Only when we started to amend the laws to the extent that the government thought in some instances they were fully altered from their initial meaning, did the government start to pay closer attention to the passage of their draft laws through plenary sessions and respective committees. (Interview Haki Shatri 2009).

The government, with the help of USAID advisors, started to follow the draft laws that were submitted to the Assembly. USAID started a 'Legislative Strengthening' project in the Assembly through which Assembly Members could be trained in their legislative responsibilities. In addition, government representatives would accompany all their laws in committee meetings as well as first and second readings in the plenary sessions. By May 2003 the Prime Minister Bajram Rexhepi had presented a government plan to the Assembly as a way of ameliorating the initial lack of contact and in fulfilment of requirements in the Constitutional Framework. The main priorities in the government plan were the further development of government infrastructure so as to be able to carry out its functions. The role of the Kosovo Assembly was the passage of the legislation that would facilitate the establishment of state infrastructure as well as practices. In other words, the government could not function fully until it had legislative grounds on which to further establish and legitimate governing. Thus, the legislative process became not only the most effective way for the Assembly to fulfil its oversight responsibility but also to use its constitutional role to dominate the governing process.

In terms of government reporting to the Assembly however, there was an overall lack of regular appearance of government ministers in plenary sessions beyond their required appearance when presenting a law from their sector. Government representatives would regularly attend committee meetings only when their laws were being amended beyond their initial expectations. What was initially considered conflict-management became a regular practice. Part of the responsibility for this was the slow progress of the Assembly in finalizing its rules of procedure, which were finally adopted in 2005. The change in

Assembly leadership during the second term was also significant in establishing more substantial requirements by the Assembly in assessing government's ability to implement the legislation the Assembly was passing. This was achieved by a project that was initiated between OSCE and the Assembly on the implementation of promulgated laws. One report (OSCE 2005:26) that traces the implementation of laws passed in 2004 notes that:

there is major room for improvement in some ministries and in the Government, and in most cases the actors have proven unable to comply with the deadlines envisaged for the adoption of secondary acts. The follow-up research from the last report also makes it clear that several of the laws from the period of 2002–2003 still have not been implemented to the extent envisaged by the Assembly, notwithstanding vast progress in a number of ministries.

The Assembly continued to use various methods to get the government on track in terms of fulfilling its obligations and following up on implementation of legislation. Part of the push by the Assembly to make the government more responsible in terms of reporting and following up was also the fact that in the second term the government was not an all encompassing coalition government. A European Commission Progress Report from 2005 notes:

After the multi-party coalition which dominated the political scene between 2000 and 2004, the elections of October 2004 resulted for the first time in Kosovo in a government coalition formed between the Democratic League of Kosovo (LDK) and the Alliance for the Future of Kosovo (AAK). The AAK's president Ramush Haradinaj was given the post of prime minister which he held until March 2005, when he was indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY). He immediately resigned, voluntarily surrendered and was transferred to The Hague. He was released on bail and returned to Kosovo in June. (SEC 2005:10)

The end of the broad coalition and the indictment of the Prime Minister strengthened the role of the Assembly in taking charge of the political environment. Moreover, the second legislative term saw a genuine opposition emerge in the Assembly without any ties to the government. By 2005-2006, there was also a boom of local non-governmental organizations, such as the Kosovo Democratic Institute, that followed closely both the work of the Assembly and the government. All of these factors combined, have contributed to the Assembly's central positioning during the preparations for the declaration of independence in 2008. Relations between the executive and the legislative

have been marked by considerable stabilization in terms of coordination and institutionalization. The political nature of this relationship is at times apprehensive, however, as a recent declaration of the OCSE Ambassador to Kosovo noted ‘the relationship between the executive and legislative branches is characterized by a certain degree of tension. This is perfectly natural for a democratic model where legislative and executive powers are separated’ (OSCE 2012).

7.7. Conclusion

The aim of this chapter was to look at the initial internal institutionalization of the Kosovo Assembly. Polsby (1968:145) suggests that an institution is institutionalized when it becomes ‘relatively complex, that is, its functions are internally separated on some regular and explicit basis, its parts are not wholly inter-changeable, and for at least some important purposes, its parts are interdependent.’ From this perspective, what is noticeable in the case of the Kosovo Assembly, is that these processes have started to take place and that there was a considerable change towards more internal complexity from the first to the second legislature. This is especially visible in the consistency, quality of work and importance of committees in the work of the house and the streamlining of rules of procedure that the Assembly modified to fit its particular needs.

While the Assembly continued to organize itself internally, some of the institutionalization processes had moved slower than others. The ‘use of universalistic rather than particularistic criteria, and automatic rather than discretionary methods for conducting its internal business’ (Polsby 1968: 145) was still not fully observed, especially in terms of adherence and respect for the house rules of procedure. There was slight improvement in support to the Assembly Members in terms of professional and administrative staff but a lack of office space and technology limited the ability of Assembly Members to fulfil basic tasks.

One interesting feature of the nature of internal institutionalization of the Kosovo Assembly was the pace at which this process developed. In the conclusion of his study of the US Congress, Polsby (1968: 168) notes that the data he presents suggest a ‘rapid development of universalistic, bounded, complex institutional forms.’ This theory contradicts, at least in part, Huntington’s suggestion that what matters more is generational

age. While generational age is certainly an important feature of an institutionalized political institution, the case of Kosovo confirms Polsby's finding that at a given juncture there is what Polsby calls a 'big bang' that jump starts this process. If for the US Congress this period of rapid internal development comes from 1890-1910, for the Kosovo Assembly this would be the period of second legislature 2004-2008. However, the institutionalization of the Kosovo Assembly coincided with the institutionalization of all Kosovo governing structures, as such practices that were established at this stage have resulted in the establishment of precedents that are slowly being accumulated and transformed in political and institutional practices. This is most obvious in the institutionalization of relations between the executive and the legislative branches. Relations between the executive and the legislative branches began without any established channels of communication and were followed by a considerably chaotic legislative process which was streamlined and institutionalized within two terms. In comparison to similar process both in the context of post-conflict and post-communist democratization experiences, this is an impressive accomplishment.

Chapter 8

Conclusion

8.1. Introduction

This study has explored the process of democratization in the context of international administration by focusing on the institutionalization of the Kosovo Assembly. In this context, the research has examined the internal and external factors that shaped the institutionalization process and the outcomes this process had on the overall post-conflict democratization in Kosovo. The research demonstrates that institutionalization of the Kosovo Assembly occurred following the initial transfer of powers from the international administration to the first freely elected Kosovo Assembly in 2001. The first legislative term proved the most significant in the establishment of internal norms and practices which were crucial to the Assembly asserting its autonomy as the most legitimate political institution not only *vis-à-vis* other Provisional Institutions of Self-Government but also in the face of the international administration. The Assembly became the centre for struggle of delineating authority between the international and local administration, which in turn resulted in a considerable degree of internal institutional cohesiveness of the Assembly. Thus, by examining the establishment and evolution of democratic political institutions under international administration, this study explains how the processes of democratization and institutionalization occurred in Kosovo under new and different circumstances. Most studies of democratization and institutionalization have focused on the role of domestic actors, and how those actors influence the democratization process and the institutionalization of political institutions in transition (see, for example, Rustow, 1970, O'Donnell, Schmitter and Whitehead, 1986, Rueschemeyer, Stephens and Stephens 1991, Huntington 1991, Whitehead 2001). Where international influence has been studied, it has only been explored from the perspective of how international events and actors influence internal democratization processes (see, for example, Whitehead 1986, 2001). What makes this study unique is that external actors are explored beyond their influencing role but as participating actors in the process. In other words, this study has explored the role of external determining actors in institutionalization in the broader context of post-conflict democratization. Thus, the research provides significant implications for further

research in both legislative institutionalization and democratization in similar settings. The conclusion focuses on the findings of these two themes.

Building political institutions in post-conflict environments is a precarious affair and a contradictory one, especially when international administrations – whether on a UN mandate or not – strive to build democratic institutions. The problem with the democracy-building agenda driven by exogenous actors is that it contradicts the very essence of democratic institutions which need to be electorally rooted within the communities that they will govern. The academic field of democratization in the context of international administration, sometimes also known as *democratic peacebuilding*, emerged following several efforts by the international community after the end of the cold war, to introduce democratic regimes in addition to conventional peacekeeping and conflict resolution. The initial studies, that influenced and came out of the first practices, were more concerned with the nature of these processes and the results, rather than the conceptual approach and implications that democratic peacebuilding had for the communities that were subjected to it. This approach came to be known as the procedural approach (O'Donnell and Schmitter 1986, Schmitter and Karl 1991:81, Linz and Stepan 1996, Schmitter and Guilhot 2000, Colomer 2000, Anderson et al. 2001:4, Gill 2002: 2-3, Levitsky and Way 2002:54-55). To that end, there have been two main approaches by which progress is assessed in international democratic peacebuilding: (i) the conditions established for capable governing institutions legitimized through democratic legal authority, and (ii) the steady reduction of violence for resolving intrastate political disputes (Roeder and Rothchild 2005; Ponzio 2011). In that context, such studies have attempted to assess the institutionalization of political institutions in the context of democratic peacebuilding. While closely observing the theoretical framework on institutionalization processes, the present study has steered away from the procedural democratization approaches and has taken a more critical approach that has focused on both the conceptual and procedural dilemma rather than the measurable outcomes, and has followed Gans-Morse's (2004:343) recognition that:

a theory of post-communist transition will not be a theory of democratization. It will be a theory of transition *from* state-socialism to many regime types, including novel forms of authoritarianism, enduring hybrid regimes, unstable forms of poor capitalism and low-quality democracy, and a handful of regimes that successfully develop sustainable liberal democracies.

This approach engages in problematizing the normative approach on democratic regime building by international administrations and the conceptual contradictions that result from it. Thus, the first half of this chapter looks at the conceptual nature of institutionalization of democratic legal authority through an international administration. Ponzio (2011:78) suggests that such administrations are:

premiered on both a fundamental normative view and observable evidence that: (a) fostering conditions for stable and democratic governing institutions can contribute to the peaceful mediation of competing domestic interests; and (b) external actors are capable of influencing markedly political liberalization within a state of territory, particularly during the initial phase of reconstruction after a deadly conflict.

The first half of this chapter engages with macro-analytical approaches and nests the Kosovo case study within broader conceptual and comparative perspectives. The second half of the chapter adopts a micro-analytical approach and examines the actual processes of building democratic political institutions and their institutionalization. It is worth reiterating at this point that these macro- and micro- approaches have been deployed in a 'non-conventional' or 'exceptional' case – in focusing on the institutionalization of the Kosovo Assembly from its first convocation in 2001 to the declaration of Kosovo's independence in 2008.

With that in mind, the second half of this chapter examines legislative institutionalization in the context of democratization under international administration. Finally, the conclusion outlines the potential for future research and policy learning arising from the outcomes of this research.

8.2. Kosovo in the Context of Democratic Peacebuilding

The Kosovo experience of democratic peacebuilding by international administration points to theoretical and practical ambiguities in understanding how political institutions, especially representative institutions, are configured and develop within democratic regimes institutionalized by 'outsiders'. The idea that a democratic regime can be installed

and institutionalized by outsiders contradicts the very core concept of democracy. The school of thought that democracy is exportable was influenced by neo-liberal ideas that defined the end of the cold war and the relative triumph of western liberal democracies (see, for example, Carothers 1999). These theories were in turn influenced by the democratic peace theory which assumed that democratic states did not want go to war with each other (see, for example, Russett 1994, Rosato 2003).

Thus, democratizing the world became one of the most momentous foreign policy pursuits of western liberal democracies after the collapse of Soviet-led communism. At the State of the Union Address in 1994, President Clinton noted that: ‘Ultimately, the best strategy to ensure our security and to build a durable peace is to support the advance of democracy elsewhere. Democracies don’t attack each other.’ This approach echoed Francis Fukuyama’s (1989) End of History thesis that declared western liberal democracies as the only remaining alternative, and by that logic everyone should strive towards it. Thus, unlike recent concerns about the nature of the post-conflict regime strategies in Libya, and regime transition across the Arab world, in the case of Kosovo there was no consideration of any possible alternative other than the model of western liberal democracy. This is why the democratization process was projected to the Kosovars and implemented by the international community as a roadmap to stability and peace. This attitude to democratization affected the process itself, as such practices of democracy-teaching resulted in what one of the interviewees called “playing democracy by do as we say don’t do as we do” (Ramosaj 2010). In all instances of democratic peacebuilding, the international administration has had overriding decision-making powers over the local political establishment. Chopra (2000:35), for example, notes that:

The UN’s sovereign government in East Timor has mimicked monarchical power. But even if conducted under the banner of peace, humanitarianism and human rights, and with all the accompanying good intentions, the international assumption of domestic rule requires built-in restraint.

The lack of restraint in the role of the international administrations stems from the assumption that there is no viable alternative to democracy. Similarly, European post-communist countries strived to establish democratic regimes as a way of guaranteeing stability but more importantly entry into the European Union which in turn would guarantee them access to European markets and credits for development. The post-

communist democratic transition experience was very well documented and researched, and mostly leaves the conceptual contradictions aside, with very few exceptions. Václav Havel, for instance, problematized this issue as early as 1985 (90-1), by noting that:

The post-totalitarian system, is only one aspect of a particularly drastic aspect and thus all the more revealing of its real origins of the general inability of modern humanity to be master of its own situation. The automatism of the post-totalitarian system is merely an extreme version of the global automatism of technological civilisation. The human failure that it mirrors is only one variant of the general failure of humanity ... It would appear that the traditional parliamentary democracies can offer no fundamental opposition to the automatism of technological civilization and the industrial-consumer society, for they, too, are being dragged helplessly along. People are manipulated in ways that are infinitely more subtle and refined than the brutal methods used in post-totalitarian societies ... In a democracy, human beings may enjoy personal freedoms and securities that are unknown to us, but in the end they do them no good, for they too are ultimately victims of the same automatism, and are incapable of defending their concerns about their own identity or preventing their superficialisation or transcending concerns about their own personal survival to become proud and responsible members of the polis, making a genuine contribution to the creation of its destiny.

In retrospect, Havel was concerned with the idea that the alternative to any post-totalitarian regime would become the liberal parliamentary democratic system, as indeed it did. This ultimately resulted in very limited critical analysis of the applicability and compatibility of liberal democracies in post-totalitarian societies. The idea that post-totalitarian societies could establish new forms of democratic or other representative arrangements that reflect their experiences, environments, cultures and economies was not considered. Thus, academic research on regime transition moved from questioning democratic regime transition and externally influenced democratization processes to observing their progression. A shift that also resulted simultaneously in the research methods used in the field, moving from qualitative to quantitative research. One such example is the debate in the field on what criteria constitutes a consolidated democracy. Linz and Stepan (1996) for instance, who have been particularly influential in the field, conceive five criteria of when a democratizing country can be considered a consolidated democracy, namely, once it has assured the following: (i) freedom for the establishment of civil society, (ii) autonomous and valued political society, (iii) rule of law, (iv) usable bureaucracy and (v) institutionalized economic society. Subsequently, at times, studies of

regime transition have been undertaken as quantitative assessments of the ability of the transitioning country to fulfil these criteria (see, for example, Colomer 2000, Cox 2000, Gill 2001, Belloni 2004, Fish 2006). One of the main critics of this approach, O'Donnell, notes that these studies conceive of regimes in transition as:

a given entity [that] inherently tends to move from lower (or immature or incomplete) to higher (or more mature, or complete) stages, up to an end point that marks the full development of its potentialities. Characteristically, the stages are understood from their end point: a seed is 'basically' a potential tree, or a given democracy is, as the authors put it, 'not yet' sufficiently consolidated. Entities are defined negatively, characterized not by their specific attributes but by what they lack in relation to the paradigmatic end point of their presumed trajectory. Negative definitions generate residual categories: cases are classified together on the basis of their sharing the lack of attributes that the more developed specimens of the same genus supposedly have (1996:162-3).

This approach was adopted in academic research and was utilized by an emerging global civil society in the post-cold-war era which strived to define global norms of appropriate good governance. Global civil society, mainly based in the global north, would use these criteria in becoming the watchdog of the democratization processes around the world. They played a crucial role in the establishment of 'democratic' norms in post-conflict Kosovo by defining them under their understanding of what constitutes democracy. Feride Rushiti (2009) who was the local civil society representative on the Kosovo Transitional Council noted that:

The internationals made it obvious to us in the most explicit terms at every stage and level that they were not at all concerned with how the local population felt about what they were doing. You didn't have to be present then to understand the lack of engagement of the locals, it is enough to look at the regulations passed in the first years of the establishment of UNMIK. There is nothing there that suggests that they were undertaken with some consultation or even regard of the population on which they were being enforced. They called this democratization.

Organizations such as Amnesty International, Human Rights Watch, Helsinki Committee on Human Rights, etc, relied on research methods coming out of academia on the measurement of democratic progress in societies in transition. These societies were coined 'transitioning countries' and their transition was assessed on the grounds of their ability to replicate institutions and private markets that would resemble those of western liberal

democracies. The shortcomings of this approach was that it lacked any tangible understanding of how these societies responded to transition and if democracy as manifested in the West was at all an obvious fit for them. Moreover, there were expectations that these processes could be expedited within a given time-frame, a consolidated western liberal democracy being the desired result. In Kosovo this strategy was pursued to such an extent that it left no practical room for local input in the establishment of the new regime. The core features of the blueprint for the new political institutions in Kosovo were non-negotiable as noted in both chapters 1 and 2.

Moreover, this study suggests that implementation of democracy by outsiders also runs the risk of wanting to establish a nearly utopian democracy through rules and regulations that may be difficult to implement in established Western liberal democracies. One such example is the gender balance legislation which made it a requirement for all political parties as well as Assembly committees to have at least 30 per cent female members. The problem with the gender balance approach, as noted in chapter 7, was with its implementation as the rule was being applied without context. Nonetheless, female representation in the Kosovo Assembly is higher than female representation in the legislatures of the United Kingdom, the USA, France, Italy, Switzerland and Canada although the overall condition of women in Kosovo is incomparable to those of these aforementioned countries (see, for instance, United Nations Population Found 2005). The idea that the problem of gender inequality could have been addressed by regulating representation on the basis of gender, not only runs contrary to the very concept of free and fair elections, but assumes that complex historical and cultural norms can be resolved through legislation.

8.3. Democratization by Internationals

The disempowerment of the Kosovar people in this process is evident throughout the post-conflict international administration. All interviewed Kosovar politicians expressed frustrations that resulted from their lack of participation in the establishment of the new regime. A great deal of frustration also resulted from lack of clarity on the nature of the new regime. More importantly, the new regime, although it was meant to institutionalize democratic governing practices, did not take into account what the Kosovars wanted but rather what the international administration thought it was best for them. The Kosovars

wanted full participation in the decision-making process and referendum on the final status. In this respect, the language and practices of international administrators was not reflective of the Kosovar reality. Thus, in a broader global framework, Kosovo was subjected explicitly to – what Neera Chandhoke (2005) suggests most developing countries of the global south were being subjected to implicitly through the new global civil society – norm setting without representation and accountability:

And when we realize that INGOs hardly ever come face to face with the people whose interests and problems they represent, or that they are not accountable to the people they represent, matters become even more troublesome. For this really means that while INGOs are in the business of representing, they are not in the business of being accountable to the people. And considering that most people who are being represented are excluded from access to global civil society organizations, and that a great many of the organizations who are active in global civil society are beyond the reach of genuine democratic activity, the issue of accountability gains some salience here.

Chandhoke, suggests that the inaccessibility of the developing countries to the norm-setting global institutions or global civil society, results in their challenges being interpreted only by the developed world. This in turn prevents transitioning societies from creating their own meaning and language for both their problems and solutions. Kosovo exemplifies a firsthand concrete experience of this broader global problem.

The initial establishment of governing institutions, starting with the Kosovo Transition Council that later transformed into the Joint Interim Administrative Structures (JIAS), was done with minimal local participation. As the name suggests, JIAS was conceived to be a power-sharing governing structure, yet its legal foundations prevented it from being effective in that the final decision was again reserved for the international administration. In addition, the internationals and locals had different governing agendas. On the one hand, Kosovar members were keen on establishing a semi-state infrastructure that would facilitate the further transition of power from the international to local administration. UNMIK on the other hand, resisted this process as it strived to build a multi-ethnic society and the inclusion of the Serb minority in the governing process (which until then had refused to participate) became the main priority. As a result, Kosovars were either excluded from the governing processes or were engaged only as observers with very little decision-making power. Even with the establishment of the Provisional Self-Governing

Institutions in 2001, the Kosovo Assembly, Government, and President, were all limited in their authority to define what they believed their problems were. This was accompanied by a lack of common language and cross-cultural communication between international administrators and Kosovars.

This problem of disconnect between international administration and national institutions, and the failure to conceive of institutional arrangements capable of articulating problems and solutions best suited to a given society, is not restricted to Kosovo alone. Yet the case of Kosovo illuminates a broader problem of democratization processes in the context of international administration. Only once the political institutions established by the international administration have been institutionalized can locals then engage in the process of decision-making, under the expectation that tactics of decision-making may change but not the core institutional structure and the regime itself. This process created considerable conflict between the international administration and the newly formed political institutions. In turn this provided an incentive to the local political establishment to claim ownership over their institutions as well as the democratization processes.

Recent studies suggest that when exogenous forces start to overpower the democratization and state-building agenda, this can run the danger that ‘the state-building agenda comes to be seen as progressively more exogenous, reinforcing the delegitimization process’ (Lemay-Hebert, 2009:66). However, the case of Kosovo suggests a different outcome. When the local political establishment in Kosovo acknowledged that the state building agenda was starting to be perceived as progressively exogenous, it decided to take ownership over the state institutions that were initially set up by the international administration. This is also the beginning of institutionalization of the Kosovo Assembly, with the first signs of establishing boundaries, thus democratizing the process of institutionalization of the Kosovo Assembly.

The Kosovo case suggests that pressure and imposition by exogenous actors can contribute in the assertiveness of domestic political institutions to reinforce their autonomy and establish their own internal working practices so as to maximize their contribution to state-building and democratization. This however came at the price of almost total disconnect between the domestic and international governing structures. Following the establishment of the PISG in 2001, Kosovo was *de-facto* under two parallel governing

structures. Even the Constitutional Framework made a clear division between the spheres of authority to be headed by the PISG and those to be headed by UNMIK. As with all post-war power-sharing institutions, the SRSG had veto over all decisions in Kosovo, both local and international. In these circumstances, the Kosovo Assembly became the central site of not only local and international confrontation on matters of which powers are transferred to the local administration and which powers are reserved to the international administration. In this particular instance, this study adds considerable value to the existing knowledge on legislative institutionalization. Unlike almost all studies on legislative institutionalization that look at legislatures that have had some pre-existing institutional structures and operate in fully sovereign states, the Kosovo Assembly was an *ex-novo* legislature operating under international administration. Thus, this research provides the opportunity to explore the patterns of learning of a young legislature from the initial stages of constitutional designs conceived jointly by local and international actors through to the implementation and institutionalization challenges. Additionally, the research provides an exhibit of relations between international and local administrations in the context of post-conflict peace-keeping and democratization and is illustrative of how differently legitimated institutions interact. More importantly, this research suggests that institutionalization in post-conflict societies is a means of modulating conflict in an institutional setting.

8.4. Institutionalization as Peacekeeping and Conflict Prevention

In the last two decades, there has been an increased interest in understanding the stabilizing role of institutionalization in post-conflict peacekeeping and peacebuilding. Polsby (1964:144) himself makes reference to the idea by noting that ‘for a political system to be viable, for it to succeed in performing tasks of authoritative resource allocation, problem solving, conflict settlement ... on behalf of a population of any substantial size, it must be institutionalized.’ Similarly, recent studies have looked at the ability of institutions in post-conflict environments to maintain conflict within institutional channels (Kumar ed. 1998:1-3, Snyder 2000:40-41, Manning 2002:4, Marjanovic 2005:2). This research adds to the current knowledge on the role of institutionalization in ameliorating conflict in that it explores the process from a new perspective as it looks at the institutionalization of conflict within institutional boundaries in the context of international administration. The ability of the Kosovo Assembly to establish itself as the

central site of political activity from early on, added to its legitimacy. Its ability to make a stand against the international administration gave it the authority it needed to amass support from all political parties. This was not only significant in the immediate post-conflict period but equally important in institutionalizing problem-solving through parliamentary practices. Siedschlag (2001:5) for example notes that institutionalization is not only a way of ameliorating a single conflict ‘but a path to improved general capacity to cope with conflict. This capacity includes a common understanding of conflict, common ideas of conflict regulation along with practical procedures and trained willingness to compromise.’

The Kosovo Assembly became a new space for mitigating differences; it became a stage for both local and international officials to convey messages to the broader public as well. Yet, the role of the Assembly in using its institutionalization process to contain conflict within institutional settings was a joint effort by both locals and internationals. The SRSG had full authority and permissible cause to dissolve parliament on several occasions, one such occasion was the Declaration of Territorial Integrity in 2002 mentioned in chapter 1. All parties understood that dissolving parliament could have resulted in the conflict spilling outside the newly elected institutions. Moreover, such an act would have discredited the entire local political establishment in the eyes of the Kosovar people. This silent understanding between the international administration and the local institutions would have not been facilitated had not the Kosovo Assembly been in the process of institutionalization. As Peters notes (Peters 2008:3) ‘institutions are arrangements of rules and incentives, and the members of the institutions behave in response to those basic components of institutional structure’ and even in instances where this may go against the preferences of certain actors, they will ‘behave entirely instrumentally so as to maximize the attainment of these preferences’ (Hall and Taylor 1996:944-945). In post-conflict settings, allegiance to newly established institutions can be very weak, especially when such institutions do not provide enough space for local parties to become full participants in the decision-making process. Kosovars had very limited authority to shape the governing process in the UNMIK-led Kosovo Transitional Council and the Joint Interim Administrative Structures, which is why there was resistance by local parties to fully engage with these institutions, as explained in chapter 6. In contrast, the establishment of the Kosovo Assembly and Provisional Institutions of Self-Government provided the space for local parties to become fully engaged in the decision-making process while

simultaneously partaking in shaping those institutions. Thus, the process of institutionalization provided an opportunity for all parties to become participants in the shaping of the new institutions whereby the process itself became the means of modulating conflict in an institutional setting. Moreover, the institutionalization of the Kosovo Assembly provided an opportunity for all parties to take ownership over the governing process. Thus, institutionalization in the context of the Kosovo Assembly brings new insights in how we understand the role of this process in conflict resolution and democratization. With that in mind, the following section looks at how this process evolved.

8.5. Institutionalization in the Context of International Administration

The establishment of boundaries and internal boundedness *vis-à-vis* external actors by the Kosovo Assembly is impressive for a young legislature evolving under the control of international administration. Acting in full disagreement with the international administration, at the risk of being dissolved by the Special Representative of the Secretary General, less than a year from its establishment, the Kosovo Assembly took a stand on May 23, 2002 by issuing the Resolution on Territorial Integrity mentioned above. While the subject and motive of the resolution is irrelevant to this study, the act itself was significant by ‘establishing boundaries that shield members from external shocks’ (Berry et al. 2000). Although this action alone may have not been what Polsby (1968:145) considered well-defined boundaries, it was a move towards developing them in the process of defining the nature and character of the Kosovo Assembly as a central political body in the broader political developments in Kosovo.

The day after the Assembly issued the Resolution on Territorial Integrity, the UN Security Council (SC/7413) condemned it as ‘deplorable’ and ‘null and void’ but fell short of dissolving the Assembly. Assembly members understood at this stage that dissolving the highest representative institution elected directly by the Kosovar people in free and fair elections might have had dire consequences for the international administration as it ran contrary to establishing democratic institutions. This was the only political leverage that the Assembly had in the following seven years of political conflict for the transfer of more powers from the international administration. These were also the first attempts of the local political elite to articulate their internal institutional values and norms beyond what

was established and required from them by the international administration. However their initial confrontation with the international administration became the *raison d'être* of their existence and therefore fell short of developing alternative and more indigenous practices of government.

This focus on the confrontation with the international administration in the first term resulted in lack of attention and focus on the internal development of the Assembly. Committee work in the first legislative term was chaotic and disorganized. There was also lack of administrative support and expert services for the elected members to make informed decisions. The findings of this research suggest that this was a direct consequence of the lack of decision-making authority of Assembly members:

We reviewed laws, added amendments, discussed various issues, invited representatives of parties who were going to be affected by these laws to our meetings, all with the idea that these drafts will become laws and really affect the citizens who elected us. Soon after however, we realised that if the SRSB chose not to promulgate a certain law because in the opinion of his legal advisors that law was in contradiction to the (SCR) 1244, the entire work was futile. It is difficult to maintain focus and commitment when your representative responsibility turns into sport. (Interview Gashi Besa 2009)

This is also shown in chapter 5 in the high number of laws passed by the Assembly that were blocked by the international administration without clarification. Only at the beginning of the second term, with the transfer of more powers from the international administration to the local one in 2005, does genuine internal institutionalization of the Assembly progress. The rules of procedure of the Assembly, which until that point had been temporary, were further developed with the experience of the first term and adopted in 2005. This streamlined the work of the committees by creating sub-committees as well as by creating explicit outcomes from sub-committees and committees. The most striking example of this was the projection of committee work plans of all 11 committees, as opposed to none in the previous term. Moreover, committees shifted their focus to their relations with the executive in fulfilling their duties as oversight of their respective ministries:

From 2001 to 2004 we went out of our way to avoid any conflict with the government and the office of the president. The idea was to present

a united front in front of the internationals, in many ways we did and it was probably the only way to show that we were serious in wanting the transfer of powers. From 2004 we started to pay more attention to the government, partly because with the transfer of more powers the government was doing more which meant that we also had to do more to keep up with their work. (Interview E.S 2010)

In this context, the increased workload of the government was reflected in a growth of internal complexity within the Assembly. It is difficult to answer with certainty the most pertinent questions in legislative institutionalization asked by Hibbing (1988): ‘Is it possible to nurse a legislature from infancy to stability, or do stable legislatures develop by caprice? Is there a common pattern to legislative change or do legislatures tend to adopt their own peculiar and idiosyncratic developmental courses?’ This research suggests that despite the different circumstances under which the institutionalization of the Kosovo Assembly occurred, there are clearly noticeable patterns with other studies of legislative institutionalization. However every institution has its own peculiarities and unique experiences. Thus, if we strive to understand patterns as identical uniform replications across the board, we cannot speak of similarities. On the other hand, if we understand similarities and patterns in terms of their broader evolutionary route and outcomes, as assessed by Huntington’s (1965) indicators of institutionalization – adaptability, complexity, autonomy and coherence, the Kosovo Assembly provides an important case for scholars of legislative institutionalization in that it suggests that, even under atypical circumstances, there are regularities to the pattern of legislative institutionalization.

8.6. Institutionalization and Democratization: The Kosovo Assembly

The establishment of state infrastructure beyond institutional design or constitution making is a matter of institutionalization, or, the ability of political institutions to mature and become sustainable. This role is one of the most significant roles parliaments play in the early stages of democratization. This is why their early institutionalization is central to them being able to carry out the responsibility for building a legislative frame, as well as state infrastructure for the rest of the polity. Thus, from both theory and practice, the recent mantra has been ‘institutionalization before democratization’ when it comes to democratic peacebuilding in post-conflict and conflict-prone societies. This research has looked at both the internal and external determinants that enable the process of institutionalization. Moreover, the addition that this research makes to an already

considerable body of research on legislative institutionalization in emerging democracies, is that it explores this process in the context of international administration. From this viewpoint, there are two major findings that come out of this research. The first is that, in contrast to Hibbing's (1985:707) conclusion that 'legislative bodies institutionalize in different ways and at different rates', this research suggests that legislative institutionalization, at least in emerging or aspiring democracies, happens more or less along similar parameters. The second finding is that in the context of international administration, parliaments not only take central stage in the process but play a central role in legitimizing the new regime, especially when in the eyes of the people the regime is viewed as an exogenous undertaking as suggested by Lemay-Hebert (2009).

Unlike all other post-communist societies that had inherited some form of pre-existing institutional structure, Kosovo's institutions were brand-new and had very little previous experience to draw from. While this might be an advantage, given that accumulated experiences from previous regimes can sometimes interfere in the process of change, they still provide a certain degree of administrative know-how that is necessary for the running of the state. With all this in mind, the role of the Kosovo Assembly in the establishment and democratization of the state, as well as asserting the sovereignty of Kosovo, was vital. Within two terms of its establishment the Assembly, although young and inexperienced, proved surprisingly apt in multi-tasking both in building its internal structures and providing the legal basis for state building and democratization. Having said that, the process was not always smooth and without drawbacks, this is evident in its constant inability to provide appropriate administrative support and resources for its own functioning. While the assertiveness of its own autonomy *vis-à-vis* the international administration was impressive, the Assembly has continued to struggle in asserting its independence *vis-à-vis* the executive. In part this has to do with what Tansey, from his study of regime building and democratization under international administration, observed:

international administrations can often set a precedent for a style of governance that breaches democratic rules. As international administrations are unelected bodies with extensive executive powers, their exercise of authority can set precedents for actions that would not generally be seen as compatible with democratic norms. (2010:216)

These practices that were partly acquired from the international administration and are partly a result of a general post-conflict power-struggle have institutionalized and have now become part of the Kosovo Assembly political culture. In this context, there are two main lessons that can be drawn from the Kosovo experience for future democratization projects, one that has to do with the approach to building democratic institutions in the post-conflict context and another that has to do with the pace of institutionalization of these institutions.

8.7. Implications for Policy and Theory

This research suggests that there is a tendency by international administrators to introduce good governance as understood in their own experiencing of democracy, which can be, and many times is, different from how people subjected to such projects perceive it. This has been a long-standing problem in democratization by outsiders. Carothers for instance notes that internationals who engage in democratization projects in post-conflict democratization:

compare the major socio-political institutions of the transitional country with those of their own society, identifying the main discrepancies. They then propose projects to bring the various institutions into line with the model. They focus, in other words, on endpoints rather than process. (1992:92)

Similarly, in Kosovo, democratization was undertaken as a top-down implementation of a plan that lacked any indigenous cultural or historical experiences. In addition, the decision making process was authoritarian in nature and lacked any legal mechanisms for balance of powers with the domestic political establishment. These practices resulted in a continuous conflict between internationals and locals, which at times prevented cooperation. Similar undertakings in the future should not only pay close attention to the local context of good governance but also provide a restraining mechanism for the international administration. The lack of restraint or balance of power between locals and internationals may not only result in continuous conflict but may also set a bad-governing example.

The other important lesson to take from the Kosovo experience is the pace with which

political institutions are established and institutionalize. The international administration supervised the local governing institutions for a prolonged period of time under the assumption that they were not ready to govern on their own. This was not necessarily due to their inability to govern but because their political decisions may have not been compatible with the political preferences of the international administration. The international administration would better fulfil its mission in observer capacity, as was the case in Bosnia, rather than a decision-making authority as was the case in Kosovo and East Timor. Moreover, some of the factors that contribute to the period under which local institutions are supervised have to do with the misconception that for political institutions to mature or institutionalise, generational age is one of the most significant indicators. Prolonged supervision prohibits local institutions from taking ownership of the decision-making process and at times can create an excuse for failure to fulfil representative duties *vis-à-vis* the electorate, as was the case in certain instances in Kosovo. The process through which this ownership of power is transferred from internationals to locals does not always have to be accompanied by conflict. The experience of the Kosovo Assembly suggests that institutionalization does not always depend on generational age and can happen faster than initially assumed. The Assembly proves that a legislature can institutionalize enough to sustain conflict within institutional boundaries while fulfilling its representative and governing responsibilities. In contrast to Polsby's assumption that generational age is one of the most significant aspects of institutionalization, the Kosovo Assembly institutionalized within two legislative terms. This in part may be explained by broader changes that have happened globally since the end of the cold war. The unprecedented rise of 'civil society', coupled with technological advancement and increased freedom of movement, has also helped in the transparency and efficiency of governing institutions. Young legislatures are not exceptions to this phenomena, this should be taken into account. The role of civil society in keeping pressure on the Assembly to observe the democratic process as well as its own institutional norms is probably on a par with legislative-civil society relations in Western liberal democracies. These factors, coupled with the pressure from the international community to show maturity before independence, had a significant impact in the relatively rapid institutionalization of the Kosovo Assembly.

From a theoretical viewpoint, as mentioned in the introduction of this research, Kosovo presents an opportunity to examine democratization in a new context involving

international administration. Democratization theory has lagged behind with democratization practices in the field. The case of Kosovo, where democratization was undertaken by internationals, is no longer unique. Iraq and Afghanistan are similar cases with similar processes. Democratization theory would benefit from future comparative analysis building on this study. In terms of institutionalization theory, this research provides a new venue for the study of the institutionalization as a process of mitigating conflict in post-conflict societies. The institutionalization process in Kosovo was the most significant aspect of the post-conflict democratization. It was through the process of institutionalization of representative institutions that conflict was not only contained within institutional structures but the decision-making processes in these institutions were also democratic in nature. Moreover, institutionalization theory is still based on theories that were built on institutionalization practices that do not always reflect the realities of the 21st century. The revolutions in information technology, freedom of movement and overall political changes of the 21st century have all contributed to a significant change in how political institutions institutionalize. The institutionalization of the Kosovo Assembly is only one such example of its time, an example of legislative institutionalization in the context of international administration, yet as such, it provides an opportunity to study the change in the modalities of institutionalization in the 21st century. More specifically for those interested in the institutionalization theory itself, the case of Kosovo provides a much-needed understanding of the role of external determinants in institutionalization (see, for example, Cooper and Brady 1981, Hibbing 1988, Squire 1992, Kopecky 2001, Judge 2003). While this research is by no means a definite answer to the role external actors play in the institutionalization process, it provides new prospects from which these factors can be explored in the future.

References

- Abrams, J., 2001. The Atrocities in Cambodia and Kosovo: Observations on the Codification of Genocide. *New England Law Review*, 35(2), pp. 303-309.
- Ágh, A. Ed., 1994. *The First Steps*. Budapest: Hungarian Centre for Democracy Studies.
- Ágh, A. and Kurtan, S., Eds., 1995. *Democratization and Europeanization in Hungary: The First Parliament, 1990-1994*. Budapest: Hungarian Centre for Democracy Studies.
- Ágh, A. and Pridham, G., 2001. *Prospects for democratic consolidation in East-Central Europe*. Manchester: Manchester University Press.
- Alexander, M., 2008. Democratization and Hybrid Regimes Comparative Evidence from Southeast Europe. *East European Politics & Societies*, 22(4), pp. 928-954.
- Alexander L. George and Andrew Bennett., 2005. *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA: MIT Press.
- Algrheim, C., 2005. *Kosovars Vow to Fight On for 'Lost' Lands. Balkans: Regional Reporting & Sustainable Training. BCR Issue 512*.
- Andeweg RB., 2000. Consociational Democracy. *Annual Review of Political Science*, (3), pp. 509-536.
- Andreev, A. S., 2004. Political Institutions and the Democratization of Post-Communist Eastern Europe (1989-2000). *Romanian Journal of Political Sciences*, 4(1), pp. 37-50.
- ASI, 2003. *Annual Report on the Assembly Support Initiative of the Kosovo Assembly*. [Online] Available at: <<http://www.osce.org/files/documents/c/7/24653.pdf>> [Accessed 12 January 2011].
- Assembly Support Initiative, 2005. Kosovo Assembly Report. ASI OSCE. Available at: <http://www.osce.org/kosovo/21120> [accessed on March 23, 2011]
- Assembly Support Initiative, 2006. Kosovo Assembly Report. ASI OSCE. Available at <http://www.osce.org/kosovo/26231> [accessed on March 23, 2011]
- Assembly Legislative Matrix 2001-2004. USAID Office, Kosovo Assembly.
- Auditor General of Kosovo, 2005. *Financial Statement for the Kosovo Assembly for the Year Ending in 2005*. Office of the Auditor General of Kosovo.
- Babbitt E., and Luz E., Eds., 2009. *Human Rights and Conflict Resolution in Context: Colombia, Sierre Leone, and Northern Ireland*. Syracuse: Syracuse University Press.
- Barjami, A., 2005. *Demokracia Parlamentare*. 4th ed. Prishtina: University of Prishtina Press.

- Baylis, E. A. 2007. Parallel Courts in Post-Conflict Kosovo. *Yale Journal of International Law* Issue 1 Winter 2007.
- Kuvendi i Kosovës miraton rezolutën. (2002) (Translation: Kosovo Assembly Adopts Resolution). *BBC Albanian* [online] available at <http://www.bbc.co.uk/albanian/020523133121.shtml>, 23 May, 2005. [Accessed on October 23 2010]
- Russia Condemns NATO at UN. (1999) *BBC News* [online] available at <http://news.bbc.co.uk/1/hi/world/europe/303127.stm>, 25 March 1999. [Accessed online: (Accessed on 25 February, 2010)].
- Becker H. S., 1970. *Sociological Work: Method and Substance*. Aldine: Chicago, IL.
- Belloni, R., 2004. Peacebuilding and Consociational Electoral Engineering in Bosnia and Herzegovina. *International Peacekeeping*, 11 (2), pp. 334-353.
- Belmont, K. in Reynolds, A., ed., 2002. *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy*. Oxford: Oxford University Press.
- Berlin, I., 1969. *Four Essays on Liberty*. Oxford: Oxford University Press.
- Berry, W., Berkman, M., and Schneiderman, S., 2000. Legislative Professionalism and Incumbent Reelection: The Development of Institutional Boundaries. *The American Political Science Review* 94(4), pp. 859-874.
- Bhagwati, J., 1997. Globalization, Sovereignty and Democracy. In: Hadenius, A., Ed. (1997) *Democracy's Victory and Crisis*. Cambridge: Cambridge University Press.
- Biber, F., 2002. Bosnia-Herzegovina: Developments Towards a More Integrated State?. *Journal of Muslim Minority Affairs*, 22 (1), pp. 205-218.
- Bochsler, D., 2006. Ethnic diversity, electoral system constraints and the nationalisation of political parties: A triangle model, applied on the Central and Eastern European countries. *CEU Political Science Journal*, 1(4), pp. 6-37.
- Booth, K., 2001. *The Kosovo Tragedy: The Human Rights Dimensions*. London: Frank Cass.
- Bradshaw, Y. and Wallace, M., 1991. Informing Generality and Explaining Uniqueness: the place of case study in comparative research. In: C. Ragin, ed., 1991 *Issues and Alternatives in Comparative Social Research*. Leiden: Brill.
- Brand, M., 2003. The Development of Kosovo Institutions and the Transition of Authority from UNMIK to Local Self-Government. *Centre for Applied Studies in International Negotiations* (CASIN), Geneva, Switzerland. Geneva: CASIN.
- Breslin, M., & Buchanan, R., 2008. On the Case Study Method of Research and Teaching in Design. *Design Issues*, 24 (1), pp. 36-40.

- Brown, A., 2000. Transnational Influences in the Transition from Communism. *Post-Soviet Affairs*, 16(2), pp. 177-200.
- Brubaker, R., 1996. *Nationalism Reformed: Nationhood and the National Question in the New Europe*. Cambridge: Cambridge University Press.
- Brunnbauer, U., 2002. The implementation of the Ohrid Agreement: Ethnic Macedonian Resentments. *Journal of Ethnopolitics and Minority Issues in Europe*. 1/2002
- Bunce, V., 1995. Should Transitologists Be Grounded? *Slavic Review*, 54(1), pp. 111-127.
- Cammack, P., 1994. Political Development Theory and the Dissemination of Democracy. *Democratization* 1 (3), pp. 353-374.
- Carmines, E. G. and Zeller, A. Z. 1979. *Reliability and Validity Assessment*. Beverly Hills: Sage Publications.
- Carothers, T., 1999. *Aiding Democracy Abroad the Learning Curve*. New York: Carnegie Endowment for International Peace.
- Chandhoke, N., 2005. How Global is Global Civil Society? *Journal of World-systems Research*, 11(2), pp. 355-371.
- Chesterman, S., 2004. Building Democracy Through Benevolent Autocracy. In: E. Newman and R. Rich., eds., 2004. *The UN Role in Promoting Democracy*. New York: The United Nations University.
- Chiva, C., 2007. The Institutionalization of Post-Communist Parliaments: Hungary and Romania in Comparative Perspective. *Parliamentary Affairs*, 60(2), pp. 187-211.
- Chopra J., 2000. The UN Kingdom of East Timor. *Survival*, 42(3), pp. 27-39. Watson Institute for International Studies.
- Clark, H., 2000. *Civil Resistance in Kosovo*. London and Sterling: Pluto Press.
- Clinton, B., 2005. *My Life*. New York: Knopf.
- Cohen, F. S., 2000. *Failed Crusade: America and the Tragedy of Post-Communist Russia*. New York: W.W. Norton & Co.
- Colomer M. J., 2008. Institutional Design. In: Landmann, T., and Robinson, N., eds. 2008. *Handbook of Comparative Politics*. London: Sage.
- Colomer, M. J., 2000. *Strategic Transitions: Game Theory and Democratization*. Baltimore: The Johns Hopkins University Press.
- Cooper, J. and Brady, D. W., 1981. Toward a Diachronic Analysis of Congress. *American Political Science Review*, 75(4), pp. 988-1006.

- Copeland, G.W. and Patterson, S.C., 1994. *Parliaments in the Modern World*. Ann Arbor: University of Michigan Press.
- Covey, J. et al., 2005. *The Quest for Viable Peace International Intervention and Strategies for Conflict Transformation*. Washington DC: USIP Press Books.
- Cox, M., 2000. *State Building and Post-Conflict Reconstruction: Lessons from Bosnia*. Geneva: Centre for Applied Studies in International Negotiations.
- Crawford, W. T., 2003. *Pivotal Deterrence: Third-Party Statecraft and the Pursuit of Peace*. Ithaca, NY: Cornell University Press.
- Crowther, W. and Roper, S. D., 1996. A Comparative Analysis of Institutional Development in the Romanian and Moldovan Legislatures. *Journal of Legislative Studies*, 2(1). pp. 133-160.
- Dacin and Dacin in Greenwood et al., 2008. *The SAGE Handbook of Organizational Institutionalism*. London: Sage Publications.
- Dahl et al., 2003. *The Democracy Sourcebook*. Cambridge: The MIT Press.
- Dahl, R., 1963. *A Preface to Democratic Theory*. Chicago: University of Chicago Press.
- Dahl, R., 1972. *Polyarchy: Participation and Opposition*. New Haven: Yale University Press.
- Dahl, R., 1982. *Dilemmas of Pluralist Democracy*. New Haven: Yale University Press.
- Dahl, R., 1989. *Democracy and Its Critics*. New Haven: Yale University Press.
- De Vaus, D. A., 2001. *Research Design in Social Research*. London: Sage Publications.
- De Vrieze Franklin, 2003. Latest Developments in the Assembly. ASI Newsletter, OSCE.
- Demi, L., 2009. *European Enlargement and the Integration of the Western Balkans*. Tirana: Guttenberg Press.
- Di Palma, G., 1990. *To Craft Democracies: An Essay on Democratic Transitions*. Berkley: University of California Press.
- Diamond L., 2002. Thinking About Hybrid Regimes. *Journal of Democracy* Volume 13(2), pp. 21-35.
- Diamond, L., 1992. Economic Development and Democracy Reconsidered. *American Behavioural Scientists* 35(4/5), pg. 450–499.
- Diamond, L., 1994. Toward Democratic Consolidation. *Journal of Democracy*, 5(3), pp. 4-17.

- Diamond, L., 1999. *Developing Democracy: Toward Consolidation*. Baltimore: The John Hopkins University Press.
- Diermeier, D., and Krehbiel, K., 2003. Institutionalism as a Methodology. *Journal of Theoretical Politics*, 15(2). pp. 123-144.
- Dillard, J. F., Rigsby, J. T. and Goodman, C., 2004. The Making and Remaking of Organisation Context: Duality and the Institutionalization Process. *Accounting, Auditing and Accountability Journal*, 17(4), pg.506-542.
- East-West Parliamentary Practice Project, 2002. Legislatures and Citizens: A programme for the parliaments and civil societies of Southeastern Europe - Follow-up Feedback Meeting to Pristina, Accessed online on December 23, 2010 at: http://www.ewppp.org/programmes/southeastern_europe.php#_19
- Efendija, E., 2006. The Committee on Budget and Finance drafts the proposal on Assembly Budget for 2007. *ASI Newsletter 25*. OSCE.
- Eisenstadt, S. N., 1964. Institutionalization and Change. *American Sociological Review*, 29(2), pp. 235-247.
- Elsie, R., 2002. *Gathering Clouds: the Roots of Ethnic Cleansing in Kosovo and Macedonia*. Prishtina: Dukagjini Balkan Books.
- Elster, J. et al., 1998. *Institutional Design in Post-communist Societies: Rebuilding the Ship at Sea*. Cambridge: Cambridge University Press.
- Encarnacion, O. G., 2000. Beyond Transitions: The Politics of Democratic Consolidation. *Comparative Politics*, 32(4), pg. 479-498.
- Errson, S. and Lane, J.K., 2000. *The New Institutional Politics: Outcomes and Consequences*. London: Routledge.
- Esposito, N., 2001. From Meaning to Meaning: The Influence of Translation Techniques on Non-English Focus Group Research. *Qualitative Health Research*, 11(4), pp. 568-579.
- Feagin, J., Orum, A., & Sjoberg, G., eds., 1991. *A Case for Case Study*. Chapel Hill: University of North Carolina Press.
- Fish, M.S., 2006. Strong Legislatures, Stronger Democracies. *Journal of Democracy* 17(1), pp. 5-20.
- Flyvbjerg, B., 2006. Five Misunderstandings about Case-Study Research. *Qualitative Inquiry*, 12(2), pp. 219-245.
- Fotopoulos, T., 2005. The Multidimensional Crisis and Inclusive Democracy. *East European Politics and Societies*, 22(4).

- Gans-Morse, J., 2004. Searching for Transitologists: Contemporary Theories of Post-Communist Transitions and the Myth of a Dominant Paradigm. *Post-Soviet Affairs*, 20(4). Pp. 320-349..
- Gaon, N., 2006. OSCE Mission Helps Kosovo Assembly Prepare for the Future. OSCE Mission in Kosovo. Available at: <http://www.osce.org/kosovo/57533> [accessed on July 19, 2011]
- Gashi, B., 2009. Member of Parliament 2001-2004 and 2004-2008. Personal Interview.
- Hibbing, J. R., 1988. Legislative Institutionalization with Illustrations from the British House of Commons. *American Journal of Political Science*, 32(3), pp. 681-712.
- Geddes in Lijphart, A. and Waisman, C.H., eds., 1996. *Initiation of New Democratic Institutions in Eastern Europe and Latin America*. Institutional Design in New Democracies. Boulder, Colorado: Westview Press.
- Gill, G., 2001. *Democracy and Post-Communism: Political Change in the Post-Communist World*. London: Routledge.
- Glesne C. and Peshkin A., 1992. *Becoming Qualitative Researchers: An Introduction*. New York: Longman.
- Goodin, R., Ed., 1996. *The Theory of Institutional Design*. Cambridge: Cambridge University Press.
- Government of Canada. (June 1998), Contact Group Joint Statement.
- Grabendorff, W., 1992. The Party Internationals and Democracy in Central America. In: L. W. Goodman, W. M. Leogrande and J. Mendelson., eds. *Political Parties and Democracy in Central America*. Boulder: Westview Press.
- Grugel, J., 2002. *Democratization: A Critical Introduction*. New York: Palgrave MacMillan.
- Grzymala-Busse, A., 2004. *Informal Institutions and the Post-Communist State*. Washington, D.C.: The National Council for Eurasian and East European Research.
- Guba, E. G., 1981. Criteria for Assessing the Trustworthiness of Naturalistic Inquiries. *Educational Communication and Technology Journal*, 29(2), pp.75-91.
- Hadergjonaj quoted in Baddenhausen-Lange, H., 2006. *Parliamentary Oversight of the Executive*. Assembly Support Initiative Newsletter: Organisation of Security and Co-operation Europe .
- Hall, P. A. and Rosemary, C.R. T., 1996. Political Science and the Three New Institutionalisms. *Political Studies* 44(5), pp. 936-957.
- Hart, V., 2001. Constitution-Making and the Transformation of Conflict. *Peace & Change*, 26(2), pp. 153-176.

- Havel, V., 1985. The power of the Powerless. In John Keane., ed., 1985. *The power of the Powerless Citizens Against the State in Central-Eastern Europe*. London: Hutchinson.
- Hay, Colin, 2006. Constructivist Institutionalism in Rhodes et al. *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.
- Heldun, R. D. et al., 2008. Capacity Building in Parliaments and Legislatures: Institutionalization, Professionalization and Evolutionary Institutionalism. In Levels of Governance and Public Policies panel: International Political Science Association Conference, *International Political Science: New Theoretical and Regional Perspectives*. Montreal, April 30 – May 2, 2008.
- Huntington, P. S., 1965. Political Development and Political Decay. *World Politics*, 17(3), pp. 386-430
- Hesse, J.J., 1998. Rebuilding the State: Administrative Reform in Central and Eastern Europe. In: SIGMA., Ed. *Preparing Public Administration for the European Administrative Space*. Paris: SIGMA.
- Hibbing, J. R., 1988. Legislative Institutionalization with Illustrations from the British House of Commons. *American Journal of Political Science*, 32(3), pp. 681-712.
- Hibbing, J. R. and Patterson, S. C., 1994. The Emergence of Democratic Parliaments in Central and Eastern Europe. In G.W. Copeland and S.C. Patterson, *Parliaments in the Modern World*. Ann Arbor: University of Michigan Press.
- Horowitz, D., 2002. Constitutional Design: Proposals versus Process. In Reynolds, A., Ed. *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*. Oxford: Oxford University Press.
- Horowitz, D. in Reynolds A., Ed., 2002. *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy*. Oxford: Oxford University Press.
- Huber, P. G. and Van de Ven H. A., Eds., 1995. *Longitudinal Field Research Methods: Studying Processes of Organizational Change*. Thousand Oaks: Sage Publications
- Huitt William G., 1998. *Internal and External Validity*. [online] available at: <http://www.valdosta.peachnet.edu/~whuitt/psy702/intro/valdgn.html> [Accessed on: December 20, 2010]
- Humanitarian Law Center, 1995. *Human Rights 1991-1995*. Humanitarian Law Center Press.
- Huntington, P. S., 1965. Political Development and Political Decay. *World Politics*, 17(3), pp. 386-430.
- Huntington, P. S., 1991. *The Third Wave: Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press.

- International Crisis Group, 1999. *Starting from Scratch in Kosovo: The Honeymoon Is Over*. Brussels: ICG.
- International Crisis Group, 2000. *Elections in Kosovo: Moving Toward Democracy?* Brussels: ICG.
- International Crisis Group, 2001. *Kosovo: Landmark Election, Europe Report N°120*. Brussels: ICG.
- International Foundation for Election System, 2000. *The Europe and Euroasia Report*. Washington DC: IFES.
- International Crisis Group Report, 2003. *Two to Tango*. Brussels: ICG.
- International Helsinki Federation for Human Rights, 1999. *Special Report: The Past 10 years in Kosovo: Autonomy, Colonisation, Genocide*. Helsinki: IHFHR.
- International Independent Commission on Kosovo, 2000. *The Kosovo Report: Conflict, International Response, Lessons Learned*. Oxford: Oxford University Press.
- Isufi, A., 2007. *A do te ndahet LDK-ja deri ne fund te javes? (Will LDK Split by the End of the Week*. [Radio Broadcast], Radio Free Europe.. Available at: <http://origin.evropaelire.org/content/article/977867.html> [Accessed 12 February, 2011]. :
- Jarstad, A., 2007. To Share or to Divide? Negotiating the Future of Kosovo. *Civil Wars Journal*, 9(3), pp. 227-242.
- Jeffrey, A. 2006. Building State Capacity in Post-conflict Bosnia and Herzegovina: The Case of Brcko District. *Political Geography*, 25(2), pp. 203-227.
- Johnson, B. J. and Reynolds, H. T., 2008. *Political Science Research Methods*. Washington DC: CQ Press, Sage.
- Jora, S., 2006. *International Organizations and Democratization Models: The Case of EU Accession of Romania*. [online] Center for Legal Dynamics of Advanced Market Societies. Kobe University. Available at <http://www.cdams.kobe-u.ac.jp/archive/dp06-10.pdf> [Accessed on 04 January 2010]
- Judge, D., 2003. Legislative Institutionalization: A Bent Analytical Arrow. *Government and Opposition*, 38(4), pp. 497-516.
- Kai, Eide., 2004. *Kosovo Report for the UN Security Council*. UN Archive 2004/932.
- Kosovo Democratic Institute, 2007. *Three Year Report on the Work of the Kosovo Assembly (2004-2007)* Prishtina: The Kosovo Democratic Institute.
- Keman, H., 1999. Political Stability in Divided Societies: A Rational-Institutional Explanation. *Australian Journal of Political Science*, 34(2), pp. 249-286.

- Knoll, B., 2007. Legitimacy and UN Administration of Territory. *Journal of International Law and Policy*. 4(1), pp. 1-15.
- Koelble, A. T. and Lipuma, E., 2008. Democratizing Democracy: A Postcolonial Critique of Conventional Approaches to the 'Measurement of Democracy'. *Democratization* 15(1), pp. 1 – 28.
- Kopecky, P., 2001. *Parliaments in the Czech and Slovak Republics*. Surrey: Ashgate, Aldershot.
- Kornberg, A., 1973. *Legislatures in Comparative Perspective*. New York: McKay.
- Kosovo Assembly, 2007. *Committee For Economy, Trade, Industry, Energy, Transport, and Telecommunication: Work Plan 2007* [pdf]. Available online: http://www.assembly-kosova.org/common/docs/03_ETIETT%2006_final.pdf [Accessed on November 12 2010]
- Kosovo Assembly Bulletin, 2003. *Rregullorja e Punes*. Prishtina: Kosovo Assembly.
- Kosovo Assembly Plenary Transcripts ‘Transkript nga Seanca Plenare e Kuvendit te Republikes te Kosoves, te mbajtur me 22 Janar 2009’ (Translation: Transcripts from the Plenary Session of the Kosovo Assembly from January 22, 2009. Kosovo Assembly. Management of Public Documents Unit.
- Kosovo Assembly Plenary Transcripts Year 2002. Kosovo Assembly Archives.
- Kosovo Assembly Rules of Procedure, 2005. Kosovo Assembly.
- Kosovo Institute for Euro-Atlantic Integration, 2002. A Survey of the Public Opinion of Kosovo about the Constitution. *Kosovo Law Review*, Vol. 6(2).
- Kotchegura, A., 2008. *Civil Service Reform in Post-Communist Countries: The Case of the Russian Federation and the Czech Republic*. Leiden: Leiden University Press.
- Krasno J., ed., 2004. *The United Nations: Confronting the Challenge of a Global Society*. Boulder: Lynne Rienner Publishers.
- Krieger, H., ed., 2001. *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*. Cambridge: Cambridge University Press.
- Kumar, K., 1998. *Postconflict Elections, Democratization and International Assistance*. Boulder: L. Rienner Publishers.
- Kvale, S., 1996. *Interviews An Introduction to Qualitative Research Interviewing*. Thousand Oaks: Sage Publications.
- Lecours, A., ed., 2005. *New Institutionalism: Theory and Analyses*. Toronto: University of Toronto Press.

- Lemay-Hebert, N., 2009. State-Building from the Outside-In: UNMIK and Its Paradox. *Journal of Public and International Affairs*, 20, pp. 65-88, [online] Available at www.princeton.edu/~jpia/pdf2009/chapter4.pdf [Accessed on 10 Jan 2010]
- Levitsky, S., 1998. Institutionalization and Personism: The Concept, the Case, and the Case for Unpacking the Concept. *Party Politics* 4(1), pp. 77-92.
- Levitsky, S., and Way, L., 1998. The Rise of Competitive Authoritarianism. *Journal of Democracy*, 13(2). Pg. 51-65..
- Liebert, U., 1989. *The Centrality of Parliament in the Consolidation of Democracy*. Barcelona: Instituto de Ciencias Sociales, Barcelona.
- Liebert, U., 1990. *Parliament and Democratic Consolidation in Southern Europe: Italy, Spain, Portugal, Greece and Turkey*. London: Frances Pinter.
- Lijphart A., 1977. *Democracy in Plural Societies: A Comparative Exploration*. New Haven: Yale University Press.
- Lijphart A., 1998. Multiethnic Democracy. In Lipset, S.M., *The Encyclopaedia of Democracy Vol III*. Washington DC: Congressional Quarterly Books.
- Lijphart A., 2002. The Wave of Power-sharing Democracy. In Reynolds, A., ed. *Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*. Oxford: Oxford University Press.
- Lijphart A., 2008. *Thinking about Democracy*. London & New York: Routledge.
- Lijphart, A. and Waisman, C.H., eds., 1996. *Institutional Design in New Democracies*. Colorado: Westview Press.
- Lindberg, S. I., 2007. Institutionalization of Party Systems? Stability and Fluidity among Legislative Parties in Africa 's Democracies. *Government and Opposition*. 42(2), pp. 215-241.
- Linz J. J. and Stepan A., 1996. *Problems of Democratic Transition and Consolidation*. Baltimore: Johns Hopkins University Press.
- Lipset, S. M., 1959. Some Social Requisites of Democracy: Economic Development and Political Legitimacy. *American Political Science Review*, 53(1), pp. 69-105.
- Loewenberg, G., 1973. The Institutionalization of Parliament and Public Orientations to the Political Systems. In Kornberg, A., ed., 1973. *Legislatures in Comparative Perspective*. New York: McKay.
- Loewenberg, G. and Patterson, C. S., 1979. *Comparing Legislatures*. Boston: Little, Brown.
- Longley, L. D., 1996. Parliaments as Changing Institutions and as Agents of Regime Change. *Journal of Legislative Studies*, 2(2), pp. 21-43.

- Lorenz, F. M., 2000. The Rule of Law in Kosovo: Problems and Prospects. *Criminal Law Forum*, 11(2), pp. 127-143.
- Luljeta Vuniqi / Fachtagung Kosova-Schweiz / 3.4.08 / HSLU SA Seite 5
http://www.hslu.ch/s-luljeta_vuniqi_fjalimi_per_zvicerr.pdf [Accessed on November 10, 2010]
- Lustick, I., 1979. Stability in divided societies: Consociationalism v. Control. *World Politics* 31(3), pp. 325-244.
- Mahoney, J., 2000. Strategies of Causal Inference in Small-N Analysis, *Sociological Methods and Research*, Vol.28, No.4, pp. 387-424.
- Malcom, N., 1998. *Kosovo: A Short History*. London: MacMillan.
- Manning, L. M., 2002. *The Politics of Peace in Mozambique: Post-conflict Democratization 1992-2000*. Westport: Praeger.
- March, J. G. and Olsen, J. P., 1984. The New Institutionalism: Organizational Factors and Political Life. *American Political Science Review*, 78(3), pp. 734-749.
- March, J. G. and Olsen, J. P., 1989. *Rediscovering Institutions: The Organizational Basis of Politics*. New York: Free Press.
- Marjanovic, M., 2005. *Post-Conflict Democratization and Depoliticizing of Conflicting Identities: Constitutional Transformation in Bosnia and Herzegovina*. MA Thesis. The Fletcher School, Tufts University. Available at <http://fletcher.tufts.edu/research/2005/MarjanovicMALDThesis.pdf> [Accessed on 01 July, 2010].
- McGarry, J., and O'Leary, B., 2006. Consociational Theory, Northern Ireland's Conflict, and Its Agreement: What Consociationalists Can Learn from Northern Ireland. *Government and Opposition*, 41(2), pp. 249-277.
- McNamara, C., 1999. *General Guidelines for Conducting Interviews*. [online] available at <http://www.managementhelp.org/evaluatn/intrview.htm> [Accessed on 07 January 2010]
- Meiklejohn, T. S., 1993. Thinking About Post-Communist Transitions: How Different Are They? *Slavic Review*, 52, pp. 333-337.
- Mertus, J., 2000. Imprint of Kosovo on the Law of Humanitarian Intervention. *ILSA Journal of International & Comparative Law*, 6, pp. 527-540.
- Mertus, J., 2004. Improving International Peacebuilding Efforts: the Example of Human Rights Culture in Kosovo. *Global Governance*. 10, pg. 333-351.
- Mertus, J., and Helsing J., eds., 2006. *Human Rights and Conflict: Exploring the Links Between Rights, Law, and Peacebuilding*. United States of America: United States Institute of Peace.

- Mezey, M., 1979. *Comparative Legislatures*. North Carolina: Duke University Press.
- NATO, 1999. *Military Technical Agreement between the International Security Force ('KFOR') and the Governments of Federal Republic of Yugoslavia* [pdf]. Available at: <http://www.nato.int/kosovo/docu/a990609a.htm> [Accessed on November 12, 2010]
- Mishler, W. and Rose, R., 1993. *Legislatures and New Democracies*. Glasgow: Centre for Studies in Public Policy.
- Mishler, W. and Rose, R., 1993. Legislatures and New Democracies. *Studies in Public Policy*. 217.
- Moore, B., 1967. *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*. Boston: Beacon Press.
- Morlino, L., 1998. *Democracy Between Consolidation and Crisis: Parties, Groups and Citizens in Southern Europe*. Oxford: Oxford University Press.
- Mustafa, E., 2003. *There is Need for More Cooperation Between the Assembly and the SRSG*. Assembly Support Initiative Newsletter: OSCE
- Nagle, D. J., and Mahr, A., 1999. *Democracy and Democratization: Post-communist Europe in Comparative Perspective*. London: Sage.
- Narten, J., 2007. Need of Self-Reflection: Peacebuilding in Post-War Kosovo from a Systems-Analytical Perspective. *The Whitehead Journal of Diplomacy and International Relations*, 9(1), pp. 121-132.
- NATO, 1999. Operation Allied Force. [online] available at: <http://www.nato.int/kosovo/all-fre.htm> [Accessed on 16 June 2010]
- NATO, 1998. Gen. Shelton's Statement on Kosovo at Brussels. Press conference, June 12, 1998.
- Newman, E. and Rich, R., eds., 2004. *The UN Role in Promoting Democracy*. New York: The United Nations University.
- Newman, E. and Schnabel, A., eds., 2002. *Recovering from Civil Conflict: Reconciliation, Peace and Development*. London, New York: Routledge.
- Norgaard, O., 2001. Democracy, Democratization and Institutional Theory. *DEMSTAR Research Report Nr. 4*, Department of Political Science, University of Aarhus
Accessed from:
- Norton, P. and Olson, D. M., 1996. Parliaments in Adolescence. *Journal of Legislative Studies*, 2(1), pp. 231-243.
- Norton, P. and Olson, D. M., 2007. Post-Communist and Post-Soviet Legislatures: Beyond Transition. *The Journal of Legislative Studies*, 13(1), pp. 1-11.

- Norton, P. and Olson, D. M., eds., 1996. *The New Parliaments of Central and Eastern Europe*. London: Frank Cass.
- O'Brien, M et al., 2008. *Parliaments as Peacebuilders in Conflict-affected Countries*. Washington, DC: World Bank.
- O'Donnell G., 1993. On the State, Democratization and Some Conceptual Problems: A Latin American View with Glances at Some Postcommunist Countries. *World Development*, 21(8), pp.1355-1369.
- O'Donnell, G., Schmitter, P. and Whitehead, L., 1986. *Transition from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*. Baltimore: The John Hopkins University Press.
- Offe, C., 1993. Designing Institutions for East European Transitions. *Public Lectures*, 9. Collegium Budapest: Institute for Advanced Studies.
- Official Gazzete of the Social Federal Republic of Yugoslavia (1974) 'Constitution of the Socialist Federal Republic of Yugoslavia' Nr. 9, Belgrade. Original in Serbian.
- Olsen, J. P., 2007. *Understanding Institutions and Logics of Appropriateness: Introductory Essay*. [online] Centre for European Studies University of Oslo. Working Paper No. 13 available at http://www.arena.uio.no/publications/working-papers2007/papers/wp07_13.pdf [accessed on 02 February 2010].
- Olsen, P.J., 1997. Institutional Design in Democratic Context. *The Journal of Political Philosophy*, 5(3), pp. 203-229.
- Olson, D.M., and Crowther, W. E., 2002. *Committees in Post-Communist Democratic Parliaments*. Ohio: Ohio State University Press.
- Organization for Security and Co-operation in Europe, 1999. *Kosovo/Kosova: As Seen, As Told*. [online] Available at: http://www.asylumlaw.org/docs/kosovo/osce99_kosovo_asseenastold.pdf [Accessed on 02/03/2010]
- Organization for Security and Co-operation in Europe, 2012. *OSCE Mission promotes enhanced co-ordination between Assembly of Kosovo and executive structures* [online] Available at: <http://www.osce.org/kosovo/91795> [Accessed on March 10 2010].
- Organization for Security and Co-operation in Europe, 2001. *Kosovo Assembly Elections Results 2001* [online]. Available at: www.osce.org/kosovo/43390 [Accessed on March 10, 2010]
- Organization for Security and Co-operation in Europe, 2002. *Kosovo Municipal Election Results 2000*. Available online at: www.osce.org/kosovo/43390 [Accessed on March 10, 2010]
- Organization for Security and Co-operation in Europe, 2006. *OSCE Report (02/2006)* [online]. Available at: <http://www.osce.org/kosovo> [Accessed on March 10, 2010]

- Organization for Security and Co-operation in Europe, *OSCE, 2006. OSCE Report (03/2006)* [online]. Available at <http://www.osce.org/kosovo> [Accessed on: March 10, 2010]
- Organization for Security and Co-operation in Europe, *OSCE, 2006. OSCE Report (04/2006)* [online]. Available at: <http://www.osce.org/kosovo> [Accessed on March 10, 2010]
- Organization for Security and Co-operation in Europe, *OSCE, 2006. OSCE Report (05/2006)* [online]. Available at: <http://www.osce.org/kosovo> [Accessed on March 10, 2010]
- Organization for Security and Co-operation in Europe, *2006. OSCE Report (06/2006)* [online]. Available online at: <http://www.osce.org/kosovo> [Accessed on March 10, 2010]
- Organization for Security and Co-operation in Europe, 2005. *On the Monitoring of the Assembly of Kosovo: 22 October – 25 November 2005*. Available at: <http://www.osce.org/kosovo/21120> [Accessed on: March 21, 2011].
- Ostrom, E., 1991. Rational Choice Theory and Institutional Analysis: Toward Complementarity. *American Political Science Review*, 85(1), pg. 237-243.
- Paris, R., 2004. *At War's End: Building Peace After Conflict*. United States of America: Cambridge University Press.
- Peabody, R., Hammond, S., Torcom, J., Brown, L., Thompson, C., and Kolodny, R., 1990, Interviewing Political Elites, *Political Science and Politics*, 23(3), pp. 451-455.
- Peace Plan, 1999. [online] available at: <http://www.washingtonpost.com/wp-srv/inatl/daily/june99/plantext03.htm> [Accessed on 12 March, 2010].
- Perritt, H. H., 2008. *Kosovo Liberation Army: The Inside Story of an Insurgency*. United States of America: University of Illinois Press.
- Perritt, H. H., 2010. *The Road to Independence for Kosovo*. Cambridge: Cambridge University Press.
- Perspective.' Conference Report. Department of Political Science & Score, Stockholm University.
- Peters, B. G., 2003. Réforme d'un Etat sans Etat ? Les changements au sein du gouvernement Américain. *Revue française d'administration publique*. 1 (105-106), pp. 193-202.
- Peters, G., 1999. *Institutional Theory in Political Science*. London: Pinter.
- Peters, G., 2005. *Institutional Theory in Political Science*. London, New York: Continuum.

- Pettit, P. 1996. *Institutions and Their Design*. In Goodin, R., ed., 1996. *The Theory of Institutional Design*. Cambridge, UK: Cambridge University Press.
- Pierre, J., Peters, G., and Stroker, G., 2008. *Debating Institutionalism*. Manchester: Manchester University Press
- Pierson, P., 2000. The Limits of Design: Explaining Institutional Origins and Change. *Governance*, 13(4). pp. 475-499.
- Pinto-Duschinsky, M., 1997. The Rise of Political Aid. In Diamond et al. 1997. *Consolidating the Third Wave Democracies: Regional Challenges*. Baltimore: The John Hopkins University Press.
- Political Affairs Committee Council of Europe, 1999. *Crisis in Kosovo and situation in the Federal Republic of Yugoslavia Doc. 8308* [online]. Available at: <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc99/EDOC8308.htm> [Accessed on: 07 July, 2010]
- Polsby, N., 2002. Interview with Harry Kreisler of the UC Berkeley's Institute of International Studies. Available online: <http://globetrotter.berkeley.edu/people2/Polsby/polsby-con4.html>
- Polsby, N. W., 1968. The Institutionalization of the US House of Representatives. *American Political Science Review*, 62(1), pp. 144-168.
- Polsby, N. W., 1975. Legislatures. In F. I. Greenstein, and N.W. Polsby, *Handbook of Political Science, Governmental Institutions and Processes*, Volume 5. Boston: Addison Wesley.
- Potter D. et al., 1997. *Democratization*. Malden, MA: Polity Press.
- Premfors, R., 2003. *The Contingency of Democratization: Scandinavia in Comparative Perspective* [online]. Available at: <http://yale.edu/polisci/info/conferences/Contingency%20Conference/Premfors.pdf> [Accessed on: December 12, 2009]
- Prezeworski, A., et al., 1995. *Sustainable Democracy*. Cambridge: Cambridge University Press.
- Prezeworski, A., 1986. Some Problems in the Study of Transition to Democracy. In O'Donnell et al., ed. 1986. *Transition from Authoritarian Rule: Perspectives for Democracy*. Baltimore: John Hopkins University Press.
- Prezeworski, et all, 2000. *Democracy and Development: Political Institutions and Well-Being in the World 1950-1990*. United States of America: Cambridge University Press.
- Pridham G., 2000. *The Dynamics of Democratization: A Comparative Approach*. London and New York: Continuum International Publishing Group Ltd

- Pridham, G., 2001. Comparative Reflections on Democratisation. In Pridham, G. and Ágh, A. eds., 2002. *Prospects for democratic consolidation in East-Central Europe*. United Kingdom: Manchester University Press
- Pridham, G., 2005. EU Accession and Democratization in Central and eastern Europe: Lessons from the Enlargement of 2004. In R. Di Quirico ed., 2005. *Europeanisation and Democratisation: Institutional Adaptation, Conditionality and Democratisation in European Union's Neighbour Countries*. Florence, European Press.
- Pridham, G., 2008. Democratizing the Western Balkans: Challenges and Burdens for the European Union. *International Issues and Slovak Foreign Affairs*, 3, pp. 72-98.
- Pridham, G., 2008. International Factors in Democratization, their Scope and Limitations. In Teixeira, S. N., ed., 2008. *The International Politics of Democratization: Comparative Perspectives*. London and New York: Routledge.
- Pridham, G. and Vanhanen, T., 1994. *Democratization in Eastern Europe: Domestic and International Perspectives*. London: Routledge.
- Pridham, G. Ed., 1991. *Encouraging Democracy: The International Context of Regime Transition in Southern Europe*. London: Leicester University Press.
- Pye, W. L., ed., 1963. Princeton: Princeton University Press.
- Quantitative Applications in Social Sciences, No. 07-001. Thousand Oaks, CA: Sage.
- Ragsdale, L. and Theis, J.J., 1997. The Institutionalization of the American Presidency. 1924-1992. *American Journal of Political Science*, 41(4), pp. 1280-1318.
- Rambouillet Accords, 1999. University of the West of England. Web Genocide Documentation Centre. Online: www.ess.uwe.ac.uk/kosovo-index.htm (Accessed on: 17/07/2010).
- Ramet, P. S., 2002. *Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to the Fall of Miloševi?* 4th ed. Boulder: Westview Press.
- Ramosaj, Berim (2009) Member of Parliament 2001-2004, 2004-2008. Personal Interview.
- Reka, B., 2003. *UNMIK as International Governance in Post-war Kosova*. Skopje: Logos,
- Reka, B., 2004. UNMIK as International Governance within Post-Conflict Society. *New Balkan Politics Issue* 7(8).
- Remmer, L. K., 1995. Review: New Theoretical Perspectives on Democratization. *Comparative Politics*, 28(1), pp. 103-122.
- Rexhepi, P., 2003. *Building Kosovo's Legislative Basis*. Assembly Support Initiative Newsletter. [online] available at www.osce.org/Kosovo: Organization for Security and Co-operation in Europe [Accessed on March 10, 2010]
- Reynolds, J., 2002. *Monitoring the Monitors*. Focus Kosovo. UNMIK DPI.

- Rezun, N., 2001. *Europe's Nightmare: The Struggle for Kosovo*. Westport, Connecticut: Praeger.
- Rhodes et al., 2006. *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.
- Robinson, M., 2007. U.N.'s Kosovo Rating at Fresh Low as it Readies Exit. *Reuters*, [online] 12 April 2007, available at: <http://www.reuters.com/article/2007/04/12/us-serbia-kosovo-un-idUSL1235427220070412> [Accessed on 25 December 2010]
- Roeder, P.G., and Rothchild, D., 2005. *Sustainable Peace: Power and Democracy after Civil Wars*. Ithaca and London: Cornell University Press.
- Roland, P., 1997. Peacebuilding and the Limits of Liberal Internationalism. *International Security* 22(2), pp. 54-89.
- Rosato, S., 2003. The Flawed Logic of Democratic Peace Theory. *The American Political Science Review*, 97(4), pp. 585-602.
- Rose R., 2000. The End of Consensus in Austria and Switzerland. *Journal of Democracy*, 11(2), pp. 26-40.
- Rose, R., 1991. What is lesson-drawing? *Journal of Public Policy*, 11(1), pp.3-30
- Rossman G., and Rallis F. S., 2003. *Learning in the Field: An Introduction to Qualitative Research*. Thousand Oaks, CA: Sage.
- Rostow, W.W., 1960. *The Stages of Economic Growth: A Non-Communist Manifesto*. Cambridge: Cambridge University Press.
- Rothstein, B., 1992. Labor-market institutions and working-class strength. In Sven, H. ed, 1992. *Historical Institutionalism in Comparative Analysis*. New York: SAGE. Pg. 33-56
- Rubin, H. J., and Rubin, I. S., eds, 2004. *Qualitative Interviewing: The Art of Hearing Data*. 2nd ed. Thousand Oaks, CA: SAGE
- Rubin, B., 2006. Peacebuilding and State-Building in Afghanistan: constructing sovereignty for whose security? *Third World Quarterly*, 27(1), pp. 175–185.
- Rueschemeyer, D., Stephens, E., H. and Stephens, J. D., 1992. *Capitalist Development of Democracy*. Chicago: University of Chicago Press.
- Russett, B.M., 1994. *Grasping the Democratic Peace*. Princeton, New Jersey: Princeton University Press.

- Rustow, D., 1970. Transitions to Democracy: Toward a Dynamic Model. *Comparative Politics*, 2(3), pp. 337-363.
- Samovar, L. & Mills, J., 1998. *Oral Communication: Speaking Across Cultures*, 10th ed. New York: McGraw Hill. pp. 185-186.
- Samuels, K., 2005. Post-Conflict Peace-Building and Constitution-Making. *Chicago Journal of International Law*, 6(2), pp. 1-20.
- Sayer, A., 1992. *Method in Social Science*. 2nd ed. London: Routledge.
- Schmidt, Vivien A., 2008. Discursive institutionalism: The explanatory power of discourse. *Annual Review of Political Science*, 11. pp. 303–326.
- Schmitter, C. P. and Guilhot, N., 2000. From Transition to Consolidation: Extending the Concept of Democratization and the Practice of Democracy. In Dobry, M., ed. *Democratic and Capitalist Transitions in Eastern Europe: Lessons for the Social Sciences*. Dordrecht: Kluwer Academic Publishers. Pp. 131-146.
- Schmitter, P., 2001. The Influence of the International Context upon the Choice of National Institutions and Policies in Neo-Democracies. In Whitehead, L., ed., 2001. *The International Dimensions of Democratization: Europe and the Americas*. New York, NY: Oxford University Press.
- Schmitter, P.C., 1988. *The Consolidation of Political Democracy in Southern Europe*. Stanford and Florence: Stanford University and European University Institute.
- Schmitter, P.C., 1995. Transitology: The Science or the Art of Democratization? In Tulchin, J.S., and Romero, B., eds. *The Consolidation of Democracy in Latin America*. Boulder: Lynne Rienner).
- Schmitter, P. and Karl T., 1991. What Democracy Is...and Is Not. *Journal of Democracy* 2(3), pp. 67-73.
- Schneckener, U., 2002. Making Power Sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation. *Journal of Peace Research*, 39(2), pp. 203-228.
- Schopflin, G., 1996. Nationalism and Ethnic Minorities in Post-Communist Europe. In Caplan, R., and Feffer, J., eds, 1996. *Europe's New Nationalism: State and Minorities Conflict*. Oxford: Oxford University Press.
- Schumpeter, A. J., 1976. *Capitalism, Socialism, and Democracy*. London: Allen and Unwin.
- Scott, W. R., 1987. The adolescence of institutional theory. *Administrative Science Quarterly*, 32(4): pp. 493-511.
- Selznick, P., 1957. *Leadership in Administration: A Sociological Explanation*. New York: Harper & Row.

- Shapiro, I., and Cheibub, J. A., 2003. *The Democracy Sourcebook*. Boston: The MIT Press.
- Shepsle, K. A., 1989. Studying Institutions: Some Lessons from the Rational Choice Approach. *Journal of Theoretical Politics*, 1, pp. 131-147.
- Siedschlag, A., 2001. *Political Institutionalization and Conflict Management in the New Europe – Path-Shaping for the Better or Worse?* Accessed online at www.esri.at/eusipo/apsa2001.pdf on 29/01/2010
- Simon, H., 2009. *Case Study Research in Practice*. London and Los Angeles: Sage Publications.
- Simon, M. D., 1996. Institutional Development of Poland's Post-Communist Sejm: A Comparative Analysis. *Journal of Legislative Studies*, 2(1), pp. 133-60.
- Simonsen, S.G., 2005. Addressing ethnic divisions in post-conflict institution-building: Lessons from recent cases. *Security Dialogue*. 36 (3), pp. 297-318.
- Sisson, R., 1973. Comparative Institutionalization: A Theoretical Explanation. In Kornberg, A., ed. *Legislatures in Comparative Perspective*. New York: David McKay.
- Smilov, D. and Kolarova, R., 2006. *Parliaments in Conflict and Post-Conflict Situations: Lessons Learned from Eastern Europe and the Commonwealth of Independent States*. UNDP Publication, 2006.
- Smooha, S., 2005. The Model of Ethnic Democracy. In Smooha, S. and Jarve, P., eds. *The Face of Ethnic Democracy in Post-Communist Europe*. Budapest: Open Society Institute.
- Snyder, J., 2000. *From voting to violence: Democratization and Nationalist Conflict*. New York: W. W. Norton & Company.
- Squire, P., 1992. The Theory of Legislative Institutionalization and the California Assembly. *The Journal of Politics*, 54(4), pg. 1026-1054.
- Stake, R., 1995. *The Art of Case Research*. Newbury Park, CA: Sage Publications.
- Statistical Office of Kosovo, 2003. *Kosovo and its Population*. Kosovo Ministry of Public Services.
- Stein, M. B. and Trent E. J., eds., 2007. *Democratization: The State of the Art*. Opladen and Farmington Hills: Barbara Budrich Publishers.
- Steiner, M., 2003. London School of Economics Speech on January 27, 2003. [online speech transcript] available at <http://www.unmikonline.org/srsg/speeches/srsg270103.htm> [Accessed on 01 March, 2010].

- Steinmo, S. Thelen, K., and Longstreth, F., eds., 1992. *Structuring Politics: Historical Institutionalism in Comparative Analysis*. Cambridge: Cambridge University Press.
- Sweet, A.S., Sandholtz, W., and Fligstein, N., eds., 2001. *The Institutionalization of Europe*. Oxford, New York: Oxford University Press
- Tansey O., 2009. *Regime Building: Democratization and International Administration*. Oxford, New York : Oxford University Press.
- Tansey, O., 2007. Democratization without a State: Democratic Regime-building in Kosovo. *Democratization*, 14(1), pp. 129-150.
- Tansey, O., 2010. *Regime Building: Democratization and International Administration*. Oxford Studies in Democratization. New York : Oxford University Press.
- Tansey, O., 2007 Process Tracing and Elite Interviewing: A Case for Non-probability Sampling *PS: Political Science and Politics*, Volume 40, No.4.
- Taylor, A., 2005. Electoral systems and the promotion of 'consociationalism' in a multi-ethnic society: The Kosovo Assembly elections of November 2001. *Electoral Studies*, 24(3), pp. 435-463.
- Taylor, R., 1992. South Africa: A Consociational Path to Peace? *Transformation Journal*, 17, pp. 1-11.
- Teitel. R. G., 1997. Transitional Jurisprudence: The Role of Law in Political Transformation. *Yale Law Journal*, 106(7), pp. 435-463.
- Tellis, W., 1997. Introduction to case study. *The Qualitative Report*, 3(2). [online], available: <http://www.nova.edu/ssss/QR/QR3-2/tellis1.html>
- The American Journal of International Law, 1914. (i) 'Treaty of friendship and alliance between the kingdom of Bulgaria and the kingdom of Servia 13 March 1912, side 1-2.' (ii) 'Secret appendix to the treaty of friendship and alliance between the kingdom of Bulgaria and the kingdom of Servia, 13 March 1912, side 3-5.' (iii) 'Military Convention between the kingdom of Bulgaria and Servia, 19 June 1912, side 5-10.' (iv) Agreement between the general staffs of Bulgaria and Servia, 19. June 1912, side 10-11.' Vol. 8, nr. 1, Supplement: official documents.
- The Kacanik Constitution, 1990. *Kushtetuta e Kacanikut (English Translation)*. Prishtina: Kosovo National Library.
- Tilley, J., Evans, G., and Mitchell, C., 2008. Consociationalism and the Evolution of Political Cleavages in Northern Ireland, 1989-2004. *British Journal of Political Science*, 38(4), pp. 699-717.
- TIME Magazine, 1992. Munich All Over Again? *TIME Magazine* [online] 31 August. Available at: <<http://www.time.com/time/magazine/article/0,9171,976369-2,00.html>> [Accessed on 02 February 2010].

- Totten, S., and Bartrop, P., 2008. *Dictionary of Genocide*. Greenwood.
- Troebst, S., 1998. *Conflict in Kosovo: Failure of Prevention? : An Analytical Documentation, 1992-1998*. European Center for Minority Issues.
- Truman, D., 1951. *The Governmental Process*. New York: A Knopf.
- Tsebelis, G., 1991. *Nested Games: Rational Choice in Comparative Politics*. Berkley: University of California Press.
- United Nations, 2002. *Security Council Deplores Kosovo Assembly's Resolution Concerning Province's 'Territorial Integrity', in Presidential Statement: SC/7413*. Press release, May 24, 2002.
- United Nations, 2002. *UN Resolution 57/52: Maintenance of international security – good neighbourliness, stability and development in South-Eastern Europe*. [online] available at <http://www.undemocracy.com/A-RES-57-52.pdf> [Accessed online November 3, 2010] 57/52 (2001)
- United Nations Department of Public Information, 1999. *Secretary-General's Report to the Security council on UNMIK*. New York: UN DPKO.
- Murphy, L., lmurphy@unicwash.org, 2010. *Re: Information Request*. [email] Message to P. Rexhepi (your email address). June 3, 2010, TIME. Available at: URL. [Accessed on: June 3, 2010]
- United Nations Department of Public Information, 1999. *Secretary-General's Report to the Security council on UNMIK*. New York: UN DPKO
- United Nations General Assembly, 2001. *Document A/56/60 (2001) Document S/2001/234: Agreement for the delineation of the borderline between the Republic of Macedonia and the Federal Republic of Yugoslavia*. [online] Available at: <http://www.un.org/documents/ga/docs/56/a5660.pdf> [Accessed on Dec 22, 2010]
- United Nations High Commissioner for Refugees, 2000. *Background Note on Ethnic Albanians: Kosovo Who are in Continued Need of International Protection*. [online] available at: <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2000/giugno/ecre-unhcr-kosovo-2.html> [Accessed on February 03, 2010. 02/03/2010]
- United Nations Interim Administration Mission in Kosovo, 2004. *Kosovo Standards Implementation Plan*. [online] available at http://www.unmikonline.org/pub/misc/ksip_eng.pdf [Accessed on March 11, 2011]
- UNMIK Department of Public Information, 2000. [Press briefing transcript], 2 February 2000. Pristina: UNMIK DPKO
- United Nations Interim Administration Mission in Kosovo, 1999. *Convenes First Meeting of Kosovo Transitional Council*. Press release, 16 July 1999. Available at: <http://www.un.org/peace/kosovo/unmikpr12.htm> [Accessed on: 03 February, 2010]

- United Nations Interim Administration Mission in Kosovo, 2001. *DPI UNMIK/FR/0040/01 Constitutional Framework Behind the Framework*. Press Release, May 25, 2001., May 25, 2001
- United Nations Interim Administration Mission in Kosovo, 2001. *UNMIK/PR/656 PRESS RELEASE-16 Oct. 2001 IAC Discusses Flag regulation, Assembly structure and Euro*. Press release, 16 October 2001..
- United Nations Interim Administration Mission in Kosovo, 2001. *UNMIK/PR/667 PRESS RELEASE- 27 Nov. 2001 IAC Discusses Flags and Assembly Preparations*. Press release, 27 November 2001.
- United Nations Interim Administration Mission in Kosovo, 2001. *UNMIK/PR/669 PRESS RELEASE- 10 Dec. 2001 SRSG Inaugurates First Kosovo Assembly*. Press release, December 10, 2001.
- United Nations Interim Administration Mission in Kosovo, 2002. *SRSG Steiner Meets FYROM. U.N. Doc. UNMIK/PR/707*. Press Release 707, 18 March 2002.
- United Nations Interim Administration Mission in Kosovo, 2002. *SRSG Michael Steiner Addresses the Kosovo Assembly*. [Press release, 732] 9 May 2002, available at: <http://www.unmikonline.org/press/2002/pressr/pr732.htm> [Accessed on November 3, 2010]
- United Nations Interim Administration Mission in Kosovo, 2010. *Transfer Council Meets, Forms Three Working Groups*. [press release], 8 April 2003, Available at: <http://www.unmikonline.org/press/2003/pressr/pr944.htm> [Accessed on January 8, 2010].
- United Nations Interim Administration Mission in Kosovo, 2001. *On the Kosovo Joint Interim Administrative Structure, UNMIK Regulation 2000/1* [online] Available at: www.unmikonline.org [Accessed on March 19, 2010]
- United Nations Interim Administration Mission in Kosovo, 2000. *UNMIK Regulation 2000/16*. [online] Available online at: www.unmikonline.org [Accessed on: March 8, 2009]
- United Nations Interim Administration Mission in 2000. *UNMIK Regulation 2000/29*. [online] Available online at: www.unmikonline.org [Accessed on: March 8, 2009]
- United Nations Interim Administration Mission in Kosovo, 2000. *UNMIK Regulation 2000/39*. [online] Available online at: www.unmikonline.org [Accessed on: Dec 21, 2010]
- United Nations Interim Administration Mission in Kosovo, 2000. *UNMIK Regulations: 2000/13*. [online] Available online at: www.unmikonline.org [Accessed on: March 23, 2010]

- United Nations Interim Administration Mission in Kosovo, 2007. *The Kosovo Standards Process 2003-2007, UNMIK/StratCo 070420* [pdf]. Available at <http://www.unmikonline.org/standards/docs/KSP2003-2007.pdf>. [Accessed online on 3 January 2011]
- United Nations Population Found, 2005. *Gender Based Violence in Kosovo* [pdf] available at: http://www.unfpa.org/women/docs/gbv_kosovo.pdf [Accessed on February 22, 2010]
- United Nations Security Council, 1999. Letter Dated June 7, 1999, from the Permanent Representative of UNDP (2005) 'Kosovo Early Warning Report' [Accessed on October 23 2010] Available at: http://www.ks.undp.org/repository/docs/ewr11_engl.pdf
- United Nations Security Council Meeting 4011 (1999) UN Archives, S/PV.4011 – 99-85444 (E).
- United Nations Security Council Resolution, 1999. *United Nations Security Council Resolution 1244* Adopted by the Security Council at its 4011th meeting. New York: UN DPI.
- United Nations Security Council, 1998. *United Nations Security Council Resolution 1160: 'On the Situation in Kosovo* UN DPI.
- United Nations Security Council, 1998. *United Nations Security Council Resolution 1199: On the Situation in Kosovo*. UN DPI.
- United Nations Security Council United, 1998. *Nations Security Council Resolution 1203: On the Situation in Kosovo*. UN DPI.
- United Nations Security Council, 1998. *United Nations Security Council Resolution 1244: On the United Nations Interim Mission in Kosovo*. UN DPI
- United Nations Security Council, 2002. *Security Council Deplores Kosovo Assembly's Resolution Concerning Province's 'Territorial Integrity'* In Presidential Statement, Press Release SC 7413. [online] Available at: <http://www.un.org/News/Press/docs/2002/sc7413.doc.htm> [Accessed on: January 15, 2010]
- United States Agency for International Development, 2003. *Evaluation of the USAID Kosovo Economic Reconstruction Project* [pdf]. Available at http://pdf.usaid.gov/pdf_docs/PDABZ157.pdf [Accessed on: April 24, 2010]
- US Department of State, *Daytona Peace Accords*, 1995.. Available online at: <http://www.state.gov/www/regions/eur/bosnia/bosagree.html> [Accessed on 26/02/2010].
- United States Department of State, 1999. *Erasing History: Ethnic Cleansing in Kosovo Part II*. Washington, D.C: United States Department of State.

- United States Department of the State, 1999. *Understanding the Rambouille Accords, Fact Sheet*. the Washington, D.C.: Bureau of European Affairs, U.S. Department of State, Washington, D.C.
- Valenzuela, S., 1992. Democratic consolidation in post-transitional settings: notion, process, and facilitating conditions. In Mainwaring, S., O'Donnell, G. and Valenzuela, ed., 1992. *Issues in Democratic Consolidation: The New South American Democracies in Comparative Perspective*. Notre Dame: The University of Notre
- Vickers, M., 1998. *Between Serb and Albanian: A History of Kosovo*. New York: Columbia University Press.
- The Economist, 2010. Viktor Chernomyrdin. *The Economist*, 4 November 2010.
- Waller, M., 1995. Making and Braking: Factions in the Process of Party Formation in Bulgaria. *Democratization* 2(1), pp.152-167.
- Waller, M., 1996. Party Inheritances and Party Identities. In Pridham, G., and Lewis, P., 1996 eds. *Stabilising fragile democracies: comparing new party systems in Southern and Eastern Europe*. New York: Routledge.
- Walter, B., 1997. The critical barrier to civil war settlement. *International Organization*, 51, pp. 335 -364
- Weinbaum, G. M., 1975. Classification and Change in Legislative Systems: With Particular Application to Iran, Turkey, and Afghanistan. In Chong Lim Kim and Boynton G. R., 1975, eds. *Legislative Systems in Developing Countries*. Durham: Duke University Press.
- Weller, M., 1999. The Rambouillet Conference on Kosovo. *International Affairs*, 75(2), pp. 211-251.
- Weller, M., 2009. *Contested Statehood: Kosovo's Struggle for Independence*. USA: Oxford University Press.
- Wellhofer, E. S., 1972. Dimensions of Party Development: A Study in Organizational Dynamics. *The Journal of Politics*, 34(1), pp 153-182
- Whitehead, L. Ed., 2001. *The International Dimensions of Democratization: Europe and the Americas*. USA: Oxford University Press.
- Whitehead, L., 1991. Democracy by Convergence and Southern Europe. In Pridham, G., 1991 ed. *Encouraging Democracy: The International Context of Regime Transition in Southern Europe*. London: Leicester University Press.
- Whitehead, L., 2005. Freezing the Flow: Theorizing About Democratization in a World in Flux. *Taiwan Journal of Democracy*, 1(1), pp. 1-20.
- Whitmore, S., 2004. *State Building in Ukraine: The Ukrainian Parliament, 1990-2003*. London: Routledge Curzon.

- Wiarda, H. J., 2001. Southern Europe, Eastern Europe, and Comparative Politics: Transitology and the Need for New Theory. *Eastern European Politics and Societies*, 15(3), pp. 485–501.
- Wippman, D., 2001. Kosovo and the Limits of International Law. *Fordham International Law Journal*, 25(1), pp. 129-147
- Wise, C., and Brown, T., 1996. The Internal Development of the Ukrainian Parliament. *Public Administration and Development*, 16(3), pp. 1-15.
- Wolfrum, R., 2005. International Administration in Post-Conflict Situations by the United Nations and Other International Actors. *Max Planck Yearbook of United Nations Law*, 9, pp. 649-696
- www.ecmi.de/jemie/download/Focus1-2002Brunnbauer.pdf. Retrieved 2008-12-28.
- Yin, R., 1984. *Case study research: Design and methods*. 1st ed. Beverly Hills, CA: Sage Publishing.
- Yin, R., 1989. *Case study research: Design and methods*. Rev. ed. Newbury Park, CA: Sage Publishing.
- Yin, R., 1993. *Applications of case study research*. Newbury Park, CA: Sage Publishing.
- Yin, R., 2009. *Case study research: Design and methods*. 4th ed. Thousand Oaks, CA: Sage Publishing.
- York, B. and Wallace M., 1991. Informing Generality and Explaining Uniqueness: The Place of Case Studies in Comparative Research. *International Journal of Comparative Sociology*, 32, pg. 165.
- Youngs, R., 2001. *The European Union and the Promotion of Democracy: Europe's Mediterranean and Asian Policies*. Oxford: Oxford University Press
- Zakaria, F., 1997. The Rise of Illiberal Democracy. *Foreign Affairs*, 76(6), pp. 22-43.
- Zucker, D. M., 2001. Using Case Study Methodology in Nursing Research. *The Qualitative Report*, 6(2).

Appendix 1

Interview Questions

Questions for internal actors:

Related to Boundedness as described in the research design:

1. In what way do you think the Assembly evolved differently from the rest of the Provisional Institutions of Self-Government (PISG)?
2. What would you consider to be the most distinctive role of the Assembly that differentiates it from the rest of the PISG? / What makes the work of the Assembly unique from the rest of the PISG?
3. Is this a result of the external factors or the internal accretion of the Assembly, or a combination of both?
4. Has the way in which the Assembly operates changed over time from its constitution? How? Why?
5. Who accounts for these changes? Are they mainly internally or externally induced?

Parties and parliamentary groups:

1. Would you consider your primary loyalty to be with the: (i) Assembly (ii) Political Party, (iii) Constituents or (iv) Ethnic Group? Why?
2. Are there key party norms and values that your political party upholds?
3. What are the party incentives for acting in accordance with party norms in the Assembly?
4. Is there a system of reprimand for members who do not act in accordance with these norms? What are they?
5. Who institutes them? / Who makes the decisions and how? Is there a procedure?
6. To what extent does party provide cues for voting a) in plenary and b) in committee?
7. To what extent does (i) your parliamentary group or (ii) the government or provide advice/information on how to make decisions in parliament?

Differentiated membership

1. Is your occupation as a Member of the Assembly or your sole profession?
2. Do you feel the Assembly observers rules of seniority in terms of length of service or age? Example?
3. Do you think that the length of service in Assembly has made you more independent from your political party/government/constituents?

Capacity building

1. Do you think the Assembly is sufficiently equipped in terms of staff, funds, research assistance and office space to perform its duties?
2. Is the Assembly dependent on external actors for training and research?

3. Would you say the Assembly has become more autonomous over time in determining its own administration?

Rules of Procedure (RoP)

1. Who initiated the change of RoP?
2. Are you happy with the current RoP?
3. What do you think are the most needed changes to the RoP? Why?
4. Are you happy with the observance of the RoP by the President and the administration?
5. Do you think external actors have influenced the design of the RoP?
6. How far do the RoP allow for effective oversight of the government?
7. Who has the most influence over the Assembly agenda?

Assembly members vis-à-vis the executive:

1. How would you describe the working relations with the executive?
2. How influential are government ministers from your parties in your decisions?
3. How influential are government ministers from the wider coalition on your decisions?
4. How influential are government ministers in your decisions? (Assembly members belonging to opposition parties)

Assembly Committees vis-à-vis the executive:

1. To what extent has proportional representation of parties on committees assisted/hindered the performance of committee roles (consensual working, non-party mode?)
2. Who decided on the number of committees?
3. Do you think this the right number with the right distribution of duties (problems of overload)?
4. Why has the power to create investigative committees only been used sparingly (twice?)?
5. How extensive is staff support for committees?

Executive oversight:

1. How frequently does the government report to the Assembly?
2. Are government ministers always present during questioning period?
3. How effective have Assembly members been in using questions to oversee the actions of ministers?
4. How useful are public hearings in linking the Assembly with civil society?

Questions for external actors:

International Actors

1. Who were the key actors in designing the Kosovo Assembly?

2. How were decisions reached in relation to the design of Constitutional Framework?
3. What were the decisive factors influencing the outcome of the final document i.e. the Constitutional Framework?
4. Where did the inspiration for the institutional design come from?
5. What were the basic principles underpinning the design?
6. How far did the PISG reflect these principles of institutional design?
7. What were, in your view, the most challenging aspects of power-sharing with the local administration?
8. What was the most positive aspect of working with the local administration?
9. Do you think the executive power of the SRSB over the PISG had a positive or a negative contribution? Why?

National executive actors

1. Do you think the Assembly has a unique position within the PISG?
2. How responsive is the Government *vis-à-vis* the Assembly?
3. How frequently does the government attend Assembly Plenary Sessions and/or committee meetings?
4. How often are members of government called for questioning?
5. How effective have Assembly Members been in using the questioning power with the government?
6. Do you think that the government influences the Assembly Agenda?
7. How would you describe the working relations with the Assembly?
8. Do government ministers influence the decisions of Assembly Members of their party?
9. Do government ministers influence the decisions of Assembly Members of the coalition?
10. How significant is the government in influencing the decision of Assembly Members belonging to opposition parties?

Appendix II

Interviews

1. A. F. (July, 2009) Adviser to the Kosovo President 2002-2004. Personal Interview.
2. A. R. (March, 2008) Member of the Kosvar Delegation to the Rambouillet Conference.
3. A.G. (April, 2010) Member of Parliament, LDK 2001-2004, 2004-2008. Personal Interview.
4. Alijaj, Sanije (July, 2009) Member of Parliament, LDK 2004-2008 Personal Interview.
5. Bajrami, Arsim (April, 2010) Member of Parliament, PDK 2001-2004, 2004-2008. Personal Interview.
6. Bakalli, Mahmut (September, 2003) Member of Parliament, AAK 2001-2004 Personal Interview.
7. Beka, Rinor (August, 2009) National Democratization Institute liaison to the Kosovo Assembly. Personal Interview.
8. Beqiri, Daut (July, 2009) Director of Legal Services at the Kosovo Assembly 2001-present. Personal Interview.
9. Berisha-Shala, Sala (July, 2009) Member of Parliament, PDK 2004-2008 Personal Interview.
10. Brovina, Flora (July, 2010) Member of Parliament, PDK 2001-2004, 2004-2008 Personal Interview.
11. D. D. (June, 2009, April, 2010) Member of Parliament, LDK 2001-2004, 2004-2008 Personal Interview.
12. Dauti, Nerxhivane (August, 2009, April, 2010) Member of Parliament, PDK 2001-2004, 2004-2008 Personal Interview.
13. DeVriez, Franklin (July, 2010) Assembly Support OSCE Initiative Personal Interview.
14. Dimic, Dragan (July, 2009) Member of Parliament, SLS 2004-2008 Personal Interview.
15. E. S. (April, 2010) Member of Parliament, PDK 2001-2004, 2004-2008. Personal Interview.

16. E. W. (April, 2010) Personal Interview. UNMIK Legal Officer 1999-2002.
17. F. R. (April, 2010) Member of Parliament, LDK 2001-2004, 2004-2008. Personal Interview.
18. Frishman, Doron (August, 2010) OSCE Democratization Officer. Personal Interview.
19. G.B. (April, 2010) Member of Parliament, PDK 2001-2004, 2004-2008. Personal Interview.
20. G.S. Interview (April, 2010) Member of Parliament SLKM 2001-2004, 2004-2007. Personal Interview.
21. Gashi, Ramadan (July, 2009) Member of Parliament, PDK 2004-2008 Personal Interview.
22. Gaxheri, Besa (July, 2009) Member of Parliament, LDD 2004-2008 Personal Interview.
23. Hadergjonaj, Safete (July, 2009) Member of Parliament, PDK 2001-2004, 2004-2008 Personal Interview.
24. Hadri, Teuta (July, 2009) Member of Parliament, PDK 2004-2008 Personal Interview.
25. Hajdaraj, Adem (July, 2009) Member of Parliament, LDK 2004-2008 Personal Interview.
26. Hulaj, Nurishahe (July, 2009) Member of Parliament, LDK 2004-2008 Personal Interview.
27. Hundozi, Zylfije (July, 2009) Member of Parliament, AAK 2004-2008 Personal Interview.
28. I.D. (April, 2010) Advisor, Office of the Prime Minister 2002-2004 Personal Interview.
29. Idrizi, Sadik (July, 2009) Member of Parliament, VAKAT 2004-2008 Personal Interview.
30. Islamjli, Valmir (August, 2009) Kosovo Democratization Institute. Personal Interview.
31. J. R. (August, 2009) Member of Parliament, LDK 2001-2004. Government liaison in the Assembly 2004-present. Personal Interview.
32. Jennifer Ober (July 2009) OSCE Chief of Central Assembly and Political Parties Support Section

33. Kelmendi, Nekibe (July, 2009) Member of Parliament, LDK 2001-2004, 2004-2008, Minister of Justice 2004-present. Personal Interview.
34. Koci, Gani (July, 2009) Member of Parliament, PDK 2001-2004, 2004-2008 Personal Interview.
35. Limaj, Fatmir (July, 2009) Member of Parliament, PDK 2001-2004, 2004-2008. Personal Interview.
36. Lumnije Murati (July, 2009) President's Assembly Advisor Personal Interview.
37. Minire Citaku (August, 2009, March-April, 2010) Adenaur Stiftung ASI Personal Interview.
38. Morina, Zef (July, 2009) Member of Parliament, LDK 2001-2004, 2004-2008 Personal Interview.
39. Murati, Shpresa (July, 2009) Member of Parliament, VAKAT 2004-2008 Personal Interview.
40. Murati, Xhezair (April, 2010) Member of Parliament, VAKAT 2001-2004, 2004-2008 Personal Interview.
41. N. D. (July, 2009) Member of Parliament, PDK 2001-2004, 2004-2008. Personal Interview.
42. Rakipi, A. (March, 2009) Personal Interview. Member of the Albanian-American Delegation to the Rambouillet Peace Talks.
43. Ramosaj, Berim (July, 2009) Member of Parliament, LDK 2001-2004, LDD 2004-2008. Personal Interview.
44. Rexhepi, Fatmir (July, 2009) Member of Parliament, LDK 2001-2004, 2004-2008 Personal Interview.
45. Rushiti, F (July, 2009) Member of the Kosovo Transitional Council. Personal Interview.
46. Shatri, Haki (August, 2009, March-April, 2010) Member of Parliament, LDK 2001-2004, 2004-2008, Minister of Finance and Economy 2004-2009. Personal Interview.
47. Shpend Ahmeti (August, 2009) GAP Institute Kosovo Personal Interview.
48. Sylaj, Gjylnaze (July, 2009) Member of Parliament, AAK 2004-2008 Personal Interview.
49. T. S. (April, 2010) Legal Advisor, Office of the Legal Advisor, UNMIK 2002-2005. Personal Interview.

50. Yagcilar, Mahir (July, 2009) Member of Parliament, KTDP 2001-2004, 2004-2008
Personal Interview.
51. Zemaj, Armend (July, 2009) Member of Parliament, LDK 2004-2008 Personal
Interview.