OSCE

Organization for Security and Co-operation in Europe

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CONFIDENTIAL/BY HAND Jan. 20, 1998

MEMORANDUM TO COUNCIL OF EUROPE DELEGATION
Ambassador Dohmes/Ambassador Groenberg
Mr. Furrer/Mr. Massie

FROM: Ray Snider, Dep. Head of Presence

SUBJECT: Tri-Parliamentary Mission on Albanian Constitution

I appreciated the opportunity to share with you views on the way ahead in the constitution-making process in our meetings these past two days, where we (too briefly) debated the relative merits of recognizing a constitution "without consensus."

As you return to Strasbourg, I want to document our concern that, after hearing from the parties involved, you seem to be inclined to recommend that the CoE members of the parliamentary mission to Albania Jan. 22-23 **NOT** publicly endorse the procedures established by the Godo/Imami Parliamentary Commission on the Constitution.

The logic here seems to be that an endorsement of the parliamentary commission process would open the way to a non-consensus constitutional draft (even though a referendum on the constitution would logically follow). We are aware of no evidence of public support for the blocking DP position.

You have seen the OSCE press release on this important visit which refers to the urgency of the constitutional process ("1998 is the Year of the Constitution"). The Venice Commission and OSCE staff analysis of the impasse objectively concludes that the Godo/Imami Commission is legally valid. I provide it to you again, and urge you to carefully consider their reasons for supporting the parliamentary commission process.

In addition, Mr. Godo and Mr. Imami have this week submitted to us a draft "petition" to the parliamentary delegation urging that they support the commission "track" with or without the DP. I offer you a draft of this reasonable appeal, for your consideration. We plan to provide it to the delegation very shortly.

As you have seen and heard, the DP is sending some mixed, but mainly negative, signals on participation. In our political experience here, it seems

unproductive to wait for a change of DP heart. Moving the train out of the station without **all** the passengers on board is a formula which has worked before in this "not for purists" fledgling democracy. I think this strategy deserves another chance, so that the basic constitutional building-block can be formed, and Albania can move ahead.

Finally, I would note that failure by the joint parliamentary delegation -- or a major component of it -- to **publicly** support those who are working on moving the process forward will be viewed as support for the DP position. The draft memo from Messrs. Godo and Imami makes this quite clear. Under these circumstances, failure to publicly endorse the Godo-Imami commission may have substantial negative consequences. I would note that in the draft memo to the parliamentarians, they raise the possible review of composition of their commission, to deal with alleged over/under representation. This constitutes further evidence of the willingness of the Albanian parliamentary players -- those who have complied in good faith with their acceptance of the June 29 results -- to reach political compromise.

Thank you for giving this issue one more review before your return to Strasbourg. Have a safe trip home.

Attach: a/s

Brussels, 27 January 1998
5574/98 (Presse 17)

Political Dialogue meeting with Albania
Brussels, 27 January 1998

Press Release

On 27th January a meeting of Political Dialogue at Ministerial level between the European Union and Albania took place in Brussels, chaired by British Foreign Secretary Robin Cook, President of the EU Council. The Albanian delegation was conducted by Foreign Minister Paskal Milo, and included the State Secretary for Euro-Atlantic Integration, Mr. Maqo Lakrori, and the Chairman of the Permanent Parliamentary Foreign Policy Committee, Mr. Sabri Godo.

The EU stressed that this meeting is a starting point for strengthening relations further with Albania, within the approach to the region set out by the General Affairs Council in April 1997.

The discussion, which has reactivated the contacts between the Parties under the Joint Declaration of the European Community and Albania on Political Dialogue on 11 May 1992, focused mainly on the internal situation in Albania and on regional relations in the Balkans.

EU Ministers gave their full support to helping Albania achieve reconciliation and a return to normality, reaffirming the results of the Rome and Brussels Conferences and the International Agenda for Albania. They also made clear that primary responsibility rests with the Albanians themselves - the government, the opposition and the people of Albania.

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The Presidency reaffirmed the Union's solidarity and strong support for Albania, commended the Government's efforts in the reconciliation process under way and in the establishment of a viable market economy, and stressed the importance of normalisation in political life and security in the country. In that respect, the Union welcomed the intention of the main opposition party to return to Parliament and participate in the Constitutional negotiations, stressing the responsibility of all political parties in creating conditions of stability in the country.

Foreign Minister Milo informed his EU colleagues on developments within Albania, focusing on the work of the Government in implementing its quick recovery programme through reinstating public order, re-establishing democratic institutions, establishing the spirit and sense of dialogue and national reconciliation and taking the appropriate steps in continuing the process of integration into the Euroatlantic community. Foreign Minister Milo also touched upon the question of the new Constitution in Albania, informing the Council of the difficulties encountered in the process and of the determination of the Government to give Albania a new Constitution in 1998.

EU Ministers welcomed and supported the positive steps taken so far by the Government and their commitment to restoring law and order and political and economic reform, including the recent agreement with the IMF. EU Ministers encouraged the continuing process of democratic reform, including of the judicial system, and noted the necessity of adopting a new constitution through an inclusive and wide ranging discussion.

Commissioner Van Den Broek gave an outline of European assistance policy towards Albania. Ministers also stressed the importance of the Albanian authorities working closely with the EU to ensure the most effective delivery of aid. EC assistance to Albania between 1991 and 1996 amounted to 557 Mecu. The EC pledged around 100 Mecu more at the October 1997 International Donors Conference. The PHARE programme of 1998 will make an additional amount of 42 Mecu available. The European Community Humanitarian Office has contributed substantial amounts of humanitarian aid to Albania since the crisis began. Last December it announced projects of more than 10 Mecu to help vulnerable sections of the population (hospitals and orphanages). This is in addition to the hundreds of millions of US dollars pledged nationally by EU Member States at the Brussels Donors Conference.

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Ministers then discussed the situation in the region and Albania's regional policy. Foreign Minister Milo highlighted Tirana's conviction that the creation of a healthy climate in its relations with the countries of the region, particularly with its neighbours, is the starting point for its European integration, and informed his EU colleagues of the Albanian proposal for a Conference on the Balkans in Tirana, which should be held in the first half of the year.

The Union recognised Tirana's constructive approach and moderating role in the region, encouraging the Government to continue to pursue its policy of dialogue toward its neighbours. In particular, the EU appreciated Albania's efforts in dialogue with Belgrade and the Former Yugoslav Republic of Macedonia.

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THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

PARLIAMENTARY ASSEMBLY

REPORT TO THE STANDING COMMITTEE ON THE TRI-PARLIAMENTARY MISSION TO ALBANIA 22-23 JANUARY 1998

FRANK SWAELEN (Belgium)
President Emeritus

TANA DE ZULUETA (Italy)
Rapporteur of the Second General Committee

1. Background

A delegation of three Parliamentary Institutions: the **OSCE Parliamentary Assembly**, the **Parliamentary Assembly of the Council of Europe** and the **European Parliament**, visited Albania 22-23 January 1998 at the initiative of the OSCE Presence in Albania. The Chairman-in-Office of the OSCE encouraged the Parliamentary Assembly to undertake this mission.

It was felt that these three parliamentary institutions could help the process of drafting the new Albanian constitution. The process has been stalled since the main opposition, the Democratic Party, refused to participate in the work of the Parliament and the Parliamentary Commission which has been appointed to draft the new constitution.

The international community, including the OSCE, has made a commitment to help Albania to develop and the consolidate stability, democracy and the rule of law.

Against this background the OSCE Parliamentary Assembly suggested that the three parliamentary institutions should undertake a tri-parliamentary mission in order to get the process of drafting the new Albanian constitution back on track by convincing all major political parties to participate in the process.

2. Delegation

The President of the OSCE Parliamentary Assembly, Mr. Javier Ruperez, appointed

Mr. Frank Swaelen (Belgium), President Emeritus of the Assembly and President of the Belgian Senate, and
Senator Tana De Zulueta (Italy), Rapporteur of the Second General Committee.

Other members of delegation were
Ms. Leni Fischer (Germany), President of the Parliamentary Assembly of the Council of Europe,
Mr. Renzo Imbeni (Italy), Vice-President of the European Parliament,
Mr. Rene van der Linden (Netherlands) and
Mr. Jordi Sole Tura (Spain), the two Rapporteurs of the Council of Europe Parliamentary Assembly on Albania and
Ms. Doris Pack (Germany), Chairman of the European Parliament Commission for relations with Southeast Europe.

The delegation's advisers included Mr. Pentti Väänänen, Deputy Secretary General of the OSCE Parliamentary Assembly and Mr. Herman de Fraye, Secretary of the Belgian Delegation. The delegation was also accompanied by Ambassador Daan Everts, Head of the OSCE Presence in Albania.

The delegation issued the joint declaration. (attached)

3. Conclusions

Albania urgently needs a new constitution. The constitution is needed for progress and stability in the country. It would be a basis for other urgently needed legislation, help to provide guarantees for potential investments and sustain international support for Albania.

Unfortunately the process of enacting a new constitution has been stalled as the main opposition party, the Democratic Party, refuses to participate in the drafting process.

The Democratic Party suggests that the drafting process should take place outside the current Parliament. The Party is boycotting both the Parliament and the Parliamentary Commission which is entrusted with the task of drafting the new constitution. They suggest that a Constitutional Assembly be elected to take over the drafting process.

Although some of the concerns, presented by the Democratic Party, are legitimate, their boycott of the parliamentary work cannot be justified. It rather threatens to destabilize Albania and deny the drafting process of the necessary wide consensus which would be essential in an enduring constitution.

It appears that there is a consensus on the urgent need for a new constitution. Several of the delegation's interlocutors, including the leadership of the Democratic Party, also believed that there would be a wide consensus on the contents of the constitution. At least at this stage the disagreements only concern the procedures. Such disagreements must not prevent the enacting of the constitution.

The Democratic Party refuses to accept the legitimacy of the current Albanian Parliament in the process of enacting the constitution.

The international community, in particular the three parliamentary institutions represented in the tri-parliamentary mission, has declared that the previous Albanian parliamentary elections were acceptable in those circumstances. Therefore the legitimacy of the current parliament cannot be questioned. The Parliament is the legitimate body to deal with the drafting of the new constitution. The present procedure is in line with the 1991 constitutional law and was also followed in 1994 when the Democratic Party was in Government.

The Parliamentary Commission has large possibilities to hear and cooperate with a wide range of national and international institutions and listen to their advice.

All parties agree that the final decision on the new constitution will be taken by the Albanian people in a referendum.

4. Recommendations

The delegation calls on the Democratic Party to end their boycott of the Parliament and participate constructively in the work of the Constitutional Commission.

The delegation offers to contribute to the process of drafting the new constitution. It proposes that an international advisory group, representing European parliamentary institutions, be established as a consultative body to work with the Constitutional Commission.

The delegation also suggests that European Parliamentary institutions should monitor the procedures of the Albanian parliament to ensure the implementation of proper parliamentary procedures.

The delegation strongly appeals to all political forces in Albania to promote dialogue, seek compromise and to work together in a spirit of national reconciliation.

5. Suggestions to the Standing Committee

It is suggested that the Standing Committee of the OSCE Parliamentary Assembly should endorse the Declaration of the Tri-Parliamentary Mission.

It is also suggested that the Standing Committee appoint an ad hoc Committee on Albania. The mandate of this Committee would be to follow-up the recommendations of the Declaration and to act as the OSCE Parliamentary Assembly's component in the international advisory group. The Committee would carry out its work in close cooperation with other parliamentary institution who decide to join the advisory group. The Committee would also work in close communication with the Chairman-in-Office and the OSCE Presence in Albania.

6. Discussions

The delegation met with

President Rezhep MEJDANI
Prime Minister and Leader of the Socialist Party Fatos NANO
Speaker of Parliament Skender GJINUSHI
Co-Chairman of the Parliamentary Commission Sabri GODO and Arben IMAMI and several other members of the Commission
Chairman of the Democratic Party Sali BERISHA
Senior Party representatives

- Haxhi ALIKO (SDP)
- Ridvan BODE (SP)
- Zef BUSHATI (CDP)
- Namik DOKLE (SP)
- Teodor LAKO (DA)
- Pandeli MAJKO (SP)
- Fatmir MEDU (RP)
- Genc POLLO (DP)
- Prec ZOGAJ (DAP)

Archbishop MIRDITA
State Secretary for Euro-Atlantic integration M. LAKRORI
Ambassadors of Germany, Greece, Italy, Netherlands, UK and USA
Head of the OSCE Presence Daan EVERTS and Deputy Ray SNIDER

6.1. President of the Republic, Mr. Rezhep MEIDANI

The President emphasized the need to build up state institutions, fight corruption and enact "European" legislation. He also noted that the economic and social problems are the main concern of ordinary Albanians.

1998 has been declared the "Year of Constitution". According to the plan the whole process of enacting the new constitution should be carried out during this year: 1) the Parliamentary Commission would produce a draft, 2) the Parliament would approve the draft and finally 3) the constitution would be approved in a referendum.

The President stressed the need for consensus. There appears to be wide consensus on substance; the contents of the constitution. The minor differences which resulted in the refusal of the constitution in the 1994 referendum can easily be solved. Those differences concerned, e.g. the powers of the President of the Republic. The majority favoured a parliamentary system and this shall be taken into account in the new draft. However, there is no consensus on the procedures and the Democratic Party is boycotting the process. According to the President, there have been attempts to create artificial conflicts.

The President felt that the opinions and advice of European parliamentary institutions

would be welcome and they would have a positive impact on the issue of the new constitution.

6.2. The Speaker of Parliament, Mr. Skender GJINUSHI and other Members of Parliament

The Speaker and other Albanian parliamentarians explained the work of the parliament and its role in drafting the new constitution. It was noted that the main opposition party, the Democratic Party, does not participate in the work of the parliament.

The Speaker listed as the priority tasks of the Parliament and Government 1) the restoration of public order, 2) reform of the army and the police force and 3) the rebuilding of the Albanian economy. According to the Speaker a new constitution is needed as a basis for development in all three domains, including the vital task of insuring an independent judiciary.

6.3. Chairman of the Democratic Party (DP), Mr. Sali BERISHA, and other representatives of the Party

Mr. Berisha acknowledged that in the beginning the DP accepted the elections, even if they were not free and fair, but because the country needed a government and the Socialists, "the former communists", promised to pay back the money lost in the "pyramid schemes". The DP also felt that the crisis was so fundamental that all forces had to participate in the process. The DP invited other parties to discuss the important issues but their repeated invitations were ignored.

According to Mr. Berisha, as a result of the new government's actions the country found itself in a situation where there was a total lack of the rule of law, MPs were expelled, people were driven out of their homes, the opposition was "taped" and a large number of civil servants expelled (all ambassadors, rectors and deans of universities, judges etc). The independence of the judiciary was attacked. At the same time massive smuggling is taking place where the mafia and a large number of the political elite is cooperating. A large number of people have been killed during the last 6 months and there are unauthorized foreign troops - namely Greek - in Albania.

There were several agreements between the DP and the Socialist Party, but, according to Mr. Berisha, the Socialist have not respected their any of them.

As far as the new constitution is concerned, Mr. Berisha felt strongly that the present Parliament must not be involved in the process. He preferred a constitutional assembly which must be elected freely. He felt that such a body would be necessary since the parliamentary elections were not free and fair. Alternatively the drafting could take place in a "round table" which should be agreed upon by "everybody" and which would be independent of the current parliament. He also feared that if the present

parliament were involved, there would be no referendum. He also felt that only a new parliament, after free and fair elections, would have a moral right to deal with the constitution.

Mr. Berisha informed the delegation that he had made an agreement on the procedures with Mr. La Pergola of the Venice Commission. He declined to release any details of the agreement.

According to Mr. Berisha the DP "misses its presence in Parliament", but it refuses to be a "facade", or act as "puppets as during the communist period".

6.4. Meeting with senior parliamentarians

Representatives of different political parties explained their views of the present situation and the parliamentary procedures. Much of the conversation dealt with the DP's boycott of parliamentary work.

During the discussion it was suggested that the European parliamentary institutions should monitor the proceedings of the parliament and also the drafting process of the new constitution. Some participants felt that such participation on behalf of the international community could be helpful, i.e. in guaranteeing the rights of the opposition and strengthening the credibility of the drafting process.

6.5. The Prime Minister and leader of the Socialist Party, Mr. Fatos NANO

The Prime Minister emphasized his Government's wish to integrate Albania into Europe. He could foresee even the EU membership in the "not distant future". He also welcomed the international community to help in this process.

The Prime Minister declared that he wants the opposition to participate in the process of enacting the new constitution because wide consensus would be necessary. However, he felt that if the DP were to carry on boycotting and seeking "to agitate and radicalize" the population, then the majority would have no choice but to proceed without the DP.

According to the Prime Minister the DP does not accept the result of the elections and they organize terrorist strikes against, for example, the police and water pipelines. Mr. Berisha has also, according to the Prime Minister, behaved in an irresponsible manner regarding the issue of Kossovo, jeopardizing the Government's efforts to promote dialogue in this field.

The Prime Minister also emphasized that a new constitution is needed to provide legal guarantees to potential investors. He felt that the DP must be repeatedly invited to join the process but must not be allowed to block it.

The Prime Minister declared that he is against prosecuting Berisha "like I was prosecuted during his regime".

6.6. Members of the Constitutional Commission

Members of the Commission explained their work and plans. It was explained that the governing parties, who have more than a 2/3 majority in the Parliament, have less than 2/3 in the Commission. This is to help the opposition and to work towards the widest possible consensus.

During the discussion it was explained that the members of the Commission are willing to consider the Commission's composition and procedures, if needed. It was also suggested that the European parliamentary institutions should contribute to the Commission's work.

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EUROPEAN PARLIAMENT

23 JANUARY 1998

DECLARATION BY THE TRI-PARLIAMENTARY MISSION TO ALBANIA

A delegation composed of seven senior members of the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, and the European Parliament, in Albania on 22 and 23 January 1998:

Met with a broad range of national leaders and explored ways to overcome the troubling impasse in the constitution drafting process;

Expressed serious concern about the difficult and fragile political, socio-economic, and security situation in Albania;

Reaffirmed the acceptability of the 29 June 1997 elections and the legitimacy of current Parliament;

Rejected the suggestion of early parliamentary elections; and

Sought ways to end the disturbing lack of proper political dialogue, and called upon all parties to seek compromise and work together in a spirit of national reconciliation.

On the constitutional process, the delegation:

Underlined the need, as expressed by all political parties, for a new constitution as the basis for enduring political stability;

Agreed with the parties that a new constitution would open the way for other needed legislation and sustain international support for Albania;

Observed that the Constitutional Commission of Parliament is a legally valid

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mechanism for drafting a new constitution, as also noted by eminent constitutional scholars;

Urged that all parties put the drafting process back on track by participating constructively in the work of the Constitutional Commission;

Acknowledged the willingness of members of the Constitutional Commission to review its composition and procedures if needed;

Pointed out that the new constitution should be based on broad political consensus, and the necessary public endorsement for the new constitution will be established through the referendum that will follow the adoption of a draft by Parliament;

Called on the Union for Democracy to promptly end their boycott of the Parliament and to participate in drafting the new constitution; and

Proposed that an international advisory group, representing European parliamentary institutions, be established to complement consultative groups working with the Constitutional Commission, such as the Venice Commission of the Council of Europe, the Administrative Centre for the Coordination of Assistance and Public Participation (ACCAPP); and domestic civil society organisations.

The delegation also:

Urged safeguarding of the independence of the judiciary and the finding of a rapid solution to the conflict between the Constitutional Court and the Parliament;

Called for fair implementation of agreements regarding the public media;

Stressed that the recruitment and appointment of the civil service, armed forces, and police should be based upon merit and professional qualification;

Emphasized that democratic standards of parliamentary procedure be observed, including respect for the rights of parliamentary opposition; and

Proposed that parliamentary practice be monitored by international observers on a systematic basis.

Concluding its mission, the delegation hereby expresses its hope and expectation that its visit has provided the needed impetus for progress for in political and parliamentary cooperation. The delegation reconfirms the interest of the international community in the consolidation of a democratic state based on the rule of law in Albania.

The delegation members are:

- Leni Fischer (Germany), President of the Council of Europe Parliamentary Assembly;
- Frank Swaelen (Belgium), President Emeritus of the OSCE Parliamentary Assembly and President of the Belgian Senate;
- Renzo Imbeni (Italy), European Parliament Vice President;
- Tana De Zulueta (Italy), Rapporteur on Economic Affairs of the OSCE Parliamentary Assembly General Committee
- Doris Pack (Germany), Chairman of the European Parliament Commission for Relations with Southeast;
- René van der Linden (Netherlands), Rapporteur of the Council of Europe Parliamentary Assembly on Albania;
- Jordi Sole Tura (Spain), Rapporteur of the Council of Europe Parliamentary Assembly on Albania.

For further information, please contact Mr. Pentti Väänänen, Deputy Secretary General, or Mr. R. Spencer Oliver, Secretary General at the OSCE Parliamentary Assembly Headquarters in