



**POST-ELECTION TECHNICAL ASSISTANCE
RECOMMENDATIONS REGARDING PARLIAMENTARY ELECTION LAW**

PART III

November 29 - December 2, 1994

BOARD OF DIRECTORS		Barbara Boggs	Maureen A. Kindel	William R. Sweeney Jr	Randal C. Teague Counsel
Charles T. Manatt Chairman	Patricia Hutar Secretary	Frank J. Fahrenkopf Jr	Jean-Pierre Kingsley	Leon J. Weil	
David R. Jones Vice Chairman	Joseph Napolitan Treasurer	Judy Fernald	Peter McPherson	DIRECTORS EMERITI James M. Cannon Richard M. Scammon	Richard W. Soudriette Director
		Victor Kamber	Sonia Picado S		

**POST-ELECTION TECHNICAL ASSESSMENT
(Recommendations Regarding Parliamentary Election Law)
November 29 - December 2, 1994**

IFES Team Member

Linda Edgeworth

**In Cooperation With Barnabas Johnson, Consulting Attorney
American Legal Consortium**

**Attachment: Barnabas Johnson of the ALC on
"Comparison of Earlier Draft and Final Text of
Tajikistan's Parliamentary Election Law"**

I. EXECUTIVE SUMMARY

Tajikistan is a country in crisis. In the aftermath of the collapse of the Soviet Union, civil war erupted which left the country in severe strife. Although negotiations resulted in a cease fire, its terms are tenuous at best. Estimates suggest that hundreds of thousands of people have been displaced and scores of thousands of refugees still remain outside the country. Economic decline threatens to worsen significantly, potentially raising the specter of widespread social unrest.

It is in this environment that the government of Tajikistan, seeking to bring about stability and secure international respectability, called a special election in which voters would vote on the adoption of a new constitution and elect their president. Originally scheduled for late September, the elections were postponed until November 6, 1994 in response to pressures within the Republic and from the international community.

In answer to an invitation from the U.S. Embassy in Dushanbe, the International Foundation for Electoral Systems sent several teams to conduct a pre-election technical assessment, a team to observe and report on the Presidential elections of November 6, and two visits since the Presidential election to discuss technical amendments to the law on the upcoming Parliamentary elections.

The overall assignment has comprised of three parts: 1) to review the legal framework and administrative procedures which would be implemented in conducting the election, 2) to assess the overall environment in which the elections were to take place; and (3) prepare a post-election technical assessment including recommendations on the Parliamentary Law with a brief discussion on the GOT's actions (or inactions) on IFES' recommendations. Incumbent in the latter was an expectation that the team would be able to come to some preliminary conclusions as to the likelihood that the elections would conform to acceptable democratic principles. The team was also to assess the degree to which these elections might ultimately be construed to have been free and fair.

The team conducted its work in Tajikistan through a series of visits from September 21 through December 2, 1994. During its stay the team met with government officials, members of election commissions at the central, raion and polling site levels. Meetings were also held with officials of local executive authorities, candidate representatives, movements and political parties, members of the media and leaders of civic organizations. The team had the opportunity to visit several raions outside Dushanbe including Varzob, Faizabad, Hissar, Tursunzade, Leninsky and Khojand.

Throughout discussions with key participants in the election process it became apparent that the government perceived an urgent need for improving their respectability with the international community. They expressed the view that adoption of the new constitution and election of a president were avenues by which Tajikistan could receive more positive recognition. This underlying motivation provided the opening which allowed the IFES team to advance from

strictly performing an assessment to having the opportunity to provide immediate technical assistance

The team's strategy was to capitalize on the experience of Kazakhstan during that country's March 1994 elections. Tajik officials were very interested in the problems Kazakhstan had encountered in their first elections under a new electoral law, and how their elections had been evaluated by the international community. Using the Kazakhstan experience as the basis of discussions, government officials recognized that a number of issues which came under fire in those elections would also relate to Tajikistan's electoral system.

The second part of the team's strategy was to focus its technical assistance objectives on improvements which were still achievable prior to election day given the current legal and administrative framework, the crisis environment, and the constraints of time and resources. Full recognition was given to the fact that ideal conditions simply could not be achieved by election day. Prior to November 6, flaws in the law would not be amended. There was insufficient time for new or existing political parties to sufficiently strengthen their organizations and sphere of public support. Nor would there emerge a totally free and independent press. However, two major elements of the election process were still to follow: 1) the campaign period, and, 2) election day itself including the processing of voters, casting of ballots, counting of votes and reporting of results.

Therefore, the IFES team concentrated its technical assistance on these elements. All in all, 26 pages of procedural recommendations were prepared, translated into Russian and discussed with election officials. Each component was designed to improve the security and accountability of the system, enhance administrative efficiency or provide a greater degree of transparency for the process. The ultimate goal was to strengthen the foundation on which the election could achieve at least a minimal degree of freeness and fairness deserving of public confidence and international acceptance.

The legal and administrative structures underpinning the election process are discussed, as are the weakness and strengths of the election system itself in the following draft document. This interim report includes a discussion of the team's general findings and recommendations relevant to the November 6 elections as well as to recommendations which are warranted as Tajikistan prepares for its parliamentary election anticipated in the Spring of 1995.

II. BACKGROUND LEADING TO IFES ASSISTANCE

In the period immediately following the November 6 referendum and presidential elections, work was already beginning in preparation for parliamentary elections which were scheduled to follow in the near future. In particular, the Committee on Legislation and Human Rights was working on the draft of a new Law on the Election of Deputies to the Majlisi Oli. IFES had on its two

earlier missions to Tajikistan formalized recommendations for consideration by lawmakers in developing the new law. The Conference for Security and Cooperation in Europe (CSCE) had also been monitoring the work closely. In particular, CSCE had solicited the services of consultants to analyze the actual working draft and make specific technical recommendations as to amendments which would improve the democratic character of the law. A formal analysis was prepared by Dr. Frederick Quinn, Mr. Jacques Roussellier and Professor Zdzislaw Jarosz on behalf of CSCE/ODIHR.

In a similar vein to the concerns and recommendations presented by IFES in its earlier work in Tajikistan, the CSCE team identified significant weaknesses in the draft. Although the technical aspects of the draft reflected a well-crafted document, the CSCE team pointed out that the deficiencies were not based on legal content. Rather, they rested in "political positions" taken, and the retention of Soviet-style thinking whereby government control impedes free and contested elections. They concluded that the law as drafted departed from traditionally accepted standards established in the CSCE Copenhagen Document to which signatory countries agreed, in four ways:

1. The law limits the participation of political parties and independent candidates in the election process.
2. The need for an independent, neutral, and objective electoral administrative structure is not adequately addressed. The draft sustains the Central Election Commission at the center as the "key player" rather than "an umpire" of the election process.
3. The draft fails to provide an adequate level of transparency in the counting of votes.
4. The need for media to be free to report on the elections, candidates and parties, and to express their views is not adequately safeguarded.

In summarizing their conclusions, the CSCE team wrote:

"This draft law organizes elections in a traditional Soviet manner. It gives every appearance of being a formally democratic document, but in reality severely limits free and contested elections, because such initiatives do not come from independent political parties or ultimately from individuals free and collectively self-organized. The main political basis of these elections are to be found in a variety of long established and controlled collectives such as worker and youth groups where entrenched privileges and vested interests prohibit the emergence of real political differences and genuine aspiration. There is an excessive concentration of power in the hands of the Central Electoral Commission which drastically limits transparency and fairness of the process, making



public scrutiny of all stages of election virtually impossible "

In view of the CSCE team's findings, Gantcho Gantchev, Head of the CSCE Mission in Tajikistan had strongly urged the government to postpone the adoption of the law until an improved version could be thoughtfully developed, and, if necessary to postpone the parliamentary elections accordingly. This view was jointly held by the by the United States Embassy in Tajikistan. However, it became clear that the Government of Tajikistan was not willing to consider such an option. Instead, the draft was scheduled to be voted upon by the existing parliament on December 1, 1994 with the elections to be scheduled very soon after

In a final attempt to ward off the impending adoption of what was perceived to be of a seriously flawed election law, U S Ambassador Escudero submitted a request through the Regional Office of the U S Agency for International Development in Almaty for the services of an election expert to provide immediate technical assistance. In response to that request, it was decided that two consultants would be sent to Dushanbe, each selected for their specific expertise. They were, Linda Edgeworth, an IFES election consultant who had worked on the pre-election assessment and election day observation teams in Tajikistan, and Barnabas Johnson, a consulting lawyer from the American Legal Consortium (ALC) with specific experience in elections in the region. Both consultants were currently working in neighboring Kazakstan greatly enhancing the immediacy with which they could respond. The joint team was able to arrive in Dushanbe on November 28, just three days before the scheduled parliamentary vote on the draft was to take place. The scope of their joint mission was to work closely with the CSCE to develop a strategy for encouraging amendments which could have an immediate affect in a law conducive to freer and fairer elections in Tajikistan

III. STRATEGY

The IFES/ALC team carefully reviewed the draft Law on the Election of Deputies to the Majlisi Oli, Republic of Tajikistan, as well as comments on the draft prepared by the CSCE advisors. The team agreed with the CSCE's evaluation of the weaknesses of the draft as it was being proposed

As a practical matter, and in view of the urgency with which the joint work was to be accomplished, the IFES/ALC focused on a few key areas which, if left unchanged, would continue to jeopardize any meaningful progress in improving the electoral system. It had become clear that there would be no postponement of the adoption. Since the vote was to take place in two days, it was critical that the proposed amendments be well focussed, simple, and designed for the greatest impact. For each of these areas the team tried to identify technical solutions that would require the least complex or detailed amendments to the existing draft. In order to improve the chances of tangible success in encouraging key amendments, the team tried to ensure that at the very least, simple wording could even be hand written into the final drafts being put

before parliament. In each area the team proposed minimal changes which would have the greatest immediate impact on the integrity of the electoral process.

Based on review of the law and experiences which impaired the free and fair conduct of the November 6 elections, the five issues the team attempted to address were:

1. Transparency
2. Nomination of Candidates
3. Ballot Accountability and Security
4. Role of the Central Election Commission
5. Candidate Campaigns

On the pages that follow is a brief discussion of the technical amendments the team suggested to meet the immediate objectives.

In recognition of the fact that this approach would not resolve the full scope of deficiencies the draft was bound to perpetuate, the team also recommends a provision that would require the Central Election Commission to evaluate the practical experience of the upcoming elections -- including deficiencies. This provision would require reconsideration of the process, hopefully lead to a new election law that the time constraints made impossible at the current time. It would also provide the international community with continuing opportunities to exert appropriate influence on the evolution of democratic principles in Tajikistan.

Through the joint effort of the U.S. Embassy and the CSCE Mission the IFES/ALC team had the opportunity to meet with the Committee on Legislation and Human Rights in approximately 5 hours of work sessions on the day before the law was to come to a vote in parliament. Although at first there appeared to be strong resistance to any amendments the team proposed, the committee ultimately agreed to most suggestions being offered. However, there was no way to guarantee that they would ultimately be passed into the final law.

IV. KEY AMENDMENTS PROPOSED BY THE TEAM:

PRIORITY 1. TRANSPARENCY

The team identified the issue of transparency as the top priority in attempting to achieve a greater degree of freeness and fairness in the election process. Many of the serious problems which occurred during the recent election on the adoption of the new Constitution and the election of

the President could have been alleviated had there been an adequate level of transparency through all aspects of the process, and especially through the counting and summarization of election results

Immediate Changes Recommended

1 Article 7, Paragraph 3 - Authorized Observers

The single most important addition to the list of observers who can participate at the polling sites should be "**representatives of the candidates.**"

The presence of a personal representative of each candidate during all phases of the process, including the counting of votes, would increase the likelihood of greater accountability and uniform compliance with law in the processing of voters, as well as reduce the potential for manipulations of election results after the close of the polls

2 Article 15, Section 10 - Publication of Results
(With conforming language in Article 42)

This section should be amended to require that the report of election results published in the press include the vote totals for each candidate by polling station within each election district

The publication of results for each polling station would provide detailed information to support district-wide totals, and allow candidates and nominating organizations to compare and confirm the reported vote totals with their own observations at polling stations on election day

3 Articles 14 and 16 - Membership on Central and District Commissions

Provisions should be added that membership on the Central Election Commission and District Commissions include at least one representative of each political party and political movement

Inclusion of these representatives would provide a degree of self-monitoring within the administrative structure itself.

4 Article 39, paragraph 3 - Checking the Ballot Boxes

Wording should be added to the end of paragraph three to require that the ballot boxes be checked and sealed in the presence of all committee members, and "**authorized observers present at the polling station.**"

PRIORITY 2. RIGHT TO NOMINATION OF CANDIDATES

- 1 Article 8 - Who May Nominate Candidates
 (With conforming amendments to Articles 7, 22, and 30)

This article should be amended to read, **"The right to nominate candidates belongs to political parties, political movements, meetings of voters at places of residence, and citizens by means of self-nomination."**

In order to ensure that military installations and the work place remain depoliticized, work collectives, labor unions and military units should be restricted from nominating candidates. These environments can subject workers and military personnel to intimidating and inappropriate influences over their political views. It was encouraging to note that in the draft locally elected representative councils were not identified as groups eligible to nominate candidates as they had been in the presidential election.

- 2 Article 22 - Process of Nomination
 (With conforming language in Article 15, Section 8 covering the forms to be designed by the Central Election Commission)

A conforming section should be added to Article 22 to define the process by which self-nominated candidates gain access to the ballot. **"The candidacy of a self-nominated citizen must be supported by at least 300 voters residing in the election district, who sign their names on a petition form provided for that purpose by the District Election Commission."**

This recommendation setting the number of signatures required at 300 conforms with the number of voters at places of residences who must attend the meeting at which a candidate may be nominated.

PRIORITY 3. BALLOT ACCOUNTABILITY AND SECURITY

- 1 Article 39, last paragraph - Procedures at the Polls
 (With conforming language in Article 41)

An additional provision should be added to the law requiring the **polling station official to sign the ballot paper at the time it is issued to a voter.**

This would provide an additional security measure that would allow officials to distinguish officially issued ballots from those deposited into the ballot box fraudulently.

Article 41, 3rd paragraph - Invalid Ballots

This article should require that **ballots not containing the signature of an election official will be invalidated.**

2 Article 39, last sentence - Notation on Voter List

To ensure a greater accountability for the number of voters who participate in the election, **a voter should be required to sign the voter list to acknowledge receipt of the ballot.**

Not only would such a provision ensure greater accuracy and accountability, it would also conform to the requirement in the Law on the Election of President

3 Article 41 - Counting Votes and Reporting Polling Station Results

A specific instruction should be added to the last paragraph, that **information recorded on the protocol or minutes in which vote totals are reported is to be written entirely in indelible ink.**

Such a provision would reduce the likelihood that results could be altered after they leave the polling site where observers have watched the counting of votes

PRIORITY 4. ROLE OF THE CENTRAL ELECTION COMMISSION

1 Article 42, paragraph 3, and Article 43 - Invalidation of an Election

It is critically important that a limitation be stressed in both articles that an election can only be invalidated if the errors or violations were **sufficient to have potentially altered the outcome.** We recommend that the wording in this law be replaced by the better text found in Article 34 of the Law on the Election of President

2 Article 15 - Duties of the Central Electoral Commission

Duties of the Central Election Commission should be expanded to require that they formalize and publish

"rules by which candidates will be ensured equal and fair campaign opportunities and access to the media; and

"uniform procedures to be followed at all polling stations for the accurate counting of voted ballots, which ensure that authorized observers have an unimpaired view of the counting process."

PRIORITY 5. CANDIDATE CAMPAIGNS

1 Article 28 - Pre-Electoral Programs and Restrictions on Campaign Content

This provision of dictates that in their campaigns, candidates may not contradict the constitution

In the second sentence, the period should be replaced with a semi-colon, followed by **"but this shall not be construed to limit responsible proposals for changes and improvements to existing law."**

This proposed change should be self-explanatory. The essence of the role of a parliamentarian is to participate in reviewing current law and proposing changes, additions, and deletions. Therefore, candidates should not be restricted from discussing their views regarding the need for such changes.

This recommended language will also restrict the role of election commissions in evaluating or judging the substance of campaign messages or impairing free and open exchanges between competing candidates.

In the end, the team proposed that the Law explicitly require that, following the parliamentary election, the Central Election Commission -- plus one representative of any political party or movement which received at least 10% of the total votes cast -- review and evaluate the election and formalize recommendations for a new law.

V. AFTERMATH - PASSAGE OF THE NEW LAW ON THE ELECTION OF DEPUTIES TO THE MAJLISI OLI

The committee members finally agreed to include the majority of the proposed changes in spite of their initial reluctance. However, as a practical matter, the simple problem of logistics in making the proposed changes available to the Majlisi Oli in time for their deliberations posed problems. In spite of the team's efforts to propose amendments which could even be handwritten into the floor copies, the team was not sure how it would be accomplished in time for the early morning parliamentary session the following day.

A representative of the U.S. Embassy attended the parliamentary session at which the vote on the

election law took place. According to his observations, each provision of the bill was covered in sequence and each was accepted with virtually no discussion. He was unable to determine if the committee had followed through with its commitment to include most of the recommendations presented by the team. A copy of the actual bill being voted upon was simply not available to anyone except the parliamentarians. Ultimately, however, the team was advised that the bill was apparently passed with no floor amendments being incorporated although some discussion arose with regard to nomination of candidates. Whether or not handwritten changes were included in the bill being voted upon could not be ascertained. It should also be pointed out that eight bills were passed that day. The team was advised that the Majlisi Oli had been assembled specifically to vote on these issues before the 21st session was adjourned.

At the time of the team's departure from Tajikistan on December 2, the bill law that had actually been adopted had not yet been published. It did not become available until after the IFES/ALC representatives had left the country.

Ultimately, it was learned that none of the proposed amendments had been adopted.

A few comments are warranted about some of the features of the Law that did pass.

- 1 Nomination of Candidates. In contrast to the law on the election of the president, the eligibility to nominate candidates for Deputies to the Majlisi Oli has been expanded to include a broader spectrum of participants. However, the additions perpetuate traditional soviet-style thinking. The key addition is that work collectives which had not been able to participate in the presidential elections, will be allowed to nominate the candidates for the parliamentary elections.

In the draft from which the team worked, there had also been two notable deletions. The Labor and Youth Unions were not identified as groups eligible to nominate candidates. In addition, the eligibility of locally elected councils to nominate candidates had been omitted, although they had been the primary supporters promoting the two presidential candidates. The team had been encouraged by this apparent departure from the prior practice. However, in the final version put before the parliament and ultimately passed, the eligibility of local representative councils to nominate candidates had been reinstated.

In another twist, the original draft reviewed by the team introduced a narrow opening for entry by independent candidates into the political arena. The provision had empowered unaffiliated individuals to be nominated through "meetings of voters at places of residence." However, it became clear during discussions of the new draft that this window for independent candidates had been closed. Through exploration of the issue, and in particular the team's recommendations regarding independent candidates, the reason behind the removal of the provision made itself clear. The idea of independent candidates, even as it was cautiously worded in the prior draft, had been reconsidered by

the committee because of apprehensions lingering in the aftermath of the recent war and the tenuous status of peace talks. Quite candidly, committee members discussed concerns that such options could raise difficult questions related to nominations by the militant opposition or exiles currently outside the country.

In an attempt to provide a broader scope of access while at the same time avoiding what they obviously perceived to be a potentially sensitive political situation, drafters developed a weakened substitute solution. The new law grants the right of any citizen to nominate himself as a candidate, "through a work collective." Nothing in the law requires the individual to be otherwise affiliated with the work collective. In practical terms it means that any citizen can approach a work collective, present himself as an interested hopeful and solicit their support to nominate him. It will be interesting to see the extent to which this option is exercised in the future. The law sets no restrictions on the number of names which can be proposed and considered during the congresses of nominating groups as they vote on the selection of their nominee.

In a positive move, the new law eliminates the need for candidates to garner support through a petition process. This streamlined approach will make it easier for more candidates to participate, while minimizing the opportunities for abuses and manipulations which were alleged during the last elections.

2. Transparency This issue had been paramount in the team's development of recommendations given the difficult circumstances which surrounded the presidential elections. The new law maintains the substance of the provisions from the presidential election law whereby nominating groups would be allowed to have one representative observe activities at the polling sites. While the addition of representatives of the candidates themselves was not incorporated, the impact of such an omission may not be as significant in parliamentary elections as it was in the presidential race. In that election the difficulty was that not all candidates had been nominated in each region. Therefore, the opposition candidate had no representation at the polling sites in areas where no nominating group had come forth with support. Strongholds of support for only one of the candidates in certain hostile regions seriously disadvantaged legitimate representation of observers for the opposing candidate. However, since the parliamentary elections will be based on district-wide nominations, every candidate will have the opportunity to have someone from his or her nominating group represent his interest at the polling sites equally.

Foreign observers and international organizations are identified among observers who may be present as well as are members of the media. The new law states more clearly that these observers are also allowed to be present for the counting of votes. No window is created for the presence of any non-partisan, neutral domestic observer delegations. One concern is that appropriate conforming language is not specified in provisions related to

certain polling day activities. For example, as written, ballot boxes are to be sealed in the presence of "all commission members" but no wording is added to specifically require the presence of the authorized observers.

Another area which could potentially perpetuate some problems that occurred in the presidential election relates to the wording used to identify local majlisi oli representatives to observe the polling. Unlike the wording associated with other nominating groups, there is no requirement that the local representative council would have to have nominated a candidate to be present. One of the issues which became significant during the prior election was the intimidating presence of extraneous officials overseeing the work of polling commissions.

Finally, details regarding observer presence throughout the counting process are left a little vague. For example, when it comes to determining and reporting the results, it could be interpreted that this phase occurs separately after the counting is completed. As written, the results of the counting of votes "are considered at a meeting of the polling site commission." In view of allegations which surfaced that vote totals were inaccurately reported it would have been preferable if this step had unequivocally been identified as part of the counting process itself rather than leaving the door open for an interpretation that it is a function which could be accomplished after observers have been dismissed.

3. Other Considerations. The new law does little to alter the intrusive role that election officials play in monitoring candidate campaigns and overseeing media access by candidates. The new law extended the restriction on candidates' messages which contradict the constitution to also prohibit contradictions of the laws of the Republic. Committee members had questioned the team's concerns about such a restriction indicating that there is a difference between "contradicting" the laws and "criticizing" them. However, the concern remains that such a distinction could leave candidates vulnerable to subjective judgements by officials which could lead to perceptions of unfair or biased treatment of candidates.

The altered version of the new law was not written to conform with the presidential election law as it relates to the invalidation of an election based on occurrences of irregularities during the process. Under its provisions election officials may invalidate an election at a polling site or district if violations have occurred. However, no criteria are established to guide when such a radical judgement should be made. In the presidential election law invalidation is allowed if the violation or irregularity "is sufficient to have altered the outcome." Clearly, conforming language in the Law on Election of Deputies to the Majlisi Oli would have been advisable.

(Dorothy: This is the e-mail version of my report. I have stripped out all underlinings and other formattings -- which appear in the "hard copy" versions being faxed and mailed -- but those underlinings, etc., should be re-entered, if possible, as they add to comprehensibility of this report. I hope everything comes through OK. It is now Sunday afternoon in Atlanta. I am about to e-mail this to you. Tomorrow morning I will fax and mail "hard copy" versions to you. Tuesday morning I will have my operation. Lowry is fine. Hope you are enjoying our malinky tank, and that the weather is not too cold. All the best to you and our friends in our home town of Almaty. Barnabas.)

R E P O R T

DATE: January 8, 1995
TO: Dorothy Lawrence, American Legal Consultation
FROM: Barnabas Johnson, Esq.
RE: Comparison of Earlier Draft and Final Text of
Tajikistan's Parliamentary Election Law

Introduction

Tajikistan's new law ("NL") on parliamentary elections barely reflects any of the proposed improvements of the draft law ("DL") outlined in my Memorandum to you dated December 8, 1994 ("my Memorandum"), which incorporates my memo of ALC and IFES proposals to the CSCE dated November 29, 1994 ("my memo"). My memo, in turn, was based on various critiques of the DL, most notably the CSCE Report, dated November 21, 1994 ("CSCE Report"). CSCE recommendations to the parliamentary Drafting Committee ("the Committee"), with which we met for several hours on November 30, 1994.

My Memorandum outlined our efforts -- under CSCE auspices, as requested of ALC and IFES by the U.S. Embassy in Dushanbe, Tajikistan -- to get the Parliament of Tajikistan, called the Majlisi Oli, to adopt a law on parliamentary elections that was a significant improvement over the badly-flawed DL under consideration prior to December 1. As of December 8, we know only that on December 1 the parliament adopted the NL; we did not know whether the NL reflected modifications of the DL, including changes proposed by ALC, IFES, and CSCE.

We now have an English translation of the NL. This Report presents my comparison of the NL and DL, pointing out all significant differences between the two, as well as similarities where we had hoped for differences. Specifically, I identify the following:

A/ aspects of the NL that reflect changes proposed by ALC, IFES, and CSCE (there are few); these are highlighted herein with the code ***A GOOD;

3/ aspects of the NL that ignore such proposed changes (almost all were ignored); these are highlighted herein with the codes: . . .
***B BAD; and

C/ aspects of the NL that, irrespective of our proposals, alter aspects of the DL in good ways (there are few), or bad ways (there are several), or ways that could be either good or bad but at least bear mentioning (many changes are not significant and do not bear mentioning); the criteria for "good" and "bad" are obviously those detailed in, or inferable from, my Memorandum to you and my memo to the CSCCE; these changes are highlighted with the codes ***C GOOD, ***C BAD, and ***C UNSURE.

Some changes or non-changes fit into more than one category, and are coded accordingly.

Comparison of DL and NL.

Note: The following assumes that the DL and NL translations available to me fairly reflect the official texts thereof; they were translated from the official Russian texts; there were also, of course, official Tajik-language (Parst) texts.

Article NL 1. The DL calls for a parliament of 230; the NL reduces this size to 181. In our discussions with the Committee, several mentioned their desire for a much smaller, "professional" parliament, a parliament that essentially serves full-time, not merely for a couple days twice yearly (as has been the case with sovietized "rubber-stamp parliaments" like the one that adopted this NL; note that, prior to 1987, no such "parliament" -- throughout the history of the USSR -- had ever encountered even one dissenting vote).

This size reduction might represent a step in the direction of a parliament that actually debates, etc.; but the new parliament, elected under this NL, will not find much herein to support any contention that this legislative body was intended to represent a significant break from past practice. On the contrary. The CSCCE Report quoted one observer as follows: "I see no significant differences between this [draft] code and [the] Russian electoral code of Stalin's time." This NL, barely, if at all, improves upon that DL. This size reduction is a marginal improvement at best.
***C UNSURE

Article NL 2. This article is very confusing. Although titled "Universal Voting Rights", this article's DL version detailed a litany of impermissible bases for not registering would-be candidates for election to the parliament -- that is, not placing their names on the ballot. Specifically, the DL prohibited -- candidate-restrictions based on nationality, race, sex, religion, etc., and "political convictions". That NL language was good, even though it had nothing to do with "voting rights" as such.

The NL transfers this litany from candidate-restrictions to

voter-restrictions, but omits "political convictions"; this change, not recommended by my memo or the CSCE Report, is bad ... or at least odd. Does it permit the inference that the NL was intended to allow restrictions on voters based on their political convictions? ***C BAD or ***C UNSURE

Articles NL 7 through 9 are unchanged. DL article 6, regarding time of voting, has been removed (it is treated elsewhere); from this point, NL and DL numbers differ.

Article NL 6. This is a complete reworking of DL 7. NL 6 is marginally better in some respects, but is generally a terrible disappointment, as I will explain.

The "Priority 1" change proposed in my memo focused on DL 7; expanding upon the CSCE Report, my memo proposed that candidates be allowed to name their representatives in all polling places "during all phases of the [electoral] process"; this was closely related to that part of my memo's "Priority 2" which proposed that "self-nominations" be allowed. Before discussing the NL response thereto, the following background might be helpful.

My memo sought to improve upon the CSCE Report, which stated: "It is extremely important . . . to make clear that the ballot counting process at every step must be open to the public, and that representatives of each candidate [and] party, observers, and the media are welcome to observe each step of the counting process. This is the only possible way to avoid charges of voter fraud, such as were widely raised during the recent Tajikistan presidential elections." The CSCE focus on the "counting process" -- as important as this is -- was too restrictive. Candidate-representatives and other observers are essential throughout the pre-voting, voting, counting, and reporting processes of an election day, and the law should explicitly ordain this. My memo reflected that expanded concern.

As to self-nominations, the CSCE Report could not be improved on: "The right to become a candidate should rest, first of all, with an individual, and then a political party. . . . Groups like workers and soldiers should exercise their political functions, not as units of society, but as individual members of parties, or as individual candidates or voters."

The Committee explicitly refused to allow genuine self-nominations; it asserted that "self-nomination" as a candidate of a work collective was allowed by the DL, and was enough. Actually, such spurious "self-nomination" was at best inferable from the DL. However, the NL makes this DL inference explicit; under the NL 21, "self nominations" must be institutional nominations. Genuine self-nominations, as the CSCE Report and my memo defined this concept, are not allowed in Tajikistan.

But, following a long discussion, the Committee did agree to allow candidate-representatives (that is, "institutional-

3/10

Second, NL 6 modifies, and is modified by, NL 40: "Ballot boxes are checked and sealed [before voting starts]. . . in the presence of all commission members, representatives (observers) of candidates, mass media and international observers."

That is the full extent of the Committee's explicit response to our proposed "Priority 1"; anything else is at best inferable. Nothing about our work disappoints me more. ***B BAD

The penultimate paragraph of NL 6 spells out some useful details of the kinds of things observers are allowed to do ("draw . . . attention . . . to cases of violation of the present law"); this is new, and must be interpreted in light of the final article, NL 50 (discussed later), which apparently criminalizes violations of this law. ***C GOOD

However, the second sentence of the third paragraph omits details of corresponding language in DL 7; this omission is very unfortunate, as it provides examples of the kinds of pre-voting, voting, and counting activities that are -- or should be -- subject to scrutiny by observers. Was this omission deliberate? If so, then the Committee was indeed engaged in a cynical charade. ***C BAD

NL 6 adds new language that includes in the list of observers "representatives of structures of power" -- presumably, government observers. Now, this might refer to the local policeman; if so, then that would be no cause for concern, as many countries station a policeman unobtrusively at the door.

4/10

But I suspect that this new language allows something more sinister, a government (administrative) official, perhaps quite high-ranking, throwing his weight around the polling place; the presence of such officials at polling sites was said by several observers to have been quite intimidating and even fraud-inducing during the recent presidential elections. Perhaps the official texts give more clarity on this point; the English translation suggests potential "separation of powers" problems. ***C UNSURE

Article NL 7, on financing the elections (DL 10), reflects some rethinking. (DL 8 and 9 have been removed from this spot). NL 7 requires funding from the state budget; DL 10 seemed to place enterprises, etc., on a par with the state as a source of funding. This revision is good, as far as it goes. ***C GOOD

Additionally, NL 7 allows funding from enterprises, etc., so long as it is funneled through the Central Commission and disbursed "in order to provide equal conditions for each candidate" Again, so far, so good. ***C GOOD

However, NL 7 keeps the DL 10 prohibition against all other sources of funding. The CSCC Report was very critical of this prohibition. My memo did not address the issue, as it was too complex, given the memo's focus. Reform in this area would require at least minimal campaign-financing provisions -- and those can never be simple, for they involve conflict-of-interest issues, "straw-party" issues, "in-kind" donation issues, and a host of administrative complexities.

Articles NL 8 and 9 (DL 11 and 12), regarding establishment of electoral districts and polling sites, are reworked and somewhat improved. The main improvement is that the DL 12 (paragraph 3) reference to nationals who permanently reside outside Tajikistan has been dropped; this is significant. In effect, the DL grant of voting rights to those who are "permanently" abroad; those who are outside Tajikistan, but are hoping to return as soon as hostilities end and the political climate improves, were disenfranchised. The CSCC Report raised this issue, and we made peripheral references to it in our discussions; but my memo did not include this issue among its "simple, high-priority" items because, frankly, the subject of foreign polling places, etc., is a potential can of worms; I doubt that NL improvements thereon will make much practical difference; but this change is welcome, nonetheless. ***C GOOD

Article NL 10, outlining the hierarchy of electoral commissions, is the same as DL 13. NL 11 (DL 14) changes little, except for the specification in NL 11 that the Central Election Commission is chosen by the parliament upon the proposal of the presidium. -- Such language changes little, given previous "rubber-stamp" practices. ***C UNSURE

Article NL 12 does not reflect any of the corresponding DL 15

5/10

improvements we called for, including the Central Commission's legal obligation to publish uniform rules and procedures for all districts and polling sites, governing candidate registration, equal and fair campaign opportunities, accurate counting and reporting of results, etc. ***B BAD

Article NL 17 gives to the Central Commission the power to appoint district commissions, whereas the corresponding DL 16 gave that power to local-government leaders; I think this change is good. In Kazakhstan, last March, local commissions were appointed and dominated by local administrators, many of whom were also candidates or employed by candidates. Although my memo did not address this issue, we discussed it informally with several members of the Drafting Commission. ***C GOOD

Article NL 14, regarding the powers of district commissions, is essentially unchanged from DL 17.

With reference to both central and district commissions, we had recommended that they should include at least one representative from each political party or movement; this change was not made. ***B BAD

Articles NL 15 and 16, regarding polling site commissions, are essentially identical to corresponding DL 18 and 19. NL 17 has no corresponding DL article; it supports other NL provisions creating a clearer hierarchy of commissions, states that all commission members must be "neutral and objective" in carrying out their electoral duties, and discusses how (and by whom) commission members may be relieved of their duties. ***C GOOD

Articles NL 18 and 19 are similar to DL 20 and 21. Confusion remains as to when an appeal from a commission decision is "ripe" for judicial intervention. This is another of those can-of-worms issues that my memo declined to address.

Article NL 20 (which is technically new, but does not significantly modify the DL) starts the section governing nomination and registration of candidates; indeed, this section is a major reworking of the DL -- and incorporates DL 8 and 9 -- but it is not a significant improvement of the DL.

As discussed above, article NL 21 makes explicit what -- the Committee told us -- the DL sought to say (and arguably implied) regarding self-nominations. -- We sought the Committee's agreement to include genuine self-nominations -- which, along with party-nominations, would replace soviet-style reliance on nominations by enterprises, work collectives, etc., but the Committee rejected this plea. As if to drive the point home, NL 21 ordains: "A citizen of the Republic of Tajikistan has the right to nominate himself . . . through a work collective."

The idea that a person who opposes his work collective's nominee could, as an "unaffiliated" individual, obtain some support from

6/10

that collective's individual members, some support from several other collectives' members, some support from his own and various others' places of residence, and some support from "unaffiliated" voters in his district -- all of which support, cumulatively, might be greater than the support given to any other would-be candidate in the district, thereby justifying a place on the ballot for that district's representative to the parliament -- is an idea that the Committee utterly rejected. ***B BAD, ***C BAD

Indeed, the NL goes even further than the DL in "institutionalizing" candidates by giving nomination power to local governments; the "soviet mind-set" that perceives people -- including voters, candidates, and parliament members -- only in terms of their relationships to institutions (invariably state-controlled), remains a serious impediment to democracy in Tajikistan. ***C BAD

Otherwise, while this section (NL 20 through 27) is even more verbose than corresponding portions of the DL, it ordains little new and nothing better. ***C BAD

Articles NL 27 through 38, regarding the activities of candidates, have few modifications of corresponding DL articles. However, we proposed, as "Priority 5" in my memo, an important change to NL 28, namely, that responsible criticisms of current law, including the Constitution, would not subject a candidate to de-certification or, worse, prosecution. DL 28 asserted that a candidate's program "is not to contradict the Constitution and the laws of the Republic of Tajikistan"; such language has caused significant "chilling" of political discourse in various countries; accordingly, we proposed that this phrase be modified by the caveat: "but this shall not be construed to limit responsible proposals for changes and improvements to existing law." The Committee, in corresponding NL 29, apparently ignored our plea, despite its promise to honor it.

One interesting addition is the final paragraph of NL 30: "A candidate . . . may establish initiative groups . . . supporting his candidacy." This appears to promote decoupling of candidates from collectives, etc. -- and in that sense is welcome -- but, again, since all candidacies are themselves institution-nominated, such initiative groups merely represent a tentative step in the right direction. ***C GOOD

Article NL 39, regarding time and place of voting, is essentially unchanged.

Article NL 40 was discussed at length with reference to article NL 6 as appearing to allow candidate-representatives to observe ballot-box sealing, while actually not allowing quite that; as noted, it ordains: "ballot boxes are checked and sealed [before voting starts]. . . in the presence of all commission members, representatives (observers) of candidates, mass media and international observers." Again, we urged -- as "Priority 1" --

that the law should allow a representative of each candidate to be present from before polls open until after the counting is completed (and "protocols" signed, etc.); we were promised that this change would be made. This change would have been simple -- simple to incorporate into the new law, and simple to implement. NL 40, on its face, refers to only a brief, albeit important, pre-voting activity; so far, so good. But NL 6 modifies NL 40; "representatives of candidates" are actually representatives of institutions that nominated them; and for this reason, and others already delved into, the above-quoted language represents a small skirmish won while a major battle is lost. ***R BAD

NL 40 does, however, require the voter to sign the registration list. ***A GOOD

We had urged the Drafting Committee to make this change; but we had urged that, concurrently, a commission member should sign the ballot issued to that voter; this change was NOT adopted. ***R BAD

In general, the system ordained in NL 40 and its companion provisions invites fraud; such fraud occurred in the recent presidential election. We discussed the need for changes with the Drafting Committee, and it agreed to make them. The changes actually reflected in the NL do not come close to fulfilling that agreement.

Article NL 41 tightens up provisions for voting "off premises" -- allowing same only if a voter cannot come to the polling site due to poor health. This is new and welcome. ***C GOOD

Articles NL 42 and 43 are essentially the same as DL 41 and 47, respectively; but NL 43 omits the DL 42 language allowing district commissions to declare an election invalid due to election-commission error or illegality; that power still resides in the Central Commission. ***C GOOD

However, we had urged that no such declaration be allowed unless, but for such error or illegality -- or candidate misconduct, etc. -- the outcome would probably have been different. This promised change was not made. ***R BAD

We had also urged that district totals be accompanied by per-polling-site totals; if each candidate had a representative observing the voting and counting in each polling site, then candidates and the general public could readily ascertain whether "official" district results accurately reflected votes properly cast and counted; NL 43 does not require such per-polling-site information; in fairness, we were unsure whether the Committee had promised this change, but my sense was that they did. Anyway, this change is not reflected in NL 42 and 43. ***B BAD

We had furthermore urged that the official polling-site totals (so-called "protocols") be written in indelible ink, not pencil;

s/w

82

would require further consideration of the entire subject of elections, based on Tajikistan's practical experience and the suggestions of international observers, etc. ***B BAD

Conclusion

A charitable conclusion would be that the Drafting Committee, and those to whom it was answerable, did not know enough or care enough about the subject of free and fair elections, etc., in order to appreciate how little it knows and how much it ought to care. But this cannot be due to any lack of interest or effort on the part of ALC, IFES, or the CSCE.

(*) The new law on parliamentary elections is so flawed that minimally-adequate elections thereunder will be unlikely, perhaps impossible. I am inclined to the view that ALC, IFES, and the CSCE should not "dignify" elections conducted thereunder by sending monitors to observe the upcoming parliamentary elections in Tajikistan.