Remarks by Principal Deputy HR Donald Hays at the Second Conference on Alternative Dispute Resolution

Ladies and Gentlemen,

Last year, at this conference, we spoke about Mediation as a completely new concept in Bosnia and Herzegovina.

Today there is a recognition of both the process and its value.

BiH today is experiencing a gradual but nonetheless significant change in the whole environment of commercial litigation – and Mediation is very much a part of that.

The Criminal Procedure Code, the business registration system, and bankruptcy legislation have all been updated in the last 12 months. But it takes time to bring these new procedures into every day practice.

So while this country is still at the beginning of this reform process, real and positive change is underway.

The newly established Commercial Chambers have begun to have an impact (and those of us who have visited the Chambers and seen the mountains of paper that they have to work through are well aware of the task they face. Clearly more staff and more computers would help them significantly).

But we should recognize the fact that, for all the limitations in the present situation, concrete change is being achieved.

To take just one example, the average number of days needed to

have a contract enforced through a court in BiH has been reduced from 640 to 430.

A major step in the right direction, an improvement of more than 30 percent – but unfortunately this timeframe is still totally unacceptable when you wish to compete with others for investment dollars – more than a year is at least six months too long..

That's one reason Mediation is so important. It offers a fast track to resolving disputes.

But that's by no means the only reason.

Mediation is about finding solutions that work for both parties; it's about spreading advantage; it's about creating win-win situations.

And that's exactly what successful business is about too.

Promoting and consolidating an effective and accessible system of commercial Mediation dovetails with the simultaneous promotion of entrepreneurial skills in this country.

And those entrepreneurial skills – which are by no means scarce here – are, in the final analysis, the only hope of getting BiH properly onto the road to economic recovery.

Now, there are things we need to do that will add momentum to the progress that has already been made.

The Law on Mediation adopted by the BiH Parliament in August 2004 is still not in use due to conflicting amendments that were incorporated in the original text. Because of these amendments, the registration and certification of mediators, and the delegation of responsibility for training and registration are not sufficiently specific. This is slowing down the introduction of a credible and reliable Mediation service.

We need a body to certify and register mediators and supervise their activities. This is the only way that mediators will be able to sign legally binding Mediation agreements and operate to their full capacity. I have spoken to some of the mediators and they need this body and they need the support of the parliaments.

There is broad consensus behind this and I urge the parliamentarians to enact a law that provides for proper supervision in this crucial area.

The results of SEED's Alternative Dispute Resolution program demonstrate very clearly what a boost this process can give to the overall economy – and therefore just how important it is for parliament to get the correct legislation in place. The pilot project underway in Banja Luka's Basic Court has already unblocked more than 3 million KM in funds that can be used for business development and would otherwise have been tied up in marathon litigation.

The SEED project shows (and participants at today's conference audience will have a chance to learn more about the pilot project's results) that Mediation can work in Bosnia and Herzegovina – but for this to happen there must be clearly defined roles and responsibilities of courts, judges and mediators, and there must be processes that tie all of these together.

It is of the utmost importance that the HJPC is fully informed about, and involved in this initiative, since its interpretation of "judicial" responsibilities will have a significant bearing on how the process is implemented. I'm pleased to learn that the HJPC has been extremely supportive. What we want to see now is the rolling out of the Banja Luka pilot project throughout the country, with the support of the respective Justice Ministries.

In recent weeks I have been traveling around BiH, among other

things, talking about the progress that’s been made in this country’s economic reconstruction and what remains to be done. One of the points I have emphasized again and again is that no economic reform takes place in a vacuum. Each reform is related to many others.

All of us needs to be in the business of establishing a commercial environment in which investment can be used to revive existing companies, start new ones and create jobs. Commercial dispute Mediation is a key element in this environment. It’s not a “boutique” issue or an “experimental” initiative. It’s integral and crucially important to the overall effort to fix the BiH economy so that it can grow at a rate that starts to lift this country out of poverty.

This project is critical for a country with the backlog of cases that exists here, it is important for the potential investor and it is important for job growth. With your involvement and the full support of the International Community it will play a critical role in putting BiH back to work.

Thank you