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

Ladies and Gentlemen,

The concept of Alternative Dispute Resolution may be new to Bosnia and Herzegovina but it has been used in many countries very successfully for years. It is a tool to circumvent the long waiting time required for the resolution of commercial court disputes, something this country urgently needs if it is to attract investment and promote economic growth.

It is therefore useful to view ADR as a potentially transforming asset that this country should now be exploiting. It's an asset that can be acquired relatively quickly and inexpensively, and it is an asset that can have a huge, immediate, and positive impact on the business environment. It is a tool to energize BiH business, attract investment and create jobs.

We have here today representatives of organizations that have the expertise needed to develop this legal procedure (ADR) for BiH, and the political authorities, whose job it will be to make sure that that a partnership is developed to incorporate this procedure successfully in BiH's judicial system. This is a gathering of technical specialists whose field of activity is as yet not well known to the public in this country, yet the people in this room, by getting immediately engaged, can give an enormous boost to the economic fortunes of Bosnia and Herzegovina.

According to the World Bank, rate of execution – the slowness of the courts – is a tremendous impediment to the proper

development of BiH's business environment. It's one of the main reasons investors put their money into neighbouring countries instead of into this country. The BiH authorities have undertaken to establish, by the end of March, 15 commercial chambers that will be attached to existing courts. These chambers will be staffed by personnel with specialist expertise in business law. They will handle cases faster and more efficiently than the regular courts.

The commercial chambers will make a difference, at two levels. At the functional level, they will begin to address the horrendous backlog of cases, some originating from before the war, which currently clog up the BiH judicial system. Justice delayed is justice denied to many who have claims waiting before the courts. This backlog is morally as well as commercially unacceptable. This backlog also serves to drive investment away from BiH, since this country has until now been unable to assure prospective investors that if litigation becomes necessary they won't be tied up in the courts for years on end. Unfortunately the 15 business chambers won't be able to do the job alone; the very size of the backlog means that they will have to have other means of disposing of legitimate claims.

Alternative Dispute Resolution can complement the role of the commercial chambers and multiply the dividends of setting up these chambers.

ADR has been shown in other countries to be an extraordinarily effective way of reducing the volume of commercial litigation – *increasing*, I should emphasize, not *decreasing* the convenience and satisfaction of parties to a dispute. In some European countries, as well as in the US and Canada, I'm told, more than 50 percent of cases are resolved in prior-to-court ADR.

Just as the disadvantages of a dysfunctional court system are twofold –denying claimants a fair hearing and thus deterring

investment – so the advantages of an efficient court system are twofold – justice is dispensed efficiently, and this in turn gives prospective investors the assurance they need to bring their money to BiH and create jobs in this country.

If we can achieve significant reductions in the number of commercial cases that go to court, by increasing prior-to-court dispute resolution, we will begin to unblock the judicial system and significantly improve the business environment of BiH.

The New Code on Civil Procedure allows for the introduction of ADR mechanisms. To get this process moving forward the authorities must enact a Mediation Law at State level. This law will define the basic mediation procedure, who does what, who can become a mediator, and stipulates that the agreement reached during mediation will be signed by both parties and will be treated by the court as an executive order.

A Working Group, led by SEED and consisting of representatives from OHR, the American Bar Association, ABA CEELI (American Bar Association Central and Eastern Europe Legal Initiative), the State and Entity justice ministries and the Association of Mediators of BiH, has drafted appropriate legislation. The BH Justice Ministry has presented the draft to the Council of Ministers, who approved it and forwarded it to parliament for their action on 19 December 2004. Once this Law is enacted, trained mediators will be able to get proper certification and start practising mediation, courts will be able take advantage of this law and send cases to mediation.

In the meantime, the ADR project incorporates, with the help of SEED, pilot training for mediators and judges, a pilot project being undertaken at one court, and building the capacity of the Association of Mediators. This is a long-term approach – to transfer know-how and ownership to local partners and ensure that ADR is established on a professional and financially sound footing.

It is essential that public awareness of ADR be developed now. For while this concept is new in BiH it will soon take hold in this country – for one very simple reason: it makes sense, and people *see* that it makes sense. That is the lesson of other countries. As ADR is made available, businesspeople will use it, because it works. Once it becomes common practice, businesspeople will benefit, and the economy of BiH as a whole will benefit.

Thank you